The General Court: the need and opportunity for reform

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Introduction
The General Court (GC)

1 of 3 jurisdictions which compose the institution of the EU Court of Justice (EUCoJ) (Art. 19 TEU)

Created in 1989 to help workload of the Court of Justice (CJ), ensure reasonable delay and establish two levels of judicial protection

Hears all administrative appeals vs EU institutions (except inter-institutional conflicts)
2 interrelated problems

The workload issues

- More with less: new responsibilities and budgetary cuts
- Length of proceedings
- Focus on statistics

The institutional issues

- EUCoJ and Member States
- Governance of EUCoJ
- EU and ECHR
Today’s Presentation

1. Analysis of the GC workload (Part 1)
2. Analysis of the causes (Part 2)
3. Possible solutions (Part 3)
Part 1
Analysis of the GC workload
## Incoming Cases

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>432</td>
<td>522</td>
<td>629</td>
<td>568</td>
<td>636</td>
<td>722</td>
<td>617</td>
</tr>
<tr>
<td>% Comp.</td>
<td>19%</td>
<td>12%</td>
<td>11%</td>
<td>7%</td>
<td>12%</td>
<td>5%</td>
<td>6%</td>
</tr>
<tr>
<td>% IP</td>
<td>33%</td>
<td>32%</td>
<td>31%</td>
<td>36%</td>
<td>33%</td>
<td>30%</td>
<td>39%</td>
</tr>
</tbody>
</table>
## Cases decided and pending

<table>
<thead>
<tr>
<th>Year</th>
<th>Decided</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>436</td>
<td>1029</td>
</tr>
<tr>
<td>2007</td>
<td>397</td>
<td>1154</td>
</tr>
<tr>
<td>2008</td>
<td>605</td>
<td>1178</td>
</tr>
<tr>
<td>2009</td>
<td>555</td>
<td>1191</td>
</tr>
<tr>
<td>2010</td>
<td>527</td>
<td>1300</td>
</tr>
<tr>
<td>2011</td>
<td>714</td>
<td>1308</td>
</tr>
<tr>
<td>2012</td>
<td>688</td>
<td>1237</td>
</tr>
</tbody>
</table>
# Duration of cases

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Average duration (in months)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Aid</td>
<td>48.1</td>
<td>50.3</td>
<td>32.4</td>
<td>32.8</td>
<td>31.5</td>
</tr>
<tr>
<td>Competition</td>
<td>40.2</td>
<td>46.2</td>
<td>45.7</td>
<td>50.5</td>
<td>48.4</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>20.4</td>
<td>20.1</td>
<td>20.6</td>
<td>20.3</td>
<td>20.3</td>
</tr>
<tr>
<td>Other direct actions</td>
<td>20.6</td>
<td>23.9</td>
<td>23.7</td>
<td>22.8</td>
<td>22.2</td>
</tr>
</tbody>
</table>
Comments on workload

- Less incoming competition cases
- Trade mark cases now account for a third of total cases
- Backlog does not correspond to pending cases
- Backlog went down in 2012
- Duration remains a problem
Comparison with national courts

Cases decided by national courts:

- Dutch CBB 1300-1500 per yr
- CAT 150-170 per yr
- Bundesverwaltungsgericht 1600/1700 per yr

Flawed comparison?
Comparison with CJ

Comparison flawed?

Number of cases decided:

<table>
<thead>
<tr>
<th></th>
<th>CJ</th>
<th>GC</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>574</td>
<td>527</td>
</tr>
<tr>
<td>2011</td>
<td>638</td>
<td>714</td>
</tr>
<tr>
<td>2012</td>
<td>595</td>
<td>688</td>
</tr>
</tbody>
</table>
Part 2
Analysis of the causes
Causes of the workload

- Structural reasons
- Member States
- The EUCoJ institution
- The parties
Structural reasons

Ever increasing responsibilities

EU institutions unaware of costs of legal proceedings and no judicial impact assessment conducted for cases on:

- trade marks
- access to documents
- economic sanctions
The Member States

System of nominations leading to permanent instability
- short and inefficient term of mandate

Role of Art. 255 Committee

In past year, no judges for Italy, Malta and Sweden for several months
The EUCoJ itself

**GC:**
- improved but improvable working methods
- unclear role

**CJ:**
- commands access to resources of institution
- conflict of interest in finding a solution to GC problem

**GC and CJ:**
- unhelpful case law
The Parties

- Unclear and inappropriate applications
- Interventions
- Disproportionate confidentiality claims
Part 3
Possible solutions
Quantitative approach followed so far

**GC:**
- specialised trade mark court
- logic of Art. 19 and Treaty of Nice

**CJ**
- increase number of judges
- specialisation within GC and end of Nice
Possible solutions

- Focus on causes
- Budgetary realities and constraints
- Simple steps and seize opportunity of Treaty reform
Cases and nominations

Structural measures: review of secondary legislation (trade marks, access to documents and economic sanctions)

Nomination proceedings

- on time!
- one fixed, long and non-renewable term
The institution and parties

EUCoJ
- representative and neutral management
- more case management and corresponding allocation of resources
- keeping flexibility: no forced specialisation!
- review of unsatisfactory case law

Parties
- new rules of procedure
- more guidelines for applicants
No time for grand designs but..

Need for checks and balances

More integration of national and EU judiciary

European Council for the Judiciary

- role of Art. 255 Committee
- review of issues of common interest (e.g. preliminary references)
- supervisory board of EUCoJ