



17th St. & Constitution Avenue N.W.
Washington, D.C. 20006
United States of America

Organization of American States

P. 202.458.3000
www.oas.org

**INTER-AMERICAN DRUG ABUSE
CONTROL COMMISSION
CICAD**

Secretariat for Multidimensional Security

FIFTY-EIGHTH REGULAR SESSION
November 11 - 13, 2015
Trujillo, Perú

OEA/Ser.L/XIV.4.41
CICAD/LAVEX/doc.21/15
6 October 2015
Original: Español

LEGISLATIVE UPDATE IN ASSET FORFEITURE, AND THE SEIZED AND FORFEITED ASSET MANAGEMENT OFFICE



**GOBIERNO
DE ESPAÑA**

**MINISTERIO
DEL INTERIOR**

SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el
Terrorismo y el Crimen Organizado
(CITCO)



**XLI Meeting of the Group of Experts for Money Laundering
Control**

Lima, October 1st and 2nd 2015

**LEGISLATIVE UPDATE IN ASSET FORFEITURE, AND THE SEIZED AND
FORFEITED ASSET MANAGEMENT OFFICE**

Andrés Pérez
Chief – International Cooperation Office
CITCO

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

EU LEGAL WORKFRAME

1. DM 2001/500/JAI on money laundering, asset freezing, seizing and forfeiting assets;
2. DM 2003/577/JAI on mutual recognition of attachment resolutions;
3. DM 2005/212/JAI on extension of forfeiture;
4. DM 2006/783/JAI on mutual recognition of seizing resolutions. (~~Ley 4/2010~~ 23/2014)
5. Directive 2014/42/UE on attachment and seizure of instruments and proceeds of crime in the EU

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

Directive 2014/42/EU

ON ATTACHMENT AND SEIZURE OF INSTRUMENTS AND PROCEEDS OF CRIME IN THE EU

- Any asset although it has been transformed or converted, wholly or partially in another asset and it has been intermixed with other property legally acquired.
- Possibility final criminal judgment upon conviction to confiscate **even in absentia** proceedings.
- Forfeiture of not of assets associated with a particular crime, but also of additional assets that are proceeds of other crimes: **extended forfeiture**.

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

- The confiscation of **property transferred to third parties** is allowed.
- Adopting measures to ensure that assets seized preventively does not depreciate before final forfeiture.
- Offices specialized in the administration of seized assets with a view to possible forfeiture - **Office of Recovery and Asset Management. (ORGA)**

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

Organic Law 1/2015, modifies CP y LECr.

CP.- FORFEITURE.- art. 127 and following.

- Enhanced.- certain crimes, founded evidence
- Without conviction: in absentia
- Third bona fide parties and equivalent value: knowledge of illicit activity / hinder confiscation / free / lower transfer price.
- Evidence of prior criminal activity, 6 years (continuing offense, with 2 offenses)
- Presumption of assets illegally obtained on 6 previous years

Final Disposition 2.- modification art 367 LECr
Final Disposition 4 – Mutual recognizing of third countries Law 23/2014
Final Disposition 5.- Internal Procedures

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

INTERNATIONAL COOPERATION IB ASSET TRACKING AND RECOVERING

- **At European Level** creation of AROs (Asset recovery Office) and AMOs (Asset management Office)
- **In Latin America on the frame of GAFILAT** it has been established the GAFILAT Asset Recovery Network RRAG (Argentina, Brazil, Bolivia, Colombia, Costa Rica, Cuba, Chile, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Paraguay, Uruguay and SPAIN)

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

EU Asset Recovery Offices Source: The CARIN Network

- Austrian EU presidency of the EU, supported by Belgium and Finland.
- October 2002: Europol seminar on asset forfeiture
- Professional police and the judiciary of 13 EU MS
- Creating an informal network of experts = CARIN "Camden Asset Recovery Interagency Network"
- Agency Network Camden Asset Recovery
- Permanent Secretariat: Europol;
- Permanent Observer of the Steering Group: Eurojust

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

Objectives of CARIN

Increase efficiency by working together to deprive criminals of their illicit profits.

To achieve its objective:

- Network of contact points;
- Proceeds of crime in an international environment;
- Advisory Center in the fight against proceeds of crime;
- Information exchange and best practices;
- Recommendations to the European Commission and the Council of the European Union.

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

Asset Recovery Offices of the EU

Decision 2007/845 JAI: cooperation between AROs

- Dec. 2007, inspired by CARIN
- Completes CARIN: legal base for information exchange
- Objective: Creation / Designation of a ARO
 - Asset recovery office
 - National point of contact for forfeiture activities.
 - Enhanced cooperation to follow the illicit assets

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

ADDED VALUE

- UE Legal framework for CARIN informal network;
- Obligation to establish an ARO
 - Possibility of the AROs / points of contact (Ex.: Judicial and Law Enforcement);
- Obligation to cooperation between AROs of different nature judicial – law enforcement;
- Obligation to exchange information and best practices;
- Legal Bases for the spontaneous exchange information.

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

Informal platform of AROs

Recommendation of the European Commission:

Periodic meetings of AROs:

- 11 meetings since January 2009 + 7 High Level Meetings
- Promotion of communication between contacts;
- Informal and formal information exchange previous to the official secure channels

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

SPAIN

Decision 2007/845/JAI - appointment of points of contact

- **Obligation to establish an ARO**
 - **Possibility of 2 AROs / points of contact**
(February 2009 General Secretariat Council):
- ✓ **Judicial ARO: Special Narcotics Prosecutor**
- ✓ **Law Enforcement ARO: CITCO (Ministry of Interior)**

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

MATRIX: ARO POINTS OF CONTACT

- **Appointment of contact points by the ME**
(first informal platform meeting ARO- January 2009)
- **Creation of matrix with offices already constituted**
 - **organisms, contact information,**
 - **nature of the office,**
 - **Information about sources.**
- **Periodic update**

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

INFORMATION EXCHANGE AMONG AROs

Decision **2006/960/JAI**, on the Simplification of exchange information between security services of the EU:

- request form (**Annex B**): As precise as possible.
 - Reasons of the request
 - Nature of the process
 - Details of the investigated assets

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

- Deadlines to answer the requests:
 - Urgent: 8 hours (exceptionally, 3 days)
 - No urgent + accessible information: 1 week
 - No urgent: 2 weeks
 - No meet of deadlines: Justification through form
- Answer form **ANNEX A**

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

INFORMATION EXCHANGE AT CITCO

CITCO distributes and assigns a Law Enforcement Agent

1. Request of information
2. Investigation Coordination System - SCI Criteria
3. CNP / GC sends answer to CITCO
4. CITCO sends the information to the ARO that requested it

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

STATISTICS

• Use of networks AROs / CARIN

- 2009, 117/ 46	- 2012, 340/ 6
- 2010, 245/ 28	- 2013, 377/ 3
- 2011, 311/ 9	- 2014, 396/ -

- Majority of requests from United Kingdom, followed by The Netherlands, Belgic, France and Germany.
- Offences: money laundering and drug trafficking.
- 2010.- Approximate value: € 25M
- 2011.- Approximate value: € 28M
- 2012.- Approximate value: € 56M
- 2013.- Approximate value: € 80M
- 2014.- Approximate value: € 53M

GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR SECRETARÍA DE ESTADO DE SEGURIDAD
Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO)

© 2015 MINISTERIO DEL INTERIOR
GOBIERNO DE ESPAÑA

CENTRO DE INTELIGENCIA
CONTRA EL TERRORISMO Y EL
CRIMEN ORGANIZADO

Thanks for your attention.