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Proposal for a Guide on Asset Investigation

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Sub-working group for coordination and integration between FIU / LEA

I. Background

In order to facilitate the asset investigations derived from money laundering offenses and organized crime, it has been considered necessary to develop a general document that collects the main aspects to be considered when conducting an asset investigation.

This document is for guidance only and aims to identify those activities that, in most cases, and especially in the early stages, are carried out by those who are doing this kind of investigations.

For its preparation it have been taken into consideration the experience of several countries. Gathering as much information as possible, while recognizing the differences within each system, collecting the experiences that may be transversal to any kind of judicial system.

It is important to mention that for efficiency in generating and collecting of information, it is essential to carry out a detailed analysis of the results showed by the investigation, being essential to give solid ground and probative value of the evidence, which are the most widely used form of evidence to prove on trial the existence of such crimes.

As will be seen below, on this document gave special priority to one aspect of the asset investigation, this is the stage of identifying the assets, the other stages of the investigation will only be mentioned in its basics on this document, subjects that can be studied in other documents developed in the future.

In recent years it has highlighted the importance associated to the "asset investigation" in the case of inquests concerning offenses involving certain degrees or forms of organized crime.

The term is recurrent in statements of several international organizations, as well as on the plans and objectives set for Law Enforcement Agencies (LEA) and Financial Intelligence Units (FIU), in the countries.

In a first approach it is possible to point out that this term is generally associated to the investigation process which will take the assets of criminals (confiscation) that has been obtained product of the commission of a crime. In this context, we can note that this

investigation will be linked to a chain of events that will identify, secure and ultimately transfer in favor to the State illegally obtained property¹.

Nevertheless, even when there is this general notion, it is possible to note that the various operators in the system of prevention and prosecution of money laundering, including financial intelligence units, police and prosecutors, assign its own perspectives, objectives and structure to this kind of investigations, an issue that complicates and hinders the dialogue that should produce among them.

In this line of thought, it was suggested in the Group of Experts for Money Laundering Control (GELAVEX), and was then approved by CICAD the possibility of generating a conceptualization regarding such investigations and a methodology for a more standardized treatment.

Order to develop the present study a survey model was sent to the delegations in order to provide background information on how this kind of investigations is understood, and the steps usually followed for its implementation. Subsequently, the results were supplemented with other work done by the group in previous years and investigation guides that have been developed in different countries to deal with this investigations.

II. Conceptualization

1. General Considerations

This work was focused on the process of identification of common denominators, in order to build a concept that would be eventually used for all countries without mayor complications².

Conceptually, this investigation technique is structured on the basis of proving or establishing a relationship between persons and assets or patrimonial rights, which would address both the question of who actually owns the property or right? As well as, what goods or rights has this person? This leads us to a first common denominator, is that such investigations can be approached from the property or persons, i.e., it may conclude that a person in particular owns as part of his wealth certain number of assets.

¹ In fact, in several international conventions related with this subjects (Palermo / 2000) is usually highlights this investigative technique, emphasizing his proper use would led to stablish and punish the illicit wealth generated from diverse forms of crime. On this context, the asset investigation is the first stage on a chain of events which have as final objective transferring definitively to the State illicit assets.

² It should be noted that some countries have legal definitions of the term "asset investigation" aspect that clearly complicates the possibilities of a standardization.

Similarly, we could point that this kind of investigation is usually raised from a retrospective point of view, since it is very difficult to establish possible links between assets and people materialized on the future³.

On the other hand, they are a kind of qualitative investigation, given that they are specifically based on a particular case of analysis, which examines in depth the background that establish or rejects the relationship between people, and property or rights.

Finally, other features that are often mentioned refers to highly documentary⁴ characteristics they possess, and the frequent use of principles or rules of heuristic analysis⁵. In this context, it is usual to search for particular devices or applications that allow us to organize and present visually the large amount of information that was collected.

2. Identification of Common Denominators

- a. Investigation technique. Several delegations support the idea that the asset investigation is an investigative technique that can be used as such by any of the Financial Intelligence Units and Law Enforcement Agencies. It seems highly relevant to consider this idea directly related to the need of having a methodology to understand this process as an investigative technique, we necessarily have to establish a minimum number of stages or phases that can be met to reach goals we have set. Moreover, from a practical perspective it seems accurate this classification, allowing officials of the FIU or LEA to validate their findings based on objective, parameters and methods, leaving aside any prejudice or bias. We consider that to be understood as a technique tends to professionalize the work that is being developed and delivered indicators of certainty regarding its conclusions.

³ Generally, the relationship between people and assets that occur in the future will be treated as a right (e.g. a call option) which can also be part of the wealth and its value usually depends on certain degrees of probability as their production possibilities.

⁴ "Financial investigations are by nature intense with respect to the required documentation, involving for example, bank account records or archives of real estate, which point to money movement. Or any document used to reflect the sequence of events that point to important movements of money. The primary goal in this type of investigation is to identify and documents showing the movement of money over the course of a crime. The link between the source of the money, who gets it, when it is received, and where it is stored or deposited, can provide evidence of criminal activity. "<http://www.irs.gov/compliance/enforcement/article/0,,id=107515,00.html>.

⁵ As a principle of heuristic analysis we could mention analogy and reduction. In terms of rules we find the possibility of making figures of analysis (tables, diagrams, and presentations), use numbers instead of data, etc.

- b. Information Analysis. This investigation technique consists in the analysis that can be performed to a series of information obtained from various predefined sources of information. At this point it is important to consider that each country should conduct an internal study referred to information sources that provide relevant information on the financial perspective and allow the identification of relationships between assets and people.

Subsequent to identify all sources of information that provide relevant information, it is advisable to classify and assess the level of certainty of the information being delivered. In this line of thought, it should favor the sources of information regarding institutions that are in charge of public records in which certain processes of registry must be done.

Once classified the relevant sources of information for the type of property (movable / immovable), or person (natural / legal) persons performing the analysis may use those sources that are essential for the persecuted purposes and may be efficient in the amount of resources used in the search process.

- c. It is a process made up of a chain of events. Much of delegations stress that the financial investigation is a process or group of activities that allows to generate the relationship between people and assets. At this point it stands out, that this process is in large part documentary, but it also requires other activities that allow a factual confirmation.
- d. Identification of assets with economic value. At this point the majority of delegations relieved the importance of being efficient in finding assets, as though from an abstract perspective we want to identify all the relationships between people and assets that can be detected in practice, it will only be relevant those related the assets of a particular economic significance.

This is not to say that other relationships (non-significant from an economic perspective) are worthless, since many times they will enable to establish an element of the criminal offense, but have no relevance for the purposes of the asset investigation to identify assets to be forfeited to the State, dismantling criminal organizations in that possess.

- e. It is associated with a period of time. As a general rule, the asset investigation is directly linked to the objectives of the criminal investigation or forfeiture process. Then, whenever the asset investigation shall cover a period of time, either one limited or extended depending on the objectives of the investigation.

At this point some argue that while far of the present time is the period of time analyzed, the possibilities of establishing this relationship between goods and

people on a reliable way is difficult, or even being it established, is complicated to find the way in which is related with the current investigation.

- f. f. One of its objectives is to understand the patrimonial situation of the subject and his environment. This is one of the points raised on the responses from various delegations, as it shows the need to expand or set as an object of analysis not only to a subject in particular, but necessarily to their near family circle.
- g. It is crosscutting. However it tends to be associated with certain types of crime (drug trafficking / money laundering / Corruption) its usability are wide. In this regard, it is common to see this kind of investigation in certain cases of violent crimes, allowing for the possibility of stablishing a mobile or modus operandi.

In this context, the possibilities of having a predefined methodology for performing this kind of research, allows its use and adaptation to any kind of criminal investigation.

3. Concept

Considering what is stated above, we note that the asset investigation will be conceptualized as "an investigative technique used by different agencies Criminal Investigation as Financial Intelligence Units, which allows through a process of analysis, to contrast the records obtained from various sources of information in order to establish a relationship between assets and people, identifying the assets that make up a particular wealth.

As we see the definition is quite understandable, but from our perspective we introduce the investigation process of assets in the context of criminal proceedings, which can indicate that the asset investigation have different standards according to the stage of the penal process. For example, the first step it is to identify the relevant assets, then the idea is to ensure that what have been identified to finally get is decreed by the judge the penalty of confiscation of such property. It is understood with the same logic by international agencies that have generated regulations on the matter⁶.

⁶ A 'financial investigation' means an enquiry into the financial affairs related to a criminal activity, with a view to: identifying the extent of criminal networks and/or the scale of criminality; identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and developing evidence which can be used in criminal proceedings.

A 'parallel financial investigation' refers to conducting a financial investigation alongside, or in the context of, a (traditional) criminal investigation into money laundering, terrorist financing and/or predicate offence(s). Law enforcement investigators of predicate offences should either be authorized to pursue the investigation of any related money laundering and terrorist financing offences during a parallel investigation, or be able to refer the

II. Structure and Stages of the Asset investigation

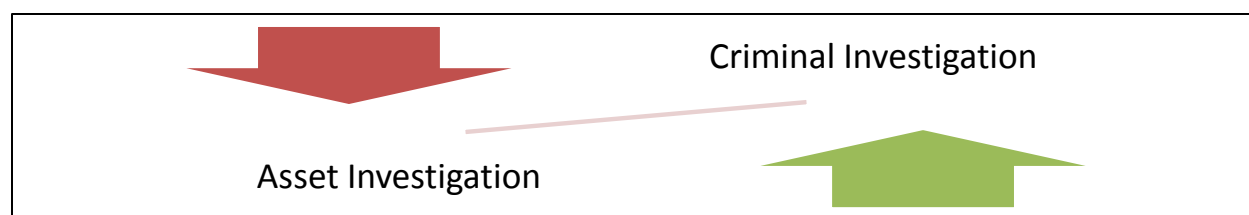
Today is reasonable start from the premise that an important part of the crimes committed have an economic purpose, the reasons why these people commit crimes have been explained from different perspectives (psychological, sociological, economic theory of law, etc.). In any case, what is relevant on the criminological analysis of the causes of criminal phenomenon lies in the fact that they are essentially the assets or increasing the personal wealth the motivational determinants of crime, for several reasons which analysis are not the case (poverty , inequality, economic policy, etc.)

What it is relevant is that, even when we have this information, analysis processes have not favored a substantive look⁷ into the wealth. This has directly influenced the resources and efforts aimed to tackle this kind of analysis.

In this context, if we want to get different results we should not always do the same, which is why a paradigm shift proposed in the analysis process to consider substantively the patrimonial perspective.

The new approach needs to assign the same or very similar weight to the analysis of illicit behaviors of the subjects, as well as the analysis of the assets linked to the case or set of cases. In other words, it aims to reduce the incidental nature of the asset analysis, positioning it and incorporating it directly to the process of criminal analysis.

Figure 1. Balance between criminal and asset investigation



If would be possible to make a study of how countries have modified their laws to deal with criminal phenomena, it could be possibly to see clearly how it have been assigned a higher value to the processes linked to asset investigations. For example, United Nations created a model law⁸ on asset forfeiture. With that countries are aiming to

case to another agency to follow up with such investigations. From: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

⁷ Analysis processes have generally considered the patrimonial data secondarily, which has involved a series of consequences that will be discussed later on.

⁸ Model Law can be found at: http://www.unodc.org/documents/legal-tools/Ley_Modelo_Sobre_Extincion_de_Dominio.pdf

create a legal and operational legal structure that allows them to face the crime phenomena, this means criminals cannot exploit the illegally obtained assets.

If in general, the legislative intent is that individuals who commit illegal activities cannot take advantage of the proceeds of crime, it is essential that the processes of patrimonial analysis related to prosecution authorities have integrated the processes, methods and tools enabling adequate asset investigations.

As for an appropriate structure of the process for Asset Investigations, we consider to be take into consideration that it can be explained as a sequenced and continuous process according to the objectives it pursues (Track / Seize / Forfeit).

Figure 2. Main stages on the Asset Investigation.



1. The Track Stage

This is achieved by analyzing the information available on various sources. In this methodology, we propose to use initially the information sources developed by services allowed to perform asset investigations such as open WEB sources, restricted access information and police reports. This stage is usually developed by junior analysts and senior analysts in charge of the case. Generally, junior analysts will be responsible for extracting information from sources based on the indication of the senior analyst. At this stage, any clues or evidence is valued, since we are in a stage of investigation where what matters is being able to identify assets linked to illicit wealth.

Figure 3. Basic tools for Asset Tracking



a. Interconnections [remote connections]

The interconnections [remote connections] are online query applications, web services and websites, enabling researchers and their support team, access to information remotely located in a timely, reliable, accurate and secure way, allowing facilitate and improve the collection of asset transactions primarily in the framework of a criminal investigation.

b. Web Sources

The idea is that each country could start a project on information sources, aiming to carry out a review process of all Web sites that may provide information relevant to criminal prosecution or property. In this context, it should be noted that the sub-group worked on an information sources project having a preliminary inventory, which could be eventually used.

The guide on open sources of information could be categorized in categories as follows:

1. International Lists about Money Laundering and Terrorism Financing
2. Search engines and Meta-search engines
3. IP addresses and Web Domains
4. Social Networks
5. Intellectual property
6. International Sources

Also, some of the above mentioned sources can be sub-categorized as:

1. Personal Identification
2. Family links
3. Addresses and/or telephone numbers
4. Criminal Information
5. Vehicles and/or boats
6. Patents and Trademarks
7. Commercial or Financial Information
8. Web domains and IP addresses
9. Real State Property
10. Environment

c. Closed Sources

Usually closed the main sources used in the field of criminal investigation are referred to bank information, the information related to electronic communications (emails), and in

some countries, tax information. In these cases, to obtain this information is a prerequisite to obtain a prior judicial authorization.

Regarding this, the elaboration of model application is recommended, that help the operator to meet all the options to request to a bank institution, as well for the understanding of which are the aspects covering by the bank secret and which could be requested without a judicial authorization. Further, it is recommended to hold coordination meetings with banks with the object of improving the applications presented, improving the times of response. For example, it is usual that in a same application the requirement that need to be filled, are mixed with other bank entities, for which it results more efficient to do different applications.

d. Police Reports

These documents are worked from the equity perspective, verifying the assets that had been able to identify with the investigations. The minutes of rising equity should contain at least the following information: i) Name or social reason, ii) Marital status and children, iii) Identity document, iv) Residence, v) Commercial activity, vi) Activity declared to the tax authority, vii) Irregular situations in tax behavior, viii) Employment history, ix) Exterior commercial activities, x) Phones, xi) Patrimonial box (summary).

2. Assurance Stage

As we saw earlier, after the identification phase of the assets, the idea is to generate useful information in order to ensure those properties through seizures or precautionary measures. Obviously, at this stage the accreditation required regarding the relationship between assets and people is much higher than in the initial phase. There should exist backgrounds that allow you to accredit the general requirements for such measures, such as *periculum in mora* and the *fumus boni iuris*, meaning that there can be a determined risk in the event of default.

It is seems to us important to emphasize this point, as traders must understand that at this time the requirement are different than those from the initial phase, that is, it should deepen the equity investigation in order to obtain the respective warrants.

3. Forfeiture Stage

Finally at this stage, an intense deepening of the equity research is needed, since it must be able to prove that the goods have been part or are the result of crime, or are assets that should be confiscated under current regulations.

At this stage the equity research usually is complemented by the professional experts work. In this context we note that within the working model also must deem that professional members of the AML / CFT system can perform expert reports, but this decision should be rigorously evaluated, as it could imply that the analyst should marginalize the team in order to make an objective report.

If it is determined that the report must be made by other public service analyst, the analyst handling the case will coordinate with the latter in order to work on the methodology to be used for the completion of the report and to set in jointly with the fiscal targets that are necessary for the case.

IV. Methodology

Internationally, you may notice different methodologies on the way to structure an asset or equity research, some of which have been developed by police or specialized prosecutors, audit institutions in the economic or financial intelligence units, having a relative coincidence in terms of phases or stages that must have this kind of investigations (determination of object of investigation / review of available sources of information / collection background / Analysis / Report about Conclusions) and to the objective sought to be achieved.

Nevertheless, to further analyze these models it may notice differences in the approach itself, which becomes evident in the emphasis that each one places at the different stages of the equity research. Thus, in the models developed by the police or prosecutors generally they include steps regarding the sources of information available, the way to get the information and how to establish in court that a particular asset belongs to a particular subject. On the other hand, the models created by regulatory agencies or Financial Intelligence Units referred to the analysis stage of information is emphasized mainly on the type of conclusions that can be obtained with the available information.

The structure proposed here takes some stages of the previous two models and incorporates other emerging from the work of the survey of the various delegations, including those relating to the verification of the background in the field, and not to

remain only with the conclusions that we can get the analysis of documents, but to compare them with certain operational measures.

1. First phase. Fixing the object of the equity research

This first stage is vital as it will mark the development of all research.

a. Persons / property or rights

As mentioned above we must define whether the investigation will start from the identified people or from the assets or rights. In the event that starts from people, such research will be conducted and how their direct family group will be approached. In which case it should be discussed to what degree of relationship the research is needed (in most models for the case of investigations into money laundering it is recommended the inquiry to relatives of the fourth degree of consanguinity).

A more complex case is when the inquiry starts from a legal person, and that inquiry must specify whether it refers only to it or also to members who compose it. In the latter case it can be generated a ripple effect, as many companies are in turn composed of other companies, being complex to cover all companies and partners who are part of the chain.⁹

On the other hand, if we start from the assets or rights, will have to define whether our intention is only to determine who is listed as the current owner or right holder, or if it is wanted to establish those previously included, changes can be historically analyze in the ownership of that property.

b. Time frame

Normally, it is recommended to set a time frame regarding the asset investigation that fits the goal of research being done. Obviously, in cases you want to know all the assets of a given subject there is not a fixed limit of time from when initiating the investigation, as a general rule the other (how long) will be implied. .

Fixing this framework will help organize information that will be relevant and effectively allows the equity research that can be developed faster and more efficiently.

⁹ Therefore, in the case of open anonymous societies it results complex to realize the inquiry to identify shareholders.

At times this limit time is not set, because you want to perform an analysis of the equity historical performance, where it can be observed that in certain times there was an unusual increase or decrease.¹⁰

2. Second phase. Identification and compilation of data

a. Inquiry into the various sources of information.

Currently, the sources of information are often classified as open source (can be accessed by anyone), mixed (only directly access some who have a legitimate interest) and closed (those requiring judicial authorization to access information).

In terms of equity research they are used interchangeably three different types of sources of information, having to evaluate the quality of information provided by each one. In this context, one should note the offset period of information that each source possess, for example, the information that is delivered to us is updated every two months, thus, information regarding this offset period of information that is set in this time frame will have to be obtained later.

The identification of sources of relevant information will be a point of great relevance for the purpose of efficient asset investigation, since the universe has a vast variety of information sources; will have to carefully evaluate what sources of information are valuable to be used. One answer would be to use only those that provide equity information, but even here the possibilities are extensive, so, again the ideal is to be using those that are required for the object of the research that has been previously set, bearing in mind that a greater number of sources will use a greater amount of time required for analysis, without its progressive use implies a proportional increase in the degree of certainty of the result sought to be obtained.

In other words, on many occasions is much more efficient to consult a small number of information sources that deliver high quality information before consulting the full range of information sources, where many do not provide relevant background and only increase the history to be analyzed, generating a negative effect.

Finally, having identified the relevant sources of information it will be necessary to select the type of information requested, since some of them manage a huge amount of information, being essential to specify the type of backgrounds that are required. For it is desirable that the area in charge of research develops the procedures for selecting, sorting, grading, study and interpretation of the information gathered.

¹⁰ It is interesting to mark that this limit will operate in both senses, meaning, to the past and to the futures. For example, in investigations in which financial fluctuations that are circulating, normal will be to fix a limit into the past and indicate that the equity research has to include all the operations that are found in execution.

To be clear about the information that is to be obtained, it also helps the information requirements that are made so it can be answered more quickly. It also gives greater flexibility to the answer the fact of dividing the request according to the department (of the institution to which he officiates) that corresponds to answer to such information. From practical experience it can be noted that it is often made the mistake of including in the same request several applications that must be answered by different departments of the same institution, which generates a delayed response because departments do not work in it simultaneously.

b. Collection of backgrounds.

At this point you should take special care to check that the information gathered is the requested information, either in terms of time, people or consulted assets. Also, information will be orderly and structured classified as discussed later.

c. Background and documents seized

The equity research should be completed with documentation and backgrounds seized. Sometimes the failure to treat this background is committed, since the entire financial and economic information was obtained from various public and private institutions.

On practical experience it has been noted that many backgrounds can only be obtained within the documents seized, primarily those related to powers, mandates, contracts and private deeds, of which there is no record in the respective notaries. They have also been important checkbooks in which annotations are made for certain people.

To make the most of the background information obtained it should be made at least one identification and structuring information. While it is true all the documents seized meet their respective chain of custody, it is likely that not all the documents are relevant, in this regard; since the information analysis is started there should be arbitrated measures on how the backgrounds that were considered for the equity research, are going to be. If this regard is not clarified it is likely that the work is not developed efficiently, since it will have to review the background to individualize it again.

On the other hand, before the identification of the background, which must have operated as a filter regarding any information that did not contributed to the equity research, it now corresponds to regroup the information by some kind of criteria. Generally, all information is grouped referring to a particular asset, for example, for a property, we can find domain registration, various certificates (by country), the contract of sale that reasons the registration, the contract of pledge, the check by which was

paid notarial instructions, cartola which contains the check as paid, photos of the property, etc.

Then each asset or right is going to associate to the corresponding person, for us to form an idea about their heritage.

On special occasions structuring are asked, for example, when you want to see points of coincidence between certain people, in which case the analysis of the person will be first and then the assets will associate, being able to plot the points of connection.

d. Information requested via international cooperation

This may end up being one of the key points regarding crimes involving transnational organized crime, since the assets are usually in different countries and is sometimes quite complex to harmonize research for international cooperation.

While they have begun to improve formal and informal mechanisms for exchanging information between countries, it remains an issue. In this context, we believe that you should use the guidelines for international cooperation that has been developing LAVEX in order to adapt the requests and applications of the consultant country, and this way streamline the time of response.

Similarly, consider a recommendation that in these types of investigations one of the first requests that researchers should perform are those related to the backgrounds which are on the outside, and that response times will be more extensive than requests that are made internally. Furthermore, to narrow and clarify the formal requirements it is appropriate to use in first instance the informal mechanisms of information exchange, such as GAFILAT (Network Asset Recovery GAFILAT / RED Egmont) or other similar mechanisms.

3. Third phase. Process data analysis. Drawing preliminary conclusions.

The process of analyzing the information collected is largely what is known as asset investigation since, as we noted earlier this process seeks to draw certain conclusions from the analysis of the various documents. From our perspective, the conclusions that are achieved to extract should specifically indicate which documents were taken into account for each of them. In the case of developing conclusions that need technical or scientists knowledge's, it will be necessary to be elaborated from a formal expert, but only as to the conclusions requiring to use such knowledge.

The conclusions of the equity research will be structured based on certain assets or for certain people. For example, one can conclude that particularly asset X has led owners to a certain group of people, who have acquired certain dates, that at the time of acquisition these persons did not figure with lawful income that would allow to solve

them, etc. On the other hand, if the conclusions were regarding the person, it could be indicated that person X, has acquired a determined number of assets in the fix time that in this period of time generates licit sources a determined quantity of money, that its expenses in the same period of time have been above its income.

Finally, note that you these are preliminary conclusions since it have been able to obtain from a purely documentary analysis, a matter which can be changed to investigate the situation on the ground. For example, it is common that some subjects listed without any investment in their name, but in reality they have a great heritage as using proxies.

Fourth phase. Validation of factual findings.

This was one of the points raised in the responses of individual countries, as it did see that they should not make definitive conclusions without at least verify the information field obtained via documentary. For example, it is often cited cases in which subjects indicate nonexistent addresses regarding properties or paper figure as a rather low value and is actually a very expensive commodity. With these considerations we add it as one of the stages within the equity research because it allows us to establish the effectiveness of the conclusions of preliminary way. Many times the conclusions drawn from the documents are enormously far from reality; this is how the conclusions are complemented by other available information. That is, by certain measures in the field we can validate or invalidate the conclusions that we have prepared.

Fifth phase. Making the definitive findings.

Subsequent to the factual validation of our preliminary findings, we are able to draw our final conclusions on which the backgrounds obtained in the proceedings in the field will be incorporated, noting how our conclusion is structured. In this regard, it should be identified the background taken into account to prepare the conclusion and reasoning or methodology used, in order to establish the technical nature of the same.