



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

**Schiedskommission im Eisenbahnverkehr**  
**Commission d'arbitrage dans le domaine des chemins de fer**  
**Commissione d'arbitrato in materia ferroviaria**  
**Railways Arbitration Commission**

## Geschäftsbericht

Rapport de gestion

Rapporto di gestione

Annual report

2012

## **Annual report 2012**

### **1. General**

#### **1.1 Legal foundations**

The Railways Arbitration Commission (RACO) is an extraparlimentary committee within the meaning of Article 8a para. 3 of the Government and Administration Organisation Ordinance (GAOO; SR 172.010.1). It is classified as a “market-oriented committee” with regard to the remuneration of its members (Art. 8m letter b GAOO). Market-oriented committees supervise or provide significant support for the functioning of a market.

The commission was set up by the Federal Council on 1 January 2000.

In its judicial activities, RACO is independent of the Federal Administration, and has its seat in Bern. In accordance with Article 13 of the DETEC Ordinance on the Railways Arbitration Commission (SR 742.122.7), administrative management of RACO is the responsibility of its President, under the auspices of the Federal Council and with ultimate supervision by the Federal Assembly. An estimate of personnel and material resources necessary to fulfil the commission’s tasks is submitted to the General Secretariat of DETEC, in accordance with Art. 10 of the DETEC Ordinance on the Railways Arbitration Commission.

RACO has been assigned administratively to the DETEC General Secretariat since 1 January 2012, along with the other infrastructure regulators ComCom, ElCom, UBI and PostCom.

#### **1.2 Mandate and competences**

RACO settles disputes that arise between the managers of infrastructure and the transport companies over guaranteed access to the rail network or over setting train path prices. At the request of the infrastructure managers and transport companies, it rules on all disputes concerning discrimination in relation to measures on tariffs (path prices) or non-tariff matters (e.g. allocation of paths) [Article 40a of the Railways Act of 20 December 1957; RailA; SR 742.101].

RACO judgements replace the network access agreement between the parties. An appeal against RACO’s decisions may be made to the Federal Administrative Court in accordance with Article 33 letter f of the Federal Act of 17 June 2005 on the Federal Administrative Court (Federal Administrative Court Act, FACA; SR 173.32).

Under Article 25 Abs. 4 RailNAO, RACO must reach a judgement and communicate it to the parties concerned within two months of its briefing. It may take precautionary measures to ensure that trains are able to run while legal procedures are still in progress.

In accordance with Article 17 of the DETEC Ordinance on the Railways Arbitration Commission, RACO's decisions on matters of major significance are made by a panel of five judges, and in other cases by a panel of three judges.

### **1.3 Relationship to the EU**

On 29 July 1991 the EU issued its Council Directive 91/440/EEC (on the development of the Community's railways). This Directive includes the regulation of free access to the network. It calls on member states to open their national rail networks to European railway undertakings. Supplementary to Directive 91/440/EEC, on 19 June 1995 the EU Council of Ministers issued two detailed regulations, covering the licensing of railway undertakings, and the allocation of railway infrastructure capacity together with the charging of fees for its use. Directive 91/440/EEC has since been amended by Directive 2001/12/EC on the development of the Community's railways. Directive 2001/14/EC on the allocation of railway infrastructure capacity defines the nature and form of the regulatory bodies. The first railway package thus consists of three Directives (2001/12/EC, 2001/13/EC and 2001/14/EC), which were substantially amended in 2004 (second package) and 2007 (third package). The EU bodies have now approved a recast of the first railway package. And where does Switzerland stand? Switzerland has a treaty in the Land Transport Agreement, which came into force as part of the Bilateral Agreements on 1 June 2002. In terms of rail transport, this agreement secures network access for Switzerland in accordance with the Directive of 1991. To benefit from its extended access rights under the two railway packages, Switzerland must now enact equivalent national legislation. Railway Reform 2.2 and further amendments to the legislation will create the legal basis for this.

## **2. Retrospective**

### **2.1. Complaints**

No complaints were filed in 2012.

### **2.2. Activity linked with non-discriminatory network access**

To ensure non-discriminatory access to the rail network, RACO has the task of supervising Trasse Schweiz AG and the infrastructure companies. This supervisory function is performed in accordance with agreements concluded with the SBB, BLS, SOB and Trasse Schweiz AG. No complaints about transparency or discrimination in route allocation were filed in the year under report. RACO has right of access to the train path ordering tool Avis. No objections were raised to RACO's supervision of this.

Ongoing discussions were held with railway undertakings and infrastructure managers as part of the monitoring of non-discrimination and market development. In the year under review, meetings took place with Trasse Schweiz AG, BLSInfra, SBBInfra, Crossrail, SOB, as well as Bombardier, Siemens AG, Alstom and Stadler Rail. Following these meetings, RACO investigated various complaints of discrimination. The cost of acquiring route knowledge was revised downwards following RACO's intervention. RACO presented the problem of the

excessive length of approval procedures in Germany, Italy and France to the authorities responsible, and expressed hope of improvement. The EU Commission was also informed about this verbally at a roundtable discussion.

### **2.3. Rail Freight Corridors 1 and 2**

In its Regulation 913/2010 “concerning a European rail network for competitive freight”, the EU created nine European freight corridors.

Although Switzerland is not actually a member of the EU, it lies at the heart of Europe and thus participates in two Corridors:

- Corridor 1: Zeebrugge/Antwerp/Rotterdam – Duisburg – Basel – Milan – Genoa and
- Corridor 2: Rotterdam/Antwerp – Luxembourg – Metz – Dijon – Lyon/Basel (Basel SBB RB)

For the establishment and subsequent operation of these Corridors, the EU requires specific committees, both at ministerial level (Switzerland: Federal Office of Transport) and of the relevant infrastructure managers (Switzerland: SBB) and train path allocation bodies (Switzerland: trasse.ch). These bodies participate actively in both Corridor 1 and Corridor 2.

Each freight corridor is directed by an executive board (at State level / ministries) and a management board (at the level of infrastructure managers and train path allocation bodies).

In the year under review, RACO was requested by the executive board of Corridors 1 and 2 to meet and establish collaboration and coordination with the Regulatory Bodies of Belgium, Luxembourg, Germany, Italy, the Netherlands and France. The Regulatory Bodies met three times in 2012. A cooperation agreement is under preparation. It has not yet been possible to reach a consensus position.

### **2.4. DERC (Working Group on Rail Freight Corridors)**

Member states, Regulatory Bodies and infrastructure managers affected by the Corridors meet twice a year to exchange information and for coordination, in a meeting chaired by the EU Commission. The legal basis for this is given by Council Directive 91/440/EEC. As Switzerland is affected by two Corridors, she is also invited. In the year under review RACO was present at a meeting in Brussels, together with Trasse Schweiz.

With the coming into force of the Recast first railway package, the working group will now be called SERAC (Single European Railway Area Committee).

#### **2.4.1. Regulatory Bodies (RBs)**

Although Switzerland is not a member of the EU, RACO is regularly invited to the meetings of the RBs of the EU countries. At these meeting, the RBs exchange information about their work, the bases for their decisions, and their decision-making practice. In particular, they

exchange information on the key questions concerning their procedures and the interpretation of their legislation. This network of the RBs meets regularly. The European Commission coordinates and supports the work of this network.

The 23rd meeting, which was held in Barcelona, was the last of this kind. From 2013 the group will be called the European Network of Rail Regulatory Bodies and will have rules of procedure. The legal basis for the member states is the Recast first railway package. Switzerland will continue to be invited as an observer, but may not participate in voting.

## **2.5. IRG-Rail**

To improve international cooperation between the national rail regulatory bodies, RACO also participated in the formation of the Independent Regulators' Group-Rail (IRG-Rail). A Memorandum of Understanding was signed in the Hague on 9 June 2011. IRG-Rail will contribute to developing an intra-European rail market. The working groups of IRG-Rail pursue the following goals: fostering a shared approach to implementing the European regulatory framework, developing best practices for regulation, and presenting a united front towards the parties involved. In the year under review there was a plenary session in Luxembourg, at which the papers of the four working groups were approved.

## **2.7. Other DETEC regulators**

RACO met with the other Swiss regulators of the DETEC: ComCom, PostReg, FOCA, SFOE and ElCom.

## **3. Organisation**

### **3.1. Personnel**

Since 1 January 2012, RACO has had the following members:

#### President:

- Herczog Andreas, architect/planner, former National Councillor, Zurich

#### Vice-President:

- Finger Matthias, Professor at the Federal Institute of Technology, Lausanne, Croix-de-Rozon

#### Members:

- Bösch Peter, logistics expert, Binningen
- Grossen Werner, business economist, Thierachern
- Klett Barbara, lawyer and mediator, Luzern

- Putallaz Yves, civil engineer, Vevey
- Tschannen-Süess Monika, mobility expert / project leader, Gerzensee

Legal secretary:

- Bevington Santana, lawyer, Bern

#### **4. Finances**

The budget totalled CHF 531,300.

#### **5. Statistics**

In 2012, no complaints were submitted to RACO. The President and the Secretariat supervised Trasse Schweiz AG, participated in the Corridor 1 and 2 Group, and the Regulatory Bodies, and carried out inquiries into railway undertakings and the subsequent investigations.

Bern, 25 February 2013