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Track Access Laws and Regulations

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In countries where track access regulation exists, the degree of regulation varies:

- States may require that infrastructure managers allow qualified railway operators to use its railway tracks for the operation of trains (**mandated track access regimes**).
 - Mandated track access regimes may apply universally with some exceptions. These regimes are also referred to as **open access regimes**. Examples are the track access regimes in the European Union and Australia.
 - Mandated track access regimes can also be limited to certain routes, networks or specific operators. Such regimes exist for example in Mexico and Brazil.
- States may also choose not to enact any sector-specific regulation (**voluntary track access regimes**). In this case third-party access to the railway infrastructure depends on a voluntary decision of the infrastructure manager, which is then subject to the general laws of the relevant country (especially competition and antitrust laws). An example for a country where track access is granted on a voluntary basis is the United States.

For more information on sector-specific regulation see also [Regulation of Sectors and Regulatory Issues Impacting PPPs](#)

Listed below is sample railway access regulation:

Australia

[Competition and Consumer Act 2010](#) - Part III A (“Access to Services”) of the Act establishes a national open access regime for essential facilities, which include railway infrastructure. Railway infrastructure may become regulated under the Act if it has been “declared” by ministerial decision or if the infrastructure manager voluntarily submits an access undertaking to the competition regulator, the [Australian Competition and Consumer Commission](#) (“ACCC”). The open access regime provides a regulated framework for third parties to negotiate access to “declared services” and, if the conditions of access cannot be agreed, refer the matter to be determined by the ACCC. The Act sets out rules on procedures to apply for a ministerial decision to make a declaration in respect of a service, dispute resolution in the event the parties cannot agree on the conditions for access, and the preparation and approval of voluntary access undertakings.

More information on the Australian national track access regime is available on the website of the ACCC.

The open access regime under the Competition and Consumer Act 2020 runs in parallel with open access regimes at the state level. As an alternative to making a declaration under the Competition and Consumer Act, the federal minister can make a determination that a railway system is already subject to an “effective access regime” at the state level. [The Queensland Competition Authority Act 1997](#) is one such example. Part 5 (“Access to Services”) of that Act establishes a regulatory framework for third-party access to “significant infrastructure” providing services including railway infrastructure. The elements of this framework are similar to the national open access regime under the Competition and Consumer Act 2010. The regulatory regime applies if a service has been “declared” by ministerial decision. The regime sets out a framework for third parties to negotiate access to “declared services”. If the parties are unable to agree on the terms of access, either can refer the matter to the regulator (Queensland Competition Authority). The Act sets out rules for the negotiation of access agreements, dispute resolution and the preparation and approval of access undertakings (which are required of owners and operators of a declared service).

More information on railway regulation in Queensland is available on the website of the [Queensland Competition Authority](#).

For more information on track access in Australia including links to model track access agreements see [Track Access Agreements Australia](#).

European Union

European Union (EU): [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast) - available in different European Union languages. The Directive entered into force 15 December 2012 and needs to be transposed until 16 June 2015. It establishes a mandated track access regime for third-party railway operators.

- Infrastructure managers are required to grant non-discriminatory access to railway undertakings (and other possible applicants listed in the Directive) operating on the European railway network.
- The principle of open access applies to the use of railway infrastructure for domestic and international rail services.
- Member states may exclude specific network and services from the mandated track access regime, such as local and regional stand-alone networks, networks intended for the operation of urban or suburban passenger rail services only, or infrastructure whose track gauge is different from the main rail network within the EU.
- The core provisions of the Directive set out the requirements and procedures for the allocation of railway infrastructure capacity and methods for the calculation and collection of infrastructure charges.

EU Directive 2012/34/EU has consolidated and replaced Directives 91/440/EEC, 95/18/EC and 2001/14/EC as amended by Directives 2004/51/EC and Directive 2007/58/EC. All EU Directives are available on the website of [EUR-Lex](#).

France

- [Code des transports, partie législative - deuxième partie: transport ferroviaire ou guide](#) - Transport Code, Legislative Section – Second Part: Railway Transport (French) – This Code establishes the general framework for network access and sets out the competences of the French regulatory authority ([Autorité de régulation des activités ferroviaires - ARAF](#)).
- [Décret n° 97-446 du 5 mai 1997 modifié relatif aux redevances d'utilisation du réseau ferré national perçues au profit de Réseau Ferré de France](#)- Decree No. 97-446 of 5 May 1997 (amended) on charges for the use of the national rail network payable to Réseau Ferré de France (French)– This decree establishes the rules for the calculation and collection of charges for the use of the national rail network.
- [Décret n° 2003-194 du 7 mars 2003 modifié relatif à l'utilisation du réseau ferré national](#)- Decree No. 2003-194 of 7 March 2003 concerning the use of the national rail network (French) – This decree specifies the regulations on access to railway infrastructure and contains provisions on licensing and safety certificates.

Germany

- [General Railway Law](#) (Allgemeines Eisenbahngesetz – AEG) (German) – The AEG establishes the general framework for licensing, access to railway infrastructure, access charges, capacity allocation and sets out the competences of the regulatory authority.
- [Railway Infrastructure Usage Regulations](#) (Eisenbahninfrastruktur-Benutzungsverordnung – EIBV) (German)– The Regulations specify the provisions on access to railway infrastructure, charges and capacity allocation.

United Kingdom

- [The Railways Act 1993 \(as amended 2005\)](#) – This Act establishes the regulatory framework for licensing, access to railway infrastructure, access charges and capacity allocation.
- [The Railways Infrastructure \(Access and Management\) Regulations 2005](#) (as amended 2009) – These Regulations specify the provisions on access to railway infrastructure, charges and capacity allocation.

Spain

- [Ley 39/2003 de 17 de noviembre, del Sector Ferroviario – LSF](#)- Railway Sector Act 2003 (Spanish) –The Act establishes the regulatory framework for the Spanish railway sector. ([Ley 38/2015, de 29 de septiembre, del sector ferroviario.](#))
- The principles of the Railway Sector Act 2003 are further specified by a number of regulations: Order FOM 897/2005 of April 7, 2005, Order FOM 898/2005 of April 8, 2005, Order FOM 233/2006 of January 31, 2006, and Order FOM 3852/2007 of December 20, 2007 (Spanish). For details on these regulations click [here](#).

Latin America and the Caribbean

Mexico

- [Ley Reglamentaria del Servicio Ferroviario 1995](#) - Railroad Service Regulatory Law 1995 (Spanish) and [Reglamento del Servicio Ferroviario 2001](#) – Railway Service Regulations 2001 (Spanish) – The Law together with the Regulations set out the framework for railway privatization in Mexico. They contain detailed provisions on the content of railway concessions granted by the Mexican Ministry of Transport ([Secretaría de Comunicaciones y Transportes – SCT](#)). The Ministry of Transport can

require that a concessionaire grants track access and/or haulage rights for specific segments of the railway line it manages to other railway operators. Concessionaires can also negotiate additional track access or haulage agreements on a voluntary basis.

Peru

- [Reglamento Nacional de los Ferrocarriles 2005](#) - National Railway Code 2005 (Spanish).

North America

Canada

- [Canada Transportation Act 1996 8with later amendments](#) - *Loi sur les transports au Canada* (English and French) - Part III of the Act deals with railway transportation. It contains regulations on running rights, joint trackage use, and interswitching. All these concepts refer to a shared use of railway infrastructure.
- [Railway Interswitching Regulations 1987 \(with later amendments\)](#) - *Règlement sur l'interconnexion du trafic ferroviaire* (English and French) - The Regulations specify the Canada Transportation Act and contain details on interswitching zones and interswitching rates.

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