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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:
NORMATIVE STUDY ON POLITICALLY EXPOSED PERSONS (PEP) IN THE REGION
PROGRESS REPORT
SUB-WORKING GROUP ON FINANCIAL INTELLIGENCE UNITS AND LAW ENFORCEMENT AGENCIES**

**WORK PLAN 2019-2020
JUNE, 2020**



I. PRESENTATION

At the XLVII Meeting of the Group of Expert for the Control of Money Laundering – GELAVEX held in Bogota (Colombia) on September 23, 24 and 25 2019, the goal of presenting the products developed in the framework of the work plan 2018-2019, based on the lines of action defined in the Strategic Plan 2018-2020, was met as well as the establishment of a Work Plan 2019-2020 that responds to the challenges and interests of the countries of the region. Among the commitments made by the Group, the development of four products was agreed.

In relation to the Sub-working Group on Forfeiture and International Cooperation, the products correspond to: i. Study on the applicability of precautionary measures on assets forfeited overseas (Coordinators: Costa Rica and Colombia); ii. The conceptualization and design of a network of managers of seized and forfeited assets (Coordinate: Costa Rica and Colombia).

Regarding to the Sub-working Group on Financial Intelligence Units and Law Enforcement Agencies, the products correspond to: i. Study of typologies of money laundering derived from smuggling. (Coordinators: Guatemala, Chile and Bolivia); ii. **Normative study on Politically Exposed Persons (PEP) in the region, with special reference to the Caribbean sub-region (corresponding with this progress report).** (Coordinate: Chile and Colombia). This progress report corresponds to the latter.

II. STUDY OBJECTIVE

Conduct a comparative study of the regulations and operations of PEP policies. This integrates experiences and regional knowledges that could be used as an input for consultation and guidance aimed at Financial Intelligence Units, and other authorities of the member states of the Expert Group. These results can be used for regulatory adaptation, which facilitates compliance with international standards on preventing and combating money laundering and corruption, to lay the groundwork for the future development of a centralized regional database searchable by the supervised entities of each country.

III. CONCEPTUAL ARRANGEMENT

In general terms, a Politically Exposed Person (PEP) is a natural person who has been invested or delegated with a prominent function within a country or with the authority over public spending on a national level or overseas, whose financial circumstances could be an object of interest, and due to the influence that they have (or could have), may constitute a risk for the Anti-Money Laundering and Counter Terrorism Financing (AML/CTF) systems of a State.

The Financial Action Task Force (FATF) 40 recommendations document divides the Politically Exposed Person (PEP) in two categories:



- a) Foreign PEP: "They are individuals who perform or have been entrusted with prominent public functions in another country, such as Heads of State or Government, high-level politicians, high-level government or judicial officials or high-ranking military personnel, high-ranking executives of state-run corporations, officials of important political parties."
- b) Domestic PEP: "They are individuals who fulfill or have been entrusted with internally prominent public functions, such as Heads of State or Government, high-level politicians, high-level government or judicial officials or high-ranking military personnel, high-ranking executives of state-run corporations, officials of major political parties. "

According to FATF's Recommendation 12, financial institutions have the obligation, in addition to having basic client due diligence measures, to establish additional measures regarding Politically Exposed Persons.

These measures are aimed at: i. Ensuring that reporting entities subject to reporting have risk preventions systems including the identification of Politically Exposed Persons (new or existent) and other high risks clients; ii. Implement measures to mitigate the risks that the entity may be used to hide to proceeds of crime, including corruption and; iii. Report these clients to the country's Financial Investigation Unit when they are involved in suspicious transactions and operations.

The categorization as PEP does not necessarily imply that a person committed act of corruption or other criminal activity. However, the continued treat of money laundering by a PEP (both foreign and domestic) through supervised entities, must be regulated and reinforced to understand and attack the potential risks of money laundering associate to these clients and its transactions.

In addition, not all PEP represent the same risk levels, this can vary according to various factors such as: the person's country of origin; the economic sector involved; the nature of the position or influence; the decision-making authority of office holder or their substantive authority over access to public assets or public expenditure.

IV. PROGRESS OF THE STUDY ACCORDING TO THE PROPOSED METHODOLOGY

Since the study includes the preparation of a legislative analysis of 11 countries of the region, the methodology to be applied is based on comparative legislation. The scope of the study includes a time-based, international comparison of normative systems, as well as the operative systems that implement the legal provisions of the PEP legislation.

- **Delimitation of the analyzed States (cases)**

According to the 2019 Global Corruption Perceptions Index (CPI) of the non-governmental organization "Transparency International" (TI) which analyzed 183 countries, it was concluded that from among the Member States of the Financial Action Task Force of Latin America (GAFILAT) and



The Financial Action Task Force (FATF), the top ten (10) countries with the best rankings are: Uruguay (71), Chile (67), Barbados (62), St. Vincent and the Grenadines (59), Costa Rica (56), Dominica (55) y Saint Lucia (55), Grenada (53), Cuba (48), and Argentina (45). On the other hand, the ten (10) countries with the worst ranking are: Venezuela (16), Haiti (18), Nicaragua (22), Honduras (26), Guatemala (26), Paraguay (28), Dominican Republic (28), Mexico (29), Bolivia (31), and El Salvador (34).

This document proposes to prioritize the top **10 States with the best ranking**, and in a further study, to analyze the 10 worst ranking positions in the Global Corruption Perceptions Index (2019) in the countries of the Americas, taking into consideration that the existence or non-existence of controls on Politically Exposed Persons can (or not) contribute to transparency and prevention of crimes associated with corruption or bribery. According to this prioritization, the study will comply with the guidelines agreed during the Plenary regarding special reference to the countries of the Caribbean Sub-region, since the list includes several of them.

Even though Colombia is placed in the mid-range in the ranking results, it was included in this study taking into account that they are co-responsible for the preparation of the study and the interest of the Chair of the Group in presenting Colombia's accumulated experience for comparison. In this study the application of the regime of the Politically Exposed Persons will be analyzed in the following states:

1. Uruguay
2. Chile
3. Barbados
4. St. Vincent and the Grenadines
5. Costa Rica
6. Dominica
7. St. Lucia
8. Grenada
9. Cuba
10. Argentina
11. Colombia

If this study is of interest and the Group of Experts considers that it should be extended to the next 10 countries selected according the Corruption Index (the 10 countries with the worst ranking), this could be a subject for inclusion in the 2020-2021 Work Plan.

- **Subjects or material for Comparison**

Common variables applicable to the **normative component**



Methodology step 1. Review of the conventions, international treaties or international standards related to prevention of transnational crimes such as money laundering and corruption, which were signed by the countries involved in the study, and the internal legislations from which the national frameworks were adjusted.

This review was advanced in the cases of Colombia and Chile considering that these initiatives defined the PEP regulation as a relevant topic in the Anti- Money Laundering and Counter Terrorism Financing systems. Both countries signed and reinforced:

- United Nations Convention against illicit traffic in narcotics drugs and psychotropic substances
- Inter-American Convention against Corruption.
- United Nations convention against Transnational Organized Crime.
- International Convention for the Suppression of the Financing of Terrorism.
- United Nations Convention against Corruption.
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

They have also adopted international standards, such as:

- The Financial Action Task Force - FATF. 40 Recommendations. Specifically, the recommendations 10, 12, and 22, as well as the best practices guidelines of GAFILAT.
- STAR (Stolen Asset Recovery) initiative for the stolen asset recovery. A World Bank initiative in association with the United Nations Office on Drugs and Crime (UNODC).

In addition, Chile adopted the Wolfsberg Guidance on Politically Exposed Persons; the recommendations of the Basel Committee on Banking Supervision, regarding the appropriate management of the risks related with money laundering and terrorism financing and due diligence with banking clients; and the guidelines Basilea III.

Methodology step 2. Review of all the local regulations related with the application of PEP legislation on reporting entities in compliance with the additional or increased measures mentioned on FATF's Recommendation 12. As well as the provisions for the application of cooperation instruments and international assistance for information exchange between criminal investigation; prosecution; and/or financial agencies.

This review also advanced for Colombia and Chile, revealing that since the mid-1990's they started to apply laws to improve the information systems of the public officials and to eradicate the corruption in the public administration and public services in both countries. Also, the application of the main administrative disposition of the authorities in charge of the financial sector to integrate prevention measures, control and the due diligence regarding persons considered as politically exposed.

Common variables applicable to the **operative component**



Methodology step 3. Review of the structural components of a PEP list: definition, categories, timeframe as a PEP (after leaving office), a person's obligations within the financial system, and the reporting obligation to the supervised entities (providing the information), updating the list.

This review was carried out in light of the definitions of both countries according to the regulations on the topic, showing the differences in terms of public positions recognized as PEP, such as in terms of time, (in Colombia the time is twice as long as in Chile) and in obligations. In the case of Colombia, it was evident that there are developments regarding the category "publicly exposed persons".

Methodology step 4. Review of the mechanisms, competent authorities and the existing procedures for the administration and consultation of the lists or database.

FINAL NOTE: The methodology described has so far been applied for Colombia and Chile. With the approval of the Group of Experts and the commitments of the countries, this study will be applied to the remaining 9 countries. Once this the study finalized will be presented in the XLIX plenary of discussion and approval.