

# Golden Shares and New State Capitalism

State Control, Economic Sovereignty, and European Corporate Governance

---

The return of industrial policy and economic security concerns has revived interest in golden shares and other mechanisms of state control over strategic companies. Once thought incompatible with single market principles, these instruments are experiencing a renaissance across Europe and beyond, raising fundamental questions for corporate governance, the free movement of capital, and the rights of institutional investors.

## Origins and the Privatisation Era

Golden shares emerged prominently during the privatisation wave of the 1980s and 1990s, particularly in the United Kingdom under the Thatcher government. As states transferred ownership of utilities, telecommunications operators, and defence companies to private investors, they frequently retained a single share carrying extraordinary control rights — veto powers over mergers and acquisitions, the right to appoint board members, or the ability to block changes to corporate structure — to safeguard what were perceived as continuing national interests.

The practice spread rapidly across Europe. Governments in France, Belgium, Portugal, Italy, Spain, and the Netherlands adopted variations of the golden share model, each tailored to national legal traditions but sharing the common objective of retaining a lever of state influence after the transfer of economic ownership to the market.

## The CJEU and the Free Movement of Capital

As European economic integration deepened, golden shares came under sustained legal challenge. The European Court of Justice (now the Court of Justice of the European Union) developed a stringent body of case law holding that national golden share arrangements constitute restrictions on the free movement of capital under what are now Articles 49 and 63 TFEU, and are permissible only where they are justified by overriding reasons of public interest, non-discriminatory, and strictly proportionate to the objective pursued.

The landmark cases of the early 2000s set the tone. In *Commission v. Belgium* (C-503/99, 2002), the Court accepted that golden shares in the energy sector could in principle be justified by security of supply, but only if subject to effective judicial review and limited in scope. In *Commission v. United Kingdom* (C-98/01, 2002), the golden share in British Airports Authority was struck down for creating a deterrent effect on investors without adequate justification. Cases involving France (*Commission v. France*, C-483/99), Portugal (*Commission v. Portugal*, C-171/08 and C-543/08), and Italy (*Commission v. Italy*, C-326/07) reinforced the pattern: broad, indefinite, and discretionary state veto rights were consistently found incompatible with single market principles.

The *Volkswagen Law* proceedings (*Commission v. Germany*, C-112/05, 2007, and C-95/12, 2013) represented perhaps the most politically significant confrontation, with the Court finding that even unused golden share rights constitute *prima facie* restrictions on capital movement. Germany's attempts to preserve a

blocking minority for the State of Lower Saxony through statutory provisions were found disproportionate, notwithstanding the broad domestic political coalition in favour of retaining the special arrangements.

The domestic aftermath of this jurisprudence was, however, more nuanced than a straightforward story of judicial compliance. Between 2000 and 2013 the Court delivered 18 rulings on golden shares, of which only two arrangements survived the proportionality test. As Werner (2017) has shown, most member states did abolish their golden shares formally, but their willingness to do so was conditioned by the existence of “protective equivalents” — pre-existing institutional mechanisms that safeguarded the interests originally protected by the special rights. France, for example, abolished its golden share in Elf Aquitaine but could rely on an established FDI screening regime in the energy sector to protect its security-of-supply concerns. The United Kingdom similarly removed its golden shares in water and electricity companies, where sectoral regulators already exercised effective oversight. In contrast, Germany and Italy, which lacked comparable fall-back instruments, fought prolonged rear-guard actions: Germany adopted a revised Volkswagen Law in 2008 that removed the appointment right and voting cap but preserved the 20 per cent blocking minority, prompting a second round of infringement proceedings. The Oxera study commissioned by the Commission in 2005 provided supporting empirical evidence for the costs of these arrangements: in the UK water and electricity sectors, the expiry of golden shares that had capped voting at 15 per cent triggered a surge in takeover activity, with all but one of the twelve regional electricity companies acquired within two years, generating significant takeover premia for shareholders. Portugal and Greece ultimately abolished their golden shares under the terms of the Troika rescue packages.



## The 2025 Renaissance

Several converging geopolitical developments have brought golden shares back to the centre of policy debate. The disruption of European energy supplies following the Russian invasion of Ukraine exposed dependencies in critical infrastructure. Intensified US-China technological competition and concerns about the transfer of sensitive know-how have heightened awareness of foreign investment risks. In China itself, the government in 2023 acquired golden shares in its two largest technology companies, Alibaba and Tencent, in what may represent only the visible portion of a wider network of state influence exercised through layered shareholding structures. A broader political shift towards economic sovereignty — reflected in the EU's European Economic Security Strategy of June 2023 and the January 2024 package of five economic security initiatives — has created a new receptivity to mechanisms of state influence that would have been politically unthinkable a decade earlier.

The most prominent recent example is the [Nippon Steel/U.S. Steel transaction](#) of June 2025, in which the Trump administration secured a perpetual golden share granting the US government a board seat, veto powers over key corporate decisions, and the ability to block asset relocations as a condition for approving the USD 14.9 billion acquisition. The arrangement marked a striking departure from traditional US non-interventionism and signalled a willingness by governments to deploy direct corporate control instruments in the name of national security and industrial revival. The golden share was held personally by the President, passing to the Treasury and Commerce Departments after his term.

In Australia, a different model emerged in 2025. Austal, the country's largest defence exporter, structured a "self-imposed golden share" arrangement granting the Commonwealth information and veto rights over its defence shipbuilding subsidiary, along with a call option exercisable upon a change of control — effectively using the golden share as a defensive shield rather than an instrument of state intrusion.

## EU Foreign Direct Investment Screening

In Europe, the political demand for strategic economic control has taken the parallel and arguably more systematic track of foreign direct investment screening. The original EU FDI Screening Regulation (Regulation (EU) 2019/452), fully applicable since October 2020, established a cooperation mechanism enabling Member States and the Commission to exchange information on foreign investments that may affect security or public order. By the end of 2024, 24 out of 27 Member States had enacted national screening legislation, and 477 investments were notified to the EU mechanism in that year.

On 24 January 2024, the Commission proposed a comprehensive revision of the FDI Screening Regulation as part of a broader economic security package. After a year of inter-institutional negotiations, the European Parliament, Council, and Commission reached a provisional political agreement on 11 December 2025. The revised Regulation will, for the first time, make FDI screening mechanisms mandatory in all Member States, introduce a common minimum scope for compulsory screening, extend coverage to investments made through EU subsidiaries under foreign control, and increase procedural harmonisation — while preserving the principle that screening decisions remain the exclusive responsibility of the Member State concerned.

## Implications for Corporate Governance

The revival of golden shares and the strengthening of FDI screening raise a series of questions that sit at the intersection of corporate governance, constitutional law, and geopolitical strategy. For institutional investors, the expansion of state veto rights in portfolio companies creates uncertainty about the market for corporate control, the enforceability of shareholder rights, and the predictability of regulatory outcomes in cross-border transactions. For issuers, golden shares alter the balance of power at the board level and may affect the cost of capital. For the European single market, the challenge is to reconcile the legitimate demand for economic security with the fundamental freedoms on which capital market integration depends.

The CJEU's jurisprudence remains stringent: golden shares are viable only in highly constrained forms, typically tied to FDI screening under Regulation (EU) 2019/452, and always subject to proportionality review. Whether the new generation of golden share arrangements — more sophisticated, more politically embedded, and more explicitly tied to national security narratives — can be reconciled with these principles is an open question and one of considerable practical importance for the governance of European companies.

## Key Questions

How do revived golden share mechanisms interact with the CJEU's established jurisprudence on the free movement of capital? · Can the revised EU FDI Screening Regulation accommodate the new political demand for strategic economic control within single market principles? · What are the corporate governance implications for institutional investors of expanding state veto rights? · How should the relationship between economic sovereignty instruments and shareholder rights be understood in the context of European capital market integration?

## Key Documents and References

---

### ECONOMIC STUDY

#### Special Rights of Public Authorities in Privatised EU Companies

Oxera, November 2005. Prepared for the European Commission. Comprehensive study including a typology of golden share mechanisms (direct vs. indirect investment restrictions), case studies of six companies subject to infringement proceedings (Cimpor, Volkswagen, Repsol YPF, KPN, Portugal Telecom, BAA), and empirical evidence from the UK water and electricity sectors on the takeover effects of golden share expiry.

---

### ACADEMIC ARTICLE

#### National Responses to the European Court of Justice Case Law on Golden Shares: The Role of Protective Equivalents

Benjamin Werner, *Journal of European Public Policy*, 2017, 24:7, 989–1005. Analysis of domestic reactions to the CJEU's 18 golden share rulings, showing that compliance was conditioned by the presence of pre-existing institutional fall-back options (FDI screening, sectoral regulation) rather than by legal uncertainty costs alone. Case studies on France (Elf Aquitaine), UK, Netherlands, Germany (Volkswagen), and Italy.

---

### ACADEMIC ANALYSIS

#### Recent Golden Share Cases in the Jurisprudence of the CJEU

Thomas Papadopoulos, *German Law Journal*, 2019. Critical review of the Court's evolving approach, including tensions between freedom of establishment and free movement of capital.

---

### COMMENTARY

#### The Return of Golden Shares and Global Politics

Tim Oswald, *Verfassungsblog*, June 2025. Analysis of the Nippon Steel/U.S. Steel golden share, the risks of politicisation, and implications for EU single market law.

---

### LAW FIRM ANALYSIS

#### Back to the Future: The Re-Emergence of the Golden Share

King & Wood Mallesons, 2025. International overview covering the US, EU, and Australian developments, including the Austal "self-imposed golden share" model.

---

### EU FDI SCREENING — CURRENT FRAMEWORK

#### Investment Screening — European Commission

Official overview of the FDI Screening Regulation, the January 2024 reform proposal, and the December 2025 provisional political agreement.

---

COUNCIL OF THE EU

## **Political Agreement on the Revised FDI Screening Regulation**

Press release, 11 December 2025. Summary of the provisional agreement mandating screening mechanisms in all Member States.

---

EUROPEAN PARLIAMENT

## **Legislative Train: Revision of the FDI Screening Regulation**

European Parliament. Tracks the legislative progress of the revised Regulation through the co-decision procedure.

---

ANNUAL REPORT

## **Fifth Annual Report on FDI Screening in the EU (2024)**

European Commission, October 2025. Reports 477 investments notified in 2024, with details on sector distribution and screening outcomes.

---

LAW FIRM ANALYSIS

## **Reform of the EU FDI Screening Regulation — Impact on M&A Transactions**

Mayer Brown, March 2024. Detailed analysis of the January 2024 reform proposal, covering scope, thresholds, and procedural changes.

---

[European Corporate Governance Institute \(ECGI\)](#)

This briefing was prepared as a reference document for the ECGI Patrons Council Roundtable on Shareholder Rights and Economic Sovereignty, London, 6 March 2026.