



Report on the activities 2016

Railways Arbitration Commission (RACO)



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



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Foreword from the Chair

With the complete overhaul of the Goods Carriage Act, the Confederation has established framework conditions for the sustainable development of goods transport and efficient cooperation between carriers. This has also made an impact on the Railways Arbitration Commission (RACO), which is responsible for ensuring non-discriminatory access to the rail network – but not only that. Since mid-2016, RACO has also monitored equality of access to private terminals for combined transport and sidings that are co-funded by the Swiss Confederation. If the facilities are receiving state support because they are not economically viable, they should be made accessible to all interested parties for use under the same conditions. At a conference, RACO provided information to the rail industry on the rules of transparency, fairness and equal treatment.

Reinforcement of RACO as a regulator, and its further development into RailCom, is also a goal of the Federal Act on Organisation of Railway Infrastructure (OBI): a non-discriminatory railway landscape makes a significant contribution to Switzerland's competitive rail system.

This market approach is also reflected in RACO's work during the reporting year:

- The energy price case ended with a partial agreement, supporting an important development in the industry. RACO welcomes the introduction of billing for the actual amount of power used.
- The Swiss Federal Administrative Court made its first pronouncement on RACO's responsibilities, confirming the regulator's decision-making powers as part of proactive market surveillance.

During the year under review, the Commission welcomed Markus Kern, who has profound knowledge of the Swiss and European railway scene, as a new member. At this point I would like to thank the Commission and the staff of the Secretariat for their work and commitment.



Patrizia Daniöth Halter
Chair



Management Summary

The Railways Arbitration Commission (RACO) is an independent supervisory authority that ensures non-discriminatory access to the rail network, thus supporting the functioning of the rail market.

Since 1 July 2016, RACO's powers have extended beyond the rail infrastructure to private terminals for combined transport and sidings that are co-funded by the Swiss Confederation. Operators must also ensure non-discriminatory access to their facilities (see page 4).

In 2016, RACO carried out the following investigations, in particular:

- In the energy price case, the flat-rate tariff for energy for Long-distance freight trains in the list of services was examined (see page 8). RACO was able to achieve partial agreement between infrastructure managers (IMs) and railway undertakings (RUs), putting the following measures in place:
 - Effective from 2017, the IMs are reducing the flat-rate energy tariff for train category 6, "Long-distance freight trains", by about 25% from 22.6 to 16.8 Wh/Btkm.
 - From 2016, each RU can measure the amount of electricity it consumes, and pay only for the actual amount of power used.

- In the train path allocation case concerning PostMail trains, RACO determined that Trasse Schweiz had not performed the train path allocation process for mail transport in conformity with the law (see page 6). The appeal submitted by Trasse Schweiz was turned down by the Federal Administrative Court (A-654/2016 dated 11.10.2016), which confirmed RACO's competence and decision-making powers as part of proactive market surveillance:

- These are not restricted to ongoing train path allocation. The Federal Administrative Court states that it corresponds to "the spirit and purpose of proactive market surveillance to be able to identify when non-discriminatory access to the network is in jeopardy, and not have to wait until it has been breached." (A-654/2016, E.8.3.5).
- RACO is also empowered to decree future measures to be taken, "insofar as the procedure which has been reprimanded could recur" (A-654/2016, E.4.3.2).
- RACO may therefore examine every procedure "likely to prevent non-discriminatory access to the network" (A-654/2016, E.4.3.1).
- In the line closures case, RACO is investigating how costs arise in connection with line closures brought about by construction work (see page 9).

In terms of market monitoring, RACO examined the IMs' train path allocation and network access conditions during the annual timetabling process (see page 11). Special attention was paid to the agreement on service contracting in the Buchs marshalling yard, and the implementation of a new operator model in the Limmattal and Lausanne marshalling yards (see page 13).



Legal bases

General

RACO is an independent committee within the meaning of Article 8a para. 3 of the Government and Administration Organisation Ordinance¹. It ensures non-discriminatory access to the network, by ruling on claims from RUs and initiating ex officio investigations if there is suspicion that network access has been prevented, or granted in a discriminatory way². As a market-oriented committee, it supervises and provides essential support for the functioning of the rail market (Art. 8m letter b GAOO).

The members of RACO were appointed by the Federal Council; it has been in action since 1 January 2000. RACO's seat is in Bern.

Administratively, RACO has come under the Federal Department of the Environment, Transport, Energy and Communications (DETEC) General Secretariat since the beginning of 2012.

Entry into force of GCarA

On 1 July 2016 the completely revised Federal Act on the Carriage of Goods by Rail and Navigation Companies³ came into force. In its Message on the GCarA the Federal Council states that facilitating non-discriminatory access to private freight terminals is an essential objective, in particular with regard to handling facilities for combined transport, and sidings. To implement this, all state-supported facilities should fundamentally allow non-discriminatory access to all market players.

With the GCarA coming into force, the Railways Act has also been altered, and RACO has been put in charge of overseeing non-discriminatory access and the use of state-supported handling facilities for combined transport and sidings by their operators. It is therefore RACO's responsibility to initiate an official investigation where there is reasonable suspicion, and to arbitrate in access-based disputes.

Those concerned are freight terminals of a minimum size that have received a state investment award for building, expanding or renovating the facility. For facilities subject to the new law, the investment award is linked to a condition to ensure non-discriminatory access.

RACO now also has the power to collect and process data for market surveillance purposes.

The GCarA additionally rules on the basic principles of complaints proceedings at the legislative level; it expressly states the Federal Act on Administrative Procedure⁴ as being applicable.

Consultations

RACO has submitted statements on the following planned legislation:

Federal Act on Organisation of Railway Infrastructure (OBI)

RACO supported the thrust of the Organisation of Railway Infrastructure (OBI). As RailCom, RACO would receive further supervisory and auditing tasks, strengthening its regulatory role. The legislative project is based on the following premises: today's integrated rail system fundamentally provides the opportunity for discriminatory practices, which are hidden and difficult to detect from outside. As OBI refrains from a more comprehensive organisational and financial split of infrastructure and operations, RailCom should be granted additional powers and tasks so that competition within the rail market can be strengthened.

RACO supports the granting of participatory rights to railway undertakings concerned with network access for decisions regarding infrastructure, and FOT's authority to grant prime-contracting status to individual RUs or IMs. It would however expressly welcome written clarification.

Ordinances to the GCarA; Network usage concept and planning

RACO welcomes the comprehensive editorial revision of the ordinances issued as part of the GCarA coming into force⁵. In particular, RACO considers it sensible to regulate the network usage plan and network usage concept in separate ordinances. This allows for contradictions between the two mechanisms to be eliminated, and to ensure the forward compatibility of network usage plan.

RACO is also responsible for guaranteeing equal and non-discriminatory allocation of train paths. It therefore advocates issuing implementing provisions on the allocation of train paths and on the tendering procedure for allocation of remaining capacity in a FOT ordinance. RACO thus supports the efforts towards amalgamating the FOT Guideline on train path allocation and the tendering procedure and with the FOT Ordinance on rail network access⁶ into one single regulation.

¹ GAOO; SR 172.010.1

² Art. 40a^{bis} Railways Act (RailA; SR 742.101)

³ Goods Carriage Act (GCarA; SR 742.41)

⁴ Administrative Procedure Act (SR 172.021)

⁵ Federal Act on the Carriage of Goods by Rail and Navigation Companies (GCarA; SR 742.411), Rail Network Access Ordinance (Rail NAO; SR 742.122), Ordinance on the Award of Concessions for, and the Planning and Financing of Railway Infrastructure (CPFO; SR 742.120)

⁶ RailNAO-FOT; SR 742.122.4



Activities to ensure non-discriminatory access to the network

Complaints and ex officio investigations

No complaints were ongoing in the year under review.

RACO undertook the following investigations:

Train path allocation by Trasse Schweiz AG concerning the train path ordering and allocation process for PostMail trains in the 2014 annual timetable

In 2013, Swiss Post AG announced an open call to tender for transporting mail. Two railway undertakings tendered to provide this service. Subsequently, both Swiss Post and one of the RUs requested train paths from Trasse Schweiz AG, leading to path conflicts. In Switzerland, Trasse Schweiz is responsible for train path allocation, with the collaboration of SBB Infrastructure, and for observing the rules of the RailA, the RailNAO, the FOT Guideline on train path allocation and the tendering procedure, as well as the Network Statements. RACO examined whether the train path allocation procedure had been carried out in conformity with the law and in a non-discriminatory fashion. In its decree dated 22 December 2015, RACO identified several contraventions of the law by Trasse Schweiz, and ordered measures to be taken to avoid this in future. Trasse Schweiz appealed to the Federal Administrative Court against this decree; the appeal was dismissed in a ruling dated 11 October 2016 and RACO’s decree confirmed⁷.

Results of RACO’s investigation

In its decree, RACO established that Trasse Schweiz AG had not carried out its train path allocation for mail transports in conformity with the law, and had thus jeopardised the non-discriminatory access to the network. In particular, Trasse Schweiz had breached Art. 9a RailA, Art. 12 para. 1 RailNAO, sections 3.1 and 3.4 of the FOT Guideline on train path allocation and the tendering procedure, and sections 4.2.2.2, 4.3.1 and 4.4.1.1 of the 2013 Network Statement. As a result, RACO required Trasse Schweiz to take the following measures:

- In the event of suspected multiple path requests for the same transport run, the ordering party should be requested to provide proof of the transport task, by the date of the provisional train path allocation.
- If the transport runs are not identical, conflict resolution should be carried out in accordance with Art. 12 RailNAO, Sections 2 and 3 of the FOT Guideline, and Section 4.4.1.1 of the Network Statement.
- Proposals for alternative and reasonable train paths should be submitted to the ordering parties to decide upon in good time, so that the provisional path allocation can be carried out on time.
- If at that point allocation is still not possible, the tendering procedure should be concluded before the deadline for definitive train path allocation, in accordance with the Network Statement.

Federal Administrative Court ruling dated 11.10.2016 (A-654/2016)

The Federal Administrative Court ruling dated 11.10.2016 contains conclusions of ground-breaking importance. As well as ruling on a particular case, the Federal Administrative Court also made statements on the powers of RACO. The key passages are therefore quoted below:

- In the train path allocation case, the infrastructure manager has “a certain authority, if no conclusive statutory regulation exists”, in the performance of the train path allocation procedure (Federal Administrative Court ruling A-654/2016 dated 11.10.2016, E.3.1).
- RACO is a specialist authority which has discretionary powers in the fulfilment of its tasks. The Federal Court rules in full cognition that “a certain reticence imposes itself when the case concerns a ruling made on specialist issues by experts in the previous instance, and the Court does not in these cases deviate from this instance’s opinion except in emergency or for a compelling reason” (Federal Administrative Court ruling A-654/2016 dated 11.10.2016, E.2).
- The Federal Administrative Court also notes that “the decree is in accordance with statutory regulations and the Federal Administrative Court does not feel the need to intervene in the judgement of the previous instance” (Federal Administrative Court ruling A-654/2016 dated 11.10.2016).
- There is no need to fear an abusive circumvention of the appeals procedure if an investigation is initiated, according to the Federal Administrative Court. “The object of the ex officio investigation was a possible breach of non-discriminatory access to the rail network in an already concluded train path allocation procedure, and the corresponding measures for the future” (Federal Administrative Court ruling A-654/2016 dated 11.10.2016, E.4.3.2).

- “In accordance with its proactive market surveillance function, RACO’s decision making powers are not restricted to ongoing train path allocation” (Federal Administrative Court ruling A-654/2016 dated 11.10.2016, E.3.3).
- “RACO shall make decisions by decree on the measures to be taken” (Federal Administrative Court ruling A-654/2016 dated 11.10.2016, E.3.3)
- The decision making powers apply not only to the present and the past, but also to the future, “insofar as the procedure which has been reprimanded could recur in future” (Federal Administrative Court ruling A-654/2016 dated 11.10.2016, E.4.3.2).
- RACO does not therefore have to wait for discriminatory access to the network to occur. “It corresponds to the spirit and purpose of proactive market surveillance to be able to identify when non-discriminatory access to the network is in jeopardy, and not have to wait until it has been breached.” (Federal Administrative Court ruling A-654/2016 dated 11.10.2016, E.8.3.5).
- RACO may examine every behaviour “likely to prevent non-discriminatory access to the network” (Federal Administrative Court ruling A-654/2016 dated 11.10.2016, E.4.3.1).
- If there is infringement of an amicable solution, a legally binding decree or an appeal enacted against it, RACO is empowered to impose a sanction in accordance with Art. 89b RailA. A “prior finding of infringement in a decree is not necessary for imposing the sanction” (Federal Administrative Court ruling A-3864/2014 dated 7.4.2015).

This judicial practice allows RACO to align its activities accordingly, and offers legal certainty for possible parties to future proceedings.

⁷ The ruling has been published (in German) on the RACO website



Energy price (flat-rate tariff) in the List of services for infrastructure

BLS Cargo AG requested RACO to examine a case of possible discrimination in the application of a flat-rate tariff in the 2013 List of infrastructure services published by SBB Infrastructure, BLS Netz, SOB, Thurbo, Sensetalbahn (STB) and Hafenbahn Schweiz (HBS AG). In addition to train type 8, “Tractor-hauled freight train”, the List of services contained only one other type of freight train for long distances. This train type 6, “Long-distance freight train”, comprises all other types of freight transport. Passenger traffic, on the other hand, is subdivided into five train types.

As a result, RACO examined the methods of calculating the energy price for each train type and the principles on which they were based, and commissioned the EPFL to draw up an expert opinion. This opinion, published in January 2014, showed that heavy freight trains travelling long distances without a stop generally need less energy than invoiced under the flat rate for train type 6, “Long-distance freight train”.

Based on these conclusions, RACO initiated an ex officio investigation. In parallel, SBB Infrastructure launched a pilot project to introduce billing for the actual amount of power used.

RACO conducted negotiations with the parties involved. In November 2015 the resulting partial agreement was signed by the IMs and freight companies, in which the IMs commit:

- to introducing billing for the actual amount of power used by the end of 2015 at the latest for all RUs travelling on their network,
- to adjusting the flat-rate energy tariff at least for train type 6, “Long-distance freight train”, in the 2018 List of services, and
- to drawing up a plan by the end of 2015 for amending the flat-rate energy approach, and submitting this plan to RACO for approval.

The approval procedure for this partial agreement was legally concluded by decree on 1 November 2016, implementing the following:

- Starting with the 2017 annual timetable, the flat-rate energy tariff for long-distance freight trains will be dropped from 22.6 kWh to 16.8 kWh per gross tonne-kilometre. This is a cut of around 25% to the flat rate for energy for the freight transport industry.
- Instead of a flat rate, from 2016 each RU can measure the amount of electricity it consumes, using the appropriate equipment on the locomotive. This ensures that charges for traction current reflect actual use.

The investigation examining the discriminatory effect of flat-rate tariffs for power for long-distance freight trains is still pending.

Line closures

Construction work on the infrastructure results in line closures for rail traffic. To maintain train connections, an RU sometimes has to deploy replacement buses, which leads to increased costs. Art. 11b RailNAO and the FOT Guideline “Line closures in accordance with Art. 11b RailNAO” regulate the division of these additional costs between RUs and IMs.

In 2014, disagreement arose between BLS AG, SBB Infrastructure and BLS Netz AG, as the IM did not want to cover BLS AG’s extra costs, declaring them to be minor expenses.

In 2015, BLS AG requested RACO to initiate an ex officio investigation into the correct application of Art. 11b RailNAO and the FOT Guideline, to determine the level to which these additional costs are considered minor expenses, and whether the RU or the IM has to bear them. RACO initiated an investigation.

The FOT is testing a new concept to clarify compensation for line closures. The investigation is therefore still pending.



Market monitoring

General points

In 2016, RACO adopted a monitoring concept. It aims to analyse discrimination-related interactions at the IM-RU interface and to update them in accordance with developments in the industry.

The concept establishes annual monitoring priorities for illuminating the interactions between IMs and RUs. Its analysis includes the players involved, disclosing their actions and intended objectives.

The considerations of specific topics bring transparency into the interfaces between IMs and RUs and deliver possible indications for exposing discriminatory practices, which can then be further developed and pursued in ex officio investigations if required. The topics may cover all interactions in the network use cycle (Fig. 1).

RACO investigates recurring topics such as train path allocation in the annual timetable, and the IMs' conditions for network usage as published annually. RACO also defines the priority topics for monitoring, so that the Commission is able to take into consideration current developments or specific requests from market participants.

In the interplay between the FOT and railway and logistics companies, RACO has an important regulatory role.



Figure 1: Topics for RACO monitoring at the IM-RU interfaces

Monitoring train path allocation in the 2017 annual timetable

With reference to the train path allocation procedure for the 2017 timetable, RACO examined key decisions made by Trasse.ch in the annual timetable.

RACO has examined the results of conflict management, in particular relating to rejection of train path requests, and found no grounds for objections.

For the 2017 timetable, Trasse.ch⁸ once again processed around 14,000 applications, amounting to a slight increase of 1% compared to 2015. In contrast to the previous year the number of conflicts handled rose from 167 to 310. Of these 310 conflicts, an amicable solution was reached in 290 cases. Trasse.ch was obliged to reject 20 applications. The increase in conflicts is essentially due to the following two factors:

a) Complete closure of Giubiasco–Luino section in the second half of 2017

In the second half of 2017 the section between Giubiasco and Luino will be completely closed. Coupled with this are also capacity restrictions on the Lötschberg-Simplon route, which will particularly affect freight traffic. At the start of 2016, Trasse.ch analysed capacity for both of Switzerland's north-south axes and suggested several further implementation measures to the FOT. Eventually four rejection decisions in total needed to be made relating to the Lötschberg axis.

b) Requests for conflicting train paths on the Zug–Arth-Goldau section

A second capacity bottleneck exists on the eastern shore of Lake Zug within the section between Zug and Arth-Goldau. A complete closure of this section had previously been planned for the 2017 timetable, to allow for expansion of capacity at the Walchwil facilities. Construction work was delayed due to objections during the planning application procedure. SBB Passenger – also explicitly on behalf of Canton Zug – ordered timetable concepts for both long-distance and local traffic, which cannot be implemented, given the available infrastructure on the eastern shore of Lake Zug. As a result train paths for local traffic had to be refused on the grounds of a lower profit margin against competing trains. Four planned train paths for long-distance traffic were rejected as they were not on a regular timetable, unlike competing local trains.

Regional transport concession for Brig–Domodossola route (I)

The concession for the provision of regional transport services between Brig and Domodossola expired at the end of the timetable period in December 2016. Until then, SBB Passenger had held this concession. The government of Piedmont put the route out to public tender. Under the "Lötschberg Strategy", BLS Passenger wanted to extend the connection between Bern and Brig by an additional stretch as far as Domodossola. Accordingly, both SBB Passenger and BLS Passenger requested the necessary train paths from Trasse.ch. At the same time, BLS Passenger tendered for the concession from the Piedmont Region.

⁸ Source: Trasse.ch



In the light of uncertainty regarding when the Italian regional authorities would come to their decision on the concession, Trasse.ch was faced with considerable challenges in the time-tabling process. At the end of July 2016, SBB Passenger stated that it would not be submitting a licence application, as running the planned regional trains with the planned subsidies from the Italian authorities would not cover costs. As a result the train paths were allocated on time. Since 11 December 2016 BLS Passenger has been running some of its regional trains as far as Domodossola. The structural restrictions in the Simplon Tunnel in the first half of 2017 mean that BLS will only be able to implement its comprehensive plan in the second half of 2017.

RACO followed this challenging procedure as well, and was able to voice its opinion.

Network access conditions 2017

a) General

The large IMs – SBB, BLS and SOB – published their network access conditions for the 2017 timetable year in good time, and informed RACO of this. RACO does not give its approval to the network access conditions, but processes disputes or investigations that arise from the application of these conditions between RUs and IMs. It does, however, give the IMs orientation on provisions that it considers critical in that they have the potential to affect non-discriminatory access to the network.

b) Wear and tear in the train path pricing system

The most significant change, from the viewpoint of IMs and RUs, affects train path pricing, which from the 2017 timetable year will be supplemented by a wear-and-tear component. This new price element replaces the previous “Basic price by weight”, which used only the tonnage of the individual train units as the basis for calculating price. The new wear-and-tear

element takes into account the dynamic forces of the individual vehicle categories in a train, which bring about different levels of wear to the track.

FOT is providing a calculation tool for RUs to be able to work out the financial consequences of their individual transport runs.

The wear-and-tear factor will not place more financial strain on freight transport than previously, according to the FOT.

c) Cancellation fees

Up to now, the SBB, BLS and SOB access conditions have allowed RUs to cancel finally allocated train paths for the annual timetable, within a certain deadline, free of charge. The IMs are discontinuing free cancellation when the 2017 List of services comes into force. This means that after final allocation in the annual timetable, a cancellation fee will become payable for any cancelled train path. The charge payable is fundamentally aligned with the quality of a train path, and cancelling a freight train path is therefore generally cheaper than it would be for a passenger train.

In the long term, the IMs aim to change the ordering behaviour of the freight RUs in particular, so that there are fewer cancellations. However, this conflicts with ever-shorter deadlines and the demands of the freight transport industry.

d) Energy price

In the case to investigate flat-rate tariffs for energy use for train category 6 “Long-distance freight train”, SBB, BLS and SOB Infrastructure have reduced their rate by about 25%. This lower tariff will be applied when the 2017 annual timetable comes into force. It was communicated to the RUs affected during 2016 (see page 8).

Marshalling yards

a) Operator model for the Limmattal and Lausanne marshalling yards

In 2015, RACO examined the new operator model for the Limmattal and Lausanne marshalling yards. These form the backbone of facilities for processing domestic single wagon-load traffic, primarily for SBB Cargo. With this new operator model, SBB Infrastructure has transferred responsibility for running the marshalling yards and securing the operational service to SBB Cargo, which in turn will have to supply planning and shunting services in a non-discriminatory way. SBB Cargo may use the necessary planning and operational IT systems for this.

In autumn 2016, representatives of RACO took part in an internal hearing of SBB Infrastructure and SBB Cargo at the Lausanne marshalling yard, and in a FOT audit of the Limmattal yard. RACO pointed out shortcomings concerning confidentiality, and pressed for appropriate retraining of staff in this area.

b) Service contracting in the Buchs SG marshalling yard

In 2016, SBB Infrastructure took further measures of optimisation. The Buchs SG marshalling yard had previously deployed SBB Infrastructure’s and SBB Cargo’s individual staff and locomotives. To make optimum use of the available resources, SBB Infrastructure will withdraw from operational shunting in Buchs in 2017, and will contract all shunting services on the yard’s perimeter from SBB Cargo.

The representatives of SBB Infrastructure informed RACO proactively and in good time about their planned steps in Buchs, to address any concerns about non-discriminatory provision of services. In contrast to the Lausanne and Limmattal marshalling yards, further RUs are present in freight transport in Buchs, and serve their customers via local sidings. RACO therefore requested SBB Infrastructure to put in place contractual mechanisms with SBB Cargo that exclude any disadvantage to competitors from the outset. RACO will continue to monitor this.

Outlook

RACO will continue on the path of market monitoring taken in 2015. It is convinced that visible and tangible accompaniment of the central processes between IMs and RUs contributes to more transparency and less discrimination in rail transport.



Market surveillance

General

The differentiation into market monitoring and surveillance introduced in 2015 (see page 10) was also applied in 2016 and developed further. Independently, and using appropriate methods, market surveillance follows developments in the Swiss railway market and analyses competition-related events.

The Swiss rail infrastructure

The Swiss railway landscape is marked by the diversity of different installations, which are used intensively. At the time of the SFSO's last survey in 2015, the total length of Swiss rail infrastructure came to around 5196 km (including 19 km outside Switzerland's borders, but excluding rack railways⁹). The narrow gauge network made up 1360 km of this, and the normal gauge network 3836 km. In 2015 the SBB owned 3172 km or 83% of the Swiss standard gauge network, or about 61% of the total network. This was followed by the BLS Group, which owned about 420 km.

RACO's current activity concentrates on monitoring RUs' access to the IMs' standard gauge networks.



Figure 2: Standard and narrow gauge network in Switzerland

⁹ Source: Swiss Federal Statistical Office

Railway undertakings in Switzerland

Measured in terms of network size, Switzerland has one of the world's densest and most intensively used rail networks, as shown by an IRG-Rail evaluation¹⁰ (see Figure 3). According to this, Switzerland has the second most intense usage (after the Netherlands) in Europe. This indicator is measured in train kilometres per route kilometre per day. The graph also shows the proportions of passenger and freight traffic.

The Swiss rail transport scene is characterised by diversity. In 2016, 74 RUs held a FOT safety certificate¹¹ and were thus entitled to perform transport on the network. This figure includes 36 RUs with regular passenger traffic (licensed transport), 13 RUs that exclusively run passenger charter trips, 18 RUs carrying only freight (6 of them only to frontier stations), and 7 RUs that perform only service and test runs. Figures 4 and 5 give an overview of the distribution of RUs across the standard and narrow gauge network.

Switzerland has a total of 42 IMs. Almost all have RUs within the same undertaking as well: the model of an integrated railway system is widespread in Switzerland. 20 IMs run standard gauge networks, and 28 narrow gauge networks. 6 IMs operate routes on both gauges.

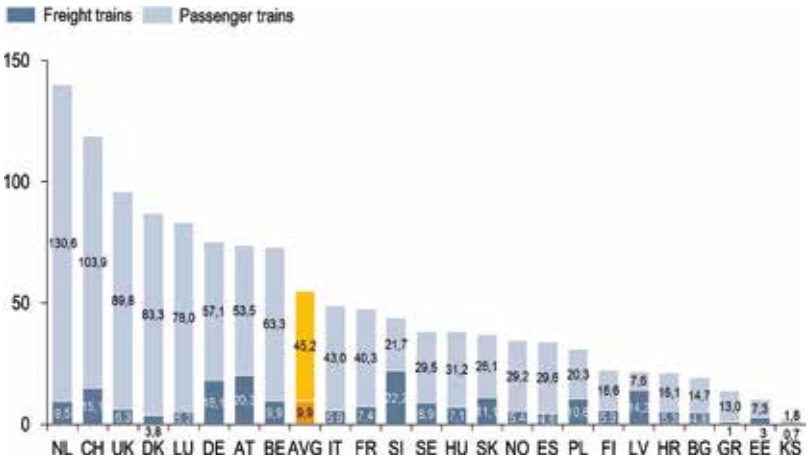


Figure 3: Network usage intensity (train kilometres per route kilometre per day) in 2015 (Source: IRG-Rail Market Monitoring Report 2016)

¹⁰ IRG-Rail Market Monitoring Report 2016 at www.irg-rail.eu/public-documents/2017

¹¹ Source: FOT, Approvals and Rules Section



International engagement

Freight corridors

In its Regulation 913/2010 “concerning a European Rail Network for Competitive Freight”, the EU created nine European freight transport corridors. These serve the international transport of freight by rail and supports the Swiss mandate, anchored in the Federal Constitution, to transfer goods from road to rail.

Two freight corridors involve Switzerland:

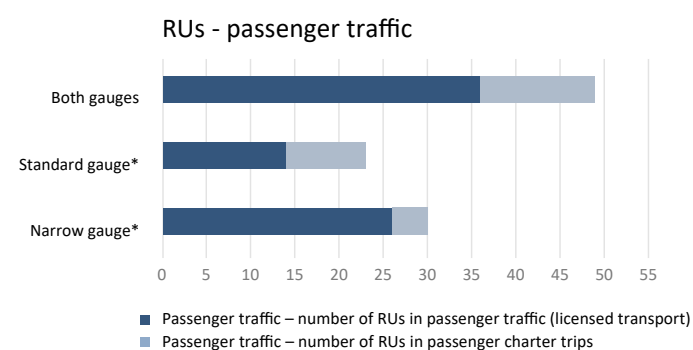
- Freight corridor 1 (Rhine–Alpine): Zeebrugge/Antwerp/Rotterdam – Duisburg – Basel – Milan – Genoa
- Freight corridor 2 (North Sea–Mediterranean): Rotterdam/Antwerp – Luxembourg – Metz – Dijon – Lyon/Basel (Basel SBB marshalling yard)

For each freight corridor, a single point of contact, the Corridor One-Stop-Shop (C-OSS), allocates train paths for cross-border freight. This involves assigning pre-arranged train paths from the capacities offered by the national train path allocation bodies. C-OSS allocates pre-arranged train paths under an agreement between infrastructure managers and train path allocation bodies. This agreement regulates the remit, powers and responsibilities of C-OSS and the national IMs/train path allocation bodies. C-OSS is thereby granted authority to allocate the pre-arranged train paths in their name and on their behalf.

The C-OSS are overseen jointly by the relevant regulatory bodies in Belgium, Luxembourg, Germany, Italy, the Netherlands, France and Switzerland, with RACO in a supervisory role. Cooperation between the European regulators and RACO is specified in the Cooperation Agreement and a Swiss Letter of Intent.

In 2016 the EU launched a public consultation with a questionnaire to clarify the need for amendments to Regulation (EU) 913/2010 (on the Corridors) and the stakeholders’ opinions on it. The results of this Europe-wide survey were presented in December 2016, with the following findings foremost:

- There is a need for amendments to the current rules and functioning of the Corridors; all those involved are unanimous on this.
- It is currently unclear whether this will be more possible by revising Regulation (EU) 913/2010 itself or by adapting external framework conditions (“soft measures”).
- RNE’s new timetabling project (TTR; see also page 19) will first need to be realised.
- The EU Commission will evaluate the need for amendments during 2017 and provide information on this.



* of which, 4 RUs operating on both gauges

Figure 4: Number of RUs in passenger traffic

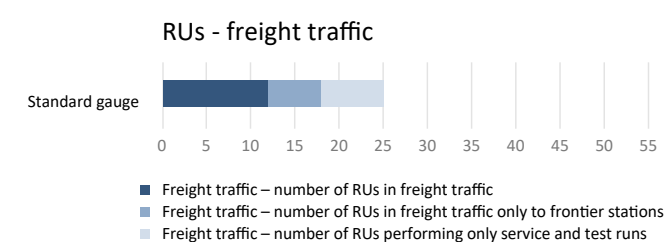
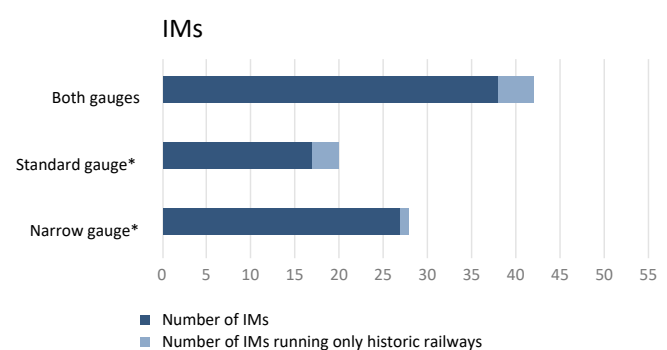


Figure 5: Number of RUs in freight traffic



* of which, 6 IMs with both gauges

Figure 6: Number of IMs



ENRRB

The ENRRB was created in 2013 through the review of the regulatory framework (European Directive 2012/34/EU; Recast). The European regulators represented in this body, together with the European Commission, meet regularly to exchange information and ideas on cross-border issues concerning rail regulations. The ENRRB promotes cooperation between regulators.

RACO is invited as an observer, and takes part in the plenary meetings.

In 2016, meetings focused on the following topics:

- The European Commission considers cooperation between regulators to be inadequate. The European Parliament would therefore welcome the creation of a European regulator. Practical work on this will not, however, commence in the reporting year; IRG-Rail clearly declines this.
- The planned exchange of best practice experiences in the new version will be institutionalised, and handled at least every two years as a regular agenda item.
- Since according to the Recast (Directive 2012/34/EU), service facilities such as terminals or defrosting facilities are also subject to free network access, they will be more closely monitored by the regulators and the European Commission. The European Commission released an implementing act for consultation at the end of 2016. It is intended to regulate free network access comprehensively, and will be adopted in 2017.

IRG-Rail

IRG-Rail is an association currently consisting of 28 regulatory bodies. Its aim is international cooperation towards developing a European single rail market: development of best practices primarily within network access and service facilities, and provision of a common approach to implementation of the European regulatory framework. In 2011, working together with regulatory bodies from Germany, the UK, the Netherlands and Austria, RACO became a founder member of IRG-Rail.

RACO takes part in plenary sessions and in the Access working group, to address the problems of access to the freight corridors and their operation.

RACO is restricted to topics of relevance for Switzerland:

- Topics that concern the Corridors (such as amendment of Regulation (EU) 913/2010),
- The exchange of experiences relating to the handling of claims and investigations,
- Experiences of line closures and other capacity restrictions,
- Free network access in terms of service facilities, particularly since RACO received new competencies concerning marshalling yards and sidings under the GCarA in mid-2016.

RNE timetabling project (TTR)

The current international timetabling process largely no longer corresponds to the needs of the market. In short: while the definitive train path is generally offered too late for passenger transport, the deadline for requesting train paths is too early for freight transport.

This leads to very different practice in different European countries, and to great dissatisfaction overall.

RNE has developed an approach based on two different path request processes:

- Passenger traffic and stable freight traffic submit requests for the annual timetable.
- Dynamic freight traffic and irregular or seasonal passenger traffic make flexible requests, including up to 36 months in advance with a capacity commitment.

The new model will be presented widely and discussed during 2017.



About RACO

Commission

The Commission is made up as follows:



RACO (left to right): Werner Grossen, Peter Bösch, Dr Yves Putallaz, Patrizia Danioth Halter, Dr Ursula Erb, Dr Markus Kern, Sibylle Burger-Bono

Function	Name	Background
Chair	Patrizia Danioth Halter	lic.iur., lawyer and notary, LL.M., Altdorf
Vice-Chair	Yves Putallaz	Dr. Ing. civil engineer EPFL, Corsier sur Vevey
Member	Peter Bösch	logistics expert, Binningen
Member	Ursula Erb	Dr. oec. publ., Uhwiesen
Member	Werner Grossen	business economist, NDS HF, Thierachern
Member	Markus Kern	Dr. iur., Assistant Professor of Constitutional and Administrative Law, Institute of Public Law, University of Bern

Specialist secretariat

The staff of the secretariat in the year under review was composed of:

Function	Name	Background
Head	Sibylle Burger-Bono	lawyer
Staff member	Sandra Dorasamy	executive assistant
Staff member	Andreas Oppliger	research assistant (lic. phil. nat.)
Staff member	Gabriela Weber	MLaw, lawyer
Staff member	Silvan Dermont	trainee



Outlook

2017 will again see significant developments and decisions:

- Train path allocation for the 2018 annual timetable will be carried out for the first time on the basis of the new network usage plan, which changes the priorities between the various modes of transport.
- Market monitoring will first examine non-discriminatory access to private sidings and terminals. The operators will have to publish details of access to their facilities and establish the conditions for access on an equal footing.
- In autumn 2017, RACO will publish a market report on developments in passenger and freight transport.
- The concession process for long-distance traffic will already affect train path ordering for 2018. The SBB's concession for Swiss long-distance transport will expire with the change of timetable in December 2017. In addition to the SBB, which provides the national long-distance service, both SOB and BLS have expressed their interest in taking over particular routes.



Abbreviations

Abbreviation	Meaning
BLS	Bern-Lötschberg-Simplon Bahn
C-OSS	Corridor One-Stop-Shop
DB	Deutsche Bahn
DETEC	Federal Department of the Environment, Transport, Energy and Communications
DML Zürich	Durchmesserlinie Zürich [Zurich cross-city link]
ENRRB	European Network of Rail Regulatory Bodies
EPFL	École polytechnique fédérale de Lausanne
ERIO	Expert group for railway infrastructure organisation
FOT	Federal Office of Transport
GAOO	Government and Administration Organisation Ordinance
GCarA	Federal Act on the Carriage of Goods by Rail and Navigation Companies
GS DETEC	DETEC General Secretariat
IM	Infrastructure manager
IRG-Rail	Independent Regulators' Group – Rail
LV	Leistungsvereinbarung [Performance agreement]
NRLA	New Rail Link through the Alps
NWS	Network Statement
OBI	Federal Act on Organisation of Railway Infrastructure



Abbreviation	Meaning
RACO	Railways Arbitration Commission
RailA	Railways Act
RailNAO	Rail network access ordinance
RTE	Regelwerk Technik Eisenbahn – industry standard
RU	Railway undertaking
SBB	Schweizerische Bundesbahnen [Swiss Federal Railways]
SFSO	Swiss Federal Statistical Office
SOB	Südostbahn
SR	Systematische Rechtssammlung [Classified compilation of Swiss Federal law]
Trasse.ch	Trasse Schweiz AG

Railways Arbitration Commission
Monbijoustrasse 51 A
3003 Bern

Tel. +41 (0)58 463 24 60

info@ske.admin.ch
www.ske.admin.ch

