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State Owners in the Internal Market: Medicine or Poison?*

Państwowi właściciele na rynku wewnętrznym: lekarstwo czy trucizna?

ABSTRACT

State-owned enterprises (SOEs) are among the largest market participants, and their importance has increased in recent decades. In developed economies, this trend is part of the functioning of a normal market economy, as SOEs can serve as instruments for addressing market failures. However, the presence of such companies may also create undue competitive advantages, as evidenced by some Chinese monopolies and by developments in certain Central and Eastern European countries experiencing democratic backsliding. The study analyzes the conflict between the benefits and the harms of SOEs in the context of the European Union's internal market and the global economy, and seeks

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to identify the potential risks that state ownership may pose to European integration in the area of competition. The study is based on comparative legal research, complemented by quantitative analysis.

Keywords: state ownership; state-owned enterprises; competition law; neutrality principle; democratic backsliding

INTRODUCTION

After extensive privatisation in the 1990s, governments still own a significant number of state-owned enterprises (SOEs) in certain sectors. The reasons for this differ between developed countries and lower-income EU Member States. In many countries,[1] SOEs are growing or, at the very least, maintaining their crucial position in both the national and global[2] economy. Governments acquire the majority of shares in companies for a variety of reasons. One such reason is to ensure the continuity of public services,[3] but state ownership may also be motivated by other grounds, such as environmental objectives, i.e., finding an effective tool to combat climate change. However, SOEs may also have other functions, including those that are more likely to serve particular economic interests. As a result, the compatibility of SOEs' operations with EU internal market and competition rules is often questioned, and disputes of this kind are increasingly being brought before the relevant EU institutions.

Certain provisions of EU law give explicit recognition to the raison d'être of SOEs. The Treaty on the Functioning of the European Union (TFEU), which provides[4] that EU law does not affect the rules in Member States governing the system of property ownership, allows Member States to depart from certain obligations under EU internal market and competition rules. This provision may, in effect, be an exemption from many of these obligations, and a significant number of Member States make use of this possibility. The legality of public monopolies, which often operate as SOEs endowed with exclusive or special rights, is underpinned by the

[1] U. Papenfuß, L. Steinhauer, B. Friedlander, *Clearing the Fog for an Overall View on State-Owned Enterprises: Quality of Aggregate Holdings Reporting by Public Administrations in 12 Countries*, "International Review of Administrative Sciences" 2019. vol. 85(1), pp. 116–136.

[2] A. Cuervo-Cazurra (ed.), *State-Owned Multinationals: Governments in Global Business*, Cham 2018.

[3] G. Citroni, *Neither State nor Market: Municipalities, Corporations and Municipal Corporatization in Water Services – Germany, France and Italy Compared*, [in:] *The Provision of Public Services in Europe: Between State, Local Government and Market*, eds. H. Wollmann, G. Marcou, Northampton 2010, pp. 191–216.

[4] Article 345 TFEU: "The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership".

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freedom of Member States to determine their system of property ownership,[5] as guaranteed by Article 345 TFEU.

The COVID-19 pandemic brought renewed attention[6] to the phenomenon of SOEs, as the maintenance of their role appeared even more indispensable in the global recession for at least two reasons. First, these companies can play an important role in fulfilling public functions in general or in supporting societies and economic actors affected by the crisis. Second, in most countries there was a government intention to bail out large firms through debt restructuring as is usually done for distressed sectors in times of crisis, on the grounds that they are "too big to fail". Thus, since the outbreak of COVID-19, government intervention through SOEs has attracted greater attention than before. Nevertheless, SOEs have always been present in market economies.

The question raised in this paper is whether systemic risks exist in the development of the European Single Market, especially in less economically developed Member States that tend to re-evaluate institutional arrangements inherited from the pre-privatisation era. In certain countries, cases of competitive disadvantage may be more significant than expected from a purely liberal perspective. Our hypothesis, which also extends to the European Single Market in a global context, is that the greater the involvement of national governments in companies, the higher the risk of reduced intensity of competition. Such a risk is likely to arise when national regulatory regimes are threatened by institutional pressure behind market players. The risk is particularly pronounced in countries where weaknesses in democratic institutions are present.

METHODOLOGY

The study is based on comparative public law and policy research using both qualitative and, in part, quantitative methods. The findings are derived from a statistical analysis of the ownership structure of state-owned enterprises, using data obtained from corporate databases as well as an original analysis of relevant case law of the Court of Justice of the European Union. The data are analysed across different dimensions. Namely, in addition to the EU internal market context, national and external market relations (i.e. with non-EU countries) are considered relevant dimensions of the research.

One of the main challenges in the research was identifying the criteria for selecting the sample of companies for empirical analysis, i.e. defining the scope

[5] W. Sauter, *Public Services in EU Law*, Cambridge 2014, p. 44.

[6] OECD, *The COVID-19 Crisis and State Ownership in the Economy: Issues and Policy Considerations*, Paris 2020.

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of SOEs. In the literature and relevant expert reports, there are different definitions of what constitutes an SOE. For instance, while the OECD provides a broad definition which does not include a precise ownership threshold,[7] the European Commission defines SOEs as firms in which the state holds at least 20% of the shares,[8] and other sources (such as a specific CEE report)[9] restrict the concept to wholly or majority state-owned enterprises. For the purposes of the research, we needed to apply a definition which covered all cases in which the state is (at least potentially) in a position to control the strategic decisions of a company, and we had to admit that majority ownership is not the only determining factor in deciding this (for example, the state may hold a preferential share with priority voting rights, often just one share with a minimal nominal value).[10] Therefore we needed to understand the concept of SOE broadly.[11] Thus, we defined SOEs as companies in which the state is a shareholder (with an ownership percentage between 0.01% and 100%) or the ultimate owner.

CONTEXTS

Contrary to popular assumptions about the economic weight of the private sector, the scale of state ownership in the global corporate sector is substantial. In the legal and economic literature, there are differing views as to whether this should be understood in the context of the overwhelming trend towards privatisation or whether the progress has some other significance.[12] Nevertheless, firms with at least a minority state ownership stake were estimated to account for approximately

[7] According to the definition provided in the most recent OECD documents, state ownership in SOEs includes direct majority ownership and, where control exists, other forms of direct and indirect ownership. Control may be exercised when an ownership entity (or several ownership entities acting in concert) is the ultimate beneficial owner of a majority of voting rights or otherwise exercises an equivalent degree of control. See OECD, *Guidelines on Corporate Governance of State-Owned Enterprises*, Paris 2024; OECD, *Ownership and Governance of State-Owned Enterprises*, Paris 2024.

[8] European Commission, *State-Owned Enterprises in the EU: Lessons Learnt and Ways Forward in a Post-Crisis Context*, Luxembourg 2016.

[9] C. Xin (ed.), *The Status Quo of State-Owned Enterprises in CEE Countries*, Budapest 2021.

[10] See, for instance, the case of golden shares or the "B" series share in Hungary's largest petrol company.

[11] For a broad definition of SOE, see A. Cuervo-Cazurra (ed.), *op. cit.*; C.F. Lopes, A. Ferreira, C. Ferreira, *State-Owned Enterprises and Corporate Scandals: A Systematic Literature Review*, "International Journal of Ethics and Systems" 2025, pp. 1–35; M. McLaughlin, *Defining a State-Owned Enterprise in International Investment Agreements*, "ICSID Review: Foreign Investment Law Journal" 2025, vol. 34(3), pp. 595–625.

[12] A. Cuervo-Cazurra (ed.), *op. cit.*; C. Xin (ed.), *op. cit*.

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0.1%[13] of enterprises in 2019. A study published in 2015 indicates that this group already accounted for around 10% of global GDP.[14] According to the latest OECD data, between 2000 and 2023 the number of SOEs among the world's 500 largest companies by revenue increased from 34 to 126, while at the end of 2022 the public sector accounted for nearly 11% of the global market capitalisation of listed companies.[15] In terms of size, of course, this is a changing phenomenon.

In the EU context, several legal and economic explanations have been advanced for this phenomenon.

Since the 2004 amendment[16] of the EU public procurement directives, the obligation to subject public contracts to competitive tendering has been increasingly relaxed, allowing contracting authorities to conclude in-house contracts with state-owned public service providers without a public procurement procedure. This means that it is precisely the state-owned company that has become a vehicle for the exercise of state influence.[17] This reform formed part of a broader EU regulatory trend to extend the possibilities for derogation from competition rules, which provides the basis for a wider use of previously exceptional solutions (such as in-house contracts), especially where this is necessary for the provision of public services.[18] This has allowed national governments to develop their own path more decisively, which some have tried to use more boldly and others more cautiously. The case law of the Court of Justice has confirmed and extended this trend. Another

[13] L. Bernier, M. Florio, P. Bance (eds.), *The Routledge Handbook of State-Owned Enterprises*, London 2020, p. 7.

[14] G.D. Bruton, M.W. Peng, D. Ahlstrom, C. Stan, K. Xu, *State-Owned Enterprises Around the World as Hybrid Organizations*, "Academy of Management Perspectives" 2015, vol. 29(1), pp. 92–114.

[15] C. Di Noia, *An Increasing Role of State-Owned Enterprises in the Global Economy Calls for Better Governance*, 17.7.2023, https://www.oecd-forum.org/posts/an-increasing-role-of-state-owned-enterprises-in-the-global-economy-calls-for-better-governance (access: 5.9.2024).

[16] Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134/1, 30.4.2004); Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134/114, 30.4.2004). For recent developments of the EU public procurement markets, see C. Bovis, *The Nature and Character of the Public Markets and Their Effects on Public Procurement in the European Union*, "Studia Iuridica Lublinensia" 2022, vol. 31(4), pp. 9–27.

[17] I. Bartha, T.M. Horváth, *Does Not It Matter? Widening of Derogation for Services of General Economic Interests*, "Maastricht Journal of Comparative Law" 2020, vol. 27(1), p. 59.

[18] For more details, see eidem, *An Extension of Exemptions: Systemic Shifts in European Union Law and Policies*, "International Review of Administrative Sciences" 2022, vol. 88(2), pp. 570–586.

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interpretation[19] later recognised the risk of counter-revolution if exemptions for public services were transformed into general competition rules.

Crises have provided further grounds for assuming increased state influence.[20] Over the past 15 years, this assumption appears to be supported by empirical developments. Following the 2007–2008 financial and banking crisis, a new economic environment emerged. Since then, a succession of international crises has unfolded, including the eurozone crisis (2009–2012) and the COVID pandemic since late 2019, as well as major political-economic disruptions such as Brexit (31 January 2020). As a result, the scope of state intervention has expanded, and state-led interventions in companies, especially banks, are no longer considered exceptional.

The crises were followed by periods of rebalancing. In Anglo-Saxon countries, state ownership was typically temporary, as government policy tended to withdraw from direct intervention once economic conditions had stabilised. In contrast, in European countries, the solutions initially imposed as emergency measures were more likely to remain in place with only limited modification.

In addition to the impact of crises, a reversal of earlier privatisations (i.e. the results of so-called "false privatisation"[21]), especially in public services sectors, emerged around 2010. Following re-municipalisation[22] and other forms of returning assets to public ownership, including the transfer of shares back into public hands in sectors such as energy, automotive, and aviation, several countries have responded to privatisation failures or major corporate crises by extending (partial) ownership of state-owned enterprises. This does not amount to nationalisation in the public law sense, but rather reflects changes in ownership structure within a private (corporate) framework, where the state acquires or increases shareholdings through market-based mechanisms. The state then becomes a private owner.

The economic literature discusses the possibility of countries pursuing different approaches[23] to crisis management and ownership interventions, as well as the varying degree of variation over time. Apart from these developments, it is widely recognised that state ownership of enterprises has consistently played a pivotal role in the modern economy, although its significance has varied across different periods.

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[19] P.I. Colomo, *Will Article 106 TFEU Case Law Transform EU Competition Law?*, "Journal of European Competition Law & Practice" 2022, vol. 13(6), pp. 385–386.

[20] J.S. Haas, V.J. D'Erman, D.F. Schulz, A. Verdun, *Economic and Fiscal Policy Coordination After the Crisis: Is the European Semester Promoting More or Less State Intervention?,* "Journal of European Integration" 2020, vol. 42(3), pp. 327–344.

[21] A. Shleifer, R.W. Vishny, *Politicians and Firms*, "The Quarterly Journal of Economics" 1994, vol. 109(4), pp. 995–1025.

[22] M. Pigeon, D.A. McDonald, O. Hoedeman, S. Kishimoto (eds.), *Re-municipalisation: Putting Water Back into Public Hands*, Amsterdam 2012.

[23] OECD, *State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity?*, Paris 2016.

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The management of SOEs has thus become an inalienable, albeit conflictual, part of the modern economy. It thus can be understood as a phenomenon in its own right, rather than merely as a reflection of, or counterpoint to, privatisation.

In the context of European integration, the beneficiaries of derogations provided for under EU law are the Member States. The use of such derogations may also pose a risk factor that could have a detrimental effect on the values of the single market and political integration. In fact, the self-definition of the business strategy of the state enterprise in a market economy often incorporates references aimed at reinforcing national economic policy objectives, such as improving service efficiency through synergies with the state, safeguarding the interests of domestic workers, or retaining profits within the domestic economy.[24]

RESULTS

According to the OECD *Guidelines on Corporate Governance of State-Owned Enterprises*,[25] there are significant benefits of reforming state-owned enterprises in order to align their practices with those of private enterprises. The *Guidelines* therefore provide an important benchmark for governments when establishing the regulatory environment. The underlying rationale is that effective operation in line with expectations helps enterprises to be more effective in raising capital and reduces the risks of management failure. As most EU Member States are also members of the OECD, these *Guidelines* are of significant importance in the EU context.[26]

1. State-owned enterprises as market actors

Several OECD reports have shown that state-owned enterprises can be adapted to operate under market economy conditions. The OECD *Guidelines on Corporate Governance of State-Owned Enterprises*,[27] first developed in 2005[28] and revised in 2015,[29] provide specific and concise advice on how such companies can be managed to be more effective and competitive. Prior to the pandemic, OECD reports identi-

[24] For more details, see A. Cuervo-Cazurra, A. Inkpen, A. Musacchio, K. Ramaswamy, *Governments as Owners: State-Owned Multinational Companies*, "Journal of International Business Studies" 2014, vol. 45, pp. 919–942.

[25] OECD, *Guidelines on Corporate Governance of State-Owned Enterprises*, Paris 2024.

[26] The European Union itself, as an autonomous subject of international law, also participates in the OECD's work pursuant to Supplementary Protocol No. 1 to the OECD Convention.

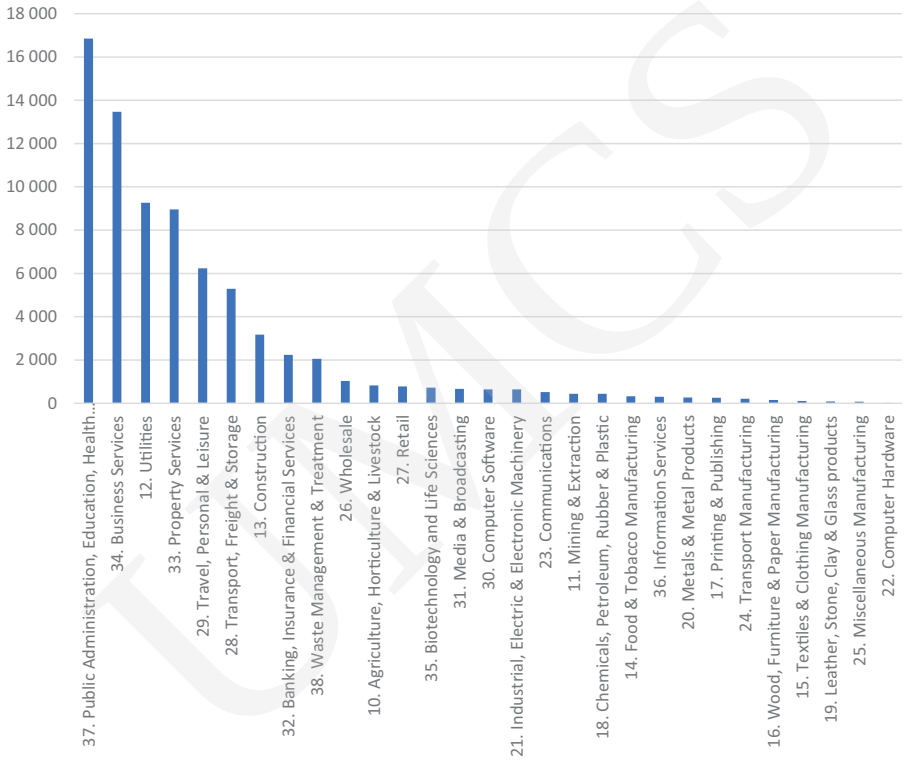
[27] OECD, *Guidelines on Corporate Governance of State-Owned Enterprises*, Paris 2024.

[28] OECD, *Guidelines on Corporate Governance of State-Owned Enterprises*, Paris 2005.

[29] OECD, *Guidelines on Corporate Governance of State-Owned Enterprises*, Paris 2015.

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fied the expansion of SOEs,[30] related challenges,[31] national regulatory practices,[32] examples of good practices,[33] etc.



Note: State-owned enterprises are defined as companies in which the state is a shareholder (with an ownership percentage of between 0.01% and 100%) or the ultimate owner.

Figure 1. Number of SOEs in Europe (EU-27 + Norway, Switzerland & UK) per sector (2020)

Source: the Authors' compilation based on the Orbis Europe company database.

Figure 1 illustrates that the number of SOEs is significantly higher in certain sectors than in others. In public administration, including education, health, and social services, SOEs mainly operate in the form of agencies, depending on how these functions are organised by the state. In addition, some of the economic service sectors are favoured by state ownership, such as business and real estate services

[30] OECD, *The Size and Sectoral Distribution of State-Owned Enterprises*, Paris 2017.

[31] OECD, *State-Owned Enterprises as Global Competitors…*

[32] OECD, *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices*, Paris 2018.

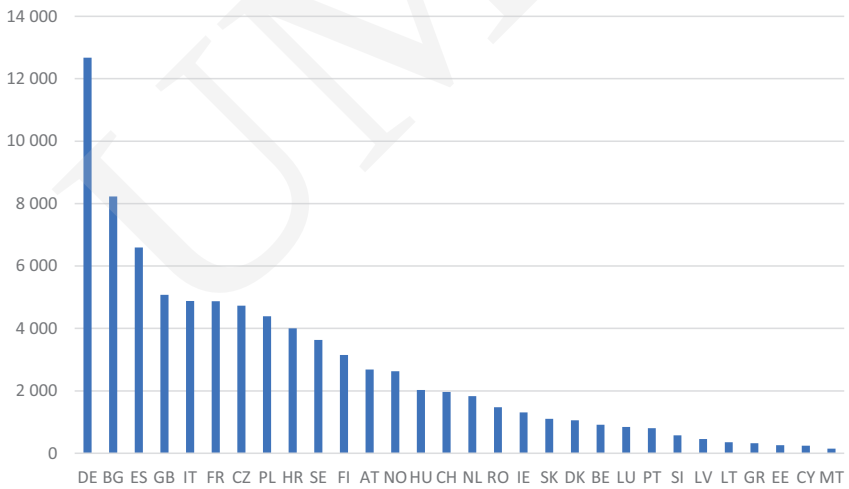
[33] OECD, *Organizing the State Ownership Function: Implementing the OECD Guidelines on State-Owned Enterprises*, Paris 2020.

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(also typically in the form of agencies), banking, insurance, and financial services. Network services such as utilities, passenger transport, public transport (including freight and logistics), and waste management and treatment are also popular areas of state ownership. Key sectors for SOEs are those where the number of these companies is limited due to natural monopolies, but the turnover is high, such as mining and extraction, media and broadcasting. Sectors producing purely private goods or services are less common areas of state involvement.

With regard to the ownership rules set out in Article 345 TFEU, it may be concluded that these rules primarily concern economic sectors characterised by market failures. This is also reflected in Figure 1, which illustrates the sectors favoured for state ownership.

There are also significant differences in the distribution of countries that favour a higher degree of state ownership of companies in the sectors mentioned above. This distribution is shown in Figure 2.



Note: State-owned enterprises are defined as companies in which the state is a shareholder (with an ownership percentage of between 0.01% and 100%) or the ultimate owner.

Figure 2. Number of SOEs in Europe (EU-27 + Norway, Switzerland & UK) per country (2020)

Source: the Authors' compilation based on the Orbis Europe company database.

Economically advanced countries, especially Germany, tend to have a higher number of SOEs. Central and Eastern European countries, such as the Czech Republic, Poland, Croatia, and Hungary, occupy an intermediate position compared to other EU Member States. This suggests that country size is only of limited relevance as an independent variable. Overall, these patterns indicate that SOEs are necessary and permanent actors in developed market economies, even in liberalised ones.

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A key question is what makes a difference between governments in terms of the nature of state influence through SOEs.

First, some key elements of a picture of state capitalism may emerge when the political power is autocratic (as is particularly and most persistently the case in Hungary) or, to a lesser extent, under nationalist unorthodox government conditions. Second, it is closely linked to the transfer of economic influence to friendly private hands (politically connected firms).

This phenomenon has been described in the literature[34] as the difference between Eastern European state capitalism and Western forms of statism. According to this perspective, the current state interventionism in economically advanced countries is intended to reduce market failures, which in recent circumstances have been caused by the pandemic situation, the economic recession, and Russia's invasion of Ukraine. In the case of non-Western economies, however, it is clear that state intervention works against certain free market conditions.[35] Our findings suggest that certain governments in Central and Eastern Europe may, to a certain extent, be influenced by this form of interventionist approach. Another feature of this policy is the type of regulation that is tending to be anti-competitive rather than pro-competitive.[36]

2. The role of Article 345 TFEU

The initial purpose of the inclusion of Article 345 TFEU was to ensure that the Community would not interfere with the Member States' prerogatives regarding the nationalisation of certain industries.[37] Nevertheless, the application of this provision is also supported by the fact that the EU legal order to evolving policy objectives, particularly in light of the expansion of so-called post-industrial priorities in recent decades, such as environmental protection, climate change mitigation, consumer protection, and so on.

In this context, a key question is by what legal mechanisms such developments can be accommodated within the EU legal system.

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[34] I. Alami, A.D. Dixon, *The Strange Geographies of the 'New' State Capitalism*, "Political Geography" 2020, vol. 82, pp. 1–12.

[35] J. Kurlantzick, *State Capitalism: How the Return of Statism Is Transforming the World*, Oxford 2016; D. McDonald, *Don't Get Too Excited: The Structural Limits of State-Owned Enterprises in Capital Economies*, [in:] *The Routledge Handbook…*, p. 276.

[36] J. Drexl, V. Bagnoli (eds.), *State-Initiated Restraints of Competition*, Northampton 2015, pp. 108–111; J. Chaisse, J. Górski, D. Sejko (eds.), *Regulation of State-Controlled Enterprises: An International and Comparative Examination*, Singapore 2022.

[37] Opinion of Advocate General Niilo Jääskinen (ECJ) of 16 April 2013, joined cases C-105/12 to 107/12, *Essent and Others*, ECLI:EU:C:2013:242; P. Reuter, *La Communauté européenne du charbon et de l'acier*, Paris 1953.

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The relevance of Article 345 TFEU is that it allows central and larger local governments to acquire the majority shareholdings in companies, particularly those responsible for public utility services. While public ownership itself is not a problematic issue, it may lead to undesirable state influence on the market or to privileges having a distortive effect on competition. This is particularly relevant when Article 345 TFEU is read in conjunction with other Treaty provisions allowing for derogations from the application of EU competition rules.

Article 106(1) TFEU generally states that public undertakings and those entrusted with special or exclusive rights are not exempt from EU competition rules. Article 106(2), however, lays down a derogation regime for services of general economic interest, providing that these undertakings are subject to the Treaty provisions on competition (namely Articles 101, 102 and 107 TFEU) only insofar as the application of such provisions does not obstruct the performance of their particular public service obligation. Pursuant to this provision, companies in public ownership are often entrusted with exclusive rights by central or local governments to fulfil certain public service obligations, as in the cases of the management of car parks in the municipality of Brixen (Italy)[38] or the provision of public passenger transport services in Lisbon and Porto (Portugal).[39] Granting exclusive or special rights may itself create a dominant position,[40] which constitutes a precondition for unlawful conduct under Article 102 TFEU. However, as Article 106(2) TFEU indicates, conduct that would otherwise infringe competition rules may nevertheless be justified where it is necessary for the performance of the tasks assigned to the undertaking concerned.

Most forms of State aid are, in principle, prohibited by Article 107(1) TFEU, unless they are declared compatible with the internal market because of their specific policy objectives set out in Article 107(2) or (3), or because they fall within the scope of the General Block Exemption Regulation.[41] The acquisition of shares in a company by the state may also raise the question of whether such an acquisition constitutes State aid within the meaning of Article 107(1) TFEU. In its 2008 Notice, the European Commission pointed out that, in accordance with Article 345 TFEU, "the mere fact that the ownership of an undertaking is largely in public hands is

[38] Judgment of the ECJ of 13 October 2005, case C-458/03, *Parking Brixen*, ECLI:EU:C:2005:605.

[39] Judgment of the ECJ of 7 May 2009, case C-504/07, *Antrop*, ECLI:EU:C:2009:290.

[40] For example, see judgment of the ECJ of 3 March 2011, case C-437/09, *AG2R Prévoyance*, ECLI:EU:C:2011:112.

[41] See for all Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187/1, 26.6.2014) and its amendment – Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No. 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No. 702/2014 as regards the calculation of eligible costs (OJ L 156/1, 20.6.2017).

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not sufficient in itself to constitute a State guarantee, provided there are no explicit or implicit guarantee elements".[42] This raises the question whether, in light of Article 345 TFEU, where a Member State grants aid to an SOE that is compatible with EU law (or provides a financial contribution that does not constitute State aid within the meaning of Article 107 TFEU, such as compensation for the provision of public services[43]), such support can in all cases be regarded as not placing the undertaking in a more favourable position (in a way that distorts competition) than competing private undertakings.

Article 345 TFEU enshrines the principle of neutrality with regard to the system of property ownership, whether public or private, and the organisation of undertakings and the "means of production".[44] A fundamental question is the extent to which this provision relieves Member States of their obligations under EU law (in particular those arising under internal market law). The prevailing view (based on the established case law of the CJEU and the related Advocate General opinions) is that Article 345 TFEU does not, in principle, constitute an exemption from the general rules of EU law. It also includes that the actual role of Article 345 can essentially be understood from the point of view of which parts of the property regime are directly linked to the proper functioning of the internal market. In the interpretation of Advocate General Jääskinen, this means, on the one hand, that an intrinsic consequence of a system of property ownership cannot be regarded as an obstacle subject to the prohibitions laid down by the Treaty, provided that the system is neither discriminatory nor disproportionate. As an example, the Advocate General refers to the nationalisation of the steel industry in a Member State, which, despite it has the effect of excluding establishments of other Member States and even direct investment by investors from those States, may constitute an intrinsic consequence of a (not discriminatory and disproportionate) ownership system. In this regard, "the Court has upheld the compatibility of nationalisations with European Union law since the *Costa*[45] judgment".[46] Thus, the fact that private investors are not permitted to acquire shares or interests

[42] Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155/10, 20.6.2008); B. Akkermans, E. Ramaekers, *Article 345 TFEU (ex 295 EC), Its Meanings and Interpretations*, "European Law Journal" 2010, vol. 16(3), p. 305.

[43] In the case of SGEI, however, public service obligation compensation (that is where the State pays aid to undertakings as compensation for the fulfilment of PSOs), under certain conditions (see judgment of the ECJ of 24 July 2003, case C-280/00, *Altmark Trans*, ECLI:EU:C:2003:415, paras 89–93), does not qualify as state aid. In addition, Article 93 TFEU is a sector-specific provision with regard to state aid for transport which expressly excludes "reimbursement for the discharge of certain obligations inherent in the concept of public service" from the category of illegal aid under Article 107(1) TFEU.

[44] Opinion of Advocate General Niilo Jääskinen (ECJ) of 16 April 2013, joined cases C-105/12 to 107/12, paras 41–43.

[45] Judgment of the ECJ of 15 July 1964, case 6/64, *Flaminio Costa v E.N.E.L.*, ECLI:EU:C:1964:66.

[46] Opinion of Advocate General Niilo Jääskinen (ECJ) of 16 April 2013, joined cases C-105/12 to 107/12, para. 43.

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in a company reserved for public shareholders cannot be regarded as a restriction prohibited by the Treaty, insofar as it is precisely an element of the system of property ownership that the Treaty does not seek to change.[47]

On the other hand, the scope of such "intrinsic consequences" must be interpreted narrowly, which means that restrictions other than those directly and inevitably resulting from the public or private system of property ownership are, on the contrary, subject to the fundamental freedoms of the Treaty.[48] As the case law on "golden shares" shows, the privileged treatment of public interests within an essentially private system of ownership is not exempt from the Treaty provisions on fundamental freedoms.[49]

The interpretation of Article 345 TFEU in the case law of the Court of Justice also reflects the specific objective previously outlined, namely the rationale behind state ownership in enterprises. Based on this approach, the provision must be interpreted in a purposive manner, avoiding distinctions between public and private undertakings based solely on the identity of their various shareholders. Such distinctions depend instead on the opportunity available to the State to impose certain economic policy criteria other than the mere pursuit of the greatest financial gain, which is inherent in private enterprise.[50]

DISCUSSION: THE PRINCIPLE OF NEUTRALITY UNDER THREAT

There are both internal and external conflicts in relation to the legal regulation of SOEs in the European Union. The internal ones arise from the application of Article 345 TFEU and its interaction with EU internal market and competition law in the case of EU-owned SOEs. The external ones arise from the tension between EU law and international trade law as it applies to SOEs originating in third countries. This latter conflict is particularly significant in light of the increasing role of non-EU economies in the globalised world. The Chinese state, as the owner of a large number of enterprises, is the most prominent actor in this process of expansion.

There is, however, another threat, the importance of which is based less on economic weight and more on a qualitative dimension. This internal challenge relates to the willingness of certain Central and Eastern European governments in power to gain economic influence through their SOEs. In this case, the opportunity

[47] *Ibidem*, para. 45.

[48] *Ibidem*, paras 42–43.

[49] *Ibidem*, para. 46.

[50] Opinion of Advocate General Colomer (ECJ) of 6 November 2008, case C-326/07, *Commission v Italy*, ECLI:EU:C:2008:611, para. 36. See also the opinion of Advocate General Colomer (ECJ) of 3 July 2001, case C-367/98 *Commission v Portugal*, case C-483/99 *Commission v France*, and case C-503/99 *Commission v Belgium*, ECLI:EU:C:2001:369, para. 54.

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of doing so (i.e. being allowed to gain such economic influence) derives purely from EU law, in contrast to the external conflict mentioned above.

Both trends appear to pose a challenge to the principle of neutrality in the internal market. These conflicts are analysed in the following sections.

1. Conflicts related to the application of Article 345 TFEU

The introduction of golden shares as a specific form of government control was inspired by privatisation, partly as a result of Member States' obligations arising from the liberalisation of certain sectors at EU level and partly in the context of the transition to a market economy in Central and Eastern European countries. Several Member States privatised key industries but, unwilling to relinquish all control, introduced restrictive measures in the form of golden shares, which allowed varying degrees of government control over privatised companies. Such control rights may take different forms, and often ordinary shares are converted into golden shares by attaching special control rights to them.[51] In the late 1990s and the first decade of the 2000s, the Commission initiated infringement proceedings against several Member States, claiming that their golden shares were in contravention of the free movement of capital and freedom of establishment.

This does not imply, however, that the State cannot retain special rights in the form of shareholding-based mechanisms in corporate decision-making. This is shown, on the one hand, by the fact that the Court of Justice of the European Union has not declared golden shares to be illegal in all the infringement proceedings mentioned above. In *Commission v Belgium*, the Court found the (golden share) legislation in question to be compatible with EU law on the grounds that the objective pursued, namely the security of energy supply in the event of a crisis, undoubtedly fell within the scope of a legitimate public interest which could justify a restriction on the free movement of capital.[52] In another case, *Commission v Germany (Volkswagen II)*, the provision of the Volkswagen Law requiring certain corporate decisions to be taken by a four-fifths majority – thereby creating a blocking minority at the level of 20%, as opposed to the three-quarters majority required under general company law – was held to be lawful (albeit mainly on procedural grounds) in a situation where the Land of Lower Saxony held 20% of the shares in Volkswagen.[53]

On the other hand, there are still examples of companies in which the State holds shares with special rights, but where this privilege has not been declared

[51] C. O'Grady Putek, *Limited but Not Lost: A Comment on the ECJ's Golden Share Decisions*, "Fordham Law Review" 2004, vol. 72(5), pp. 2219–2285.

[52] Judgment of the ECJ of 4 June 2004, case C-503/99, *Commission v Belgium*, ECLI:EU:C:2002:328.

[53] Judgment of the ECJ of 22 October 2013, case 95/12, *Commission v Germany*, ECLI:EU:C:2013:676.

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illegal in any proceedings before the EU institutions. One such example is MOL, Hungary's largest company (in terms of annual turnover), in which the Hungarian government holds a share with preferential voting rights. The judgment in *Commission v Germany (Volkswagen II)* provides some clarification in this regard. In that case, one of the Commission's arguments was that full compliance with the earlier *Volkswagen I* judgment would have required an amendment not only to the Volkswagen Act but also to Volkswagen's Articles of Association. However, after privatisation, Volkswagen became a private company, which, according to Germany, meant that the State could not be held responsible for its acts and omissions, as only the shareholders can amend the Articles of Association at a general meeting. The Court rejected the Commission's argument in this respect and further confirmed that Volkswagen's Articles of Association could not be regarded as a state measure capable of restricting the free movement of capital within the meaning of Article 63 TFEU. It follows from the above that the situation of companies currently operating as private companies, such as the Hungarian MOL (whose Articles of Association are the only legal document providing for a share conferring a special right on the State), differs from that of companies subject to the "golden shares" case law, which concerned former public undertakings whose privatisation process was governed by normative rules (laws and government decrees) that were challenged in the infringement proceedings. In the case of the Articles of Association of a private company (even if the State is a shareholder or even a privileged shareholder), it is much more difficult than in the case of a normative act to argue the existence of a "state measure", which is a precondition for an infringement of the freedom of establishment or the free movement of capital, since the relevant prohibitions in the Treaty are addressed to the Member States. The limitation on the acquisition of public ownership (and thus the scope of Article 345 TFEU), which is based on compliance with internal market rules, cannot therefore apply if the State is granted a share conferring a special right by means of a private measure.

Unbundling, i.e. the separation of energy supply and generation from the operation of transmission networks, is a principle governing competition between gas and electricity companies in the EU internal market. Full ownership unbundling was typically considered by the Commission in its practice prior to the liberalisation of the energy sector in the EU as a precondition to avoid abuse of a dominant position under Article 102 TFEU in the case of vertically integrated "national champions".[54] The question is whether in such a case Article 345 TFEU could provide a defence against the ownership unbundling obligation. According to the relevant academic literature, there is no conflict between the "principle of neutrality" enshrined in Article 345 TFEU and ownership unbundling, since under the latter, publicly owned generation and transmission assets do not have to be privatised, as it would be

[54] M.D. Diathesopoulos, *Ownership Unbundling in EU & Legal Problems*, 29.12.2010.

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sufficient to apply measures ensuring effective separation of each activity from the other (e.g. through two independent public entities).[55] Member States are therefore still free to choose the model for organising the transmission or generation market, either public or private.[56] The so-called Third Energy Package, which represented a decisive step in the liberalisation of the energy sector, imposed the unbundling obligation on Member States, with three optional models, of which ownership unbundling was only one, although undoubtedly considered the most efficient.

The internal tension in the application of Article 345 TFEU is partly linked to the question of the extent to which compliance with liberalisation obligations (such as unbundling) imposed by EU secondary legislation in certain sectors affects the acceptance of public interest justification and the assessment of the restriction of fundamental freedoms. This issue has been less pronounced in earlier case law, as in most instances the contested national rule was adopted before the opening of the EU market in the sector concerned or the entry into force of the relevant EU legal obligation. Therefore, no factor other than the system of fundamental freedoms and exceptions could be taken into account. In more recent judgments, however, the relevance of harmonisation has become increasingly significant. Initially, the Court of Justice of the European Union was rather reluctant to take this factor into account when considering the restriction of fundamental freedoms. In the *Essent* case, concerning Dutch legislation prohibiting the privatisation of electricity and gas distribution system operators,[57] the Court clearly attached importance to the fact that the Netherlands had adopted restrictive measures in line with the objectives of the Third Energy Package (even though in this particular case only the fulfilment of the Netherlands' obligations under the Second Energy Package was at stake) and examined the scope of Article 345 TFEU in this context. In line with this approach, the Court also "forgave" the Dutch State for not having an explicit obligation to do so under the directives. As a result, the Court established that reasons underlying the rules on property ownership adopted by national legislation may be taken into consideration as those justifying restrictions on the free movement of capital.[58]

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[55] M. Hunt, *Ownership Unbundling: The Main Legal Issues in a Controversial Debate*, [in:] *EU Energy Law and Policy Issues*, eds. B. Delvaux, M. Hunt, K. Talus, Brussels 2008; J. Pielow, E. Ehlers, *Ownership Unbundling and Constitutional Conflict: A Typical German Debate?*, "European Review of Energy Markets" 2008, vol. 2(3); E. Cabau, *Unbundling of Transmission System Operators*, [in:] *The Internal Energy Market: The Third Liberalisation Package*, ed. C. Jones, Leuven 2010, pp. 90–94.

[56] K. Talus, A. Johnston, *Comment on Pielow, Brunekreeft and Ehlers on 'Ownership Unbundling'*, "Journal of World Energy Law & Business" 2009, vol. 2(2), pp. 149–154.

[57] The restrictions were provided by Dutch electricity and gas regulations, under which the transfer of shares held in a system operator cannot be permitted if the shares became the property of persons other than the State of Netherlands (or Dutch provinces or municipalities) or other "specified legal persons" owned, directly or indirectly, by Dutch authorities.

[58] See judgment of the ECJ of 22 October 2013, joined cases C-105/12 to C-107/12, *Essent and Others*, ECLI:EU:C:2013:677, para. 55.

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Directives 2003/54 and 2003/55 of the Second Energy Package do not require ownership unbundling between transmission or distribution system operators and energy producers or suppliers, nor do they provide for it as an explicit implementation mechanism. The Dutch legislator has thus, on its own initiative, gone further than required by the applicable EU secondary legislation by opting to unbundle the ownership structures of distribution system operators on the one hand and energy production and supply undertakings on the other.[59] However, the Dutch legislation was also in line with the evolution of EU legislation, since Directives 2009/72/EC and 2009/73/EC (not yet applicable in the main proceedings), which form part of the Third Energy Package, explicitly mention the unbundling of ownership structures as a requirement for correct transposition.

It follows that, while in the *Essent* case the Dutch government invoked Article 345 TFEU to justify an absolute prohibition on privatisation, in the "golden share" cases privatisation had already taken place (at least partially), but the obstacles arising from the Member States' prerogatives as shareholders in the privatised companies were the issue under EU law.[60] Another important difference between the two cases is that in the *Essent* case, the reference to Article 345 TFEU is not primarily presented as an exception to a fundamental freedom of the internal market as a general rule, but the contested Dutch provisions are in line with a liberalisation policy initiated by the European Union, reflected in the adoption of directives requiring the unbundling of transmission and distribution system operators and users.[61]

2. Are SOEs a threat to the internal market?

The entry into the internal market of a company subject to privatisation restrictions in its own country (i.e. outside the European Union) has been a challenge for European integration from the outset. In principle, the areas of activity that are subject to privatisation restrictions and those that are not are separated and geographically delimited, but it is not always possible to control that these boundaries are respected. On this basis, however, another problem arises. What is the impact of the entry into the internal market of non-EU state-owned enterprises for which the privatisation restriction is not controlled? This issue is examined with particular reference to China as an example.

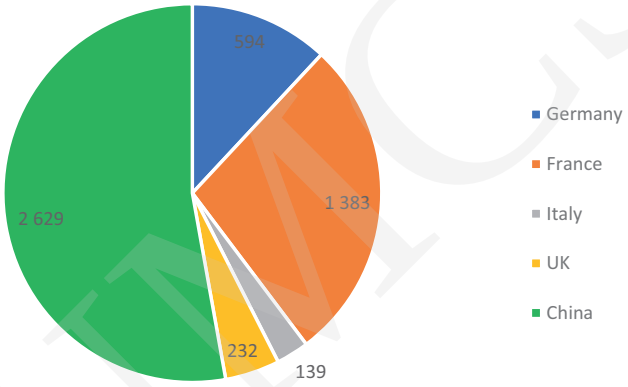
[59] Opinion of Advocate General Niilo Jääskinen (ECJ) of 16 April 2013, joined cases C-105/12 to 107/12, para. 69.

[60] Judgment of the ECJ of 22 October 2013, joined cases C-105/12 to C-107/12, para. 54.

[61] See also the opinion of Advocate General Niilo Jääskinen (ECJ) of 16 April 2013, joined cases C-105/12 to 107/12, para. 3.

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China alone accounts for the vast majority of SOEs[62] in the world, and Chinese companies are also active in countries that operate under market-based economic principles. This fact highlights a discrepancy between the anticipated standards of conduct in a free market and the actual practice of state-monopolised economic systems. Such divergences are particularly evident when examining the proportion of foreign state-owned SOEs in a given region (such as the European Union), the operation of which is based on free market economy principles (see Figure 3).



Note: State-owned enterprises are defined as companies in which the state is a shareholder (with an ownership percentage of between 0.01% and 100%) or the ultimate owner.

Figure 3. Number of companies owned by a foreign state (either as a stakeholder or the ultimate owner) in the territory of the European Union

Source: the Authors' compilation based on the Orbis Europe company database.

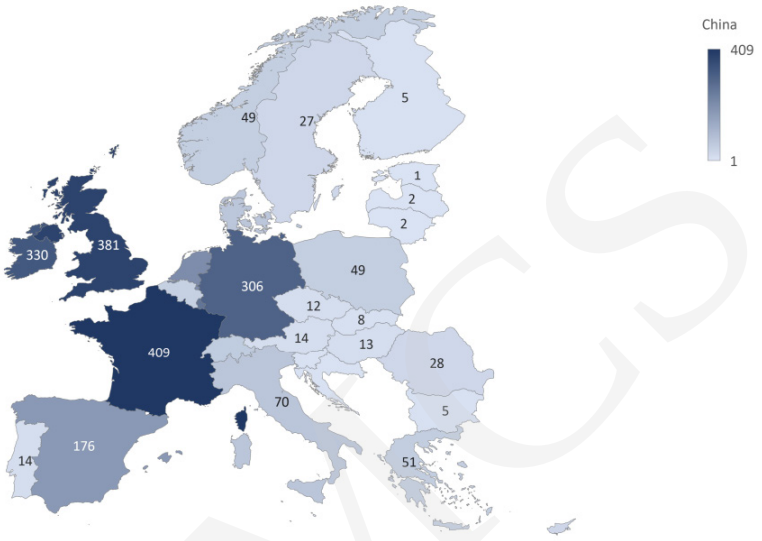
The majority of owners in the markets of other EU Member States (hereinafter: foreign owners) are governments of the largest European countries. China is an exception, as it is not a European state but is nevertheless highly represented among those states which are foreign owners of SOEs within the European Union. As Figure 4 shows, Chinese SOEs are predominantly located in France and Germany, followed by Italy and the United Kingdom.

The issue of subsidies and other forms of support in third countries that adversely affect the EU internal market has long been raised[63] in the context of competition law, but so far the European Union has so far done little to address the problem. This approach seems to have changed with the adoption of the Foreign Subsidies

[62] The central government is a full or majority owner of 51,000 enterprises, valued at USD 29.2 trillion and employing approximately 20.2 million people. See OECD, *The Size…*, p. 8.

[63] M. Heim, *How Can European Competition Law Address Market Distortions Caused by State-Owned Enterprises?*, "Policy Contribution" 2019, vol. 15(18), pp. 1–9.

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Note: State-owned enterprises are defined as companies in which the state is a shareholder (with an ownership percentage of between 0.01% and 100%) or the ultimate owner.

Figure 4. Number of companies in which China is a shareholder or the ultimate owner, per country (EU-27, Norway, Switzerland & UK, 2020)

Source: the Authors' compilation based on the Orbis Europe company database.

Regulation (FSR), which entered into force on 12 January 2023.[64] However, such a response does not contribute to a coherent system, as the State aid regime in the internal market is different from that of the FSR, which is aimed at external actors.[65] There are also strong initiatives at the global level to control the economic activities of state-owned enterprises,[66] for example under the umbrella[67] of the World Trade Organisation. This policy orientation focuses on the expected benefits of reducing the market failures caused by state ownership.

In addition to the phenomena described above, another type of challenge emerged in countries experiencing democratic backsliding, such as Hungary since 2010 or Poland between 2015 and 2023. Hungary is also subject to protective

[64] Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (OJ L 330/1, 23.12.2022).

[65] L. Hornkohl, *Protecting the Internal Market from Subsidisation with the EU State Aid Regime and the Foreign Subsidies Regulation: Two Sides of the Same Coin?*, "Journal of European Competition Law & Practice" 2023, vol. 14(3), pp. 137–151.

[66] R. Liu, *How State-Owned Enterprises Drag on Economic Growth: Theory and Evidence from China*, Berlin 2019.

[67] Y. Wu, *Reforming WTO Rules on State-Owned Enterprises: In the Context of SOEs Receiving Various Advantages*, Singapore 2019.

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measures adopted by the Council under the rule of law conditionality regulation.[68] In both states, economic policies were (are) shaped by forms of economic nationalism, which is typically a symptom of democratic backsliding.[69] In the case of Hungary, the origins of this trajectory can be traced back to the global financial crisis of 2007–2008, while in Poland it has its roots in economic interventionism, which was also accompanied by nationalism in the mid-2010s. In response to these negative developments, the EU has adopted a wide range of responses, spanning from purely political to economic[70] instruments. However, the foundation of this approach is deeply embedded in the political[71] and ownership structure of an earlier era and is characterised by a continuous expansion.

An IMF cross-country analysis of Europe reveals that SOEs in Central, Eastern and Southeastern Europe tend to underperform relative to private companies. However, they wield significant influence, extending beyond the economic sphere.[72] In particular, the illiberal influence of populist governments in Hungary and Poland exerted considerable pressure on the competition law system,[73] which in effect allows SOEs to consolidate their monopolistic positions in the domestic market and also extend them in the international market. Consequently, SOEs of sufficient size should also be investigated beyond the context of the internal market, in order to exert effective control over their activities.

These findings are also supported by data provided by the 2022 BTI (Bertelsmann Stiftung's Transformation Index) country reports and their indicators used for the evaluation of the countries of Central and Eastern Europe (among others) by these reports. In particular, three indicators are relevant for the purposes of this study:

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[68] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433I/1, 22.12.2020). A procedure under the Conditionality Regulation was not initiated in the case of Poland, since the Commission did not find that all the conditions for the application of the Conditionality Regulation were fulfilled. See Communication from the Commission to the European Parliament and the Council on the application of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, COM(2024) 17 final.

[69] S. Bulmer, O. Parker, I. Bache, S. George, C. Burns, *Politics in the European Union*, Oxford 2020, pp. 195–196.

[70] T. Theuns, *Containing Populism at the Cost of Democracy? Political vs. Economic Responses to Democratic Backsliding in the EU*, "Global Justice and Populism" 2020, vol. 12(2), p. 144.

[71] B. Magyar, B. Madlovics, *A Concise Field Guide to Post-Communist Regimes: Actors, Institutions, and Dynamics*, Budapest 2022, pp. 209–221.

[72] C. Richmond, D. Benedek, E. Cabezon, B. Cegar, P. Dohlman, M. Hassine, B. Jajko, P. Kopyrski, M. Markevych, J.A. Miniane, F.J. Parodi, G. Pula, J. Roaf, M.K. Song, M. Sviderskaya, R.A. Turk, S. Weber, *Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe*, Washington 2019.

[73] M. Bernatt, *Populism and Antitrust: The Illiberal Influence of Populist Government on the Competition Law System*, Cambridge 2022.

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- the extent to which free and fair competition is guaranteed by an institutional framework that ensures unrestricted participation in the market and a level playing field for all market participants (7.1. Market Organization);
- whether antitrust or competition law rules exist and are enforced against monopolization and cartelistic conduct (7.2. Competition Policy); and
- the extent to which private companies are permitted and protected, and whether privatization of state-owned companies is carried out in accordance with market principles.

Based on these indicators, as well as the overall democracy and market economy ranking of 137 developing and transition countries, Table 1 shows the ratings of the Central and Eastern European countries.

Table 1. Selected BTI (Bertelsmann Stiftung's Transformation Index) scores for Central and Eastern European countries, 2022

Country	Status index (rank)*	Rule of law**	Q7.1 | Market organization***	Q7.2 | Competition policy****	Q9.2 | Private enterprise*****
Estonia	2	10	10	10	10
Czech Republic	3	9	10	9	10
Lithuania	4	9,8	9	10	10
Slovenia	6	8,5	10	9	10
Latvia	7	8,5	8	10	10
Slovakia	8	8,3	9	9	10
Croatia	13	7,3	8	10	7
Poland	14	6,3	9	9	8
Romania	15	7,5	8	7	8
Bulgaria	17	6,8	8	8	9
Hungary	29	5,3	6	6	7

* The Status Index ranks 137 countries (developing countries and countries in transition from different geographical regions) according to the state of their democracy and market economy; the second column shows the rank of CEE countries on this list.

** Evaluated in a scale 1–10. This factor refers to the basic configuration and operation of the separation of powers (institutional differentiation, division of labor according to functions and, most significantly, checks and balances).

*** Evaluated in a scale 1–10. The main focus is to assess if free and fair competition is guaranteed by an institutional framework that ensures unrestricted participation in the market and a level playing field for all market participants.

**** Evaluated in a scale 1–10. This factor aims to assess whether antitrust or competition laws exist and are enforced against monopolization (e.g. mergers, dominant market positions, concentration) and cartelistic conduct.

***** Evaluated in a scale 1–10. This factor aims to access to what extent private companies are permitted and protected, and if privatization processes are conducted in a manner consistent with market principles.

Source: Bertelsmann Stiftung's Transformation Index (BTI) country reports: *Bulgaria Country Report 2026*, https://bti-project.org/en/reports/country-report/BGR; *Croatia Country Report 2026*, https://bti-project.org/en/reports/country-report/HRV; *Czechia Country Report 2026*, https://bti-project.org/en/reports/country-report/CZE; *Estonia Country Report 2026*, https://bti-project.org/en/reports/country-report/EST; *Hungary Country Report 2026*, https://bti-project.org/en/reports/country-report/HUN; *Latvia Country Report 2026*, https://bti-project.org/en/reports/country-report/LVA; *Lithuania Country Report 2026*, https://bti-project.org/en/reports/country-report/LTU; *Poland Country Report 2026*, https://bti-project.org/en/reports/country-report/POL; *Romania Country Report 2026*, https://bti-project.org/en/reports/country-report/ROU; *Slovakia Country Report 2026*, https://bti-project.org/en/reports/country-report/SVK; *Slovenia Country Report 2026*, https://bti-project.org/en/reports/country-report/SVN (access: 10.9.2024).

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3. Fuel crisis and introduction of price cap in Hungary: the market position of MOL Plc.

The following case study illustrates how the presence of state-owned enterprises may adversely affect the competitive position of other market participants where democratic control of economic decisions by the central government proves ineffective. The issue highlighted by the case study is not state ownership as such, but rather the potential risk of inadequate control of dominant market players and an inability to guarantee fair competition when the State simultaneously acts as owner and regulator, while democratic control mechanisms are not functioning effectively.

The 2022 fuel crisis, triggered by Russia's invasion of Ukraine, prompted the Hungarian government to impose a price cap on certain types of fuel (petrol and diesel) sold by petrol stations to consumers, with the price ceiling set at HUF 480 per litre, equivalent to about €1.20. The first price cap was imposed by the Hungarian government on the retail price, but not on the wholesale price. This resulted in petrol stations purchasing fuel at a higher price than they were able to sell it for. In response to this, the Hungarian government imposed a second price cap, which then also capped the wholesale price of fuel at HUF 480 per litre. The introduction of the second price cap resulted in only a slight improvement for petrol stations, as they paid the same amount for fuel as they could sell it for. This indicates that the market environment remained far from ideal. However, the subsequent impact of the second price cap was that it was no longer profitable for wholesalers to import more fuel than was strictly necessary. As a result, petrol stations were restricted to purchase from MOL, the sole wholesaler with a domestic refinery.

In December 2022, MOL announced that it was required to optimise its supply strategy "in the interest of the country's operational and energy security". As a consequence, the company was unable to supply fuel to all petrol stations.[74] In practice, MOL preferred to supply mainly those belonging to its own retail network and did not supply petrol to a number of independent stations (i.e. those not belonging to any supply chain). As a result, several independent petrol stations were forced to introduce quantitative restrictions on sales, such as a maximum of two litres per individual consumer. In 2024, the Association of Independent Petrol Stations submitted a formal complaint against MOL to the Hungarian Competition Authority (HCA), alleging that MOL abused its dominant position in the relevant market.[75]

[74] J. Haász, D. Zách, *480-as üzemanyag: élt majdnem 13 hónapot – az olcsó tankolással önmagunkat csaptuk be*, 6.12.2022, https://telex.hu/belfold/2022/12/06/egy-literenkent-480-forintos-ev-ezek-az-uzemanyagar-korlatozas-tortenetenek-allomasai (access: 10.9.2024).

[75] Megjelent, *Panaszt tettek a Mol ellen a versenyhivatalnál a független benzinkutak*, 27.2.2024, https://hvg.hu/gazdasag/20240227_Mol_GVH_panasz_FBSZ (access: 15.9.2024).

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The impact of the introduction of price caps from the perspective of market actors may be summarised as follows.

1. **Petrol stations' perspective.** During the period of fuel price restrictions, a number of independent petrol stations were forced to cease operations. With the removal of the price cap, former suppliers returned to the market, but customers who had previously patronised the independent petrol stations that had been closed in 2022 did not fully return, leading to the closure of several stations. It remains uncertain whether the procedure of the HCA can grant them an effective remedy. In recent years, several European Semester Reports of the Commission[76] have highlighted the fact that competition law instruments are not sufficiently used by the HCA.[77]
2. **Consumers' perspective.** The first price cap brought a temporary advantage to consumers, but this was offset by a lack of available fuel due to quantity restrictions. Furthermore, after the price cap period, prices have significantly increased.
3. **MOL's (wholesaler) perspective.** The second price cap shifted part of the burden of the first price cap, which had previously been covered entirely by the petrol stations, onto the wholesalers, primarily MOL. However, the government took over part of the company's losses (e.g. by abolishing the stockholding charge and reducing the excise duty). Viewed in conjunction with these corrective measures, the overall impact of price-cap regime on MOL appears to have been limited. Between 2022 and 2023, only one MOL-branded petrol station ceased operations, compared with the closure of approximately 80 stations across the market, including a significant number of independent operators. It is also necessary to take into account other government measures that may have strengthened MOL's market position, such as the award of the national waste-management concession to the company. Such measures may have enhanced MOL's competitive position in other (non-fuel) markets, thereby also counterbalancing the economic disadvantages caused by the second price cap.

[76] 2024 Country Report – Hungary, Brussels, 19.6.2024, SWD(2024) 617 final; 2023 Country Report – Hungary, Brussels, 24.5.2023, SWD(2023) 617 final; 2022 Country Report – Hungary, Brussels, 23.5.2022, SWD(2022) 614 final; 2020 Country Report – Hungary, Brussels, 26.2.2020, SWD(2020) 516 final.

[77] K. Cseres, *Defending the Rule of Law through EU Competition Law: The Case of Hungary*, 2024, https://www.sipotra.it/wp-content/uploads/2024/07/Defending-the-rule-of-law-through-EU-competition-law-the-case-of-Hungary.pdf (access: 20.9.2024).

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CONCLUSIONS

State-owned enterprises are, in principle, regarded within the EU internal market as legitimate instruments of economic policy ("medicines"), reflecting the freedom of Member States to determine their own systems of property ownership as recognised by Article 345 TFEU. This approach has been confirmed by the case law of the Court of Justice of the European Union, which originated from the *Essent* case. In accordance with this rationale, SOEs assume a significant function in ensuring stability in domains where it is imperative for governments to assume responsibility for the security of pivotal industries and services. Concurrently, these entities are also susceptible to political influence. As a result, they occupy a unique position at the intersection of economic activity and public authority.

In recent years, additional challenges have emerged in the context of a succession of global crises experienced over the past decade and a half. In this setting, state ownership in enterprises may, under certain conditions, raise concerns regarding its "poisonous" impact on competitive neutrality within the internal market. The most significant challenges are associated with third-country SOEs, in particular those originating from China, whose presence in the EU market has expanded considerably. At the same time, although to a lesser extent, concerns may also arise within the internal market, particularly in certain Central and Eastern European Member States experiencing democratic backsliding. In such cases, state ownership may intersect with broader patterns of political influence over economic governance, which can affect the functioning of market competition.

From this perspective, the key issue is not state ownership per se, but the risk that extensive government involvement in corporate activity may reduce competitive intensity. It may therefore be argued that the greater the degree of state involvement in enterprises, the higher the potential risk of distortions in market competition.

In response to external distortions, the European Union has adopted legislative measures aimed at addressing the impact of third-country subsidies and state influence, including those affecting Chinese SOEs. However, within the internal market, the legal assessment of state ownership structures in certain Member States remains more constrained by the existing EU constitutional framework governing property ownership and Member State competence.

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ABSTRAKT

Przedsiębiorstwa państwowe należą do największych podmiotów rynkowych, a ich znaczenie wzrosło w ostatnich dekadach. W krajach rozwiniętych tendencja ta wpisuje się w funkcjonowanie normalnej gospodarki rynkowej, gdyż przedsiębiorstwa państwowe mogą służyć jako instrument ograniczania ryzyka zawodności rynku. Jednakże istnienie takich podmiotów może również prowadzić do nieuzasadnionych przewag konkurencyjnych, czego przykładem są niektóre chińskie monopole oraz państwa Europy Środkowej i Wschodniej dotknięte zjawiskiem cofania się demokracji. W opracowaniu analizie poddano konflikt między korzyściami a szkodliwymi skutkami funkcjonowania przedsiębiorstw państwowych w kontekście rynku wewnętrznego Unii Europejskiej oraz gospodarki globalnej. Celem było także zwrócenie uwagi na potencjalne zagrożenia dla integracji europejskiej, jakie może stwarzać własność państwowa w sferze konkurencji. Opracowanie opiera się na prawnoporównawczych badaniach naukowych, uzupełnionych analizą ilościową.

Słowa kluczowe: własność państwowa; przedsiębiorstwa państwowe; prawo konkurencji; zasada neutralności; cofanie się demokracji