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"Two richly entwined European  
Weeds: State Action and Private  
Coordination".

Istanbul  
5 September 2008

Europe likes guilds and private understandings.

- Europe expects the State to regulate
- The State has regulated in support of its guilds for quite a long times
- Guilds and private understandings are part of the characteristics of this continent, far more than it is in the US tradition.
  - *German Beer purity law*



## Use of creative legislation to bring a change

- **Fictitious litigation?**
  - **Case 267/86 Van Eycke v ASPA [1988] ECR 4769**

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## Conservatism of the EU Court

- A) Private coordination made compulsory by the public power**
  - **Conservatism of the EU Court in examining private price coordination**
    - *Meng, Ohra and Reiff*
  - **But there are big movements**
  - **Constitutional litigation often involves formal defeat but makes a “crack in the wall” for change.**

[Istanbul, 5 September 2008]

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## Conservatism of the EU Court

### B) Airfare cases

- Case 246/81 *Lord Bethell v Commission* [1982] ECR 2277.
- Case 66/86 *Ahmed Saeed Flugreisen and Silver Line Reisebüro v Zentrale zur Bekämpfung unlauteren Wettbewerbs* [1989] ECR 803.
- Case 311/85, *ASBL Vereniging van Vlaamse Reisbureaus v. ASBL Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten*, 1987 E.C.R. 3801.

## Conservatism of the EU Court

### C) Evolutionary Conservatism

- C-198/01 *Consorzio Industrie Fiammiferi (CIF) v Autorità Garante della Concorrenza e del Mercato* [2003] ECR I-8055

## Times when the State goes too far and provokes controversy

- *Case 30/87 Bodson v Pompes Funèbres des Régions Libérées* [1988] ECR 2479.
- *Case C-266/96 Corsica Ferries France SA v Gruppo Antichi Ormeggiatori del porto di Genova and others* [1998] ECR I-3949.

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## European Regulations in Sport

- **Are sports regulations to be regarded as private or public?**
  - *Case C-415/93 URBSA, RCL and UEFA v JM Bosman* [1995] ECR I-4921
  - *Case T-313/02 Meca-Medina and Majcen v Commission* [2001] ECR II-3291

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## There is a greater toleration of private regulatory competence in Europe

- **Situations where good faith regulatory efforts have had positive consequences are permitted by the Court**
  - *Case C-309/99 Wouters [2002] ECR I-1577*
  - *Case 35/99 Manuele Arduino [2002] ECR I-1529*
  - *Case T-313/02 Meca-Medina and Majcen v Commission [2001] ECR II-3291*

## Conclusions

- **Deep rooted guild traditions**
- **Toleration of regulations**
- **Trend change**
- **Traditional opinions are difficult to reconcile**
- **The climate of times determines decisions**

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