

Secretariat for Multidimensional Security

XLVI MEETING OF THE GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING June 4 and 5, 2019 Washington, D.C., USA OEA/Ser.L/XIV. 4.46 DDOT/LAVEX/doc.4/19 June 4, 2019 Original: Spanish

#### PRESENTATION

#### PROGRESS REPORT

#### STUDY ON COMPARATIVE LEGISLATION AND TECHNICAL GUIDELINES OF INTERNATIONAL ORGANIZATIONS REGARDING THE PROBATIVE VALUE OF INTELLIGENCE REPORTS IN THE REGION

Bolivia, Co-Coordinator of the Sub-Working Group on Financial Intelligence Units and Law Enforcement Agencies



### PROGRESS REPORT "Study on Comparative Legislation and Technical Guidelines of International Organizations Regarding the Probative Value of Intelligence Reports in the Region"

### <u>AGENDA</u>

- 1. Introduction
- 2. Objective
- 3. Proposed Methodology
- 4. Presentation of Results
  - a) Comparative Legislation



- b) Technical Guidelines of International Organizations
- 5. Conclusions and Tasks to Complete



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## 1. Introduction

In accordance with the lines of action from the Strategic Plan for 2018-2020 and the **Working Plan 2018-2019** for the **Sub-Working Group of Financial Intelligence Units and Law Enforcement Agencies** of GELAVEX, it was determined that this period will be spent working on the following items:

- Assessment of the prosecution of money laundering for which the primary offenses are human trafficking and the illicit trafficking of migrants in the region.
- Guide of best practices in the use of expert reports to prove the crime of money laundering.
- Study on comparative legislation and technical guidelines of international organizations regarding the probative value of intelligence reports in the region.



#### **PROGRESS REPORT**

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### 2. Objective

Produce recommendations that allow states to unify criteria with respect to the information shared between Financial Intelligence Units and law enforcement agencies and the probative value of those criteria.





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## 3. Proposed Methodology

- Compile information about the legislation of member states.
  Preliminary assessment and systematization.
- As necessary, request additional information, from member states, through the GELAVEX Technical Secretariat.
- □ Produce and present the preliminary report or study.
- Conclude the study and prepare the final report and presentation, to be shown at the 2019 plenary session.

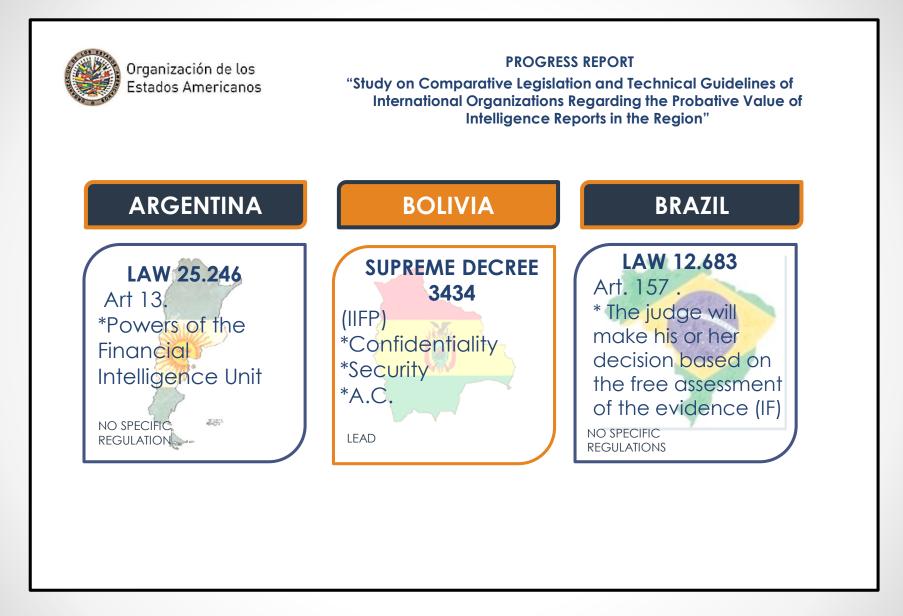


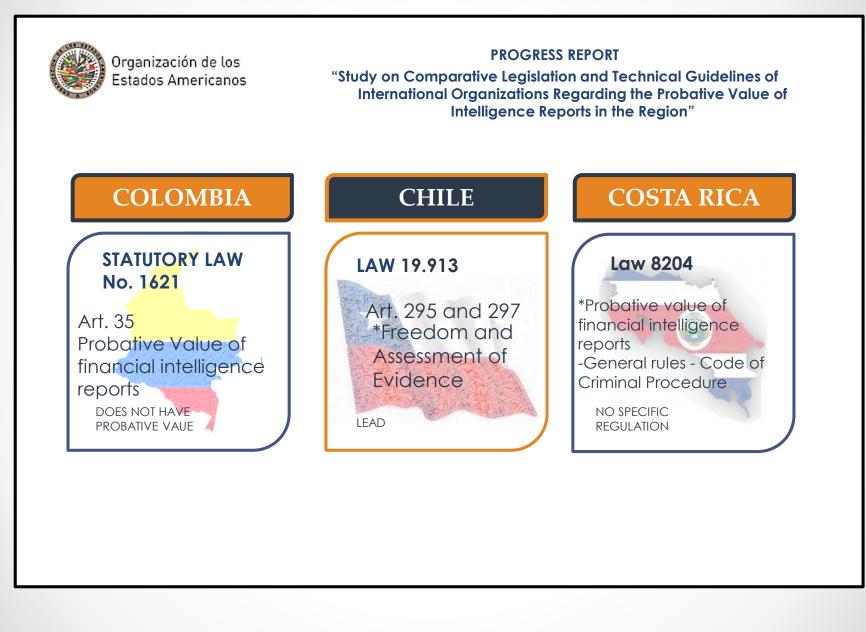
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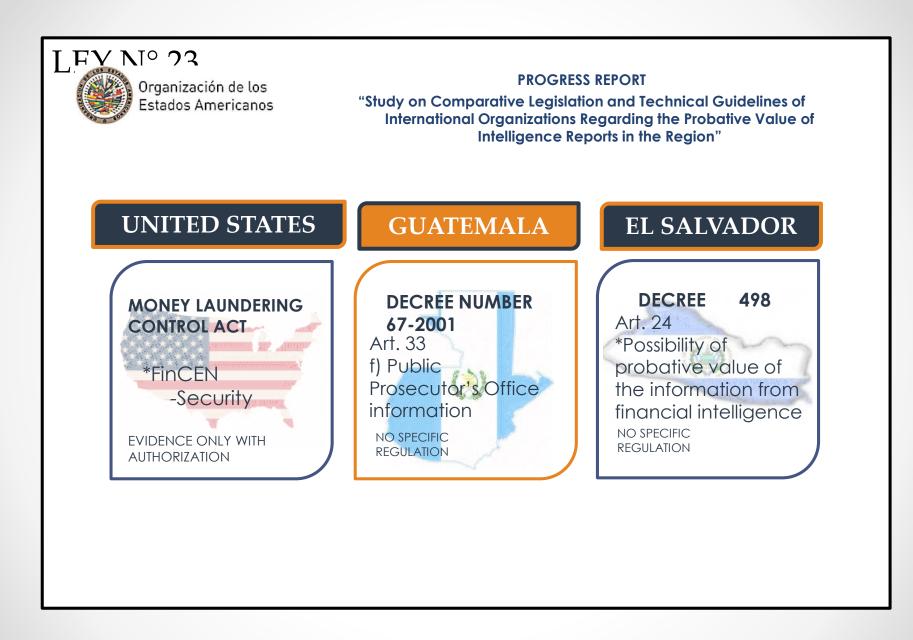
### 4. Presentation of Results

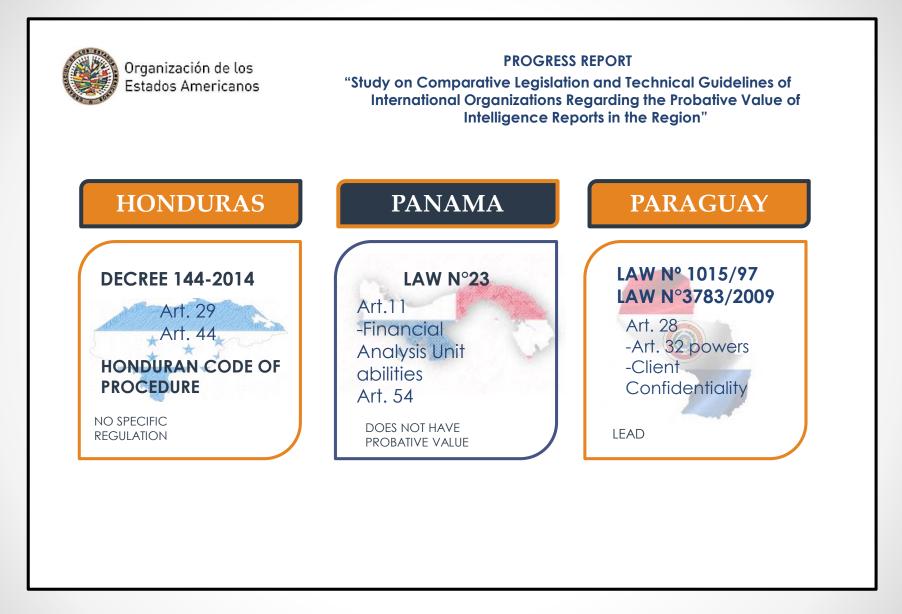
a) Comparative Legislation

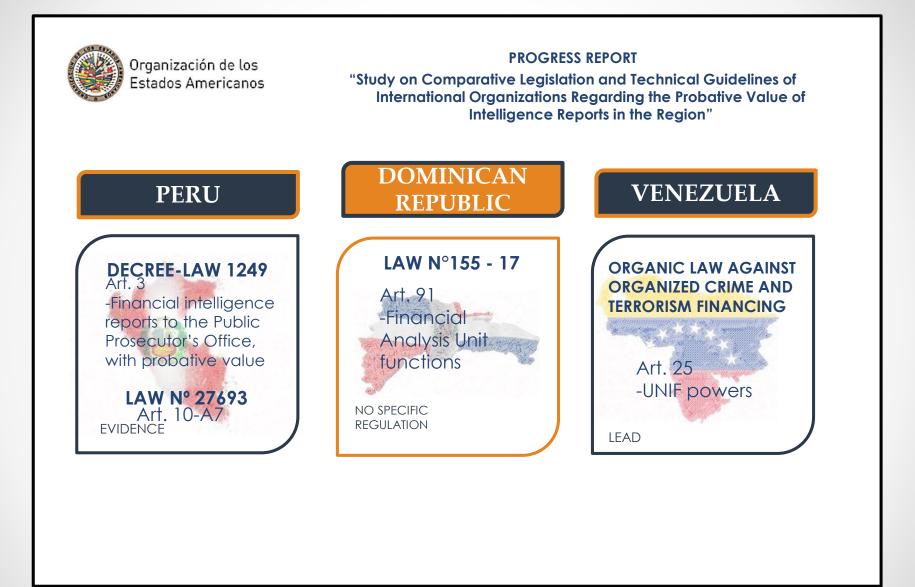
ARGENTINA - BOLIVIA - BRAZIL - COLOMBIA CHILE - COSTA RICA - UNITED STATES GUATEMALA - EL SALVADOR - HONDURAS PANAMA - PARAGUAY - PERU DOMINICAN REPUBLIC - VENEZUELA TRINIDAD AND TOBAGO.

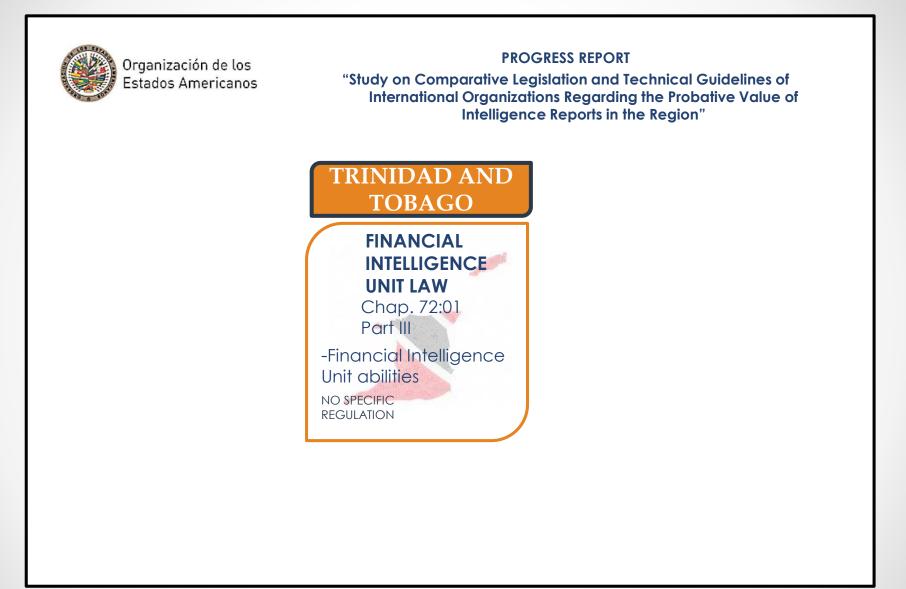














### **PROGRESS REPORT**

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### **5.a CONCLUSIONS**

With respect to releasing of the Intelligence Report:

- **Bolivia, Paraguay, Venezuela**, and **Chile** release financial intelligence reports with probative value.
- Financial intelligence reports in **Panama** and **Colombia** do not have probative value in judicial proceedings.
- In **the United States**, financial intelligence reports only have probative value with the authorization of FinCEN.
- Financial intelligence reports in **Peru** may be used to support an investigative process with a set probative level.
- The legislation of Argentina, the Dominican Republic, Trinidad and Tobago, Honduras, El Salvador, Guatemala, Costa Rica, and Brazil does not contain special regulation in this regard.



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### 4. Presentation of Results

b) Technical Guidelines of International Organizations

I.	FATF
II.	OAS/CICAD
III.	FATF - FSRBs
IV.	CICAD
V.	WORLD BANK
VI.	GAFISUD – EUROPEAN UNION



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### I. FATF

International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation

### 40 **RECOMMENDATIONS**



### **Recommendation 29 – FINANCIAL INTELLIGENCE UNITS**

Information received, processed, held or disseminated by the FIU must be securely protected, exchanged and used only in accordance with agreed procedures, policies and applicable laws and regulations.



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# II. OAS/CICAD

OEA/Ser.L/XIV. 4.33 CICAD/LAVEX/doc.4/14 RECOMMENDED PRINCIPLES FOR THE COORDINATION AND INTEGRATION OF FIU/OIC WORKING GROUP



2. Information from a FIU cannot be used as evidence in an administrative document, investigative, procedural, or judicial process without prior consent from the FIU receiving the request. Even if permission is granted to use FIU information as evidence, there may be additional legal requirements, such as those found in Mutual Legal Assistance Treaties (MLATS) and the use of letters rogatory, so that the information may be used as evidence in legal proceedings.



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## III. FATF

International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation



### AML – CTF FOR JUDGES AND PROSECUTORS

### **Burden and Standard of Proof**

Financial intelligence is an excellent source of lead information, but in many countries, **it should not be used as evidence**. In some countries, the FIU may be able to participate as a party to the prosecution, and in rare cases, the defendant may be able to access financial intelligence if it contains evidence tending to exculpate him.



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# IV. CICAD

MODEL REGULATIONS CONCERNING LAUNDERING OFFENSES CONNECTED TO ILLICIT DRUG TRAFFICKING AND OTHER SERIOUS OFFENSES (ART. 13)



### FINANCIAL (INTELLIGENCE/ INVESTIGATION/ INFORMATION/ ANALYSIS) UNITS

Fach member state shall establish or designate a central agency responsible for receiving, requesting, analyzing and disseminating to the competent authorities, disclosures of information relating to financial transactions that are required to be reported pursuant to these Model Regulations that concern suspected proceeds of crime.



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## **V. WORLD BANK**

Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism (AUGUST-2007)

Due to the operative analysis, the Information received by the FIU becomes **operative intelligence**, which can be transmitted to the police or prosecution office for further purposes.

In either cases, the FIU must provide <u>financial intelligence</u> to the competent authorities as soon as possible, so that they can follow the lead provided by the FIU.

The FIU, generally, does not count on all judicial faculties of the law enforcement and the judicial agencies have to obtain evidence.



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## **VI. GAFILAT – EUROPEAN UNION**

Operational Issues Financial Investigations Guidance (June 2012)

In most countries, the Information on the STR are used with intelligence purposes and not as evidence in the judicial proceedings.

How to make intelligence information available for operational authorities and covert them into evidence?

STRs are not to be considered as criminal charges and should not be viewed as "criminal activity reports".

When receiving information from the FIU, investigators should note the restrictions on the use of information, and, how it can be utilised or "handled", in particular for investigative purposes.

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## **5.b CONCLUSIONS AND FURTHER STEPS**

- Compile the comments and suggestions of the Group and propose a preliminary assessment.

- Conclude the study and elaborate a final report presentation to be exposed in the 2019 Plenary Meeting.

# Thank You