



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**

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June 4, 2019
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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



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PROGRESS REPORT

“Study on Comparative Legislation and Technical Guidelines of
International Organizations Regarding the Probative Value of
Intelligence Reports in the Region”

AGENDA

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.**



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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.



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ARGENTINA

LAW 25.246

Art 13.

*Powers of the
Financial
Intelligence Unit

NO SPECIFIC
REGULATION

BOLIVIA

SUPREME DECREE

3434

(IIFP)

*Confidentiality
*Security
*A.C.

LEAD

BRAZIL

LAW 12.683

Art. 157 .

* The judge will
make his or her
decision based on
the free assessment
of the evidence (IF)

NO SPECIFIC
REGULATIONS



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COLOMBIA

STATUTORY LAW No. 1621

Art. 35
Probative Value of
financial intelligence
reports

DOES NOT HAVE
PROBATIVE VAUE

CHILE

LAW 19.913

Art. 295 and 297
*Freedom and
Assessment of
Evidence

LEAD

COSTA RICA

Law 8204

*Probative value of
financial intelligence
reports
-General rules - Code of
Criminal Procedure

NO SPECIFIC
REGULATION



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UNITED STATES

**MONEY LAUNDERING
CONTROL ACT**

*FinCEN
-Security

EVIDENCE ONLY WITH
AUTHORIZATION

GUATEMALA

**DECREE NUMBER
67-2001**

Art. 33
f) Public
Prosecutor's Office
information

NO SPECIFIC
REGULATION

EL SALVADOR

DECREE 498

Art. 24
*Possibility of
probative value of
the information from
financial intelligence

NO SPECIFIC
REGULATION



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HONDURAS

DECREE 144-2014

Art. 29

Art. 44

HONDURAN CODE OF PROCEDURE

NO SPECIFIC
REGULATION

PANAMA

LAW N°23

Art.11

-Financial
Analysis Unit
abilities
Art. 54

DOES NOT HAVE
PROBATIVE VALUE

PARAGUAY

LAW N° 1015/97 LAW N°3783/2009

Art. 28

-Art. 32 powers
-Client
Confidentiality

LEAD



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PERU

DECREE-LAW 1249

Art. 3

-Financial intelligence
reports to the Public
Prosecutor's Office,
with probative value

LAW N° 27693

Art. 10-A7

EVIDENCE

DOMINICAN REPUBLIC

LAW N°155 - 17

Art. 91

-Financial
Analysis Unit
functions

NO SPECIFIC
REGULATION

VENEZUELA

ORGANIC LAW AGAINST ORGANIZED CRIME AND TERRORISM FINANCING

Art. 25

-UNIF powers

LEAD



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TRINIDAD AND TOBAGO

FINANCIAL INTELLIGENCE UNIT LAW

Chap. 72:01
Part III

-Financial Intelligence
Unit abilities

NO SPECIFIC
REGULATION



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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.



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.



IV. CICAD

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



FINANCIAL (INTELLIGENCE/ INVESTIGATION/ INFORMATION/ ANALYSIS) UNITS

Each 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.



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 **financial intelligence** 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.



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

