

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

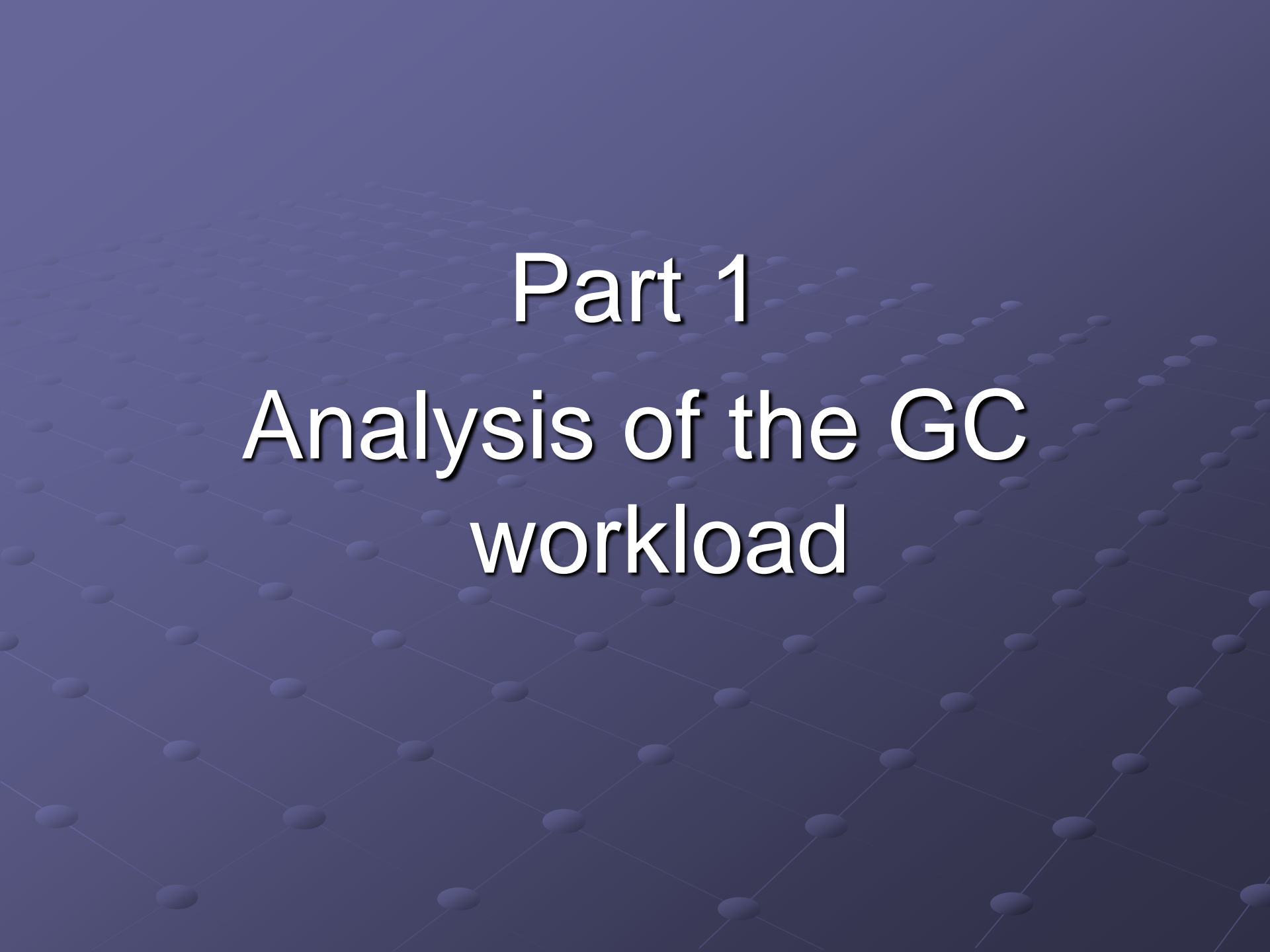
- More with less: new responsibilities and budgetary cuts
- Length of proceedings
- Focus on statistics

● 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

	2006	2007	2008	2009	2010	2011	2012
Total	<u>432</u>	522	629	568	636	722	<u>617</u>
% Comp.	<u>19%</u>	12%	11%	7%	12%	5%	<u>6%</u>
% IP	<u>33%</u>	32%	31%	36%	33%	30%	<u>39%</u>

Cases decided and pending

	2006	2007	2008	2009	2010	2011	2012
Decided	<u>436</u>	397	605	555	527	714	<u>688</u>
Pending	<u>1029</u>	1154	1178	1191	1300	1308	<u>1237</u>

Duration of cases

Average duration (in months)	2008	2009	2010	2011	2012
State Aid	48.1	50.3	32.4	32.8	31.5
Competition	40.2	46.2	45.7	50.5	48.4
Intellectual Property	20.4	20.1	20.6	20.3	20.3
Other direct actions	20.6	23.9	23.7	22.8	22.2

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:

	CJ	GC
2010	574	527
2011	638	714
2012	595	688



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