



17th St. & Constitution Avenue N.W.
Washington, D.C. 20006
United States of America

Organization of American States

P. 202.458.3000
www.oas.org

XXXVI MEETING OF THE GROUP OF EXPERTS FOR THE
CONTROL OF MONEY LAUNDERING
May 30-31, 2013
Washington, D.C., USA

INTER-AMERICAN DRUG ABUSE
CONTROL COMMISSION

CICAD

Secretariat for Multidimensional Security

OEA/Ser.L/XIV. 4.34
CICAD/LAVEX/doc.14/13
3 de junio de 2013
Original: español

FINAL REPORT
(DRAFT)

I. BACKGROUND

The Commission, during its forty-second regular session was hosted in the City of Santa Marta (Colombia). The basis of the work of the Group of Experts for the Control of Money Laundering (GELAVEX), were areas of action identified by GELAVEX in its 34th Plenary Session held in November 7-9, 2007 in Santiago de Chile, namely, forfeiture, *in rem* forfeiture, asset recovery agencies, coordination and integration between Financial Intelligence Units (FIUs), prosecution and investigation agencies, and terrorism financing.

The Commission also agreed that GELAVEX would host two annual meetings: one during the first half of the year, exclusively for the Sub Working Groups (a Subgroup of Forfeiture and a Subgroup for coordination and integration); and another meeting during the latter half, which will feature a plenary session as well as an additional meeting for the Sub Working Groups.

The plenary of the Expert Group held in Caracas, Venezuela, September 27-28, 2011 (LAVEX 33rd), recommended that the Commission approve the proposal for the development of a Planning Process for the Group of Experts for the Control of Money Laundering. This proposal was approved by CICAD at its Fiftieth Regular Session, which took place in Buenos Aires, Argentina, November 2-4, 2011.

According to the 2012-2013 Working Plan approved by CICAD, the Sub Working Group on International Cooperation and Asset Forfeiture will focus its work on the following topics: 1) Writing a self-evaluation guide to distinguish the progress of the forfeited asset system on the following topics: a) Asset Investigation; b) Asset Management; and c) Effectiveness of the application of forfeiture. To this end, the coordination of the Sub Working Group will work in coordination and with the support of the ES and BIDADAL project; and 2) developing a Study on International Cooperative Mechanisms (formal and informal) to allow adequate exchange of information for the prevention and suppression of money laundering, terrorism financing and recovery of assets of criminal origin. Also, according to the same work plan approved by the Commission, the Sub Working Group of Financial Intelligence Units and Criminal Investigation will work to: 1) Continue the process of identification and analysis of risk factors associated with money laundering and financing of terrorism at the hemispheric level; and 2) The development of a guide for asset investigation, which should contain at least an outline of investigation technique and the minimum elements required to apply these techniques. The work will be based on a sample survey, designed for and sent to the countries in English and Spanish. The countries will submit the completed survey by April 2013, so the coordination of the subgroup can tabulate the answers and produce a report to be presented at the GELAVEX sub-working group's meeting in Washington DC.

II. AGENDA: APPROVAL AND REVIEWING OF THEMES.

1. Inaugural session. Opening remarks were given by Chairman of the Group of Experts for the Control of Money Laundering of the Inter-American Drug Abuse Control Commission (CICAD), Mr. José Alberto Sbattella, Chairman of the Financial Intelligence Unit (FIU) of Argentina; and Mr. Nelson Mena, Chief of the Anti-Money Laundering Section of the Executive Secretariat of CICAD (ES/CICAD).
2. Agenda. The Group adopted, without modifications, the draft agenda (CICAD/LAVEX/doc.1/13).-

3. Posthumous tribute. A posthumous tribute was paid to the memory of the Lawyer Arturo Chávez, Prosecutor of the Anti-Money Laundering Unit of the Public Ministry of Honduras, by offering a minute of silence in the plenary meeting.

Uruguay proposed to the plenary to release a strong public statement to also be presented to CICAD, which condemns acts of delinquency within the international community.

El Salvador suggested taking advantage of the next OAS General Assembly to present the public statement and was informed that, through the ES the necessary inquiries would be made to the Office of the Secretary General.

Argentina, Bolivia, El Salvador, United States, Honduras and Uruguay formed a working group to draft the public statement (CICAD/LAVEX/ doc.13/13).

III. GROUP DELIBERATIONS

1. The Executive Secretariat reported orally on efforts to provide technical assistance to member states for the implementation of the FATF Recommendations. The steps to be taken to fulfill this mandate were detailed and summarized as follows: a) the management of the technical assistance aimed at supporting the government of Dominica in updating laundering legal frameworks to implement the main recommendations in accordance with the FATF evaluation; b) the management of a proposal handled by a working team formed by the Financial Crimes Enforcement Network (FinCEN), the Egmont Group, the GAFIC Secretariat and CICAD, to finance and carry out a training workshop on Strategic Analysis for Financial Intelligence Units in the region, which, in the first instance, will benefit Central America and the Caribbean; c) the management of a proposal that includes management, design and implementation of national and regional workshops specializing in issues related to money laundering targeted at judges and prosecutors – 2 in Central America and 2 in the Caribbean – which the Secretary of GAFIC will attend and incorporate as one of the central themes of the agenda, the implementation of the recommendations of mutual evaluations; d) management of the design and presentation of the donors proposals that include the development of specialized training programs and technical assistance, as well as training of Anti-Money Laundering Section staff in the new FATF methodology in supporting regional bodies (GAFIC and FATF) in the developing of mutual evaluations. These proposals would be implemented during the first half of 2014, and the result of the negotiations will be presented at the next meeting of the Group of Experts in Brazil.
2. The Executive Secretary of CICAD presented the Report on the Drug Problem in the Americas, highlighting the main findings on the phenomenon in the Hemisphere. The presentation focused mainly on the chapters related to security and flow of illicit assets, stressing that the Report is composed of an Analytical Report and a Scenarios Report. The first consists of a technical study of the hemispheric overview of the drug policies and presents a framework of options to strengthen the policies and their implementation; the second examines possible future situations for 2025 that are relevant, challenging, credible, and clear. The methodology used in the preparation of the Report was summarized, as well as, the review topics, challenges, and the relationship between crime and violence, with special reference to the problem of money laundering and the transfer of profits of illicit origin.

Deliberations of the delegations:

Chile stressed the importance of developing appropriate and standard methods of determining the amount of illegal assets that exist in respective countries. The developing methods and results could be shared with other countries as a foundation for establishing and implementing good practices in order to start work in the Expert Group.

3. The Coordination of the Subgroup on International Cooperation and Asset Forfeiture and the BIDAL Project presented a report on the progress of drafting a self-evaluation guide to distinguish the progress in the system of asset forfeiture focused on the following themes: a) Asset Investigation; b) Asset Management; and c) Electivity of asset forfeiture application (CICAD/LAVEX/ doc.3/13). The Group is working diligently to finalize the document, scheduled to be presented at the next Plenary Session for approval. It was also agreed that the delegations will submit, through the ES, their observations to the document. The ES informed that both versions, in English and Spanish, will be circulated once the first draft has included the indicators that should be included, ensuring that both versions are circulated as soon as possible to allow delegations to get their observations in due time.
4. The Coordination of the Sub-Working Group on International Cooperation and Asset Forfeiture also presented a draft of the study of international cooperation mechanisms (formal and informal) to allow adequate information exchange for the prevention and suppression of money laundering, terrorism financing and recovery of assets of criminal origin (CICAD/LAVEX/ doc.4/13); in this regard, the Group welcomed the significant progress made in the study, deciding that the ES circulate it to the respective delegations and that they submit their comments before the next meeting of the Expert Group for its consideration and approval.

Comments of the delegations:

Chile stated that it is important that the work not only be a study and proposed going further by presenting a program proposal as a result of this same study.

USA stressed that international cooperation has a lot to do with what is asked of countries. It added that the international conventions provide mechanisms for effective international cooperation. It also made reference to the fact that in recent years international cooperation laws have been strengthened. Lastly, was highlighted the need of taking advantage of the mutual evaluation reports conducted by specialized institutions such as FATF should be used to obtain important information about the findings or progress of the matter.

Ecuador emphasized the importance of unifying the terminology in the field of asset recovery, due to problems that can generate a terminological imprecision in international assistance requests.

Uruguay also referred to the importance of standardizing terminology, suggesting that including definitions of substantive character of the legal institutions referred in the applications generates

a kind of good practice in the drafting of international assistance requests. It also made reference to the importance of supranational rules that represent the primary basis of international cooperation.

Brazil manifested the availability of its guide on international cooperation to the Working Group on International Cooperation and Asset Forfeiture as a reference that can be used for the preparation of the proposed program that is presented as a result of this study.

Colombia referred to the execution of judgments about goods delivered abroad and that are requested, highlighting that important changes are being made in the domestic legislation to recognize the effectiveness of such foreign judgments.

5. The delegation of Colombia, through Dr. Julio Ospino, Prosecutor Officer to the Supreme Court of Justice, gave a presentation related to the Update of the Legal Frameworks related to Asset Forfeiture and Best Practices to the application of Special Techniques for Effective Asset Investigation.

Comments of the delegations:

Brazil commented that asset investigation is being performed effectively in the country although there isn't a law of forfeiture. It was also indicated that legal provisions that allow special techniques of investigation have been developed in Brazil, as well as rules that allow the lifting of bank secrecy and the implementation of other security measures on assets.

The USA highlighted the potential for more international cooperation with Colombia in confiscation of assets. It was stressed that some reforms will allow the investigation of assets of people who have been extradited to USA, but whose properties are in Colombia. They will also allow enforcing asset forfeiture judgments, raising the potential of Colombian authorities to confiscate or proceed with *in rem* forfeiture of assets from drug trafficking and organized crime.

Honduras stood out in saying that although its domain deprivation law has only recently been implemented, it has been very successful due to the independence of criminal action. The key to success in the exercise of the forfeiture action is to delimit the grounds of criminal proceedings, accompanied by an efficient system of administration of seized and forfeited assets.

Bolivia made reference to the faculties of the Bolivian FUI and the advantages that arise from the adoption of the 2010 anti-money laundering law, concerning the transmission of information to the Attorney General. Bolivia also pointed out the advantages of having a laboratory on money laundering, which establishes a database that allows immediate access to relevant information for an effective asset investigation.

Salvador highlighted the possibility of adopting an *in rem* forfeiture law that is currently being studied in the Legislative Assembly. It was also noted the value of the Colombian experience in the application of this legal mechanism.

Panama stressed the importance of having an appropriate institutional structure, especially in the area of jurisdiction of courts that judge *in rem* forfeiture actions. It was also highlighted that such a structure should have the capacity to prosecute all cases related to the subject, as well as the capacity of public prosecutors to work further in the investigations.

Uruguay made reference to the effectiveness of *in rem* forfeiture in a critical context due to the impossibility of applying the figure of forfeited assets in criminal asset recovery, which may not apply in non-critical contexts and where there is the possibility, perhaps constitutional, of implementing the *in rem* forfeiture institute. For this, Uruguay urged the Group to seek other possibilities to ensure the success of an effective asset investigation.

6. The delegations of Argentina and Peru gave presentations on the implementation of asset-freezing measures by the Financial Intelligence Units (CICAD/LAVEX/ doc.6/13; and CICAD/LAVEX/ doc.7/13).

Comments of the delegations:

The USA stressed the importance of compliance with the FATF Recommendations, particularly regarding freezing measures, which should be imposed in specific AML/CFT cases. Therefore, the USA welcomed the delegations of Argentina and Peru by major advances in their legislations to comply with these international standards.

7. The Coordination of the Sub-Working Group of Financial Intelligence Units and Criminal Investigation Agencies presented the progress report on the development of recommendations for the identification and analysis of risk factors associated with Money Laundering and Terrorism Financing at the hemispheric level (CICAD/LAVEX/ doc.9/13). The group decided that that the Sub-Working Group will continue developing this document, in order to submit to the plenary session in September a final document, for consideration and approval. This final document will contain guidelines that support the countries to develop and diagnose risk of ML/FT, identifying specific objectives and parameters of threats and vulnerabilities, in order to evaluate and prevent risks and ML/FT consequences. To this effect, the delegations will review the version presented in this meeting and will provide comments, observations and proposals through the SE.

Comments of the delegations:

Uruguay stressed the importance of the new stage of this risk-based approach, in line with FATF recommendations, which will naturally be subject of future evaluations of this specialized agency. Therefore, the experience of the countries that have made progress on this issue will be

very helpful for the work of this group, creating synergies that will help to enable countries to take appropriate action to meet this requirement.

The USA referred to the feedback that FIU should promote with the obligated entities, which should be part of the strategic guidelines follow by authorities that prevent and combat AML/CFT. Guides and training to obligated entities should also be part of these strategic lines of action.

Chile highlighted the importance of improving internal coordination between FIUs and law enforcement authorities to have a more integrated view on the identification and assessment of LD/FT risk factors.

8. The Coordination of the Sub-Working Group of Financial Intelligence Units and Criminal Investigation Agency presented a progress report on the elaboration of the "Work Guide on Asset Investigation" (CICAD/LAVEX/ doc.10/13), based on the consolidation of the answers to the survey circulated to member states. In this regard, the Group decided to continue the development of this document, which shall contain the following minimum elements: i) Concept, ii) Scope, iii) Sources of information and tools (national and international), iv) Methodology, v) Good practices, vi) Limitations, and vii) international legal assistance. For these purposes, the coordination of the Sub-Group, with the support of the SEA, will circulate a first draft in late July for the delegations to submit their comments before August 31. A final version will be presented to the Plenary in the September meeting for consideration and approval.

Comments of the delegations:

Uruguay pointed out the importance of meeting FATF recommendations regarding the parallel financial investigation of money laundering predicate offenses. It was also indicated that joint investigations should be the central point of this work.

IV. CONCLUSIONS AND RECOMMENDATIONS OF GELAVEX'S SUB WORKING GROUPS

1. To welcome the report submitted by the ES, recognizing the effort made to provide technical assistance to member states for the implementation of the FATF recommendations, urging to the SE to continue strengthening the institutional capacity of member states for efficient and effective fight against AML/CFT.
2. To highlight presentation of the "Report on the Drug Problem in the Hemisphere", and its focus on the chapters about security and flow of illicit assets.

3. To present to the plenary for approval in September the self-evaluation guide about the advances in the asset forfeiture system. To this end, delegations will submit through the ES, the comments to the referred document before August 1.
4. To present to the plenary in September the “Study of International Cooperation Mechanisms” (formal and informal) in order to allow adequate information exchange for the prevention and suppression of money laundering, terrorism financing and recovery of assets of criminal origin, for which the SE will circulate the final version of the document in reference to the respective delegations, which will submit their comments before July 15.
5. To continue developing the document “Identification and analysis of risk factors associated with money laundering and terrorism financing at the hemispheric level”, in order to present s final version to the plenary in September, for consideration and approval. The delegations will review the version presented at this meeting and will provide comments, feedbacks and suggestions, through the SE, by August 1.
6. To continue developing the “Work Guide on Asset Investigation”, which shall contain the following minimum elements: i) Concept, ii) Scope, iii) Sources of information and tools (national and international), iv) Methodology, v) Good practices, vi) Limitations, and vii) international legal assistance. For these purposes, the coordination of the Sub-Group will coordinate, with the support of the ES, will circulate a first draft in late July and the delegations will submit their comments before August 31. A final version will be presented to the plenary in September for consideration and approval.

V. OTHER BUSINESS

Regarding the Public Statement on the death of Attorney Orlan Arturo Chávez, the ES made appropriate consultations on the possibility of presenting the Statement at the next General Assembly to be held in June in Antigua, Guatemala, and informed the plenary that this procedure should be through the Commission. However, remains the possibility that the Statement can be presented to the General Assembly through the Honduran Foreign Ministry or the Foreign Ministry of another Member State. Due to this consideration, the Expert Group states in this Report its desire to express the message contained in the Statement to the General Assembly. The ES shall provide all assistance required for this purpose through the Permanent Mission of Honduras to the OAS. The aforementioned statement will be posted on the website of CICAD.

The Working Group composed by Argentina, Bolivia, El Salvador, United States, Honduras and Uruguay will work further in the text of the declaration and will present it to the Plenary in September for review and approval in order to be presented to CICAD in December.

Next meeting

The group decided that the next GELAVEX's plenary meeting will be established by the Chair and the Executive Secretary, in coordination with the Vice chair, being provisionally established with as September 17-18 in Brazil. The ES will confirm the dates and city in due time.

The groups thanked the Chair of the Group held by the Republic of Argentina Delegation, for the excellent organization of this meeting and the outstanding handling of this Plenary.