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50th (VIRTUAL) MEETING OF THE GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING

Model for sharing assets between countries

Progress Report

Working Sub-Group on Forfeiture and International Cooperation

July 13-14, 2021



The GELAVEX prepared the Strategic Plan for the Triennium 2021-2023 of the Group for the XLIX Meeting celebrated in a virtual format from Asunción, Paraguay, on November 10th, 2020.

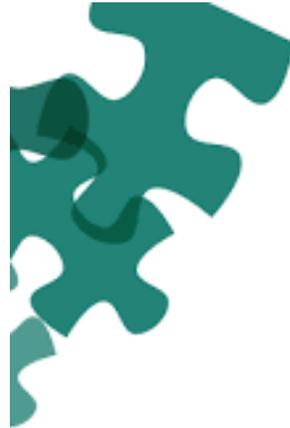
In agreement with the approved 2021-2023 work plan, the Working Sub-Group on International Cooperation and Confiscation assumed the commitment to:

- Initiate the creation of a model agreement or reference standards for the sharing of assets.





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OBJETIVO GENERAL

The objective of the study is to create a model of asset-sharing for the use of countries in the region, which would ensure a more agile sharing of goods between intervening countries, not only at the level of application of the national regulations of each State, but also in relation to logistical aspects and formal and informal contact with the institutions and corresponding instances in each State.



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METODOLOGÍA

With the goal of establishing a draft of minimum criteria for the sharing of assets and its subsequent presentation to the plenary meeting of GELAVEX for its observations and improvement, a review was conducted regarding the various legal instruments that deal with mutual legal assistance and international cooperation in the seizure and forfeiture of assets.



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Such a review included:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
- United Nations Convention Against Transnational Organized Crime
- Framework Agreement for the Disposal of Assets Confiscated from Transnational Organized Crime.





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Minimum criteria proposed for the elaboration of a good sharing model for the region

- Normative aspects: The States will act in accordance with and in respect of their national legislation and apply the international legal instruments that have been respectively approved by them.
- Definitions: In order to have clarity about the scope of the concepts, it will be necessary to define terms to standardize them at the regional and model level.





Minimum criteria proposed for the elaboration of a good sharing model for the region



- Defining whether a general criterion will be established for the sharing of assets, or, if it fails, whether it will be a task where special criteria are applied according to the case under examination.
- Defining the negotiation mechanisms between the States of the region.
- Defining through whom it is negotiated: if it will be done through a Central Authority or through the property administration institution in each State or other institution. In this case, it is important to create a directory with the contact information of each country in the region or to consider that the Network of Administrators for the region, also part of the GELAVEX project, also serves as an informal communication channel to initiate talks.



Minimum criteria proposed for the elaboration of a good sharing model for the region

- Defining who will benefit from the sharing of assets: whether it will depend on the degree of participation of each State party or if there will be a distribution in accordance with the regulations of the Asset Management Offices (AMOs) in this regard.
- Defining payment of administration expenses: if they will be settled prior to the negotiation of property sharing.
- Defining mechanisms that guarantee a good-faith basis for the respect of the rights of third parties and the compensation for damages to victims.





Minimum criteria proposed for the elaboration of a good sharing model for the region



- Defining what is distributed: goods, monetary currency, and financial products, the product of the disposition and/or administration of the goods.
- Definition in relation to the assets to be shared: if their monetization will be carried out prior to sharing (necessary for real estate) or if the shared goods will be delivered physically.
- Defining the form of payment: in the currency of the State where the confiscated goods are located; and its execution by electronic transfer.