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**DEPARTMENT AGAINST TRANSNATIONAL ORGANIZED CRIME (DTOC)
ORGANIZATION OF AMERICAN STATES (OAS)**

**XLVIII (VIRTUAL) MEETING OF THE GROUP OF EXPERTS
FOR THE CONTROL OF MONEY LAUNDERING
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STUDY ON THE APPLICABILITY OF PRECAUTIONARY MEASURES ON ASSETS FORFEITED OVERSEAS

PROGRESS REPORT

SUBGROUP ON FORFEITURE AND INTERNATIONAL COOPERATION

2020



I. JUSTIFICATION

The XLVII GELAVEX Meeting was held in Bogotá (Colombia), on September 23, 24 and 25, 2019. The meeting's objective was to present the products developed within the framework of the 2018-2019 Work Plan, based on the Lines of Action defined in the Strategic Plan 2018-2020, as well as to establish the 2019-2020 Work Plan.

The proposal to prepare a study of comparative legislation to facilitate the applicability of the precautionary measures on assets located in the territory of another State is among the products to be developed by the Sub-Working Group on Forfeiture and International Cooperation,

The goal of the study is to make it an aid instrument for the member States, in particular for the national entities in charge of the persecution of assets, insofar as it could constitute a valuable input for judicial operators to improve their practices when seeking the application of these precautionary measures for assets abroad.

II. DEVELOPMENT AND PROGRESS OF THE STUDY

International judicial cooperation is a mechanism aimed at obtaining collaboration or mutual assistance between States. It allows national authorities to manage proceedings in foreign territory and integrate them into the judicial or administrative process of their State.

Mutual legal assistance is the mechanism used by the different jurisdictions to obtain, and provide information and evidence that supports the issue of provisional measures and for the application of court decisions abroad. It is based on the multilateral or bilateral instruments signed by the States, and in their absence, in the provisions of domestic law and in the principle of reciprocity.

Thus, the document on which the Subgroup is working has two major components. The first part is theoretical. It consists of a general framework that describes the types of cooperation used in the region, which have a common basis in the international conventions signed by the countries. The theoretical framework describes the instruments that must be attached to support the requests, which are extracted from the study of comparative legislation that was carried out.

In this first part, the intention is, in a very didactic way, to describe the procedure that the states must execute to access international cooperation, so that they can restrain the assets. In these months, progress was made in the work of collecting information and structuring the theoretical framework of this study.

Since the majority of countries in the region have a common base and in order not to carry out an excessive and repetitive study, the study focuses on Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico, Paraguay, and the United States as a reference.



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The second component intends to be more practical. It considers important and relevant to include information from various countries about whether, in an operational context, requests have been made to issue precautionary measures on assets abroad.

We expect that the information is accompanied by a practical case, in which the legal basis by which the request was filed is described (if it is a precautionary measure issued in the framework of a conventional or in rem forfeiture; if it used some international convention or norms of domestic law); the difficulties they encountered in the process and if it was successful; among other relevant aspects.

Initially, and without an exhaustive list, the study intends to obtain information regarding the case of the former President of Guatemala, Alfonso Portillo, extradited from Mexico to Guatemala. We have found general news information, within the framework of the virtual plenary meeting. The intention is to take the opportunity to request both countries to collaborate information on their perspective and execution of the act, consulting if relevant information is available in this regard in any report by the CICIG-UN or competent national authority.

We also intend to share the experience of Costa Rica in the restraining and seizure of money and vehicles, to be executed in the United States in the money laundering case called "Liberty Reserve".

On the other hand, we consider it pertinent to request Paraguay and Brazil, if possible, to share their experience with the request of the former to apply the Mercosur Protocol in 2006, which resulted in the seizure of a real state on the common border between both countries. Later on, Brazil requested the asset to be sold to maintain its value.

Likewise, we consider it useful to request the intervening States to report on the cooperation between Mexico and Guatemala in 2016 for the case called "COFRUVEISA"; or in the case of Raúl Flores Hernández-OFAC.

Based on the above, we take this opportunity to invite the delegations to provide information on cases in which they have been, both requested and requesting parties, so that a review of their execution can be carried out and thus find opportunities for improvement at the regional level.

Once again, the active participation, constant and customary endorsement and support of the Technical Secretariat is important to access the information required from the Member States on the practical cases.

The study aims, through theoretical information and real practical cases in which information was requested, to identify not only mechanisms for international cooperation, both formal and informal, but also to know the ways in which the States of the region share information about assets and what are the legal instruments that allow for the precautionary restraining of them. On the other hand, knowing the successful cases in the region will encourage judicial collaboration among the States in the persecution of assets abroad.

The following structure is proposed for the preparation of said study:



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1. Theoretical Study

- a. The general framework of international cooperation for the application of precautionary measures on assets subject to forfeiture
 - i. Cooperation types
 - ii. Instruments that support the request
 - iii. Comparative legislation study
- b. The process of international cooperation
 - i. Requirements
 - ii. Procedures

2. Practical Study

- a. Case study of cooperation for the application of precautionary measures on assets subject to forfeiture

3. Conclusions

- a. Shared challenges in applying precautionary measures on assets subject to forfeiture abroad
- b. The sharing of forfeited assets as a stimulus to cooperation