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Privatisations and golden shares : bridging the gap between the State and the market in the area of free movement of capital in the EU

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In the early days of European integration, capital movements were not completely liberalised as a result of the international scepticism regarding their possible contributory effect to financial instability. However, with the entry into force of the Maastricht Treaty and the introduction of the EMU, it was decided that the EU would follow the model of unrestricted capital liberalisation in order to facilitate financial integration. This is particularly evident in the privatisations and golden shares case law, where the Court of Justice has adopted a broad interpretation of ‘capital restrictions’ under Article 63 TFEU and has treated forms of public ownership and special shareholding of public authorities in privatised undertakings as measures of economic protectionism inherently incompatible with the Internal Market. In this context, this thesis attempts to address the risks of a very broad interpretation of ‘capital restrictions’ by identifying the legal tools available under the existing legal framework and the possible modifications in the judicial interpretation of the free movement provisions that will ensure respect for the division of competences between the EU and the Member States in the fields of corporate governance and property ownership and will allow sufficient room for reconciling economic integration with societal values.

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