The Return of Golden Shares and Global Politics

How States Are Reasserting Control Over Strategic Assets in the Name of National Security

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26.06.2025 doi: 10.59704/c05133656099e803

The Trump Administration just announced that the Japanese steel giant *Nippon Steel* has granted it a powerful "golden share" in *U.S. Steel* as a condition for its acquisition of this major US-American steel manufacturer. A "golden share" is a special class of share that grants its holder – typically a state entity – extraordinary control rights. Although the exact terms of the agreement have just begun to surface, it marks a striking departure from traditional non-interventionist U.S. economic policy. More importantly, "golden shares" have reemerged as a tool for states to actively shape markets in the name of security, sovereignty, and strategic competition. While the European Union (EU) has largely constrained the use of such instruments under internal market law, the United States now appears willing to deploy them as symbols of industrial revival and national strength. In its response to the increasing global (geo)economic competition, the EU and its member states should resist this trend and instead refine targeted FDI screening mechanisms to reconcile national security with internal market integrity.

The emergence of "Golden Shares"

Golden shares emerged prominently in the 1980s and 1990s during the wave of privatizations across Europe, particularly in the United Kingdom under Margaret Thatcher, but also spreading to France, Germany and other EU member states. As states transferred ownership of formerly public enterprises to private investors, they often retained a "golden share". This is a peculiar class of share that grants the government special, i.e. preferential rights. Legally, "golden shares" can be introduced either directly via legislative action – as was the case with the so-called "VW-Gesetz" (Volkswagen law) in Germany, which factually created a Volkswagen-specific company law – or through changes to the company charter or articles of association agreed upon with the government. Well-known examples of "golden shares" that have appeared in the jurisdiction of the European Court of Justice (ECJ) range from veto rights or requirements of prior administrative approval over certain strategic decisions, such as mergers, acquisitions, or changes in company structure to the right to appoint officers/board members. The underlying rationale – very much like today – was to protect national interests, especially in sectors like energy, telecommunications, and defense, where full market liberalization was either politically or strategically sensitive. By retaining veto rights or special control powers, governments could intervene to prevent hostile takeovers, ensure continuity of critical infrastructure services, and maintain operational stability in firms that are essential to national security and economic functioning in times of economic or political crises. In this way, they sought to contribute to the economic resilience of the respective states.

Restricting "Golden Shares" under EU law

However, as the economic integration and market liberalization within the European Communities – and later the European Union, progressed – "golden shares" came under increasing legal scrutiny. The ECJ has repeatedly held national "golden shares" to be incompatible with the freedom of establishment (Arts. 49, 54 TFEU) and the free movement of capital (Art. 63 TFEU), insofar as they (factually) prevent or limit the acquisition of shares in the relevant undertakings or deter investors of other Member States from investing or controlling a company. In Commission v Belgium,

the ECJ allowed a very constrained version of a "golden share" (held by the Belgian government) because it was limited to opposing specific corporate decisions, required justification, and was subject to judicial review. This offered a potential blueprint for national "golden shares" that are compatible with internal market rules.

"Golden Shares" vs. FDI Screening

European governments may now be tempted to (re)introduce such "golden shares" in light of increasing global (geo)economic competition in strategic industries – such as defense, energy, technology or pharmaceuticals –to strengthen Europe's economic resilience, protect strategic sectors, and gain "strategic autonomy". And they do have such potential. Particularly, "golden shares" are likely to be effective in deterring unfriendly takeovers and Foreign Direct Investment (FDI), either because they require government approval for certain corporate decisions or make the investment itself unattractive. FDI can be concerning from a security perspective, because it might allow third-countries corporate control of companies in strategic sectors such as defense, energy, or transport; and because it runs a potential risk of leaking intellectual property or sensitive information to strategic competitors.

While these concerns must be taken seriously – and "golden shares" may be an effective remedy – reintroducing them may also come at a significant economic cost in the long-run. This is because they are also indiscriminate in nature. Investors can be expected to demand a discount for an investment in a company which is (in)directly controlled by a national government via "golden shares". This not only undermines the affected company's capital-raising capacity by increasing the cost of capital but also exerts a chilling effect on bona fide domestic and intra-EU investors. Such investors would find less attractive investment opportunities within the EU. This is especially worrisome as these investment opportunities pose no credible security risk per se and would otherwise benefit from the free movement of capital under EU law (Art. 63 TFEU).

As with regards to the security risks involved with FDIs, the EU is right, therefore, to have increasingly turned its attention to another protective mechanism: FDI screenings. The EU Commission plans to strengthen and further harmonize these screenings, In contrast to "golden shares", investment screening mechanisms allow for a more targeted and nuanced approach with respect to specific countries and/or investors. This became evident in the German government's prohibition of the sale of a chip manufacturing plant and the gas-turbine business of MAN Energy Solutionsto Chinese investors, which were both based on the results of a FDI screening conducted by the then German Federal Ministry of Economic Affairs and Climate. A strict investment screening process – alongside an increasingly hostile world – may still raise capital costs for European companies. In some cases, third country investors will be barred from investing in strategic industries as a consequence. Nonetheless, FDI screenings preserve a competitive market for corporate financing and control within the European Union. As such, they prove less incisive to the single market than "Golden Shares", which is in line with the prescribed goals of European integration (see Art. 3(3) TEU, Art. 26 TFEU).

Diverging Paths?

All this reveals potentially diverging avenues for advanced economies to balance openness of markets with national security concerns. In the U.S., the use of a golden share in the *Nippon Steel-U.S. Steel* case signals a willingness to depart from market orthodoxy and embrace tools historically associated with European dirigisme. What sets the U.S. apart, however, is the political framing: rather than regulatory precaution, the "golden share" is presented as a vehicle of strategic nationalism and industrial revival. The Trump administration touted the "golden shares" agreement with *Nippon Steel* as an opportunity to secure more investment and jobs in the U.S. steel industry, mostly located in America's old industrial heartland – a place where Donald Trump assembles a promising coalition. As such, the agreement's symbolic function is as important as its practical effects:

projecting control, deterrence, and alignment with domestic political narratives about restoring manufacturing strength and economic sovereignty.

But the "golden share" is also inherently selective and prone to risks of politicization as governments and their leaders may be inclined to wield their granted corporate control to please interest groups such as unions or their voters. This runs counter to the EU's commitment to maintaining a level playing field in the single market. With the EU's legal system built on principles of non-discrimination, proportionality, and the primacy of market freedoms within the political community, European governments should continue to shield critical infrastructure and technologies from potentially hostile takeovers by strengthening and further developing its FDI screening processes, instead of falling back on tired ideas the ECJ has long put to rest.

"Golden Shares" beyond the EU and U.S.

That is not to say that "golden shares" do not have the potential to gain considerable traction as a tool of economic statecraft. In 2023, the Chinese government took "golden shares" in China's two biggest tech companies, Alibaba and Tencent. Alibaba and Tencent may, however, just be the tip of the iceberg of a plethora of "golden shares" held by the Chinese government, often through myriad shareholding structures. Thus, the proposal by the German Council for Foreign Relation (Deutsche Gesellschaft für Auswärtige Politik) to amend the German FDI screening regulation (Außenwirtschaftsverordnung) to consider "golden shares" held by third-country governments in the approval procedure of FDI is sensible. It prevents third country governments from (in)directly controlling strategic companies in Germany. Moreover, this broader assessment of the ownership structure of foreign investors is – rightfully – already reflected in Art. 5 Nr. 1 (b)(i) of the European Commission's current proposal for a reviewed and overhauled FDI regulation.

In light of the apparent tendency of governments to expand their reach into corporate governance under the guise of strategic interest, "golden shares" are no longer mere historical artefacts but evolving instruments of (geo)political influence. In some cases, such as the *Nippon Steel* deal, the influence sought is rather inward-looking (towards unions, voter base etc.) and others, such as China, rather geopolitical, which may involve the transfer of critical know-how held by European companies to Chinese government entities. Either way, lawmakers and government officials must bear in mind this configuration of interests when seeking to strengthen Europe's economic resilience. Whether cloaked in the rhetoric of sovereignty or wielded for silent control, the return of "golden shares" marks a turning point: economic policy is no longer just about efficiency, but about power.

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SUGGESTED CITATION

Oswald, Tim: The Return of Golden Shares and Global Politics: How States Are Reasserting Control Over Strategic Assets in the Name of National Security, Verfassungsblog, 26.06.2025, doi: 10.59704/c05133656099e803.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20250627-143514-0.