

EU law lets the UK renationalise its railways

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The following article is by [Nicole Badstuber](#) who is a researcher in urban transport governance at the Centre for Transport Studies, UCL. It was published on [The Conversation](#) and I republish it here because it answers a question often asked. Republishing is permitted by The Conversation:

The UK government [has announced](#) that it will take control of the failing East Coast train line. The franchise will now end in June 2018 — only three years into its eight-year contract. Twice before, in 2006 and 2009, the private company running the route from London to Edinburgh ended their contract early.

This has intensified calls for Britain's railways to be renationalised — a manifesto pledge of the Labour opposition in the 2017 national election. It is a policy [surveys](#) suggest has strong public support.

Yet, whether and how renationalising the railways might be achieved depends on the final Brexit deal the UK strikes with the European Union. Under current EU competition policy, Britain could not [recreate a railway monopoly](#). It could, however, bring much of the rail sector into public ownership.

The British model

Britain's railways are a three party affair: the infrastructure manager, the train service operators and the train leasing companies. Network Rail is the public body responsible for track maintenance and investment. Its predecessor was a [for-profit company that was replaced](#) following a series of fatal train crashes attributed to poor track maintenance.

Train service operators — all the rail company names you encounter on your commute — are a mix of subsidiaries of other European national rail companies and private companies. They run train services, earn money from tickets sales, pay a track usage fee to Network Rail, and hire the trains from a train leasing company.

Britain's railways use a competition-for-the-market model. This means that instead of competitors running the same services alongside each other and vying for passengers, the competition is to win the contract to run part of Britain's railway network for usually five to ten years.

Broadly, railway routes fall into two categories: commercially profitable and public service. Train service operators make payments to government to run commercial routes, while receiving subsidies to run public service routes. Often the bidder most optimistic about passenger numbers — therefore, promising the best deal — wins the contract.

The House of Commons Public Accounts Committee [concluded in April 2018](#) that overly optimistic passenger forecasts were to blame for the collapse of the East Coast mainline franchise.

The franchise's repeated collapse highlights two key flaws with Britain's rail model: it incentivises overestimating to win bids, and the government ultimately holds all the risk. Since transport plays too vital a role in keeping the economy going and all of us moving, the government cannot allow the railways to stop running.

EU rules

The key EU rule governing how member states run their railways is that the management of infrastructure and rail services must be separate. Another is that where a rail route has spare capacity, available time slots to run new services should be open to any operator to purchase. Notable services using this mechanism are the Eurostar and Heathrow Express.

These two key requirements stand in the way of recreating a unified rail monopoly. But, as other EU member states show, the majority of Britain's railways could be brought back into the public sector.

The EU Commission argued that greater competition on the railways will improve services and reduce fares for passengers. For the past three decades, it has applauded Britain's railway privatisation and encouraged others to follow Britain's example.

Key to enabling fair competition on the railways is non-discriminatory track access. For this reason successive EU railway reforms have pushed for independence of infrastructure management. When unveiled in 2013, the EU Commission's latest railway reforms, the [Fourth Railway Package](#), set out to impose strict institutional separation of infrastructure and rail services, adopting the franchise model on all routes.

But after several years of debate and notable push back from European governments and railway operators — in particular [the German Deutsche Bahn and French SNCF](#) — a watered-down version of the Fourth Railway Package passed in 2016. It now only

requires infrastructure to be independently managed and allows some public service routes to be directly awarded, specifically where a direct award would lead to [better quality or cost-efficiency](#). This is how many regional services are run by national operators. On all other routes the operator is to be determined by competitive bidding.

Different ways to renationalise

Other European nations [demonstrate](#) how Britain could take the railways back into the public sector while abiding by EU rail rules. There are two main adopted models. The first is two separate state-owned companies (one for track, one for trains), which is used in Spain and [the Netherlands](#).

The second uses separate companies within a state-owned group of companies (a parent company with a subsidiary company for infrastructure, and others for different train services). This is the [model](#) used in Germany and Italy.

Switzerland illustrates how Britain's railways could be renationalised if the UK negotiated an exemption from opening up its railways to competition as part of its Brexit agreement. [The Swiss Federal Railway](#) is an example of a unified national railway company that brings together track and trains.

The [Japanese model](#) is another alternative that could be adopted if the UK were free from the requirement to separate track and trains. Japan's railways are divided into regional units. Each unit has an integrated management of track and trains and is operated by one company (some privately, some government run). It is a model the current transport secretary of state, Chris Grayling is [keen to see](#) implemented on Britain's railways.

Britain's railways are already partial nationalised, as Network Rail is a public body. Although, reinstating a national rail monopoly under current EU rules would not be possible, there are ways that Britain could return many of its railway services to the public sector — Germany, Italy, Spain and the Netherlands all show how this can be effectively done.