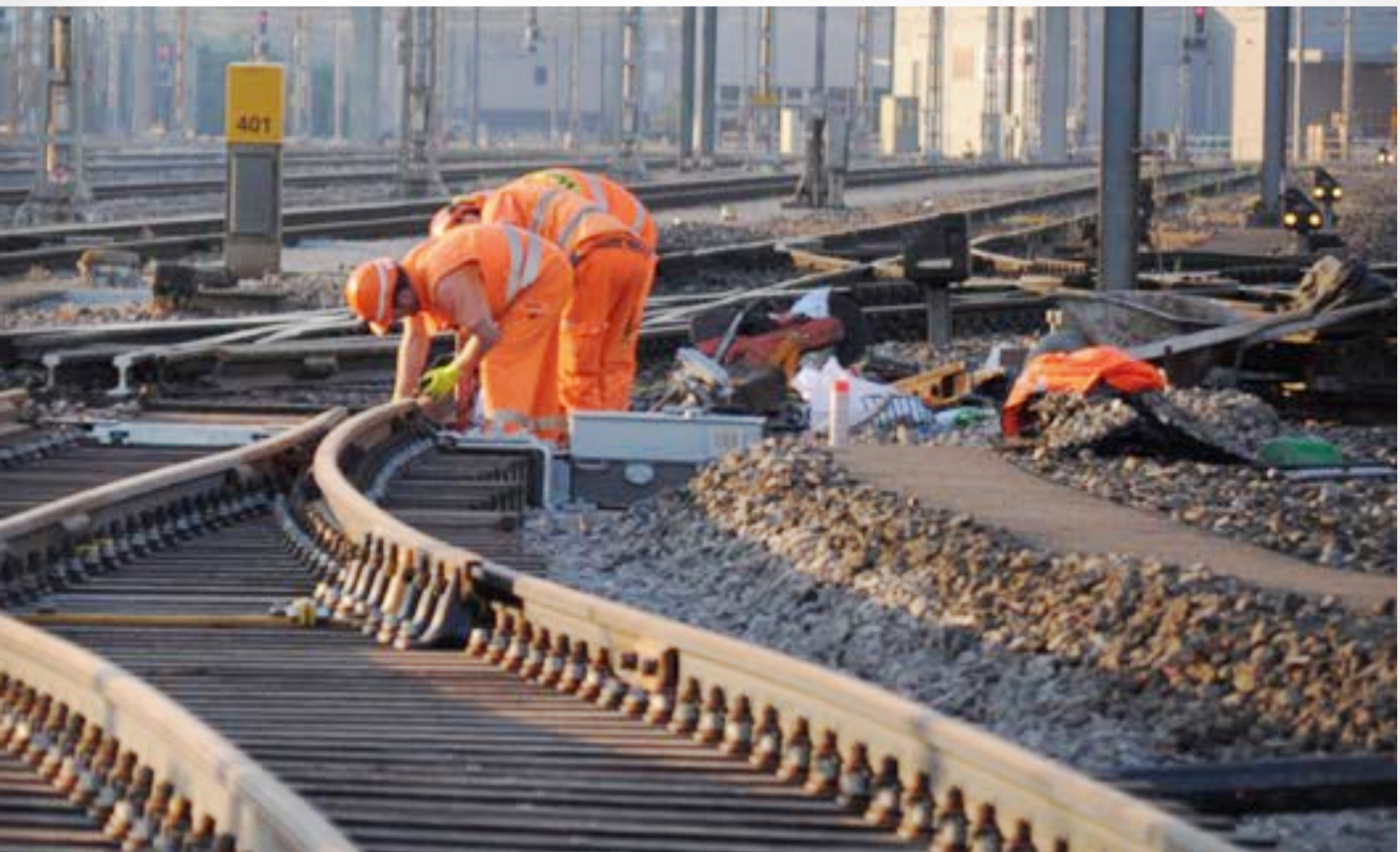




# **Report on the activities 2021**

## **Rail Transport Commission**

### **RailCom**



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

**Kommission für den Eisenbahnverkehr RailCom**  
**Commission des chemins de fer RailCom**  
**Commissione del trasporto ferroviario ComFerr**  
**Rail Transport Commission RailCom**



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## Foreword by the Chair

Dear reader

The high capacity utilisation of the Swiss rail network poses major challenges for the maintenance, renewal and expansion of the railway infrastructure. On the one hand, sufficient time must be planned for maintenance activities and construction work so that infrastructure is always in good condition. On the other, because of the high volume of traffic, construction work and maintenance activities must be carried out as quickly and efficiently as possible. Owing to these conflicting demands of construction work and maintenance activities, interval planning can be described as 'squaring the circle'.

As network access is affected by capacity planning and specifically by interval planning, the latter are subject to the non-discrimination requirement and thus fall within RailCom's supervisory competence. In 2021 we focused on analysing how SBB Infrastructure conducts these processes. We work to ensure reliable and integrative interval planning: the infrastructure managers inform the transport companies in good time, work with them on an equal footing to develop balanced solutions for replacement measures and resolve any conflicts in a standardised procedure. We held a symposium on this topic at the end of November 2021. More detailed information can be found in this activity report.

A further focus of our supervisory activities in 2021 was prices and discounts in intermodal freight terminals subsidised by the Confederation. Throughout Switzerland, the federal government has made its financial investment in 30 such facilities conditional on non-discriminatory access being granted by the operators to third parties. This includes ensuring fair prices and providing discounts for handling and associated services. We developed principles for pricing and discounting for these services and en-



sured the facility operators were complying with the legal requirements. Previously there was no sufficient, publicly available data on the cost structures of these services in Switzerland, so we conducted our own analyses and commissioned a consulting firm to conduct a study on this issue.

I would like to take this opportunity to thank the Commission and the specialist secretariat staff for their outstanding commitment and professionalism.

Patrizia Danioth Halter  
Chair



## Management Summary

### RailCom

As an independent executive commission, the Rail Transport Commission RailCom ensures non-discriminatory access to:

- the rail infrastructure,
- intermodal freight terminals and sidings subsidised by the Confederation and
- last-mile rail freight services (i.e. rail services in freight transport between railway infrastructure and sidings or intermodal freight terminals).

Furthermore, RailCom monitors whether superordinate tasks are conducted in a non-discriminatory manner and is responsible for resolving disputes between the system leader and the companies concerned.

In addition, RailCom enforces the right of participation of the affected railway undertakings in the short and medium-term investment planning of infrastructure managers in relation to the participation process.

RailCom is active in three areas:

- As a specialist court, it rules on complaints from railway undertakings and other transport companies.
- As a supervisory authority, it conducts ex officio investigations and takes measures to ensure non-discrimination. In this respect, it carries out market monitoring and market surveillance activities.
- RailCom cooperates with other regulatory authorities at international level, in particular on rail freight corridors.

### Activities in 2021

In late June 2021, RailCom issued a ruling starting an **ex officio investigation** in the area of intermodal freight terminals. It wants to examine in greater depth whether the prices and discounts applied by an operator comply with the non-discrimination requirement. The facilities operator lodged an appeal with the Federal Administrative Court against this ruling. The appeal proceedings were still pending before the Federal Administrative Court at the end of 2021.

RailCom issued a declaratory ruling in the reporting year and carried out a range of legal investigations. There were no claims or complaints to rule on.

In addition to the annually recurring tasks, in **market monitoring** the focus was as follows: RailCom

- analysed capacity management processes for potential discrimination relating to construction work and maintenance activities (interval planning);
- examined whether the intermodal freight terminals subsidised by the Confederation meet the legal requirements for non-discriminatory pricing and discounting;
- supported SBB Infrastructure in ensuring non-discriminatory access in the Traffic Management System (TMS);
- supported the last-mile service providers in the practical implementation of non-discrimination principles.

At its annual **symposium**, RailCom discussed the conditions for non-discriminatory interval planning.

In **market monitoring**, RailCom analysed the key figures on national transport services, prepared certain publicly available data and published revised factsheets on the rail network and passenger and freight transport.





## Legal aspects

### General

RailCom is an independent commission under Art. 8a para. 3 of the Government and Administration Organisation Ordinance (GAOO<sup>1</sup>). It ensures non-discriminatory access to the rail infrastructure, to intermodal freight terminals and sidings subsidised by the Confederation and to last-mile rail freight services. As a market-oriented commission, RailCom supervises and provides support to ensure the efficient performance of the rail market (Art. 8m let. b GAOO). RailCom fulfils its legal mandate under Art. 40a<sup>ter</sup> Railway Act (RailA<sup>2</sup>) as follows:

- As a specialist court, it rules on claims and complaints from railway undertakings and other transport companies.
- As a supervisory authority, it conducts ex officio investigations and takes measures to ensure non-discrimination. In this respect, it carries out market monitoring and market surveillance activities. RailCom also applies the 'support supervision' instrument to identify potential discrimination at an early stage, consulting and involving stakeholders concerned. Appropriate measures can then be implemented.
- RailCom works with regulatory authorities abroad, in particular on rail freight corridors.

RailCom updated its Code of Conduct in the reporting year.

### Proceedings and legal investigations

#### Claims and ex officio investigations

RailCom started an ex officio investigation into an operator of intermodal freight terminals under a ruling issued at the end of June 2021. This will look in more detail at whether the operator's prices and discounts respect the non-discrimination requirement. The facilities operator lodged an appeal against this ruling with the Federal Administrative Court. The appeal proceedings were still pending before the Federal Administrative Court at the end of 2021.

RailCom did not have to adjudicate on any complaints or grievances in the year under review.

#### Other procedures and legal investigations

• **Intermodal freight terminal not subject to non-discrimination requirement:** If intermodal freight terminals are subsidised by the Confederation, the operators must grant non-discriminatory access based on the Goods Carriage Act (GCarA<sup>3</sup>) and the associated ruling on funding. RailCom was approached by a facility operator who about 20 years ago had received an interest-free, repayable loan from the federal government in order to purchase a mobile transshipment unit. After ten years in use, the unit had been depreciated and replaced by a new unit, which was paid for by the operator. The operator had fully repaid the loan for the original transshipment equipment. At the beginning of March 2021, RailCom issued an order stating that the operator was no longer subject to the non-discrimination requirement and was therefore free to set prices and discounts for its customers.

- **Access to free-loading facility:** RailCom addressed a complaint concerning non-discriminatory access to a public free-loading facility in western Switzerland. As such facilities are part of the railway infrastructure, the IM must also grant free network access to free-loading facilities. RailCom established that the use of loading sidings or facilities can be ordered and capacity allocated via an ancillary service. Further investigations were still being made at the end of 2021.
- **Query regarding use of siding:** RailCom responded to a renewed enquiry from a siding operator regarding the responsibilities for capacity management on its siding. An initial enquiry had been made in 2020.
- **Query regarding system use in case of speed restrictions:** RailCom answered an enquiry from an RU regarding payment for the use of an IT system operated by another RU to communicate driver-relevant information. Since the IM concerned ensures that all RUs receive this information by alternative means, the RU is not entitled to use this IT system free of charge.
- **Clarification of responsibilities and competences with the capacity allocation body:** With effect from 1 January 2021, Trasse Schweiz AG became a federal public institution and was renamed the Schweizerische Trassenvergabestelle (TVS). RailCom discussed issues of responsibility with the TVS and clarified competences in a number of areas. Together these two federal agencies anticipated possible overlap and each drew up solutions in their surveillance activities.

<sup>1</sup> SR 172.010.1

<sup>2</sup> SR 742.101

<sup>3</sup> SR 742.41





## Market monitoring

### General

In its market monitoring, RailCom systematically checks whether there is any potential for discrimination in its area of responsibility. On an annual basis, it monitors in particular

- the network access conditions that apply to the timetable period
- train path allocation in the annual timetable
- areas of responsibility and operational procedures in the marshalling yards
- access to subsidised intermodal freight terminals.

Furthermore, RailCom deals with a changing list of key topics. Those for 2021 are set out below.

Where developments in the railway industry lead to new potential for discrimination – for example greater digitalisation – RailCom provides support supervision. At the earliest possible stage and with the involvement of the companies concerned, it draws up measures to prevent any potential unequal treatment and to implement an adequate solution in accordance with the law.

### Network access

#### Network access conditions

RailCom carried out the annual audit of the main IMs' publication instruments of the following timetable years (SBB, BLS and SOB), and found no evidence of discrimination.

#### Train path allocation for 2022 annual timetable

In the train path allocation process for the 2022 annual timetable, the capacity allocation body TVS was able to resolve all 275 conflicts by mutual agreement. No bidding took place. RailCom found no grounds for discrimination that would have necessitated intervention.

#### Ancillary service 'Route-setting for shunting runs'

RailCom reviewed the pricing and the management process for the ancillary service 'route-setting for shunting runs' at the IMs SBB, BLS and SOB. This service includes the setting of train paths in the signal box and the necessary agreement between the IM staff and the RU. RailCom agreed measures with the IMs to update the price calculation and to adjust the billing method. For the 2024 service catalogue, the IMs must update the 2010 pricing method based on marginal costs. In addition, under the agreement with RailCom, they are revising and standardising the process of establishing billing quantities based on planned and average values.

### Ancillary service 'Stabling of railway vehicles'

RailCom prioritised the ancillary service 'Stabling of railway vehicles' in its market monitoring activities in 2020. It evaluated the IMs' management process for this ancillary service with regard to discrimination potential and adopted measures to prevent discrimination.

In 2021 RailCom consulted SBB Infrastructure, BLS Netz, SOB Infrastructure and the Swiss capacity allocation body TVS on how best to implement these measures. In accordance with these measures, SBB, BLS and SOB documented and published the available stabling capacities at the 20 stations with the highest demand. RailCom will take further steps in 2022 along with the IMs to better standardise planning activities and document them clearly.

### Improving SBB's integrated railway performance

In the Traffic Control Center (TCC) project, SBB Passenger Services employees who are responsible for train management and customer information are transferred to the control rooms of the SBB operations centres. In 2020, RailCom agreed various measures with SBB Infrastructure to ensure that the divisions of Infrastructure and Passenger Services are separated at an organisational level and their accounts kept separate.

As in the previous year, in 2021 SBB Infrastructure reported to RailCom on the status of the project and the implementation of the measures agreed. RailCom visited the Olten operations centre and clarified open questions in direct discussions with members of the SBB Infrastructure and Passenger divisions, in particular regarding employees employed in both divisions.

### Traffic Management System (TMS)

Together with other industry players, SBB Infrastructure is in the process of developing and gradually implementing a uniform Traffic Management System (TMS). The aim of this system is to automate capacity planning and operations management with a continuous IT-supported process.

RailCom analysed governance of TMS from the perspective of organisation and financing. As part of its support supervision activities, RailCom recommended that SBB Infrastructure ensure greater autonomy and non-discrimination in its organisation and steering processes. Furthermore, RailCom analysed the basic specifications for algorithms used in TMS. It agreed with SBB Infrastructure measures to minimise the discriminatory potential of the algorithms. RailCom will continue to supervise TMS in 2022.

### Capacity planning for construction work and maintenance activities

One focus of supervisory activities in 2021 was capacity management in the event of restrictions due to construction work and maintenance activities (interval planning). RailCom feels it is essential for IMs to inform RUs sufficiently and in good time of any planned restrictions and to involve them on an equal footing. Any conflicts should be resolved in a fair and balanced manner, taking into account the interests of all RUs and transport modes concerned. RailCom analysed how SBB Infrastructure establishes replacement plans and how it involves RUs in drawing them up. It focused on SBB Infrastructure as this is the largest Swiss IM and it plays a central role in interval planning on the standard gauge network in Switzerland. In the second phase of the project, in 2022 RailCom will identify potential for discrimination and agree on necessary measures with SBB Infrastructure. RailCom will also take up the issue with other IMs.





## Symposium

On 26 November 2021, at its annual symposium, RailCom discussed conditions for non-discriminatory interval planning. During discussions with representatives of the rail sector, it became clear that transparency, participation and equal treatment are key to ensuring careful and reliable planning. The presentations and a summary of the panel discussion are available on the RailCom website.

## Last-mile rail freight services

In rail freight transport sector, RailCom has been responsible for ensuring non-discriminatory access to last-mile services since 1 July 2020. This covers services related to the delivery of trains, waggons or waggon sets between rail infrastructure on the one hand and sidings or intermodal freight terminals on the other.

RailCom helped the sector to implement the new requirements under Article 6a of the Goods Carriage Ordinance (GCarO<sup>4</sup>). Besides freight RUs, specialised staff leasing companies, shunting service providers and siding operators who perform shunting services in particular on the last mile, must also comply with the new requirements. Discussions focused on the publishing requirement, whereby companies must publish the basic conditions of service provision, planning and resource allocation as well as the basis for price assessment. RailCom produced a factsheet and a publication template that the companies can use to describe their last-mile services.

## Intermodal freight terminals

RailCom oversaw the non-discriminatory pricing and discounting of intermodal freight terminals subsidised by the federal government. Prices and discounts are non-discriminatory when all users pay the same price for the same service and under the same conditions. Prices must thus be set independently of whether the service is provided for a company's own use or for third parties. Price differences for the same or comparable services must be justified objectively and transparently.

Besides conducting its own analyses, RailCom commissioned a research and consulting firm to conduct a study into the cost structures of the terminals subsidised by the federal government. RailCom also reviewed the publications on terminal access conditions that are required by law and have been agreed with the parties involved. They also held discussions with the terminal operators. On RailCom's recommendation, several operators made changes to their pricing and discount systems. In the case of one terminal, RailCom opened an ex officio investigation, which was contested by the party concerned. The proceedings were pending before the Federal Administrative Court at the end of 2021.

## Superordinate tasks

RailCom has been responsible for superordinate tasks since the Organisation of Railway Infrastructure (OBI) legislative package came into force. It decides on disputes between the system leader and the companies concerned and oversees the non-discriminatory performance of superordinate tasks (Art. 40a<sup>5er</sup> para. 1 and 2 RailA). Currently, the FOT has commissioned a system leader to draw up and implement a solution for seven superordinate infrastructure tasks: customer information, ETCS, railway radio communications, TAF/TAP TSI<sup>5</sup> and traction current supply 16.7 Hz (system leader SBB) as well as train control metre gauge (system leader RhB) and vehicle/track metre gauge (system leader RAILplus).

In the case of six superordinate tasks, in the year under review RailCom issued a statement on the agreement between the FOT and the system leader. A statement on the agreement of superordinate tasks in railway radio communications is expected to follow in the first half of 2022.

RailCom also supported and supervised the system leader SBB Infrastructure in preparing agreements for the superordinate tasks of traction current 16.7 Hz, customer information and ETCS. Under Art. 37 para. 5 RailA, these agreements between the system leader and the companies concerned must regulate the superordinate tasks, participation and cost-sharing.

## Right of participation in investment planning

Since the beginning of 2021, IMs must grant affected RUs and owners of private sidings the right to participate in short- and medium-term investment planning on their network. RUs and sidings owners can request information about projects and have the right to a clear and detailed answer from the IM. RailCom is responsible for formally enforcing this right of participation, i.e. for the participation process, and adjudicates on disputes (Art. 40a<sup>5er</sup> para. 1 and para. 37a RailA). In contrast, the FOT decides on the content of investment planning, e.g. on the inclusion of investment requests submitted by the RUs and sidings owners which are not considered.

The Association of Public Transport (VöV) has formed a working group to support IMs in exerting their rights of participation. It is expected to publish its recommendations for the participation process in 2022. RailCom has provided its support to this working group.

<sup>4</sup> SR 742.411

<sup>5</sup> TSI = Technical Specification for Interoperability, TAF = Telematics Applications for Freight, TAP = Telematics Applications for Passengers





## Market surveillance

### General

As part of its market surveillance activities, RailCom analyses developments in competition and non-discriminatory access on the Swiss rail network. It provides the railway sector and the general public with an insight into its activities on its website and in a newsletter.

### Transport capacity in passenger and freight services

Figure 1 shows developments in **regional and long-distance rail traffic of passenger services** from 2016 to 2020. Rail passenger transport use having risen by 5.5 % between 2018 and 2019, the political measures to control the coronavirus pandemic and changes in public behaviour caused it to fall by 38.6 % in 2020. This marked decrease was largely due to fewer people travelling (decrease in passenger journeys by 36.8 %). The reduction in public transport services also resulted in a 3.0 % decrease in the number of train-kilometres.

### Development of transport capacity in rail passenger transport

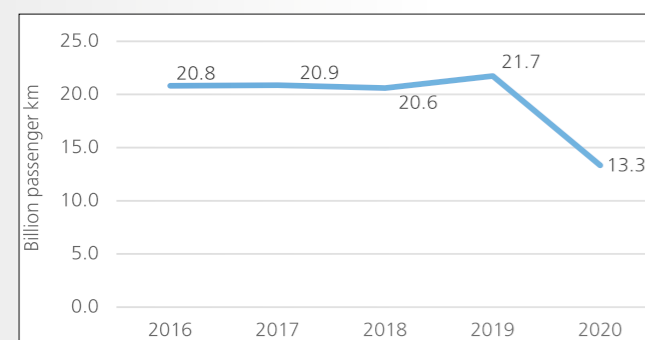


Figure 1: Rail passenger transport use (regional and long-distance) 2016–20. Source: FSO.

Developments in transport use in 2021 continued to be shaped by the effects of the coronavirus pandemic. At the end of 2021 it was still unclear when figures would recover to rereach 2019 levels. Compared to the respective periods in 2019, passenger kilometres were down by -49.3 %, in the first quarter of 2021, -40.5 % in the second and -27.2 % in the third quarter (provisional data FSO, as of 14.12.2021).

Figure 2 shows the development in **rail freight transport (domestic, import, export and transit traffic)**. In 2020, rail freight transport use fell by 5.2 % compared to the previous year, with both the tonnes transported (-5.4 %) and the train kilometres travelled (-5.0 %) decreasing. With the exception of export traffic, slight decreases were recorded across all transport types. Compared to rail passenger transport (Figure 1), the decline in rail freight transport was moderate.

### Development of transport capacity in rail freight transport

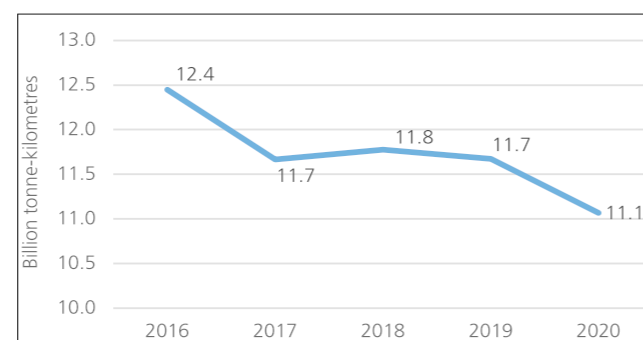


Figure 2: Rail freight transport use (domestic, import/export and transit traffic) 2016–20. Source: FSO.

### Selected key topics

#### Cargo sous terrain (Underground freight transport infrastructure)

The new Underground Freight Transport Act is designed to create the conditions for the Cargo sous terrain project and require operators of underground facilities to provide transport services to third parties and grant access to their facilities on a non-discriminatory basis. RailCom will be responsible for monitoring this and adjudicating on any disputes. The Swiss parliament debated the bill in 2021 and it was passed in December of that year.

#### Federal Act on Mobility Data Infrastructure

On behalf of the Federal Council, the Federal Department of the Environment, Transport and Energy (DETEC) drafted a bill on a National Mobility Data Infrastructure (NaDIM). The objective is to simplify the exchange of mobility data and so make it easier to combine different means of transport. NaDIM is to be structured in an independent, reliable, non-discriminatory, transparent, non-profit-oriented and technically flexible way and will enable companies to provide their customers with combined multi-modal services. RailCom gave its feedback on the draft Federal Act on Mobility Data Infrastructure in the consultation procedure. A large amount of core mobility infrastructure data which can be obtained via NaDIM are made available in the superordinate task customer information. The superordinate task and its supervision by RailCom are not affected by NaDIM and continue in their current form.

The provisionally available quarterly FSO figures for 2021 (as of 14.12.2021) do not differ greatly from those before the coronavirus pandemic: compared to the equivalent periods in 2019, figures were down 3.1% in the first quarter, up 4.5% in the second quarter and up 0.9% in the third quarter.

### Developments of market surveillance

In order to monitor the development of the Swiss railway landscape, RailCom makes information on specific aspects of its mandate publicly available. As part of its market surveillance redesign, in 2021 it revised the three factsheets on rail network, freight and passenger transport that are published on its website. RailCom also worked on supplementing its market surveillance data collection with suitable key figures on non-discriminatory access to intermodal freight terminals subsidised by the Confederation. The results are expected in 2022.



#### Cooperation in rail passenger transport

In a report published in 2021, the Federal Council concluded that Switzerland should continue to rely on cooperation rather than competition in rail passenger transport. Going forward, it proposes that long-distance transport still be operated under a single SBB concession, although it would like SBB to be required to commission other interested transport companies to operate individual lines. In international passenger transport, the Federal Council continues to adhere to the existing cooperation model. In regional transport it proposes maintaining the direct award system. RailCom will continue to follow developments in this area.

#### FOT decision on right of participation regarding Bern-Entlebuch-Lucerne line

Since the beginning of 2021, IMs must grant affected RUs and owners of private sidings the right to participate in short- and medium-term investment planning on their network (Art. 37a RailA). In an initial application of this new right, the FOT concluded that SBB Infrastructure must adjust its investment planning for upgrading the Bern-Entlebuch-Lucerne line to comply with the Disability Equality Act. One RU argued that the proposed planning would cause considerable operational disadvantages (lack of crossing places due to reduction in existing platform facilities).

#### Measures in public passenger and rail freight transport in response to the coronavirus pandemic

In 2020 and 2021, in response to the pandemic, the Confederation adopted two packages of measures to support public passenger and freight transport by rail. Furthermore, in December 2021 the Federal Council agreed measures to stabilise SBB's finances, in particular a reduction in track access charges for long-distance traffic.



## International affairs

#### Independent Regulators' Group – Rail (IRG-Rail)

RailCom prepared data for Switzerland for IRG-Rail's 2021 market monitoring report and attended the working group Access meetings. In this working group, it explained to the regulatory authorities from the other member countries the Swiss specifications for planning and setting capacity on temporarily restricted lines and hubs. Among other things, the working group Access continues to be involved in the redesign of the international timetable process (TTR).

#### Rail Freight Corridors (RFCs)

The aim of rail freight corridors is to promote international rail freight transport. Switzerland is part of RFC 1 (Rhine–Alpine) and RFC 2 (North Sea–Mediterranean). In 2021 the regular exchanges between national regulators and the C-OSS in RFCs 1 and 2 took place. A major topic of discussion was the impact of the coronavirus pandemic.

## Outlook

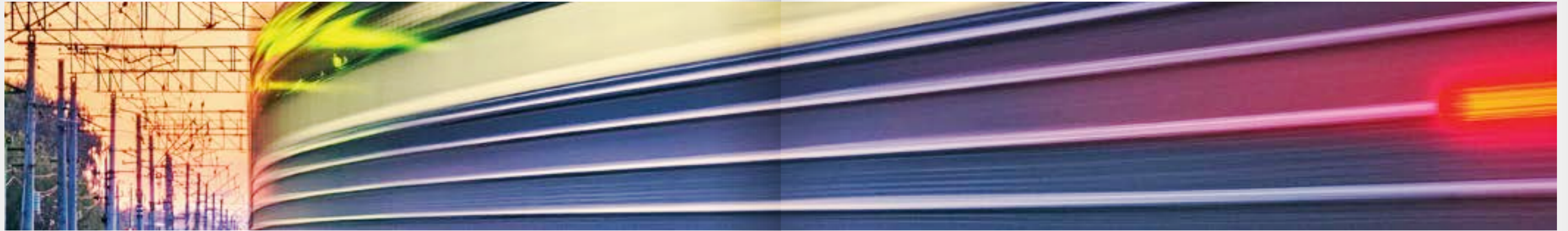
#### Capacity planning for construction and maintenance measures

In 2022, in its supervisory activities RailCom will focus to an even greater extent on interval planning processes, identifying necessary actions and agreeing measures with the companies concerned.

#### Access conditions in slot and capacity allocation at intermodal freight terminals

In 2022, RailCom will focus its support supervision activities on reviewing access conditions in slot and capacity allocation at intermodal freight terminals subsidised by the federal government. Following the review of the pricing and discount systems, RailCom is now working on another key aspect of non-discriminatory access to IFTs.





# RailCom

## Commission

RailCom was established on 1 January 2000. Its members are appointed by the Federal Council and the Commission's head office is in Bern. RailCom is attached administratively to the Federal Department of the Environment, Transport, Energy and Communications. In 2021, RailCom was made up of the following members:



RailCom (from left to right): Anna Ciaranfi Zanetta, Werner Grossen, Peter Bösch, Giuliano Montanaro, Patrizia Danioth Halter, Christof Böhler, Prof. Markus Kern.

Position	Name	Background
Chair	Patrizia Danioth Halter	lic. iur., Attorney-at-law and notary, LL.M., Altdorf
Vice-Chair	Markus Kern	Professor in Law, LL.M., Professor of Constitutional, Administrative and European Law at the University of Bern, Bern
Member	Peter Bösch	Logistics expert, Binningen
Member	Anna Ciaranfi Zanetta	lic. iur., Attorney-at-law, Finance and Economics Department, Canton of Ticino, Dalpe
Member	Werner Grossen	Certified economist, Head of Bern Waste Disposal and Recycling Centre, Thierachern
Member	Giuliano Montanaro	Certified civil engineer EPF/SIA, CEO, alius consulting GmbH, Zurich

## Specialist secretariat

The specialist secretariat supports the Commission in its adjudicatory tasks, carries out supervisory activities and represents RailCom internationally in working groups. During the year under review, the secretariat staff were as follows:

Position	Name	Background
Head	Christof Böhler	Master in International Affairs HSG
Deputy	Andreas Oppliger	lic. phil. nat.
Staff member	Ursula Erb	Dr. oec. publ.
Staff member	Fabia Portmann	lic. iur., Attorney-at-law
Staff member	Katrin Suter-Burri	Dr. sc. nat. ETH
Staff member	Ken Ziegler	B.A. in Economics, University of St Gallen





## Glossary

Abbreviation	Meaning
BLS	Bern-Lötschberg-Simplon Railway
C-OSS	Corridor One-Stop-Shop
DETEC	Federal Department of the Environment, Transport, Energy and Communications
ETCS	European Train Control System
FOT	Federal Office of Transport
FSO	Federal Statistical Office
GAOO	Government and Administration Organisation Ordinance
GCarA	Goods Carriage Act
GCarO	Goods Carriage Ordinance
IM	Infrastructure manager
IRG-Rail	Independent Regulators' Group-Rail
ORI	Organisation of Rail Infrastructure legislative package
RailA	Railways Act
RFC	Rail freight corridor
RNE	Rail Net Europe
RU	Railway undertaking
SBB	Swiss Federal Railways
SOB	Schweizerische Südostbahn
SR	Classified compilation of Swiss Federal Law
UGüTG	Underground Freight Transport Act

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