



OAS | More rights
for more people

Secretariat for Multidimensional Security

**XLVII MEETING OF THE GROUP OF EXPERTS
FOR THE CONTROL OF MONEY LAUNDERING
September 24 to 25, 2019.
Bogota – Colombia**

**OEA/Ser.L/XLV.4.47
DDOT/LAVEX/doc.5/19
September 24, 2019
Original: Spanish**

PRESENTATION

**“STUDY OF COMPARATIVE LEGISLATION AND TECHNICAL GUIDELINES FROM
INTERNATIONAL ORGANIZATIONS REGARDING THE PROBATIVE VALUE OF
INTELLIGENCE REPORTS IN THE REGION”**



Organización de los
Estados Americanos

**“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”**

PROGRAM

1. Introduction
2. Objective
3. Methodology
4. Systematic Presentation of Results Obtained

a) Comparative Legislation

b) Technical Guidelines from International Organizations

5. Diagnosis of situation
6. Conclusions and recommendations.





Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from international organizations regarding the probative value of intelligence reports in the region”

1. Introduction

Following the lines of action from the Strategic Plan 2018-2020 and the **Working Plan 2018-2019** for the **Sub-Working Group in Financial Intelligence Units and Organisms for Criminal Investigation** of GELAVEX, it was determined for this period to work on the following products:

- **Diagnosis of the prosecution of money laundering with crimes based in trafficking in persons and illicit migrants smuggling in the region.**
- **Practical guide for the use of expert reports to prove the crime of money laundering.**
- **Study of comparative legislation and technical guidelines from international organization regarding the probative value of intelligence reports in the region.**



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from international organizations regarding the probative value of intelligence reports in the region”

2. Objective

To know the legislations of countries in the region and the guidelines provided by international organizations, regarding the use of intelligence information from FIUs in the criminal procedures of money laundering, to formulate the corresponding diagnosis.





Organización de los
Estados Americanos

**“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”**

3. Methodology

Compilation of available information on the legislation of member states and the technical guidelines from international organizations regarding the use of the intelligence report from FIU systematizing the information obtained through the registry matrixes that are annexed to the present document.



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”

4. Systematic Presentation of Results Obtained

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.



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”

ARGENTINA

LAW 25.246

Art 13.

*Competencias
de la UIF

NO SPECIFIC
REGULATION

BOLIVIA

D.S. 3434

(IIFP)

*Confidentiality
*Security
*A.C.

SIGN

BRAZIL

LAW 12.683

Art. 157 .

*El juez formará su
convicción por la
libre apreciación
de la prueba (IF)

NO SPECIFIC
REGULATION



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”

COLOMBIA

STATUTORY LAW No 1621

Art. 35
Probative
value of IIF

HAS NO
PROBATIVE VALUE

CHILE

LAW 19.913

Art. 295 y 297
*Liberty and
evidence
assessment

SIGN

COSTA RICA

LAW 8204

*VP IIF
-General rule
CPP

NO SPECIFIC
REGULATION

LEY N° 22



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”

UNITED STATES

MONEY LAUNDRY CONTROL ACT

*Fin Cen
-Security

EVIDENCE ONLY WITH
AUTHORIZATION

GUATEMALA

DECREE No 67- 2001

Art. 33
f) Information MP

NO SPECIFIC
REGULATION

EL SALVADOR

DECREE 498

Art. 24
*Possibility of VP
of IIF

NO SPECIFIC
REGULATION



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”

HONDURAS

DECREE 144-2014



NO SPECIFIC
REGULATION

PANAMA

LAW N°23

Art.11
-Faculties UAF
Art. 54

HAS NO PROBATIVE
VALUE

PARAGUAY

LAW N° 1015/97 LAW N°3783/2009

Art. 28
-Attributions
Art. 32
-Professional
secret

SIGN



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”

PERU

DECREE 1249

Art. 3
-IIF to MP, with VP

LAW N° 27693

Art. 10-A7

EVIDENCE

DOMINICAN REPUBLIC

LAW N°155 - 17

Art. 91
-Funciones UAF

NO SPECIFIC
REGULATION

VENEZUELA

ORGANIC LAW AGAINST ORGANIZED CRIME AND FINANCING OF TERRORISM

Art. 25
-Attributions
UNIF

SIGN



Organización de los
Estados Americanos

**“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”**

TRINIDAD AND TOBAGO

LAW FIU

Cap 72:01
Part III

-Faculties FIU

NO SPECIFIC
REGULATION



Organización de los
Estados Americanos

**“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”**

b) Technical guidelines from international organizations

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



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”

I. FATF

International standards on the Fight against Money Laundering and Financing of Terrorism and Proliferation

40 RECOMMENDATIONS



Recommendation 29 – FINANCIAL INTELLIGENCE UNITS

The information received, processed, kept or communicated by the FIU has to be firmly protected, has to be exchanged and used only according to the agreed procedures, policies and laws and applicable regulations.



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”

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. **The FIU information cannot be used as evidence** within an administrative document, investigative, procedural or judicial proceeding without the prior consent of the requested FIU. Even if permission is granted to use the information from FIU as evidence, there can be additional legal requirements as those found in Mutual Legal Assistance Treaties (MLATs) and the use of letters of request, so the information is used as evidence in legal proceedings.



III. FATF

International standards on the Fight against Money Laundering and Financing of Terrorism and Proliferation



AML - CFT FOR JUDGES AND DISTRICT ATTORNEYS

Burden of proof and probative standard

Financial intelligence is an excellent source of basic information but in many countries, **must not be used as evidence**. In some countries, the FIU must participate as party to a proceeding, and in exceptional cases, the defendant may have access to the financial information if it contains evidence that might exonerate them.



IV. CICAD

**MODEL REGULATIONS ON MONEY
LAUNDERING OFFENSES RELATED TO
DRUG TRAFFICKING AND OTHER
CRIMINAL OFFENSES (ART. 13)**



Unit for the compilation, analysis and exchange of information

Every member state will create or design a central organism whose task will be to receive, request, authorize and elevate to competent authorities the reports regarding financial transactions which this Regulation addresses, when these involve assets whose origin is under suspicion of illicitness.



V. WORLD BANK

REFERENCE GUIDE FOR ANTI-MONEY LAUNDERING AND COUNTER FINANCING OF TERRORISM (AUGUST-2007)

Regarding the operational analysis, the information the FIU receives is turned into **operational intelligence**, that can be transmitted to the police authorities or District Attorney's Office for ulterior goals.

In any of the cases, the key is that the FIU provides **financial intelligence** to the competent authorities, as soon as possible, so that they can trace the lead provided by the FIU.

The FIU generally does not count with all the legal faculties that police organisms and judicial authorities have to obtain evidence.



VI. GAFILAT – EUROPEAN UNION

GUIDE FOR FINANCIAL INVESTIGATIONS (JUNE-2012)

In the majority of countries, the information from ROS is used with intelligence purposes and not as evidence in judicial proceedings.

How the intelligence can be put at the disposal of operational authorities and turned into leads or evidence.

The ROS should not be considered criminal prosecutions and should not be seen as “reports of criminal activity”.

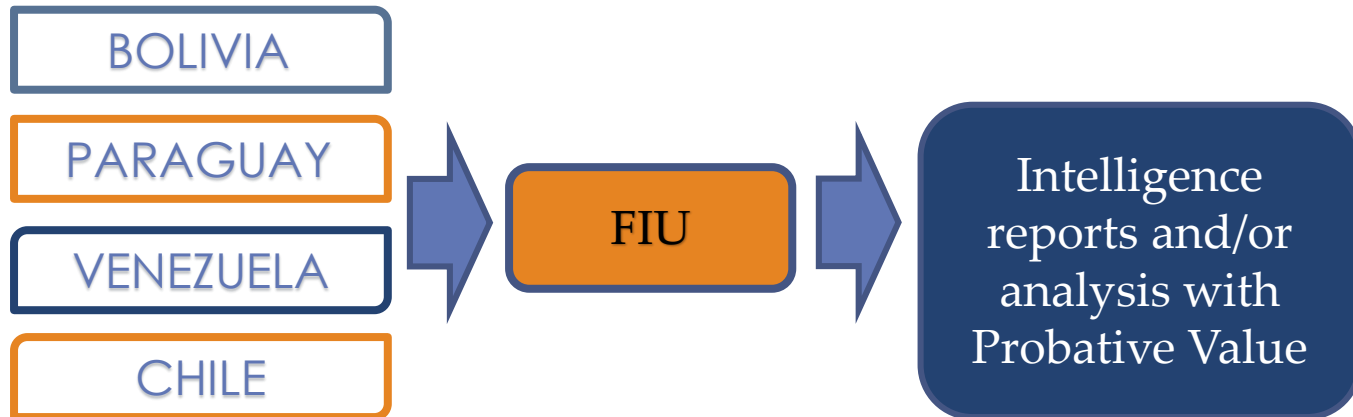
When they receive the information from FIU, investigators must take into account the restrictions regarding the use of information and how the can be used, particularly in the objectives of the investigation.



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”

V. DIAGNOSIS OF THE SITUATION





Organización de los
Estados Americanos

**“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”**





Organización de los
Estados Americanos

**“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”**

USA



FinCEN



Cannot be used as
probative material or
be presented in trial or
be used in any other
formal proceeding
without previous
written consent



Organización de los
Estados Americanos

“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”





Organización de los
Estados Americanos

**“Study of comparative legislation and technical guidelines from
international organizations regarding the probative value of
intelligence reports in the region”**

CONCLUSIONS AND RECOMMENDATIONS

The legislation of the countries in the region and the guidelines provided by international organizations regarding the use of intelligence information from FIUs in criminal proceedings for money laundering have been analyzed and presented in the corresponding Diagnosis of Situation.

We recommend the Secretariat to make available to countries this study, hoping to gather the contributions, commentaries and suggestions from the Group for its corresponding approval.

Gracias...

