

INCLUSION. HANDICAP

Procurement of double stack wagons in Switzerland (DOSTO)- A decision for 40 years

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ESCIF congress 2021 in Nottwil, Switzerland
Convention on the Rights of Persons with Disabilities (CRPD)



PROGRAMM SCHEDULE

1. Welcome
2. The Decision of the Federal Office of Transport (FOT)
3. The Decision of the Federal Administrative Court
3. The current procedure before the Federal Court
4. Submissions to Parliament
5. Media and Public relations
6. What happens after the Dosto ruling?



THE DECISION OF THE FEDERAL OFFICE OF TRANSPORT (FOT)



November 2017: 62 new Swiss Federal Railways (SFR) double-decker trains (FV-Fosto) are (temporarily) approved by the FOT.

Procurement of double stack wagons in Switzerland (DOSTO)



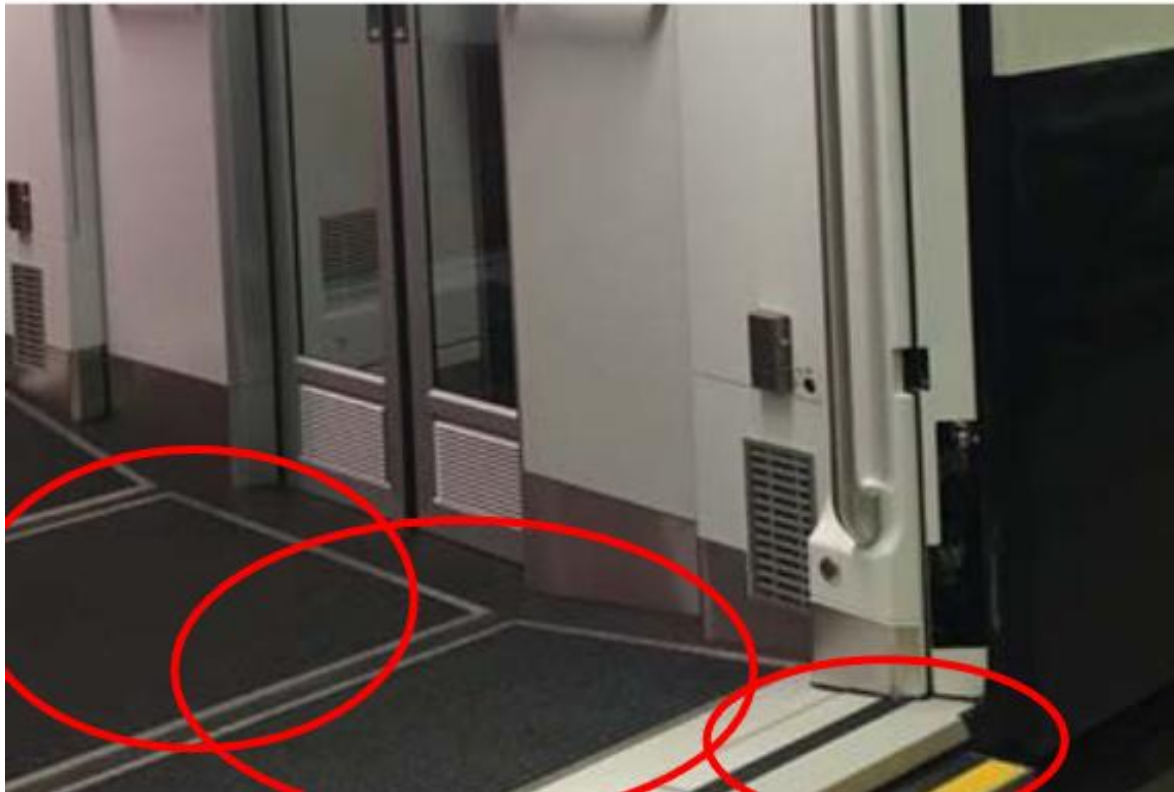
Procurement of double stack wagons in Switzerland (DOSTO)





December 2017: After inspecting a finished train, representatives of people with hearing, visual and physical disabilities come to the conclusion that the FV-Dosto lead to disadvantages in the sense of the DDA (restriction of autonomy/risk of injury).

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COMMISSION REGULATION (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility (Point 4.2.2.8)

Table 6

Maximum slope for ramps in rolling stock

Length of ramp	Maximum gradient (degrees)	Maximum gradient (%)
Paths between the vestibule of a wheelchair accessible exterior door, the wheelchair space, a wheelchair accessible sleeping accommodation and the universal toilet		
Up to 840 mm in single deck carriages	6,84	12
Up to 840 mm in double deck carriages	8,5	15
> 840 mm	3,58	6,25
Other areas of the train		
> 1 000 mm	6,84	12



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Swiss Disability Discrimination Act

Art. 1 - Purpose

¹ The Act has the purpose of preventing, reducing or eliminating discrimination against people with disabilities.

² It lays down general conditions that make it easier for people with disabilities to participate in society and in particular to cultivate social contacts **independently**, and to have access to basic and advanced education and training and to employment.

Art. 3 – Scope of Application

This Act applies to:

(...)

b. publicly accessible public transport facilities (buildings, structures, communications systems, ticket offices and machines) and vehicles that are subject to any of the following Acts:

1. the Railways Act of 20 December 1957,

(...)



- **January 2018:** Inclusion Handicap files a complaint with the Federal Administrative Court
- **January 2018-November 2018:** extensive complex and hard-fought correspondence (IH writes about 500 pages).
- Expertise of the Swiss Paraplegic Association on the dangerousness of the ramps for persons in a wheelchair.



THE DECISION OF THE FEDERAL ADMINISTRATIVE COURT



November 2018: Judgment of the Federal Administrative Court. **Dismissal of all objections with the exception of the complaint regarding the inclination of the ramp (partial approval).**

According to the Federal Administrative Court, the DDA does not include a right to autonomous access to public transport; there is no discrimination, as all technical standards (TSI PRM) are met. Inclusion Handicap is ordered to pay **252,000CHF** in compensation to SFR and Bombardier.



November-December 2018: Consultation of all members of IH regarding the question of referral to the Federal Court.

December 2018: IH Board unanimously decides to proceed to Federal Court, based on:

- **Unanimous support** from the members.
- Pledges from IH members and third party donations to secure the budgeted amount of CHF 1 million to cover the maximum costs of both proceedings (BVG and BG).



THE CURRENT PROCEEDINGS BEFORE THE SWISS FEDERAL SUPREME COURT

Procurement of double stack wagons in Switzerland (DOSTO)



In Sachen

Inclusion Handicap, Mühlemattstrasse 14a, 3007 Bern,

Beschwerdeführerin,

vertreten durch RA Martin Looser und RA in lic. iur. Nuria Frei,
ettlersuter Rechtsanwälte, Klausstrasse 43, Postfach 3062, 8034 Zürich,

gegen

Schweizerische Bundesbahnen SBB,

Division Personenverkehr, Wylerstrasse 123/125, 3000 Bern 65 SBB,

Beschwerdegegnerin,

vertreten durch RA Prof. Dr. iur. Hans Rudolf Trüeb und RA Dr. iur. Martin Zobl,
Walder Wyss AG, Seefeldstrasse 123, Postfach, 8043 Zürich,

und

Bombardier Transportation GmbH,

Am Rathenaupark, 16761 Henningsdorf, Deutschland,

Weitere Beteiligte,

vertreten durch RA lic. iur. Michael Kramer und RA Dr. iur. Michael Lips,
Pestalozzi Rechtsanwälte AG, Löwenstrasse 1, 8001 Zürich,



January 2019: filing of IH's appeal with the Swiss Federal Supreme Court. Main arguments:

- The right to autonomous use of public transport is a human right (CRPD, Swiss Constitution, DDA). It was not invented at the ordinance level.
- The technical standards (TSI PRM) do not guarantee this autonomous access. They must be interpreted in the light of the CRPD, Swiss Constitution, DDA.
- It is not about maximum demands of Inclusion Handicap, but about serious disadvantages of people with disabilities (autonomy/risk of injury)
- The amount of party compensation makes the right of appeal by associations impossible.



March 2019: Complaint responses from SFR and Bombardier (as well as FOT)

- CRPD, Swiss Constitution, DDA do not guarantee a right to autonomous use of public transport by persons with disabilities.
- There is no discrimination of persons with disabilities, as all technical standards have been complied with.
- Inclusion Handicap had early knowledge of all the problems complained about and could/must have intervened earlier.
- Party compensation more than justified. IH as a "powerful association".



May/June 2019: Drafting of replication by IH. Retention/continuation of the core arguments in the complaint:

- Autonomy is at the heart of disability equality law. CRPD, Swiss Constitution and DDA guarantee such a right. This is not absolute. May be restricted if overriding interests are opposed.
- Disadvantages are present. The TSI PRM do not guarantee autonomous use. Moreover, they are not fulfilled throughout (ramp!).
- IH is not late with its complaints and does not act against good faith.
- Party compensations are horrendous and make it impossible to conduct complaints.



- After entering replica IH: Duplicate SFR/Bombardier/FOT. Subsequently 3rd exchange of writs.
- As of now, we still are waiting for the Judgment of the Federal Supreme Court.



**SUBMISSIONS TO THE
PARLIAMENT
IN MARCH AND APRIL 2019**



- Statement on the role of the FOT as supervisory authority and on the approval procedure.
- Counter-arguments to SFR's accusation that IH should have intervened earlier ("res iudicata"/protection of confidence).



Role of the FOT illustrated by the example of the ramp inclination.

May 2018: "The slope of the floor in the entrance area of the SFR FV-Dosto, which is 14.9% as mentioned, is 742 mm and thus complies in every respect and in full with the requirements of the PRM TSI as presented here".

July 2018: "(...) this results in a floor slope of 14.65% on both sides that complies with the regulations. The regulation of the TSI PRM allows 15% maximum slope measured on horizontal track. "

September 2018: FOT maintains its statement that the ramp slope in the FV-Dosto is 14.9%.

May 2019 (letter from FOT to SFR): "SFR is instructed to modify the entrances/exits of the prototype vehicles, which are identified in the expert opinion as not conforming to the standard, so that they comply with the maximum permissible inclination of 15% (...)."



MEDIA AND PUBLIC RELATIONS

Procurement of double stack wagons in Switzerland (DOSTO)



- Strong presence of Inclusion Handicap in the media.
- (Indirect) impact on the perception of the umbrella organization by the public, authorities as well as the media.
Examples:
 - Objection Centralplatz Basel SBB
 - Bus stop Düdingen/Canton Freiburg
 - General increase in media inquiries
 - Communication concerning the Dosto proceedings up to the ruling of the Federal Supreme Court. Keyword: "Autonomous participation in social life".

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Schweiz **Neue Zürcher Zeitung** Caroline Hess

Behinderten-Dachverband geht gegen neuen SBB-Zug vor Bundesgericht

Inclusion Handicap, der Dachverband der Behindertenorganisationen Schweiz, zieht die Beschwerde gegen die befristete Betriebsbewilligung für den neuen Doppelstockzug der SBB ans Bundesgericht weiter. Die neuen Züge seien gesetzeswidrig.

TA SCHWEIZ Mein Profil

Abstimmungen Bundeshaus Politbüro Lockdown

Startseite | Schweiz | Behindertenverband muss SBB und Bombardier 252'000 Fr. zahlen

Behindertenverband muss SBB und Bombardier 252'000 Fr. zahlen

Weil die neuen Doppelstockzüge nicht rollstuhlfreundlich seien, zog der Verband vor Gericht. Das Urteil ist eine Niederlage.

10.01.2019, 14.26 Uhr **LE TEMPS**

ARTICLES BLOGS VIDÉOS CHAPPATTE MULTIMÉDIA EPAPER/PDF

Nouveaux trains des CFF: la mobilité autonome des handicapés est menacée

OPINION **ABONNÉ**

Nouveaux trains des CFF: la mobilité autonome des handicapés est menacée

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Suisse Publié le 10 janvier 2019 à 18:38

Inclusion Handicap recourt au Tribunal fédéral contre les nouveaux trains CFF

PLAY SRF Sendungen

29.01.2018 · 5560 Ansichten **SPÄTER SCHAUEN**

FOKUS: Die Rollstuhlfalle der SBB

Der öffentliche Verkehr muss für alle zugänglich sein, auch für Menschen mit Handicap. Denn gerade dieser Personengruppe gibt der ÖV ein Stück Selbstständigkeit zurück. «10vor10» zeigt, warum jedoch die neusten Bahnwagen der SBB ein Grund für eine Klage des Behindertendachverbands sind.

SRF news
10 VOR 10

MEHR VON 10 VOR 10



WHAT HAPPENS AFTER THE DOSTO RULING?

LITIGATION STRATEGY



Disability Discrimination Act, DDA

Art. 9 Right of organisations for persons with disabilities to appeal and take legal action

¹ Organisations for persons with disabilities operating throughout Switzerland that have been established for at least ten years may take legal action in cases of discrimination that affect a substantial number of persons with disabilities.

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DISCUSSION



**THANK YOU FOR YOUR ATTENTION
AND YOUR INTEREST**