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# **EUROPEAN CRIMINAL BAR ASSOCIATION**

***ANTWERP – Spring '10***

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*Evidence & Legal Privileges*

THE BELGIAN CENTRAL OFFICE FOR SEIZURE  
AND CONFISCATION (COSC)

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Judge Court of appeals Antwerp

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## COSC = What?

- COSC created in 2003 as a new public prosecutor's office. Nationwide competent. Actual staff: 37 persons (incl. LO police & MinFin). Budget:  $\pm$  2,000,000 €;
  - Aim = to reduce crime by confiscating the proceeds of all crime. Only valuable assets & cash, no “material evidence”;
  - General mission = to assist legal authorities (+ MinFin) in the realm of asset protection (seizure/freezing), asset confiscation and the execution of confiscation orders.
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# COSC = Why? (1)

- Finding before 2003 =
  - Too little interest & expertise in asset forfeiture;
  - No seized assets management (high cost, depreciation);
  - Poor results in execution of confiscation orders.

=> COSC specific missions in asset forfeiture:

- To advise and assist policy makers + actors in the field (police, public prosecutors, investigative judges, courts, MinFin);
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## COSC = Why? (2)

- Management of seized assets: sale of assets while seizure, management of seized cash + product of sales + other valuable assets on demand;
  - Database on protected and confiscated cash & valuables + on execution results;
  - Liaison between public prosecutors and MinFin in execution of confiscation orders, incl. inquiries into convicted persons' patrimonia for execution purposes;
  - International cooperation (CARIN, Council Decision 2007/845/JHA d.d. 06/12/2007: ARO cooperation).
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# Conflict issues? (1)

- General:
    - Discussions on proportionality (excessive asset protection ↔ purpose to safeguard execution of future confiscation). Risk to disrupt normal economic activity → bankruptcy. Draft law to protect diamond sector.
    - Discussions on timeframe (protection period too long). Art, 6.1 ECvHR: reasonable delay. ECtHR 12-02-2008 (Jouan / Belgium): Freezing account during 3 years without progress investigation is unreasonably long.
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## *Conflict issues? (2)*

- Specific:
    - Selling of seized assets (obtained price replaces seized asset). Guarantees: only common assets, public sale (unless exception), in principle no sale below minimum price ↔ Emotions & claims innocence.
    - Interests on returned cash: normal interest on savings account. Fluctuations, foreign currency ...
    - Compensation returned assets with (former) suspect's existing fiscal and social debts (LO's).
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