

Geschäftsbericht

Rapport de gestion

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Annual report

2011

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General

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). 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, as stated in Article 71c para. 1 Administrative Procedure Act (APA), 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 Federal Office of Transport in accordance with Art. 10 of the DETEC Ordinance on the Railways Arbitration Commission.

According to Article 25 para. 3 of the Railway Network Access Ordinance of 25 November 1998 (RailNAO; SR 742.122), RACO is administratively subordinated to the Federal Office of Transport.

RACO represents the voice of railway undertakings. It settles disputes that arise between the managers of infrastructure and the transport companies over guaranteed access to the rail network or over the calculation of fees for the use of infrastructure. 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; 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.

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 are now planning to rework the first railway package, in order to clarify and refine the existing legislative framework, to ensure that the market functions better in the rail sector and thus makes rail more attractive compared to roads. 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. As far as rail transport, the 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. We have indicated to the EU our fundamental willingness to adopt the two railway packages, and the necessary changes to legislation form part of Railway Reform 2.

Retrospective

Complaints

No complaints were filed in 2011.

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 the supervision of this; RACO has discussed potential interface problems with COMCO.

There were ongoing discussion 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 BLS Cargo, SBB Infrastruktur RailCare, BLT and Hupac. Following these meetings, RACO investigated various complaints of discrimination.

2.3. International Group for Quality Improvement of Rail Freight Traffic on the North-South Corridor (IQ-C) / Corridor 1

Rail Corridor 1 between Rotterdam and Genoa has been defined by the EU as one of the six key transport axes in Europe. It is among Europe's most powerful axes. In 2003, transport ministers from the Netherlands, Germany, Italy and Switzerland signed a Memorandum of Understanding in Lugano agreeing to improve the quality of rail freight traffic on Corridor 1. This was the starting point for the international Working Group IQ-C, with representatives of the four countries' transport ministries, and for a coordinated joint programme of action. RACO is a member of the Regulatory Bodies Working Group. In a 2006 Memorandum of Understanding the transport ministers in the Corridor reaffirmed their goal of equipping the railway line between Rotterdam and Genoa with ETCS by 2012. ETCS would harmonise the train control systems across Europe and improve rail interoperability. In June 2007 there followed the signing of a Memorandum of Understanding on the mutual recognition of rolling stock, a further decisive step towards cost-efficient, reliable and competitive freight transport on the Corridor between the Netherlands and Italy. The Ministries' current interim report (2011) documents the work in Corridor 1. In the year under report there were three meetings of the Regulatory Bodies Working Group.

2.4. Regulatory Bodies (RB)

Although Switzerland is not a member of the EU, RACO (like the Norwegian Regulatory Body, RB) is regularly invited to the meetings of the RB in the old and new EU countries. Various problems and methods are handled there, depending on the groups concerned. Like other network regulations in the EU, the texts must be harmonised as far as possible. Given its experience and in view of its key position on the north-south corridor, RACO can make a crucial contribution to the debates on transport policy. RACO took part in a meeting in Brussels and one in Luxembourg. The Regulatory Bodies also met with RailNetEurope (RNE) in Vienna; again, RACO was present at this meeting.

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 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 meeting in Bonn in addition to the one in the Hague.

2.6. Other DETEC regulators

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

Organisation

Personnel

Since 1 January 2011, RACO has had the following members:

President:

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

Vice-President:

Perret Francis-Luc, civil engineer, Professor at the Federal Institute of Technology, Lausanne, Director of the Institute of Transport and Planning (ITEP), St-Prex

Members:

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

Bürki Kurth, retired, former head of train paths sale service of SFR, BLS, RM, Münchenbuchsee

Kohli Vania, barrister, Bern

Lapp Roland, proprietor of Feramar T&T AG + Consulting, President of the Swiss Freight Forwarding and Logistics Association, Schaan

Tschannen-Süess Monika, mobility expert / project leader, Gerzensee

Legal secretary

Bevington Santana, lawyer, Bern

Finances

The budget amounted to CHF 461,500.

Statistics

In 2011, RACO received no complaints. The President and the Secretariat supervised Trasse Schweiz AG, participated in Corridor 1, IQ-C and Regulatory Bodies, and carried out inquiries into railway undertakings and associations and the subsequent investigations.

Bern, 24 April 2012