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**XLII MEETING OF THE GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING
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PROGRESS REPORT

REGIONAL ASSESSMENT ON THE STATUS OF IMPLEMENTATION OF FORFEITURE LAWS IN OAS MEMBER STATES

ANTECEDENTS

The CICAD/OAS Group of Experts for the Control of Money Laundering (GELAVEX) celebrated its XXXIX meeting in Montevideo, Uruguay, where it approved a strategic plan for the Sub-Working Groups. This document defines the lines of action for each of the Sub-Working Groups for the 2015-2017 period.

According to what was agreed in the XLI Meeting of the GELAVEX held in Lima, Peru, the Sub-Working Group on International Cooperation and Forfeiture will work on the following lines of action in the 2015-2016 period: (1) Administration of complex assets; and (2) Promotion of the development of effective forfeiture laws and their effective implementation in Member States.

This second line of action was adopted in response to some delegations' interest in learning about the nature of forfeiture laws and their implementation status in OAS Member States. Additionally, it aims to facilitate international cooperation in specific asset forfeiture cases where there is a confluence of dissimilar international elements or procedures.

With this in mind, the second line of action will be developed through a ***“Regional assessment on the status of implementation of forfeiture laws in OAS Member States”***, which will be established according to the objectives and methodology described in this report.

This regional assessment will greatly benefit Member States as it will clarify the differences and

similarities between various forfeiture systems in relation to each country's current legislation and its implementation status. Additionally, the document will serve as a tool to facilitate international cooperation in specific cases in which the variety of procedures existing in each country complicates the mutual recognition of seizure and forfeiture sentences.

GENERAL OBJECTIVE

Identify Member States that have special forfeiture laws and determine their implementation status.

SPECIFIC OBJECTIVES

- Provide an updated list of countries that have special forfeiture laws, specifying the regulations in force and their date of publication;
- Identify countries that are currently working on legislation projects to implement special forfeiture laws;
- Determine the main benefits of implementing special forfeiture laws;
- Establish the main limitations for implementing new legislation on forfeiture procedures; and
- Provide Member States with a reference document regarding the status of special forfeiture laws in other States.

METHODOLOGY

As requested, the Sub-Working Group on International Cooperation and Forfeiture will present a study on the development of forfeiture laws and their effective implementation in Member States through the elaboration of a ***“Regional assessment on the status of implementation of forfeiture laws in OAS Member States”***.

This assessment was to be completed by the Coordination of the Sub-Working Group on International Cooperation and Forfeiture with the support of the Technical Secretariat and the delegation of the United States, which promised to assist in the elaboration of guidelines about the specific topics that should be analyzed in the study.

In this regard, the delegation of the United States submitted several documents for the evaluation of the Coordination of the Sub-Working Group. Such documents highlighted certain topics that should be considered in the assessment in order to identify the similarities and differences among the various

legislations.

With the aim of identifying the implementation status of special forfeiture laws as well as the main country-specific characteristics of these legislations, the following questionnaire was designed to be distributed among the delegations and returned by **July 15, 2016**.

The responses will be compiled and analyzed by the Technical Secretariat and the Sub-Working Group, with the goal of creating an assessment that will be presented at the XLII Plenary Meeting of the GELAVEX.

QUESTIONNAIRE ON SPECIAL FORFEITURE LAWS

- Member State:
- Position of the person answering this questionnaire:
- E-mail address and phone number:

1. What law regulates criminal forfeiture in your country?

Explain:

2. Does your country’s domestic legislation have a special forfeiture law other than the traditional criminal forfeiture?

Yes

No (skip to question 5)

3. What is the name of the special forfeiture law and the date it came in force?

Explain:

4. In case this law was inspired by any Model Law or Regulation, indicate which one(s).

Explain:

5. Does your legislation include any of the following legal figures or instruments?

LEGAL FIGURE	YES/ NO	INSTRUMENT	DATE IT CAME IN FORCE
<i>In Rem</i> Forfeiture			
Forfeiture by abandonment			
Extended forfeiture			
“Decomiso de pleno derecho”			
Other (specify)			

6. Is your country currently elaborating a special forfeiture law or is there any legislation project about this matter pending approval?

Explain:

7. What are the main characteristics of the sentencing procedure for special forfeiture established by your country's legislation and what is the substantial difference between this procedure and the traditional forfeiture procedure (whether through the special forfeiture law or any of the other legal figures mentioned in question 5)?

Explain:

8. Is the special forfeiture procedure contemplated in your legal system handled through any special jurisdiction?

Explain:

9. What kind of assets are subject to the special forfeiture contemplated in your legal system?

Explain:

10. Does your legislation include asset forfeiture for equivalent value?

Yes

No

11. Does the special forfeiture include the legal figure of "mixed assets"?

Yes

No

12. If your country has approved *In Rem* or extended forfeiture laws, what is the nature of such action?

Explain:

13. Are *In Rem* or extended forfeiture actions imprescriptible in your legislation?

Yes

No

14. Is your country's special forfeiture law applicable regardless of when the illicit activity was committed? (principle of retroactivity)

Yes

No

15. Does your country's special forfeiture law have a procedure for international cooperation according to the international treaties your country has signed, regarding matters such as asset administration and asset recovery?

Explain with references to the laws or regulations that enables such actions:

16. Does your country's special forfeiture law include regulations to protect victims' rights?

Explain with reference to the regulations:

17. Can the special forfeiture proceed in case of the death of the defendant or other affected persons?

Yes

No

18. Can the special forfeiture proceed when the defendant or other affected person is declared *in absentia*?

Yes

No

19. What is the procedure for *bona fide* third parties to express and demand their rights in special forfeiture processes?

Explain:

20. In what phase of the process are *bona fide* third parties' rights acknowledged?

Explain:

21. What are the major benefits of implementing special forfeiture laws and/or establishing the legal figures mentioned in question 5?

Explain:

22. Based on your experience, what are the major limitations for implementing these new regulations for special forfeiture in your legislation?

Explain:

