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SUB-GROUP REPORT OF INTEGRATION AND COORDINATION OF THE FIU/OIC

## Sub-group report of integration and coordination of the FIU/OIC

### 1. General Considerations

The present report aims to summarize the response that various delegation sent (20), identifying common aspects or innovative practices that enable to efficiently address the mandate entrusted by the CICAD.

The responses of the different delegations were captured in an Excel file that will be made available to the countries through the CICAD Web page. In addition, this report will also be incorporated.

### 2. Mandate

According to the Work Plan 2012-2013 approved by the CICAD, the Sub Working Group of the Financial Intelligence Units and the Criminal Investigation Agency (FIU/OIC) must elaborate "...a Working Guidance in the patrimonial investigation field, that must contain at least a conceptualization of the investigation technique and the minimum elements that should be contain in a working methodology in the field. In this context, it will be worked according with a sample survey which was designed and sent to the countries..."

### 3. Preformed work

1. It was a joint work with the executive secretary in the design of the sample survey and its English translation.
2. On February 15, 2013 the sample survey was sent to the different delegations both in English and Spanish, to be answered before April 30, 2013.
3. Subsequently the executive secretary worked in the tabulation of the responses of each delegation (18 countries answer the survey).
4. The Sub-Group coordination, analyzed the received responses in order to prepare a report, which proposes.

### 4. Results obtained (analysis)

a. Question N°1. In your country how it is understand the patrimonial investigation? Regarding the responses sent by the different delegations it can be observed that there is not a uniform definition or any concept of the term "patrimonial investigation", which obviously complicate the adequate planning of the activities that the Sub-Group intend to develop because there is not a homogeneous concept. For some countries the term refer to the investigation of the instruments and effects of the crime, others refer to the modus operandi used by the subjects of an investigation or the possibility of identifying properties (personal property and real state) of the subjects.

Taking into account the diversity of the concepts, it is considered that the best formula to achieve a some degree of harmonization in the concept is to search for common

denominators in the different answers. In this context, there are some duplicate points in the answers. In order to validate if effectively are parts of the essential requirements:

- Research technique.
- Analysis of the information from open or closed sources (need to obtain information.)
- Identification of the goods or assets with an economic interest.
- Investigation of a person or a legal entity, with the purpose of establish a relationship between property with some assets or other persons, as well as determine their economic capacity.
- The objective is to know the patrimonial solvency of the investigated subject and its surroundings. Also, identify the assets for a possible seized or forfeited.
- Is associated only respect certain investigations (laundering/ corruption/terrorism/ etc.)
- Is associated with a specific period of time.

b. Question N° 2. Does the concept of patrimonial investigation is content in any law or regulation? The majority of the countries report that the patrimonial investigation term is not content in any law, although this term can be assumed for an interpretation of some laws as a whole. Few countries have the defined term in a law. In relation with these countries it can be observed that when the concept is set in a law generally associated with a type of crime. In addition, some countries inform that the concept is defined in some institutional manuals or guidelines. However, some countries restrict the term only to the criminal investigation conducted by a judge or prosecutor.

Finally some countries refer to the importance of distinguishing the between economic and legal property.

c. Question N°3. What are the necessary legal requirements to initiate a patrimonial investigation (complaint, suspect operation report, investigation, legal process, other)? Do the patrimonial investigations are initiated in parallel the criminal investigation? There are no warnings regarding the initial investigation, may start in different ways depending on the entity that initiate the criminal investigation. Only few countries indicated the necessity to associate this term to a criminal investigation.

The majority of the countries indicate that this type of investigation is initiated in parallel or even before with the laundering investigation, but there is not information if the countries initiate it parallel to the base crime investigation. In this regard, just few countries recognize that this is a problematic issue.

d. Question N°4. What entities realize patrimonial investigation in your country? Most countries indicate that the FIU and OIC. Also can be the Accounting and work forces or specialized groups.

e. Question N°5. The patrimonial investigations realized by the FIU/OIC or other entities are similar? Several FIU and OIC refer that are unaware of how the other entities realize the patrimonial investigation. Additionally each one of the entities that

realize this type of investigation has different approaches and depends of the entity competency.

Some delegations highlighted the importance of this type of investigation is realized by multidisciplinary teams.

f. Question N°6. Who or whom establish the scope of a patrimony investigation? The scope of a patrimony investigation is in the law, either directly or indirectly. But the approach it is established by the institution that is doing the investigation, whether the police, the prosecutor, the FIU, or the Accounting.

g. Question N°7. Does your country have a standardized methodology to conduct a patrimony investigation? (In the case that the answer is yes, inform about that methodology) responses are divided between the countries that report that having a methodology and those who not have one. In any case, some countries when they answer about the methodology they associate the analysis of the operation reports of suspicious operations or procedures to determine illicit enrichment.

On other occasions the methodology refers to the process used for the realization of partial or technical reports (method of income and expenses, assets evolution, analysis of bank accounts). Also these methodologies need to refer to the system to determine the origin and application of the funds.

h. Question N°8. What are the steps or stages that you follow to achieve a patrimony investigation? The principal steps in the context of the completion of a patrimony investigation are the following: (1) Identification the person, operation or the activity, operation mapping, hypothesis generation, (2) Relevant information sources, information research, information collection and necessary documentation: (3) analysis and processing of the information obtained, (4) necessity of operational proceedings to verify the information, (5) conclusion.

i. Question N°9. What proceedings are necessary or what mechanisms are used to validate, verify and contrast the documentary information with the official information? Some delegations indicated that the official information is the one that counts, but they do not take into account when the information is in accordance with reality. Other delegations remarks the necessity of operational proceedings (surveillance/ interviews/ declarations of other involve subjects) that can validate official information with the object of avoid hiding the information. It highlights the need of a cross-analysis of the information provided form different sources.

j. Question N°10. What proceedings are used in your country to identify or link assets to a particular person? The delegations agreed that the use of the public registry and other sources of information of the real state. It also stresses the need to verify who is using a specific good and the declaration that this person provide regarding this assets.

Finally, it is necessary to use other special investigation techniques, like wiretaps analysis or emails.

k. Question N°11. How you identify a real property title?

The delegations informed that as a general rule they use:

- Public registry
- Official documentation
- Documentation related with the asset directly
- Verifying who use the good and who the owner is
- Following the money
- Surveillances
- Interception phone calls and e-mails.

l. Question N°12. What standard must possess the patrimony investigation to conclude that who is listed as a registered owner of a well, it is actually a front man? In general the standard of the patrimony investigation is very high, and all the investigation lines must be exhausted. Some countries require rational strong evidence of guilt, based on objective circumstances properly proved.

Additionally, other delegations refer to the use of circumstantial evidence as a trigger to start a laundering investigation (relation with the main activity, increasing of the assets, and the absence of a lawful activity that justifies the assets increasing).

m. Question N°13. Do you have identified the sources of important information to realize a patrimony investigation? Do the FIU/OIC have access to these sources? In case they can access, how is this access electronic or by paper? What is the approximate time for response? The countries report that they know their main sources in assets matters, although they recognize the necessity to improve the access to some sources (bank secret) because there is a problem with timing of the delivery of the information. Regarding the access to the information the electronic one needs to be improved.

n. Question N°14. With the available information in the states registry, is it possible the reconstruction of the tradition/transfer of assets in previous operations? Of which kind of assets (real state, automobiles or financial products, among others)? In this regard all the delegations confirm that with the information in the registries is possible to reconstruct the tradition/transference and track the goods operations.

o. Question N°15. In your country, What are the main problems to realize and effective patrimonial investigation?

Synthesis of the main problems:

- That the patrimony investigation does not start in parallel.
- Limited faculties of the FIU and the OIC.
- Difficulties to obtain the information of other jurisdictions.
- Lack of coordination between institutions. There is no awareness of the need and timelines of the information delivery.
- Lack of proceedings to maintain the reserve in international cases.
- Problems with the organization of the registry (not reliable or inflexible research)
- Extremely strict banking secrecy.

- Lack of technical resources (software/ hardware) or humans (specialized personnel).
- Resistance to team work among institutions.
- Few or no information.

p. Question N°16. What are the minimum contents that should be addressed in a regional guide a regional of patrimony investigation?

Regarding the minimum content the delegations remark the following:

- Concept
- Scope
- Information sources and tools (national and international). How to use and manage them.
- Methodology / proceeding /protocols. Treatment by sector or area.
- Best practices
- Efficient and necessary evidence.
- Limitations
- International Legal Assistance.

q. Question N°17. Does the patrimony investigation includes the identification of foreign assets? What mechanisms are provided for they identification? Most of the delegations note that by definition are included the foreign assets, although there are problems to identify such goods.

Experiences are highlighted as the RRAG of CARIN Network FATF or the STAR initiative.

r. Question N°18. Is there an approximate time for the develop of a patrimony investigation? From your experience, How much time can pass to end this type of proceeding? As a general rule there is no estimated time that is appropriate, as it will depend of the type of investigation, but it is recommended to be initiated in a parallel because the information can get lost.

s. Question N°19. What risks can you associate to the develop of a patrimony investigation? (transfer or destructions of the goods, opposition of legal entities, delay of legal proceedings, justification of the operations with false documentation, among others).

In general the following:

- Opacity
- Destruction of evidence.
- Opposition of legal entities (grants, loans, etc..)
- Filtration
- Disappearance of assets

#### 4. Conclusions

- Based on the responses from the different delegations, we consider that it is possible to establish and comply the CICAD mandate, regarding the creation of a

patrimony investigation term, as generate the minimum elements that must have an hemisphere guide.

- Regarding the concept were identifying common denominators and formulations prepared by various institutions, which will allow us to outline a concept.
- Concerning the elements to be contained and guidance which will work for the next meeting will be: i) Concept, ii) Scope, iii) Sources of information and tools (national and international), iv) Methodology, v )Good practices, vi) Limitations and vii) international legal assistance.