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**PROGRESS REPORT ON THE COMPLEMENTARY STUDY ON PROCEDURES AND/OR CRITERIA FOR  
INTERNATIONAL COOPERATION IN ASSET SHARING**

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CRITERIA FOR INTERNATIONAL COOPERATION IN ASSET SHARING

Under the agreements reached on this matter at the XXXVI Meeting of the Group of Experts for the Control of Money Laundering (GELAVEX), which took place September 17-18, 2013, in Brasilia, Brazil, the Subgroup on Forfeiture and International Cooperation should work on a “**Complementary Study on Procedures and/or Criteria for International Cooperation in Asset Sharing**,” as part of its work plan for this 2013-2014 period.

Because this subgroup has been working on international cooperation as regards the situation of asset forfeiture and recovery, it has reviewed several of the documents produced by GELAVEX that address the sharing of forfeited assets among the states. These documents include:

1. “Implementation of Asset Forfeiture Systems and Mechanisms for Sharing Seized Assets,” approved at the XXXV Meeting of the Group of Experts held in Buenos Aires, Argentina, September 17-18, 2012.

This document provides an important synthesis of the provisions that Argentina, Brazil, Colombia, Costa Rica, the United States, Guatemala, Honduras, Mexico, Peru, the Dominican Republic, El Salvador, and Venezuela have incorporated into their legal systems with regard to international cooperation in asset sharing with other states.

However, with the exception of Brazil and the United States, in the majority of cases there are no specific rules governing the treatment to be given to forfeited assets that may be connected to a case being prosecuted in another country.

In the case of Colombia and the Dominican Republic, it was noted that there are rules specifying the authority that will determine how assets may be shared with other countries if need be. Generally, though, most of the countries cited establish a provision in their legal systems to request and provide any international cooperation in the event that mutual legal assistance in asset recovery is required, but do not specifically define the procedures, percentages, and/or assumptions by which assets could be shared among countries, with the exception of Brazil and the United States, as indicated above.

This reflects the fact that, at the time the previous study was conducted, some member states still had domestic legal systems that did not include regulations on asset sharing with other countries, and some states continue to have significant gaps on this issue even though they have some rules in place. This underscores the importance of defining criteria and/or procedures in this area, as the subgroup has been assigned to do.

2. “Study to Identify International Cooperation Mechanisms (Formal and Informal) that Provide an Adequate Exchange of Information to Prevent and Combat Money Laundering, the Financing of Terrorism and the Recovery of Assets of Criminal Origin,” approved at the XXXVI Meeting of the Group of Experts held in Brasilia.

This document proposes that a technical assistance program be developed by the Executive Secretariat, with the support of GELAVEX. That program includes the following elements that directly pertain to the subject of the “complementary study” to be prepared by the subgroup:

1. Investigation of mutual evaluations to identify states’ problems with regard to international cooperation in asset recovery.

2. Preparation of a document with framework provisions, guidelines, and/or best practices with regard to international cooperation in asset recovery, resulting from the collection of information described in paragraph 1, above, which would serve as a reference for all countries in the Americas.

In addition, one of the program's specific objectives is to "promote the adoption of mechanisms to share forfeited assets among States that participate and cooperate in the identification of assets and their recovery."

Thus, the investigation of mutual evaluations will provide essential input for understanding countries' circumstances with regard to international cooperation in asset recovery and will serve as the basis for the document with framework provisions, **procedures, and/or criteria for international cooperation in asset sharing**. That is, the program will develop criteria for asset sharing among the states, something this Working Subgroup has also been assigned to do, through the complementary study.

This being the case, this Coordinator believes that the mandate to produce a "**complementary study**" should be carried out as the program develops, with the subgroup providing its contributions directly to the Executive Secretariat during this effort by collecting updated information on the subject from the countries.

Based on the facts laid out in the preceding paragraphs, the Coordinator of this Working Subgroup, in order to contribute to the Secretariat's efforts **and update the information —if any country has made revisions to its system after the work already done by GELAVEX on this subject**—suggests that a questionnaire be drafted and proposes that a series of minimum aspects be included for consultation with the member states. These will be part of a questionnaire that will be circulated for responses from all delegations. As indicated, the idea is to gather specific, updated information on the subject so that this input, along with the research and work that would be done by the Secretariat through the implementation of the program, would serve as the basis for drafting procedures and/or criteria that could provide guidance to the countries in this area. Finally, the information will be consolidated and will become part of the document that will be produced by the program and presented at the next GELAVEX plenary session in September.

It is important for this Coordinator that all delegations indicate at this onsite working meeting participate in drafting new questions as they see fit and in evaluating those proposed by the Coordinator. The questions for the questionnaire would be as follows:

1. Does your country's domestic legal system have rules establishing procedures to share forfeited assets with other states? If so, describe them.
2. If the first question was answered in the affirmative: What specific provisions in your country's domestic legal system define percentages and assumptions or circumstances in which forfeited assets should or may be shared?
3. Do the national rules contemplate the possibility of including interest or recalculated value that may have been derived from the proceeds of the crime or the forfeited assets and deducting reasonable costs incurred in investigations, prosecutions, or judicial proceedings that led to the forfeiture of the criminal proceeds or the assets?
4. What are the requirements that should be included in applications to distribute the criminal proceeds or forfeited assets?
5. Do national rules include provisions related to respecting the rights of victims when it comes to signing agreements or arrangements to share assets among states?
6. Is it legally possible to sign bilateral agreements or arrangements to resolve specific cases involving asset sharing among states?

7. What national authority or authorities have the legal standing to sign bilateral agreements or arrangements to share assets among states?

The Coordinator also deems it necessary for the Executive Secretariat to define, by means of a timeline, the start of each phase of the program, as well as the structure and content of the specific outcomes so that the subgroup can give the Secretariat the support it needs to identify the assigned procedures and/or criteria.