

Preface

I am delighted to submit the 2016 Annual Report of the Office of the Attorney General (OAG). The report includes, in particular, the annual report for the attention of the Supervisory Authority Overseeing the Office of the Attorney General (AB-BA), whose supervisory regulations it takes account.

The core operating activities of the OAG in the reporting year were dominated by the processing of major proceedings, which could only be handled by deploying proceedings teams. Furthermore, numerous proceedings were brought to a conclusion, including some older cases.

Both in terms of operations and administration, the reporting year marked the start of the implementation of the OAG's strategy for the 2016–2019 period of office. In terms of administration, the adjustment of the OAG's organisation to the strategy and creation of new governance structures were the focus. These organisational measures are not an end in themselves, but aim to fulfil as best possible my official mandate to create an organisational purposeful structure for the establishment and operation of the OAG and to ensure an effective deployment of staff and use of financial and material means.

The fulfilment of the OAG's official mandate is overseen by various supervisory and controlling bodies, with whom we were again in regular contact over the reporting year. As such, the OAG is under the undivided, specialist and administrative supervision of the AB-BA and senior parliamentary supervision (audit and finance committees and their delegations). Furthermore, the Swiss Federal Audit Office (SFOA) examined various subjects of the OAG's activities. The role of the courts must not be forgotten in this comprehensive supervision and controlling system. The proceedings actions taken by the OAG are verified and assessed by the Federal Criminal Court of Switzerland and, where applicable, by the Federal Supreme Court.

The OAG's institutional independence was assessed as positive by GRECO (Group of States against Corruption) within the framework of its evaluation of Switzerland conducted in 2016. The FATF (Financial Action Task Force), which also conducted an evaluation of Switzerland in 2016, praised the efficiency of the criminal prosecution of the OAG and of the cantonal law-enforcement agencies.

The OAG looks back on a busy year. This report documents in extracts how varied the legal tasks assumed by the OAG are.

Finally, I wish to thank the OAG's numerous partner authorities at the federal and cantonal levels for the good collaboration and the OAG's employees for their commitment.

Michael Lauber
Attorney General

Berne, January 2017

Contents

Introduction

1	Status and official mandate of the Office of the Attorney General (OAG)	4
2	International co-operation	4
3	National co-operation	6
4	General notes for the legislator	7
5	Legal matters	8

Interview

	Interview with the Attorney General	12
--	-------------------------------------	----

Operating activity

1	2016–2019 strategy	16
2	Initial Case Processing of the OAG	16
3	Cases of public interest	17
4	Criminal offences prosecuted only upon authorisation	22
5	Enforcement of judgments	23

Administrative activity

1	Legal foundations for the organisation	26
2	Adjustment of the support organisation to the 2016–2019 OAG strategy	26
3	Use of financial and material means	27
4	General directives	28
5	Human resources management	29
6	Organisational chart	30
7	Workload of the individual departments	31

Reporting

	Figures and statistics (reporting as at 31 December 2016)	34
--	---	----

1 Status and official mandate of the Office of the Attorney General (OAG)

1.1 Status of the OAG (organisational)

Under Article 7 Law-Enforcement Authorities Organisation Act (StBOG; SR 173.71), the OAG is the prosecutors' office of the Swiss Confederation. It is comprehensively overseen by the Attorney General, who is elected by Parliament and has broad organisational and management competencies. The Attorney General has two deputies, who are also elected by Parliament and have all powers of the Attorney General in the event of representation. The election of the other prosecutors and hiring of further employees is the responsibility of the Attorney General. He is an independent employer under federal staff law.

The OAG is subject to the undivided supervision of a supervisory authority that is also elected by Parliament (AB-BA; articles 23 et seqq. StBOG).

1.2 Official mandate (operative)

As the prosecutors' office of the Confederation, the OAG is responsible for investigating crimes and bringing charges in the area of Federal Supreme Court jurisdiction as specified under articles 23 and 24 Swiss Criminal Procedure Code (CrimPC; SR 312.0) and in special federal laws.

On the one hand, this involves classic state security crimes, i.e. crimes that are primarily directed against the Federation or strongly affect its interests. On the other hand, this relates to prosecution of complex inter-cantonal or international cases of organised crime (including terrorism and its financing), money laundering and corruption. Within the framework of an optional federal competence, the OAG deals with cases of white collar crime across Switzerland or of an international dimension. Finally, the enforcement of requests for legal assistance from foreign law-enforcement agencies is also the responsibility of the OAG.

The OAG conducts its criminal investigations in close co-operation with the Federal Criminal Police (FCP) as the judicial police of the Confederation. The OAG also co-operates closely with the cantonal law-enforcement authorities. As the OAG regularly conducts complex proceedings with international links, close co-operation with foreign law-enforcement agencies is equally of great significance.

2 International co-operation

2.1 FATF¹

The OAG is part of the Swiss working group as an expert, which is involved in the work of the FATF under the auspices of the State Secretariat for International Financial Matters (SIF). In this context, the OAG notes the numerous documents drawn up by the working groups of the FATF; it drafts statements and prepares proposals on the basis of its experience in the areas of prosecuting money laundering and terrorism financing.

2016 was dominated by the continuation of the significant and intensive work in connection with the country assessment of Switzerland conducted by the FATF (fourth evaluation round): The OAG prepared a draft final report for the matters in its remit and attended the meetings with the assessment experts and the plenary session in Paris in October 2016. Within the framework of this country assessment, it co-ordinated and represented the work for all Swiss law-enforcement agencies. The FATF rated as significant the level of effectiveness of the law-enforcement agencies in the remits of the OAG and the cantonal prosecutors' offices, in particular as regards the use of financial analyses, the efficiency of prosecution, confiscation and combating terrorism financing.

In its report², the FATF highlighted, in particular:

- The OAG has specialist units that support the analysis of financial information in complex cases.
- The Swiss authorities show the clear will to prosecute money laundering, as the establishment of specialist units in the OAG proves (ZEB, see p. 16 Item 2).
- Large-scale complex investigations have been carried out at both a federal and cantonal level.
- The Swiss authorities comprehensively apply sequestration orders, which allow temporarily withdrawing from criminals the proceeds and funds from their crimes. Confiscation is a priority for the Swiss authorities, including in cases where no conviction of money laundering can be obtained.
- The Swiss authorities should take measures to increase the severity of the crimes.
- The Swiss authorities should keep statistics on the number and type of investigations, prosecutions and convictions in relation to money laundering, including the predicate offences.

¹ Financial Action Task Force.

² Accessible at: www.fatf-gafi.org/fr/publications/evaluationsmutuelles/documents/mer-suisse-2016.html.

- The OAG takes the necessary measures to prove the financial aspects in terrorism cases, but should work towards imposing dissuasive sanctions.

The OAG is also involved in the “interdepartmental co-ordination group to combat money laundering and terrorism financing”, which identifies and assesses the risks of money laundering and terrorism financing at a national level under the auspices of the SIF by order of the Federal Council. The Federal Council thereby implements the corresponding recommendation of the FATF for the national risk assessment.

2.2 GRECO³

In 2016 Switzerland was assessed by GRECO within the framework of the fourth evaluation round. The subject of this round was Corruption prevention in respect of members of parliament, judges and prosecutors. The evaluation of Switzerland focused on the federal authorities and, in particular, on the OAG. The following issues were discussed:

- Ethical principles, code of conduct and conflicts of interest;
- Prohibition or restriction of certain activities;
- Disclosure of assets, income, liabilities and participations;
- Implementation of applicable rules;
- Awareness-raising.

GRECO’s report on Switzerland was adopted by the plenum in Strasbourg on 29 November 2016.⁴ The internal organisation of the OAG and its independence were subjected to a detailed assessment and deemed to be good by GRECO. However, the lack of an own code of conduct for the activities of the prosecutors was criticised. The OAG was recommended that it rectify this, which it intends to do in 2017.

2.3 OECD⁵ – Working Group on Bribery (WGB)

Within the framework of the WGB, four meetings were held in 2016. A major topic was phase 4 country monitoring. For Switzerland, this country monitoring began at the end of 2016 and will be completed in 2017. Regarding the Law Enforcement Officials meetings in June and December 2016, in the first meeting the focus was on the discussion of the links between bribing foreign

officials as well as tax crimes and money laundering. At the meeting in December, questions of handling large data volumes, accused individuals willing to co-operate and persons with security clearance as well fundamental questions of revealing international corruption were discussed. Another objective of the two meetings was the important exchange of experience among the individual prosecutors’ offices of the OECD member states.

2.4 Genocide Network⁶

Switzerland, represented by the OAG, is a member of the so-called Genocide Network. This network is a subgroup of EUROJUST⁷ and consists of international criminal law practitioners of the prosecutors’ offices and police forces of the EU countries, the US, Canada, Norway and Switzerland as well as representatives of international courts, organisations and NGOs. The meeting held twice a year in The Hague is dedicated to the mutual exchange of information and experience as well as the specialist further training of the attendees.

In a meeting reserved exclusively for criminal prosecutors, a specific exchange with the partner authorities of the relevant countries takes place, which is a key element for the interconnected and co-ordinated prosecution of criminals under international law.

2.5 Attendance at the 21st Annual Conference of the IAP⁸

The 21st Annual Conference of the IAP, which was held in Dublin from 11 to 15 September 2016, was organised by the director of Ireland’s prosecutors’ offices.

The attendees had the opportunity to exchange their experience gained in the various judicial systems relating to the main subject of the conference, the relationship and collaboration between prosecutors and police investigators and their roles in criminal proceedings. The conference also provided the opportunity to discuss in detail other subjects, in particular in the areas of cybercrime, terrorism and organised crime, international legal assistance and the independence of the prosecutor. In addition, the more than 540 attendees were able to expand their contacts through specialist and personal exchange, which results in a better understanding of the relevant legal systems and international co-operation.

3 Group of States against Corruption.

4 GRECO’s report will be published in January 2017. It will be available at: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4_en.asp.

5 Organisation for Economic Co-operation and Development.

6 European Network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes.

7 European Union’s Judicial Co-operation Unit.

8 International Association of Prosecutors.

3 National co-operation

3.1 Co-operation with the Federal Criminal Police (FCP)

The OAG works closely and well with the FCP. The recommendations and measures developed and now implemented within the framework of a working group, which was appointed in 2013 by the AB-BA and the Federal Department of Justice and Police (FDJP) and placed under the supervision of Pierre Cornu (former Attorney General of the Canton of Neuchatel)⁹, have been successful.

3.2 Co-operation with the Swiss Financial Market Supervisory Authority (FINMA)

After developing and testing good practices in the area of prosecuting stock exchange crimes for co-operation with FINMA, these were set out by the OAG and FINMA in a *Memorandum of Understanding* regarding the general co-operation between the two authorities. The aim is to optimise the necessary co-ordination and knowledge transfer within the framework of the legal options. This allowed, in particular in complex criminal proceedings, considering findings of FINMA's investigators in the reporting year. In turn, it was possible to provide FINMA with key information in the same context by granting access to files. Particularly noteworthy is a comprehensive analysis of FINMA, which substantiated an urgent insider trading suspicion and resulted in the further gathering of evidence by the OAG, among other things by means of compulsory measures.

3.3 Co-operation with the Swiss Prosecutors Conference (SSK)

The Attorney General is a member of the board of the SSK and as of 2017 its Vice-President. The active collaboration in the SSK is important to the OAG, because the SSK promotes co-operation between the law-enforcement agencies of the cantons and the Confederation. It aims, in particular, to promote an exchange of views between the law-enforcement agencies of the cantons among one another and those of the Confederation as well as the co-ordination and implementation of joint interests. The SSK promotes a unified practice in the area of criminal and criminal procedure law. In particular, it issues statements on draft laws of the Federation, gives recommendations and influences the opinion-making in matters of criminal and criminal procedure law as well as related areas.

An example of such a co-ordination among the law-enforcement agencies of the cantons and the Confederation is the so-called VW emissions scandal. In this context, the OAG agreed with the SSK to collect all criminal complaints filed in Switzerland in connection with the manipulated VW emissions figures centrally at

the OAG. In April 2016 the OAG referred a good 2000 criminal complaints within the framework of a case referral request to the prosecutors' office in charge in Germany and already conducting a criminal investigation in Braunschweig. On instruction of the Board of Appeal of the Federal Criminal Court, the OAG has in the meantime opened its own investigation into the bodies of AMAG, AMAG AG and Volkswagen AG and conducted the measures required to secure the evidence.¹⁰

9 Press release of the FDJP dated 7 February 2014, www.fedpol.admin.ch/fedpol/de/home/aktuell/news/2014/ref_2014-02-07.html.

10 Ruling of the Board of Appeal of 30 November 2016, BB.2016.192; press release of the OAG of 9 December 2016, www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-64901.html.

4 General notes for the legislator

4.1 Principle of “dynamic legal assistance in criminal matters”

Within the context of multinational white collar crime proceedings, the Swiss legal assistance proceedings is very cumbersome and does not permit the appropriate fulfilment of the requirements of effective international co-operation. If, for instance, several countries request legal assistance from Switzerland (the OAG had up to 19 requesting countries in the same case), the legal assistance proceedings for each one of these countries must be observed in detail. For each individual request, each person concerned must be granted the right to be heard before evidence can be disclosed. The consequence is a considerable administrative workload, which complicates prosecution. Serving the requesting countries, so that they grant co-operation at their end within good time (principle of reciprocity) and simultaneously conduct the investigations required for the Swiss criminal proceedings, is a balancing act. The exhausting of the legal means (although these complaints are dismissed virtually systematically) in such cases results in many months passing before the evidence can be sent abroad.

This problem could be rectified by expanding the principle of so-called “dynamic legal assistance” to all evidence.

This principle provides the option of sending information to the requesting authority, if necessary confidentially, if a guarantee is given that the information will not be used as evidence. Although the authorities may use it for their investigations before it can be used as evidence, e.g. as the basis for a bill of indictment or a judgment in summary form, however, a standard legal assistance proceedings must be conducted (protection of the right to be heard of the person concerned, announcement of a final order including the possibility to appeal). If the complaint is granted, the information sent must be removed from the file. The person concerned does therefore not experience any disadvantages.

This principle is nothing new: it is already intended in Article 18b Federal Act on International Legal Assistance in Criminal Matters (to a limited degree for electronic data traffic; IMAC; SR 351.1), in Article 20 Second Additional Protocol to the European Convention on Legal Assistance in Criminal Matters (which specifies the option of establishing joint investigation groups; SR 0.351.12), in Article 30 no. 3 Treaty on Co-operation with the European Community and its Member States on Combating Fraud in the Area of Indirect Taxes (SR 0.351.926.81), and finally it was recognised by case law for telephone data collected in accordance with Article 18a IMAC. It also exists in the area of legal assistance

in tax (Article. 21 TAAA; SR 651.1) and stock exchange matters (Article 42a para. 4 and 5 FINMASA ; SR 956.1).

Dynamic legal assistance increases the effectiveness of co-operation, on the one hand. It also results in a marked reduction in complaints that merely aim to delay the disclosure of information abroad, on the other hand. It therefore also results in a reduction in the workload. A corresponding change to the practice, which would not affect the rights of the persons concerned, would have to tie in with the key paradigmatic changes, which Switzerland has already carried out and is yet to carry out in the area of co-operation in tax matters (automatic exchange of banking data). It would therefore be practical to put some thought into this matter.

4.2 Amendment of Article 260^{ter} Swiss Criminal Code

A working group consisting of practitioners in the area of prosecution appointed by the Criminal Law Committee of the Conference of Cantonal Justice and Police Directors (KKJPD) developed proposals for an adjustment to the punitive standard regarding criminal organisations (Article 260^{ter} Criminal Code, SCC; SR 311.0) and a new punitive standard for terrorism under the auspices of the Attorney General in the reporting year. In addition to the OAG, the Federal Criminal Court and the cantons of Zurich, Berne, Geneva and Ticino were represented in the working group. The solutions proposed by the working group were supported by the Board of the KKJPD and were presented to the Chair of the FDJP in September 2016.

The working group also considered in its work, in particular, Parliamentary Initiative 14.401 Effective punishment provisions for the prosecution of organised crime (amendment of Article 260^{ter} Criminal Code), motion 15.3008 Article 260^{ter} Criminal Code, Amendment and Parliamentary Initiative 15.407 Creation of punishment provision for terrorism combating.

4.3 Implementation of Medicrime Convention

In connection with the implementation of the Medicrime Convention, the OAG declared its willingness to assume in the future criminal cases processed by the Swiss Agency for Therapeutic Products (Swissmedic), which require secret monitoring measures, are of a significant international nature and have a high degree of complexity (OAG 2013 Annual Report, p. 7, Item 2.3).

The new tasks will result in additional work for the OAG (and the FCP). To what extent additional resources may be required cannot yet be specified. According to past experience, the transfer of proceedings to the OAG will likely be limited to one to two cases a year.

5 Legal matters

However, individual comprehensive and complex proceedings also involve several people from the start of the investigation, as experience shows.

5.1 Access of the law-enforcement agencies to reports of financial intermediaries for FINMA

In its ruling 1B_249/2015 of 30 May 2016 (BGE 142 IV 207)¹¹ regarding the unsealing in an investigation conducted by the OAG into a bank on suspicion of a company's criminal liability, the Federal Supreme Court notes that financial intermediaries must document the observance of anti-money laundering regulations – also for their foreign branches or subsidiaries. This documentation must then be made available to the Swiss criminal proceedings in any event, i.e. also within the framework of an investigation into the corresponding financial intermediaries, as evidence. The criminal procedural self-incrimination privilege (*nemo tenetur*) does not contradict this in principle. The documents and reports edited in the same substantive context for FINMA regarding the observance of anti-money laundering regulations by the financial intermediary are, subject to the condition that they were not created under the threat of punishment, also accessible to the criminal proceedings without restriction and can be used accordingly.

5.2 Scope of client-attorney privilege within the framework of internal bank investigations

In its ruling 1B_85/2016 of 20 September 2016 regarding the unsealing in a criminal investigation conducted by the OAG against a former relationship manager of a bank, within the framework of which it demanded the sealing of documents redacted at its end, the Federal Supreme Court notes that the legal advice from an attorney, also as regards legal questions of anti-money laundering compliance, is protected by client-attorney privilege as a rule. However, the delimitation of the typical professional activity of a lawyer protected by client-attorney privilege from the commercial operating activity not protected by client-attorney privilege also applies here. Anti-money laundering law compliance and internal controlling of legally compliant business operations are by law the core tasks of banks. As such, if a bank outsources its own legal compliance and controlling tasks as well as the associated obligation to correctly document suspicious business processes to a law firm, it may not refer integrally and fully to client-attorney privilege in the event of criminal law investigations. The ruling also qualifies the activity of the law firm tasked with the investigation as an “internal investigation”, for which reason the bank cannot refer to the self-incrimination privilege (*nemo tenetur*).

¹¹ Press release of the Federal Supreme Court dated 23 June 2016, www.bger.ch/press-news-1b_249_2015-t.pdf.

5.3 Access to the file after proceedings concluded with legal force

Access to the file is governed by the Swiss Criminal Procedure Code (CrimPC) from the instigation of the criminal proceedings through to its legally binding conclusion. Under Article 99 para. 1 CrimPC, the processing of personal data, the proceedings and legal protection after the conclusion of a criminal proceedings are guided by the provisions of the data protection legislation of the Confederation and cantons. For the federal bodies, the Federal Data Protection Act (FADP; SR 235.1) applies accordingly.

The Data Protection Act serves to protect the personality and fundamental rights of persons in relation to which data are processed (Article 1 FADP). In harmony with this goal, the right to information set out under Article 8 FADP is primarily deemed to be a means of implementing the protection of privacy. The applicant may – for the purposes of protecting the person of the other parties involved in the proceedings – only be granted access to the data relating to himself as a rule. A disclosure of personal data of other parties involved in the proceedings is only permissible given the conditions under Article 19 para. 1 FADP. If none of these conditions is fulfilled, the file may only be released on an anonymised form or as extracts. For the owner of data collection, this means considerable administrative work, depending on the scope of the file. As information is as a rule provided free of charge (Article 8 para. 5 FADP), i.e. the cost contribution of the applicant is no more than CHF 300 (Article 2 para. 2 Ordinance to the FADP; SR 235.11), it rarely covers the costs.

Occasionally, a request to view the file with regard to a civil proceedings to be brought is filed after a legally valid conclusion of the criminal proceedings. This does not serve to implement the protection of personality, but above all the discovery of evidence. Although such an approach is permissible subject to the abuse of a legal right (see BGE 138 III 425), in such cases – within the meaning of Article 2 para. 1 Ordinance to the FADP – a further imposing of costs to compensate for expenses would be justified. The owner of the data collection should therefore be able to levy a corresponding fee on the basis of a cost regulation. This would also require an amendment to the legal foundations.

Interview

Interview with the Attorney General



“We want to listen even more closely to our employees”

The Office of the Attorney General (OAG) is currently in a major change process. In addition to handling the various proceedings, this means an additional workload for its employees. Attorney General Michael Lauber is aware of this.

The OAG’s employees have a busy year behind them.

Where do you see the milestones of the OAG in 2016?

Michael Lauber (ML): In terms of the proceedings, certainly the fact that we managed to conclude the Behring case, that we made major progress in the Arab Spring area and that we were able to conduct on-site interrogations within the framework of the proceedings against the daughter of the Uzbek President, which was certainly rather special. We also managed to conclude various proceedings in the areas of state security and combating terrorism. Overall, it was a very interesting year in terms of the proceedings; some of them reverberated far beyond the OAG.

What does that mean?

ML: For instance as regards the Behring case. Despite the proceedings’ duration of 12 years, the court did not rule in favour of delay or denial of justice. Despite major procedural delays and attacks on the institutions, the case turned out to be justiciable. I consider that to be a good sign, also for the rule of law in Switzerland.

In the area of combating terrorism, the OAG broke new ground with the so-called Nautilus case – charges were brought against a terror cell in Switzerland for the first time ever.

ML: Indeed, we also aim to further develop the law. In the case of the four Iraqi nationals, this worked in that the Federal Criminal Court clearly interpreted Article 260^{ter} of the Swiss Criminal Code (SCC) as regards

terrorism. Knowing what the involvement in or support of terrorist organisations in the, let’s say, modern world means allows us to progress a great deal in our work.

OAG Profiles, as one of the authoritative projects of the OAG’s fresh orientation, was completed in 2016. Are you able to relate the debates about this within the office?

ML: Yes, I can understand the debates well. I also experience them directly in the so-called OAG Talks, for instance, which are the discussions scheduled for each function with all employees. I understand that such debates arise in a change process. That’s normal, and I want to be available for such talks. At the same time, I’m also convinced that we took the right decision. Whether we always reacted appropriately during the implementation is a different matter.

Have any conclusions been drawn yet from these talks?

ML: I liked the fact that the feedback from the employees was direct and in the overwhelming majority of cases genuinely constructive. I was also pleased that it was occasionally possible to talk very personally and a real exchange of ideas took place. The fact that there is no fear at the OAG to say what one really dislikes and also dares to tell the senior boss gives me a sense of optimism. On the other hand, it’s certainly correct that there is still scope for us in the management to listen more closely to our individual employees. We also expect decisions to be accepted and implemented.

The OAG employees won some weighty decisions before the Federal Criminal Court and before the Federal Supreme Court in 2016. Do you have a favourite?

ML: For me, all criminal proceedings are OAG proceedings and therefore of equal significance. When we prioritise in terms of resources or my presence, for instance for official trips or controlling meetings, briefings or debriefings, then that’s a matter of the current importance.

In the area of cybercrime, (accelerated) proceedings referred to by the OAG as a precedent were thrown out by the Federal Criminal Court. How is the OAG addressing the fact that the realities on the ground are changing at a rapid pace, also for criminal prosecution?

ML: Yes, that is indeed a major challenge. That’s certainly the case when we look at the cyber area. But also in general, when the framework conditions are permanently changing, we need to be able to handle this, meaning that criminal prosecution needs to be embedded in an overall context at the federal level, not only

as regards proceedings planning, but also in terms of the mindset. And this means not that the OAG does make politically decisions, quite the contrary. In the cyber case, in particular, we considered as a team what legal options were still open to us. This can happen if we don't agree with a court ruling on the basis of its merits. We don't always have to agree, and we can also say so. Not every objective criticism, if it is relevant, is institutional criticism.

In the interplay between the various institutions, it is becoming clear that law-enforcement agencies are being tasked with fundamental social issues. Is that the role of prosecution?

ML: Clearly not. I think prosecution must clearly be the state's ultima ratio with its monopoly on the use of force. A limitation to what criminal law is capable of is necessary, i.e. criminal prosecution. We cannot cushion negative developments in society or the political process of addressing intense changes with criminal law. That would be an excessive burden. And also a case of false expectations of what criminal prosecution can achieve.

Does that mean that the judiciary and criminal prosecution are not well-positioned to combat so-called newer phenomena?

ML: If these are mere phenomena of crime, a solution can be found. The Cybercrime Convention is an example as to how new phenomena can be addressed. This may require some legal amendments. That's one area. The other one is the tendency in society to expect a criminal standard for anything that doesn't quite fit in. I consider that to be a precarious development.

The employees of the OAG work not only on politically explosive cases or cases with a strong media interest. How heavy is the organisation's workload?

ML: I do think that the organisation faced a very heavy workload this year. We have now implemented the organisational decisions taken last year. This means the implementation made them tangible and comprehensible. This caused uncertainty. We are undergoing a change process, and that means an additional load on top of the major proceedings. Overall, we have reached a limit as to what the organisation can cope with. But I'm proud of what we've achieved together.

Would the OAG actually be able to cope with another major case in terms of resources?

ML: Well, I tend to ask myself the same question. We proceed in accordance with the principle that we need to make do with our resources in our competencies.

We've seen an accumulation of major cases in a relatively short period of time, and this comes at a time when we had to implement the reorganisation. But given how we've handled our resources over the past five years, I believe we have sufficient credibility to file a resource application in urgent cases.

However, the issue of resources is not only limited to the OAG. How important are the partners in the collaboration with the OAG?

ML: The OAG can only be successful with its partners. I'm thinking here of the police above all, the investigators and supporting special units, and also of the other partners at a federal level, such as the intelligence services of the Federation, the Federal Office of Justice or the FDFA and the cantons. In the complex structure of criminal prosecution at a federal level, we need partners; it won't work otherwise. The OAG alone cannot achieve anything.

And if these partners need to deal with resource matters?

ML: I think the partners will themselves support proportionate resource applications. For instance, we support them in the area of terrorism, where we have also said publicly that additional investigators are needed in the police force and in the intelligence services. The important thing is that we co-ordinate.

After a busy year, fresh challenges need to be addressed. In the criminal proceedings, in the interaction of the various players. What will be your priorities in 2017?

ML: I will try to be even closer to the cases and employees. At the same time, we must not neglect explaining our rather abstract activities to all those who are not in direct contact with the OAG. We are available to parliamentary committees and also to the cantons. I was recently elected Vice-President of the Swiss Prosecutors Conference. And I also see key tasks in that area so that we form a strong union for prosecution. There is more than just the Federation, we also have the cantons that are partly facing the same problems as us.

Operating activity

1 2016–2019 strategy

In the reporting year, the OAG created in various projects new framework conditions for its activities and therefore the backdrop for the implementation of its 2016–2019 strategy:

- As of 1 February 2016, the structural organisation derived from the strategy came into force. The number of departments was reduced. They are now organised by crime or competence areas.
- The National Security, Terrorism, Organised Crime (STK), White-Collar Crime (WiKri) and Mutual Legal Assistance, International Criminal Law departments conduct the criminal proceedings in the corresponding crime area and perform the core tasks of the OAG. The WiKri division is structured locally at the offices in Berne, Lausanne, Lugano and Zurich.
- The Forensic Financial Analysis (FFA) department provides its services directly in the criminal proceedings by analysing specific economic matters.
- The General Secretariat includes organisational units of the support services in the areas of OAG Development, Finance, Human Resources (HR), Law and ICT and Central Services. Initial Case Processing (ZEB), which is directly relevant for the criminal proceedings and judgment enforcement, is also assigned directly to the General Secretariat.
- All function profiles were verified and revised as the basis for implementing the strategy. Accordingly, all employees of the OAG were given new function assignments and employment contracts. The strategic steering of human resources is carried out via the defined, function-specific contingents.
- Together with the management and specialist staff, new governance structures were developed. One focus was on increasing the efficiency in input control (see Item 2). Other focuses were the mapping of all proceedings in the portfolios of the departments (structured by crime areas) and their prioritisation as well as the fulfilment of steering instruments for proceedings controlling.

2 Initial Case Processing of the OAG

Input controlling in the departments of the OAG was strengthened in accordance with the strategic requirements. The aim of the newly created Initial Case Processing (ZEB) is to identify all inputs that need to be pursued in a criminal investigation. All other inputs are processed directly by the ZEB to relieve the departments. The ZEB has registered, analysed and selected all inputs since 1 July 2016 that are not directly connected to an already instigated criminal investigation. They include, in particular, criminal complaints, requests for referrals of proceedings from cantons and reports of suspicion from the Money Laundering Reporting Office Switzerland (MROS).

An initial legal analysis of the inputs is the responsibility of the ZEB team, which was formed from the already existing secretariats of the Operating Committee of the Attorney General (OAB) and the Central Processing of Reports of Suspicion of Money Laundering (ZAG). The operations of the ZEB team are overseen by the OAB, which now performs its main task, i.e. to decide on questions of competence, in co-operation with the ZEB team. Where required, after the initial legal analysis, an in-depth assessment is carried out by a prosecutor. On the basis of these foundations, the OAB decides on the further procedure.

If it is decided that a criminal investigation is to be instigated, the ZEB analysis is passed on to the relevant head of the investigation. It contains the requirements of the OAB in addition to the information drawn up. This method promotes the *unité de doctrine*. In the event of a negative decision regarding the instigation of a criminal investigation or a request for referral of proceedings, the case is concluded by the ZEB in co-operation with the OAB. The persons and authorities involved are informed by the ZEB.

A total of 470 inputs have been processed since 1 July 2016 (without so-called bulk matters). They included 68 requests for referral of proceedings; in about 70 % of these cases, the OAB decided that the Confederation had jurisdiction. Furthermore, among others, 116 MROS reports were processed and some 100 additional inputs (criminal complaints or other inputs) forwarded to the departments for further processing.

The central recording of all inputs at the OAG provides a comprehensive overview with which trends and possible resource bottlenecks can be identified early. The ZEB is also *the single point of contact* for internal queries and for partner authorities.

3 Cases of public interest

3.1 Data theft at the Federal Intelligence Service

A computer scientist at the Federal Intelligence Service (FIS) copied in April/May 2012 some 500 gigabytes of secret or classified and particularly protected data from a security system of the FIS to external data carriers without authorisation, removed them from the premises of the FIS and took them to his domicile. The accused wanted to pass on or sell the stolen data to interested foreign parties or organisations. On the occasion of searching his house, a corresponding pitch letter was found in several copies. Thanks to the rapid intervention of the law-enforcement authorities, it was possible to prevent the highly sensitive data from falling into foreign hands.

This is a severe case of political espionage within the meaning of Article 272 Swiss Criminal Code with a high risk potential for Switzerland. The Federal Criminal Court followed the applications of the OAG as regards the sentence and deemed an individual punishment of five years to be appropriate. The court reduced this sentence by two thirds to 20 months due to diminished responsibility of the accused. The judgment does not yet have legal force.

3.2 Corruption among officials in connection with a major IT project

In January 2016 the OAG filed charges with the Federal Criminal Court against, among others, the former IT section head at the Federal Office for the Environment (FOEN), against the then external Data Access (DaZu) IT project manager at the FOEN as well as against two managers of external IT service providers in this project.

The court largely followed the application of the OAG. On 6 December 2016 it convicted the former external IT project manager of multiple counts of misconduct in public office, multiple counts of accepting bribes and multiple counts of bribery as well as document forgery. It sentenced him to a prison term of 3 years (of which 18 months without parole) and a conditional cash fine of 30 day rates of CHF 100 each. The former IT section head was convicted of multiple counts of misconduct in public office and multiple counts of accepting bribes and sentenced to 2.5 years in prison (of which 15 months without parole) and a conditional cash fine of 21 day rates of CHF 30 each. The two managers of the providers were sentenced to a conditional cash fine of 330 day rates of CHF 300 each or CHF 350 and a fine of CHF 6,000 or CHF 7,000 for multiple counts of bribery and in one case for aiding and abetting misconduct in public office. The judgment does not yet have legal force.

The court deemed the concept of official (Article 110 para. 3 Swiss Criminal Code) to be clearly fulfilled as regards the external IT project manager in both an objective and subjective respect. The reason for this was that he also assumed tasks in the area of awarding contracts at the FOEN. As such, he was assigned direct tasks in the public interest. He had authoritative influence at the FOEN on the decisions on awarding IT contracts (de facto decision-making competence), although he did not formally take the awarding decisions.

For the managers of the providers (as the parties paying bribes), the key position of the IT project manager at the FOEN in connection with awarding IT contracts and therefore his role as an official was clear, they were aware of it and they acted accordingly, i.e. paid him or his company commissions. The court did not accept the reference to the so-called "industry practice" for commissions paid. Under his mandate agreement, the former external IT project manager had to deal with tasks in the area of awarding contracts / procuring resources in the FOEN and had already been compensated for those tasks. The court confirmed the close nexus between the commission payments to the former IT project manager and his official activities or his influencing of the awarding of mandates.

3.3 Terrorism proceedings regarding alleged IS cell in Switzerland

In October 2015 the OAG filed charges with the Federal Criminal Court against four Iraqi nationals in relation to alleged activities for "Islamic State" (IS: see OAG 2015 Annual Report, p. 13). The criminal investigation related, in particular, to the preparation of a terrorist attack in Europe as well as the trafficking of further IS members, as became clear from numerous chat messages. By judgment of 18 March 2016, three of the four accused individuals were convicted of being involved in or in one case supporting a criminal organisation as well as various violations of the Swiss Foreign Nationals Act. One of these three accused individuals was acquitted from the charge of multiple counts of portrayal of violence, the fourth accused on all charges.

The court confirmed that the organisation of the IS constitutes a criminal organisation within the meaning of Article 260^{ter} Swiss Criminal Code. The motive of planning to import in the occidental cultural area their own political and religious world order and combat ideology by means of a ruthless strategy of violence was deemed to be particularly objectionable. The fact that the activity of the accused individuals ended only on their arrest and that the planned criminal activities were directed against those structures that offered the

accused individuals social and financial support were also deemed to be aggravating circumstances. The judgment does not yet have legal force.

3.4 Terrorism proceedings relating to Jihad “tourists”

In February 2016 the OAG filed charges with the Federal Criminal Court against a 25-year-old Swiss national in relation to portrayals of violence and a violation of Article 2 of the Federal act on the ban on the groups of Al-Qaïda and Islamic State as well as associated organisations (SR 122; IS Act) and potentially a violation of Article 260^{ter} Swiss Criminal Code. The accused was arrested by the Cantonal Police of Zurich in early April 2015 on his departure from Zurich Airport and confessed during the criminal investigation that he intended to travel to Syria to the war zone of the organisation of “Islamic State” (IS).

By judgment of 15 July 2016, the court convicted the accused of violating Article 2 IS Act, but acquitted him from the allegation of portrayals of violence. The court noted that the IS Act takes precedence over Article 260^{ter} Swiss Criminal Code as a special act. It emphasised the elements of the offence of propaganda activities for IS, which was thereby confirmed in its existence and directly supported. The court found that, by embarking on his trip, the accused joined the group of actors and moved so closely to the criminal conduct of IS with his personal commitment that he was liable to prosecution under Article 2 IS Act. The judgment does not yet have legal force.

3.5 Criminal investigation in the area of cybercrime (phishing) I

By ruling of the Federal Criminal Court of 12 October 2011 (BG.2011.27), the prosecution of the persons involved in *phishing* who are acting from abroad was referred to the OAG and that of the persons acting in Switzerland as *money mules* to the cantonal law-enforcement agencies. As a result, a proceedings file was opened by the OAG, in which the numerous phishing cases were recorded that had been reported by banks, cantons and private individuals since 2012 to develop a more systematic approach for these cases. More than 455 cases have been recorded to date. Since 2012, numerous requests for legal assistance have been filed with various countries, where the money was transferred that had been withdrawn from the bank accounts of the victims (*internet banking*) with the use of Trojans improperly installed on their computers (*pharming*). In May 2016 the head of the investigation tasked the Cybercrime Coordination Unit Switzerland (CYCO) and the FCP with analysing the cases and data recorded

since 2012 and with conducting the necessary investigations in the area of IT and cash flows in order to identify the main perpetrators acting from abroad.

The results of these joint investigations, in which the Reporting and Analysis Centre for Information Assurance (MELANI) was also involved, were summarised in a report submitted in December 2016. This report shows a series of cases that will result in additional investigations, in particular by way of international legal assistance. The other cases will be dropped, with the option of resuming them if new evidence emerges.

Currently, a procedure for the permanent processing of phishing cases is being developed by the OAG. It includes a selection and registration by the ZEB, followed by police investigations by the FCP, i.e. the Cybercrime Coordination Unit Switzerland (CYCO), in collaboration with the Reporting and Analysis Centre for Information Assurance (MELANI) and the cantonal judicial authorities responsible for the *money mules*.

3.6 Criminal investigation in the area of cybercrime (phishing) II

The accused individuals arrested in Thailand and extradited to Switzerland earned their living from 2008 to 2014 by unlawfully obtaining the details of more than 100,000 credit cards from the US, Great Britain, France and Denmark (*phishing*) and misusing them. The perpetrators used the illegally obtained credit cards to purchase services and goods for themselves or third parties or had money unlawfully paid to them via various money transmitters.

The information regarding the illegally procured credit cards was largely on the encrypted computer of one of the accused individuals. Without that person's co-operation, it would not have been possible to access the information. The accused individuals will be charged shortly in summary proceedings.

The OAG is of the opinion that, due to the provisions of the *Cybercrime Convention* (SR 0.311.43) in conjunction with Article 6 Swiss Criminal Code (jurisdiction under state treaty obligation), Switzerland is also responsible for assessing crimes committed abroad by foreign nationals against foreign victims. This applies all the more as the charges considered only those states that had previously confirmed not to request extradition. The Federal Criminal Court, however, refused to accept the charges in summary proceedings for a lack of jurisdiction regarding the acts committed abroad by the foreign perpetrators to the detriment of foreign victims. It explained in its oral substantiation that the conviction of such acts would equate to interference in foreign matters under international law.

The OAG has released the accused individuals from pre-trial custody and is assessing the further approach.

3.7 Petrobras / Odebrecht proceedings

In connection with the corruption scandal relating to the semi-state-owned Brazilian company Petrobras, the OAG has been conducting investigations since April 2014 in relation to money laundering and acts of bribery in particular. In 2016 some 20 fresh criminal investigations were instigated in these proceedings, as a rule following corresponding reports of suspicion from the MROS. This increased the total number of criminal investigations conducted by the OAG in this context to more than 60. The investigations in Switzerland are being conducted, above all, into Brazilian officials on the suspicion that they had bribes paid to them in accounts in Switzerland in return for awarding public procurement contracts in Brazil, but also into Brazilian construction and supplier companies on the suspicion that they paid bribes via these account structures in Switzerland and unjustly enriched themselves in numerous cases.

In this process, the OAG seized and has largely examined banking documents relating to far more than 1,000 accounts. To date, assets in the total amount of CHF 1 billion, converted, have been confiscated, of which some CHF 200 million has already been returned to the Brazilian law-enforcement authorities on request and with the consent of the account holders concerned.

A special focus of the OAG's investigations was on the proceedings being conducted since summer 2015 into the Odebrecht conglomerate based in Brazil, which is active, among other things, in construction, petrochemicals, energy, engineering, infrastructure and property management. In the criminal investigations into Odebrecht, other companies and numerous private individuals, a key employee of Odebrecht was arrested and interrogated in Switzerland in February 2016. In March 2016 the OAG managed to seize a server system featuring key evidence with the support of the FCP in Geneva and analysed at least part of the data. The investigations into Odebrecht in Brazil also progressed, and at the start of the year initial judgments were handed down against executives of Odebrecht, sentencing them to several years of imprisonment for corruption, among other things. Odebrecht subsequently decided to co-operate with the law-enforcement agencies, and the investigations conducted against it in Brazil, the US and Switzerland were brought to a conclusion.

Odebrecht was found guilty in Switzerland by penalty order under Article 102 Swiss Criminal Code

and fined CHF 4.5 million. By sequestration and determination of a corresponding compensation claim, Odebrecht was obligated in Switzerland to refund proceeds from crimes in the amount of CHF 200 million. Another USD 1.8 billion in total is to be repaid on the basis of corresponding agreements with or rulings of the competent authorities in Brazil and the US.

The co-ordinated conclusions of the proceedings in Switzerland, Brazil and the US are a success for the international combating of corruption and the result of close co-operation and co-ordination of the law-enforcement authorities in charge.

3.8 1MDB criminal investigation

On the basis of the finding that the Swiss financial services hub was affected by the financial scandal of which the Malaysian sovereign fund 1 MALAYSIA DEVELOPMENT BERHAD (1MDB) is supposed to have fallen victim, the OAG instigated an investigation in August 2015. Within the framework of improper financial operations, several billion USD is said to have been embezzled at the expense of that fund, with the operations branching out into Singapore, Luxembourg, the US and Switzerland. This case has caused great furore in the media due to the scope of the fraud, the involvement of certain banks (suspicion of breach of obligations in the area of combating money laundering) and the likely involvement of executives of 1MDB and the sovereign wealth fund of Abu Dhabi in the misappropriation of the funds.

The Swiss investigation, which was instigated on the suspicion of fraud, bribery and money laundering, is directed against Malaysian officials and officials of the United Arab Emirates, who each held several bank accounts in Switzerland to which funds from a criminal origin allegedly flowed. Since 2015, the MROS has reported about one hundred suspicious accounts to the OAG in connection with this international case of fraud. The OAG has frozen several tens of millions of USD as part of a seizure. At the international level, the OAG has noted the refusal of Malaysia to execute its request for legal assistance, whose aim was to clarify the facts and collect evidence in Malaysia. However, the OAG is investigating in close co-operation with the authorities of other countries that are affected by this case and welcomes the effectiveness and speed of this co-operation.

As regards the financial intermediaries affected by this scandal, the OAG instigated on the basis of Article 102 para. 2 Swiss Criminal Code (responsibility of the company) separate investigations into two Swiss banks. They are being suspected of failing to take all necessary and reasonable organisational precautions to prevent the commission of acts of money laundering within the bank.

Both banks have been fined by FINMA. In particular, FINMA ordered the seizure of the profits, which had been generated in violation of the anti-money laundering regulations. The corresponding orders were contested, and the Federal Administrative Court will have to rule on this.

3.9 Further criminal investigation in the area of international corruption

In 2011 the OAG was entrusted with the enforcement of a Norwegian request for legal assistance, which was filed with Switzerland within the framework of a corruption scandal relating to a major company based in Oslo. The company was suspected of having made a corruption payment of USD 1.5 million to a Swiss account of a domiciliary company, whose declared beneficial owner was the son of a Libyan official. The aim was to thereby conclude a trade agreement on collaborating with a Libyan state-owned company.

Within the context of the enforcement of this request for legal assistance, the OAG instigated under Article 102 para. 2 Swiss Criminal Code an investigation into a Swiss company and its two managers in 2012. It had become apparent that the Norwegian company, which was in the cross-hairs of the foreign proceedings, had initiated one of its suppliers, the Swiss company, to make the bribery payment on its behalf. The Swiss company subsequently had the funds repaid by artificially inflating the price for goods it sold to a branch of the Norwegian company on several invoices.

The company, which is the subject of the Norwegian investigation, was sentenced to a penalty notice of 14 January 2014 for bribery by the Norwegian authorities. Furthermore, a manager of the company was convicted of bribery in December 2016 in connection with these facts by a Norwegian court of appeal. On 31 May 2016 the OAG issued three arrest warrants, with which the criminal law responsibility of the Swiss company for aiding and abetting the bribing of foreign officials was acknowledged, while one of the managers was convicted of aiding and abetting the bribery of foreign officials and forging documents and the other manager of forging documents.

3.10 Criminal investigations in connection with world football

In 2016 the proceedings in connection with the International Football Association (FIFA) saw a phase of the investigation results being consolidated. Over the year, various compulsory measures were carried out to secure and collect evidence, including such in close collaboration with partners abroad (Germany, Austria and

France). Furthermore, the OAG was sent information and documents from Germany, Austria, the US and France by way of international legal assistance. It also repeatedly received information and documents from FIFA, be it on request or on an unsolicited basis. Finally, the OAG submitted to the Federal Office of Justice over the year the final binders with the evidence collected in Switzerland, which is to be sent to the US in enforcement of an extradition request and its supplementation.

3.11 Criminal investigation into Behring case

After filing and permitting the charges against the accused, Dieter Behring, in autumn 2015, the Federal Criminal Court held the main hearing from 30 May 2016 until 1 July 2016. By judgment of 30 September 2016, the Federal Criminal Court convicted Dieter Behring of organised fraud and sentenced him to imprisonment of five years and six months without parole. The assets seized by the OAG in the amount of a medium eight-digit figure were sequestered and a compensation claim in the amount of CHF 100 million was filed against Dieter Behring. With a view to the defence situation by a duty lawyer, as criticised by the defence and the so-called “focusing strategy”, the Federal Criminal Court protected the OAG.

The OAG thereby successfully completed a proceedings subject to a referral to the Federal Supreme Court, which was assessed by the presiding judge as a “thorny dragon”, which brought the law-enforcement agencies to the limits of justiciability. The charges filed by the defence against representatives of the OAG and Federal Criminal Court were not accepted. Appeals filed against this are pending.

3.12 Criminal investigation in the area of stock exchange crimes

The OAG investigated the exchange of bank and client information via electronic communication channels (Bloomberg, Reuters) and allegedly manipulative insider trades in the forex trading of a major Swiss bank. Forex traders had exchanged information with other traders within the group and with third-party banks. Measured by the criminal law evidence requirements, the chats lacked in many cases the feature of disclosure of information to external parties. Conversations with traders of other banks either contained only little information belonging to the bank, whose disclosure is protected under criminal law by Article 162 Swiss Criminal Code and is only prosecuted on request, or they were too imprecise in terms of content and did therefore not constitute bank client information.

The forex traders acted in the spot market on behalf of the bank. The trades legally observed the regulations of sales law. The traders did not directly dispose of client assets, but of the assets of the bank in accordance with policies and in a way that did not put the assets of the bank at risk or cause a loss.

The OAG therefore dropped the case against the senior trader on the suspicion of a breach of professional secrecy (Article 47 Banking Act; SR 952.0) and in relation to unfaithful management (Article 158 Swiss Criminal Code). The proceedings thereby revealed a criminal liability loophole, as the exchange of information that provides forex traders with headway which they could use for conclusion within the meaning of an insider trade is *de lege lata* – contrary to securities trading – not regulated and not expressly subject to punishment.

3.13 Criminal investigation in the area of international criminal law

Since August 2014, the OAG has been conducting a criminal investigation into a commander of the United Liberation Movement of Liberia for Democracy (ULIMO) for alleged war crimes. The accused is alleged to have committed war crimes against Liberian civilians in the armed conflict with the National Patriotic Front of Liberia in 1993/1994. Specifically, he is being accused of murder, rape, looting, forced labour and recruiting child soldiers.

The special challenges of the case are, on the one hand, the fact that the circumstances need to be mainly reconstructed on the basis of statements of victims and witnesses, who are predominantly in Liberia. The Liberian state's refusal to grant a request for legal assistance filed by the OAG in November 2014 means that persons willing to make statements from Liberia are forced to travel to Switzerland for the duration of the interrogations. On the other hand, during time relevant for the crimes, both the humanitarian organisations and the national and international press withdrew from the region where the crimes were committed, and as the local population is predominantly unable to read and write, there are hardly any written sources on the events of the war.

4 Criminal offences prosecuted only upon authorisation

4.1 Criminal prosecution of federal employees / members of the federal parliament

The prosecution of federal employees for criminal acts that relate to their official activities or position (excluded are offences in road transport) requires authorisation from the FDJP in accordance with Article 15 Government Liability Act (VG; SR 170.32).

The prosecution of members of the federal parliament for criminal acts that relate to their official activities or position can only be instigated with the authorisation of the responsible committees of both councils (Article 17 para. 1 Parliament Act, ParlA; SR 171.10).

4.2 Prosecution of political crimes

Under Article 66 StBOG, the prosecution of political crimes requires authorisation by the Federal Council. These are cases in which political interests, i.e. foreign policy interests, outweigh those of prosecution, for which reason the national government may intervene in these proceedings as an exception. The Federal Council has delegated the authorisation competence to the FDJP (Article 3 let. a FDJP Organisation Ordinance; SR 172.213.1).

On authorisation under Article 66 Law-Enforcement Authorities Organisation Act (StBOG), the authorisation of the FDJP is also deemed to have been granted in accordance with the Government Liability Act (Article 7 Regulation to the Government Liability Act; SR 170.321).

Regarding proceedings requiring authorisation against Swiss Post employees, the FDJP decided to make a change to the practice in the reporting year. According to this change, the exclusion of the applicability of the Government Liability Act in Article 11 para. 2 Postal Organisation Act (POA; SR 783.1) for the staff of Swiss Post Ltd is to be interpreted in a comprehensive meaning and also rules out the applicability of the Government Liability Act as regards criminal liability. The prosecution of employees of Swiss Post Ltd therefore no longer requires authorisation from the FDJP. A corresponding authorisation application from the OAG therefore became null and void.

4.3 Authorisation applications filed by the OAG 2016

Applications filed with the GS-FDJP ¹ or parliamentary committees ²	Number	Authorisation granted	Authorisation refused	Application null and void	Decision pending
under Article 15 VG ¹	10	8	0	1	1
under Article 66 StBOG ¹	9	8	0	0	1
under Article 17 / 17a ParlA ²	0	0	0	0	0
Total	19	16	0	1	2

5 Enforcement of judgments

Some 700 legally valid rulings of the OAG (penalty orders, orders to dismiss proceedings, etc.) with further need for action in the enforcement area as well as judgments of the Federal Criminal Court were referred to the judgment enforcement service in the reporting year. The enforcement files also contain cases regarding the forgery of official stamps in connection with the motorway toll sticker, for which fine deposits were no longer levied for persons resident in Switzerland and who therefore enter the orderly enforcement process.

Of the above rulings and judgments, seven were referred to the Federal Office of Justice (FOJ) for clarification of the applicability of the federal act on splitting seized assets (SR 312.4; "sharing"), as seizures in excess of CHF 100,000 had been ordered or the seizure was carried out in collaboration with a foreign country. The FOJ completed several sharing proceedings in 2016 from the preceding years and finally seized and booked assets in the amount of some CHF 16.5 million (about CHF 13 million of which for the Federation).

In the reporting year seizures or claims in the total amount of some CHF 20 million were imposed with legal force by the OAG and the Federal Criminal Court. Some CHF 360,000 of that amount is not subject to sharing and can be booked directly with the federal treasury as a seizure or claim. The seizure or claim in the amount of CHF 200 million imposed on Odebrecht (see p. 19 Item 3.7) came into legal force in January 2017.

Administrative activity

1 Legal foundations for the organisation

Under Article 16 Law-Enforcement Authorities Organisation Act (StBOG), the OAG administrates itself as an independent authority detached from the Federal Council and federal administration. The Attorney General bears the responsibility for a purposeful organisation that uses its financial and material means efficiently (Article 9 para. 2 let. b and c StBOG). The OAG keeps its own account and has a global budget. The federal administration submits annually to the Supervisory Authority Overseeing the Office of the Attorney General (AB-BA) a draft cost estimate for the attention of Parliament (Article 17 para. 2 and Article 31 para. 4 StBOG).

Self-administration includes the fact that the OAG is free as a rule in the procurement of the goods and services it needs in the logistics area (Article 18 para. 2 StBOG).

2 Adjustment of the support organisation to the 2016–2019 OAG strategy

Within the framework of implementing the strategy, the Central Office as well as IT & Central Services areas were merged to form the General Secretariat. This created the foundation for an optimised alignment of the services of the support organisation to the needs of the management and operating organisational units. The General Secretariat is broken down into the following areas:

- OAG Development
- OAG Management and Controlling
- ICT and Central Services

2.1 OAG Development area

The OAG's strategic project portfolio is kept in the OAG Development area. All measures regarding the strategy implementation in projects are planned and controlled here. The key projects in the reporting year were:

- OAG 2016: Work was conducted in relation to the governance structures in particular (see also above Item 1).
- OAG Profiles: The focus in 2016 was the implementation of the System ESP management tool, with which the project is completed.
- Vision Joining Forces: Based on a jointly developed vision, a programme is to be initiated to standardise processes and tools (e.g. business and IT architecture) or use of synergies in the co-operation between fedpol and the OAG within the framework of criminal prosecution processes. The Federal Criminal Court was involved within the framework of a needs analysis as a relevant stakeholder.
- New Guisan (G1): The work for the new administrative building was specified further, mainly in the areas of area planning, security, premises and restaurant operations.

2.2 OAG Management and Controlling area

The support services of Legal, Finance, HR and Management Assistance are summarised in the OAG Management and Controlling area. The key challenge for this area in the reporting year was – in addition to ensuring its orderly task fulfilment – the adoption of project solutions in the operations of the OAG.

This included, in particular, the setting up of the ZEB (see p. 16 Item 2), the rolling out of the New Management Model for the Federal Administration (NFB, see p. 27 Item 3.2) and the establishment of central contract management. The implementation of the new organisation and functional adjustments resulted in a heavy workload in the HR area. The accompaniment of the executives in the resolution of HR matters was also continued in the reporting year. Thanks to the centralised use of HR and Legal, in particular, the OAG was able to

3 Use of financial and material means

reduce the number of employees on long-term sick leave and find a solution to some personnel conflicts.

2.3 ICT and Central Services area

In the ICT and Central Services area, the strategy implementation in the setup organisation resulted in changes. They were largely offset in the reporting year thanks to adequate measures and recruitment. The integration in the new General Secretariat was carried out positively and the management structures were gradually established.

The range of services in the ICT and Central Services area was selectively expanded and is to be further structured and expanded in the future. Valuable support services were again provided to the proceedings-conducting organisational units (e.g. data processing for numerous proceedings) and in favour of the overall organisation (e.g. replacement of landline telephony with a contemporary communication solution, internal relocations, etc.) over the reporting year. The subject management in the area of information security and technology was made more professional and presented across the organisation using awareness-raising measures.

3.1 2016 budget

The cost estimate for the expenses of the OAG is CHF 57.7 million for 2016. With the orderly supplemental credit application II/2016, an increase in the Arrest, Investigation and Law-Enforcement Costs credit by CHF 0.5 million was requested, while a complete compensation was carried out for the Material and Intangible Assets, Stocks was carried out. At CHF 37.0 million (64 %), the main share of the cost estimate is made up of personnel expenses. Furthermore, CHF 10.0 million is budgeted for arrest, investigation and law-enforcement costs. The remaining CHF 10.7 million relates to the items of rent, IT material costs, consultancy costs, other operating expenses and write-offs on administrative assets.

Broken down by types of financing, the budgeted expenses consist of the following: CHF 50.1 million is to be allocated the financially effective expenses outside the Federation and CHF 0.3 million to write-offs. Federal internal cost allocation amounts to CHF 7.3 million (in particular for rent, IT costs and other operating expenses). Furthermore, investments in the amount of CHF 3.7 million were budgeted in the IT area and for the replacement of the office's vehicles.

The figures of the 2016 state budget will be published in due course on the website of the Federal Tax Administration (state budgets¹²).

3.2 New Management Model for the Federal Administration (NFB)

Detailed preliminary work was carried out to implement the New Management Model for the Federal Administration (NFB) in 2017 and the rollout of the global budget. The NFB means a new vantage point for steering the OAG. Systematically linking tasks and finances or resources and services results in an improvement of budget controlling. This allows enhancing target- and result-driven administration thanks to improved cost and performance transparency. The NFB forms the basis for the development of a comprehensively standardised management system for controlling and steering in the OAG. The OAG has summarised all services provided by it in a single service group called 'Law-Enforcement of the Swiss Confederation'.

3.3 Audit by the Swiss Federal Audit Office (SFAO)

The OAG was invited to an exchange or audit by the Swiss Federal Audit Office in three areas in the reporting year:

¹² www.efv.admin.ch/efv/de/home/finanzberichterstattung/finanzberichte/staatsrechnung.html.

4 General directives

- *Analysis of the horizontal evaluation of international legal assistance*

The SFAO audits the necessity or relevance of carrying out a horizontal evaluation in the area of international legal assistance. In this context, the OAG was invited to an interview. The information provided by the OAG on the bases of its activities in the area of international legal assistance and its financial aspects supports the SFAO in its decision on conducting a horizontal evaluation.

- *Horizontal evaluation of the management of seized assets*

The SFAO is conducting a horizontal evaluation on the subject of seized assets. The OAG manages a significant amount of seized assets within the framework of its proceedings. When carrying out this horizontal evaluation, fundamental questions arise to delimit the supervisory competencies of the SFAO and AB-BA. In particular, in this context the question must be answered to what extent the SFAO is granted insight into the ongoing proceedings of the OAG and under what conditions such can take place.

The OAG has endeavoured to find solutions with the SFAO. Supporting the horizontal evaluation was associated with a considerable workload for the OAG. The OAG is the first organisation to be audited by the SFAO within the framework of this horizontal evaluation. The horizontal evaluation is being continued by the SFAO in 2017.

- *Extraordinary audit of procurement*

The SFAO is conducting an extraordinary audit of the OAG's procurement. In accordance with the audit framework defined by the SFAO, the OAG answered the questions of the SFAO in writing and orally during two interviews. The SFAO's report on this audit is expected for 2017.

The Attorney General issued the Directive for Employees on Information Security during the reporting year, which came into force as of 1 July 2016. It supplements the existing Integral Security Guideline, which defines the framework conditions for all security areas.

The Directive for Employees on Information Security governs the use of the information and IT equipment at the OAG, including the monitoring of internet and e-mail traffic, access to the rooms of the OAG and employee-related security measures. Its aim is to ensure the secure and economical use of IT equipment and protection of the information being created during its use and of the employees' personality rights. In addition to information security, the directive also includes requirements for and notes on general security and on the protection of the employees.

5 Human resources management

5.1 Workforce as at 31 December 2016

As at the end of 2016, the OAG had a total workforce of 221 employees (previous year: 227) with 202 full-time jobs (previous year: 205). 30 (previous year 36) of the 221 employees are in temporary employment relationships. The employees break down across the sites of the OAG as follows:

	31.12.2016	31.12.2015
Berne	166	165
Lausanne office	25	27
Lugano office	17	19
Zurich office	13	16

5.2 Staff deployment

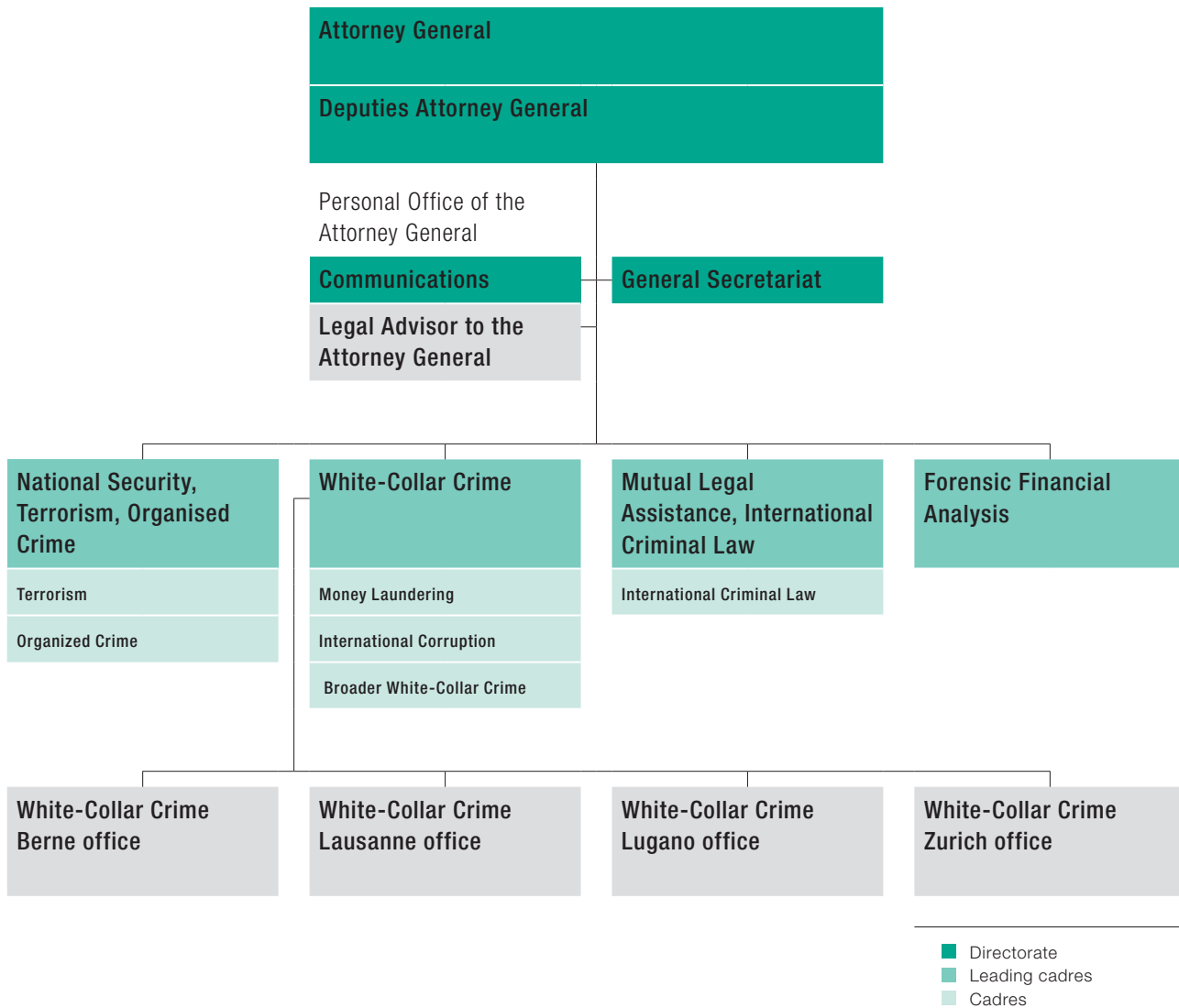
The occupied roles at the OAG are spread across the following functions: Attorney General (1), Deputy Attorney General (2), Federal Prosecutor / Head of Division (5), Federal Prosecutors (37), Assistants Federal Prosecutor (33), Solicitors (13), proceedings assistants and employees of the Chancellery (50), administrative employees (52) and experts and analysts of the FFA division (28).

The OAG has also offered 12 legal stagiaires practical legal training at 31 December 2016.

The average working week is 91.5 %, the average age is 39.6. The breakdown in terms of figures across the national languages among the employees is the following: German 134, French 65 and Italian 22. The OAG employs 118 women and 103 men. Staff turnover was 14.9 % in the reporting year.¹³

¹³ Staff turnover indicates the ratio of departures of permanent employees to the average number of permanent employees over the period from 1.1.2016 to 31.12.2016 per capita.

6 Organisational chart



R. Montanari
Deputy Attorney
General

M. Lauber
Attorney General

J. Rayroud
Deputy Attorney
General

M. Curiger
Secretary General

A. Marty
Head of External
Relations

7 Workload of the individual divisions

7.1 White-Collar Crime (WiKri) division

The first year of the newly structured division was dominated, in particular, by several major proceedings, which were conducted within the framework of a task force and in part across offices. These proceedings are all in a very active investigation phase and therefore resulted in a high operating workload for all parties involved. At the same time, the completion of older proceedings assumed from the former departments was expedited.

Finally, work based on the nature of the department to organise the new unit arose, which had to be addressed in addition to the day-to-day business. To fulfil the key tasks, priorities were set consistently and new synergies also used between the offices. Overall, the deployment and workload of the employees was very heavy.

7.2 National Security, Terrorism, Organised Crime (STK) division

The crime areas of national security, terrorism and organised crime were summarised in one division (STK). Three prosecutors left the division; the departures have not (yet) been filled in full. The intended expansion of the areas of terrorism and organised crime by one additional prosecutor each was only partly carried out. In the terrorism area, two assistant prosecutors were employed instead of a second prosecutor. The role of a second prosecutor in the area of organised crime has not yet been filled due to language and specialist requirements.

As the recorded inputs in the STK division have increased in the area of terrorism in particular, but not only, the lack of staff resulted in additional work for the employees.

7.3 Mutual Legal Assistance, International Criminal Law (RV) division

Within the framework of implementing the 2016–2019 strategy, it was decided, in particular, that the crime area of international criminal law is of strategic significance. For specialist reasons (close link to and interconnection with the subject of international legal assistance), the International Legal Assistance Competence Centre (CC RIZ) and the International Criminal Law Competence Centre (CC V) were merged into the RV division as of 1 February 2016. This resulted in the division being supplemented with one Federal Prosecutor and one Assistant Federal Prosecutor each. Over the current year, all vacant roles were filled.

The workload in the division primarily results from the assigned international legal assistance proceedings and the emerging criminal investigations (largely based on MROS reports) and the criminal investigations in the

area of international criminal law. All employees of the RV division work both in international legal assistance and in international criminal law proceedings. The workload of the RV division is high, as the prosecutors in international legal assistance also co-operate over the longer term and in a time-intensive manner in various major sets of proceedings (e.g. Petrobras or FIFA) of other divisions of the OAG (“joint ventures”).

7.4 Forensic Financial Analysis (FFA) division

The economic and financial specialist knowledge of the FFA (formerly CC WF) was involved in about 120 criminal proceedings, while two sets of proceedings (26 proceedings) used more than 30 % of its resources. These resources continue to be largely used in proceedings relating to corruption, money laundering and the criminal responsibility of companies. In parallel, the division was involved in the operations of the ZEB and in the regular evaluation of the OAG’s practice of handling frozen assets. The continuation of the projects mentioned in 2015 (electronic file editing and digitisation of standardised proceedings files) as well as the evaluation of an application for importing, recording and analysing banking transactions were very work-intensive for the division. They are focusing more strongly on the specialist and technological training of individual employees or teams in order to keep up with the developments in the proceedings. It has also taken various initiatives to promote the transfer of knowledge and experience both within the division and with cantonal financial analysts from German-speaking Switzerland, the Romandie and Ticino.

The deployment of the division took place in a difficult context in terms of resources, which was dominated, in particular, by the longer absence of one employee, the merger of the management of the FFA teams in Zurich and Lugano and a workload that has remained high without change for several years. These circumstances were offset by the employees’ great motivation.

Reporting

Reporting

Criminal investigations	as at 31.12.2015	as at 31.12.2016
Pending preliminary clarifications	112	129
Pending criminal investigations ¹	449	441
National security	77	93
Terrorism	47	35
Organised crime	71	67
International criminal law ²		10
Money laundering	247	231
International corruption	73	82
General white-collar crime	94	85
Suspended criminal investigations	170	210
Pending criminal investigations older than two years	155	186
	2015	2016
Newly instigated	233	190
Completed		
Not accepted	93	158
Suspended	115	94
Referral/delegated/forwarded/returned to canton	16	65
Summary penalty orders ³	580	1094
Charges filed	20	14
Charges filed in accelerated proceedings	5	3
Referral of summary penalty order to court	16	20
Return of the charges	5	1
Operative portion of judgment BStGer ⁴	21	32
	2015	2016
Mutual legal assistance proceedings accepted	145	193
Completion of legal assistance proceedings	144	186
Back to FOJ for delegation to canton	19	27
Mutual legal assistance refused	12	4
Mutual legal assistance granted	72	119
Other completions (e.g. write-off, withdrawal, etc.)	41	36

Passive mutual legal assistance	as at 31.12.2015	as at 31.12.2016
Pending mutual legal assistance proceedings	248	265
Requests received	19	16
Requests being examined	62	61
Mutual legal assistance enforcement	165	180
Complaints proceedings	2	8
Pending mutual legal assistance proceedings older than two years	30	42
	2015	2016
Mutual legal assistance proceedings accepted	145	193
Completion of legal assistance proceedings	144	186
Back to FOJ for delegation to canton	19	27
Mutual legal assistance refused	12	4
Mutual legal assistance granted	72	119
Other completions (e.g. write-off, withdrawal, etc.)	41	36

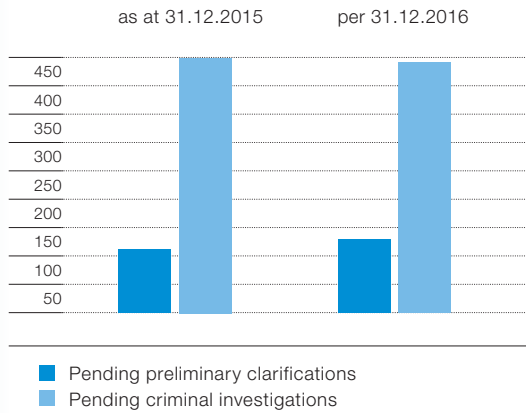
1 Multiple answers are possible for the crime categories

2 The international criminal law crime category is stated for the first time as an own category in 2016

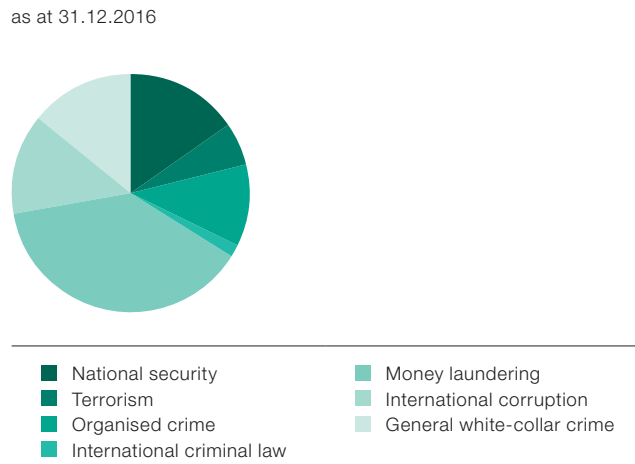
3 A penal order is imposed on a person; it is therefore possible that several penal orders are imposed in one proceedings. For the statistics of the OAG, the number of penal orders is counted.

4 Judgments in summary proceedings and judgments in standard proceedings.

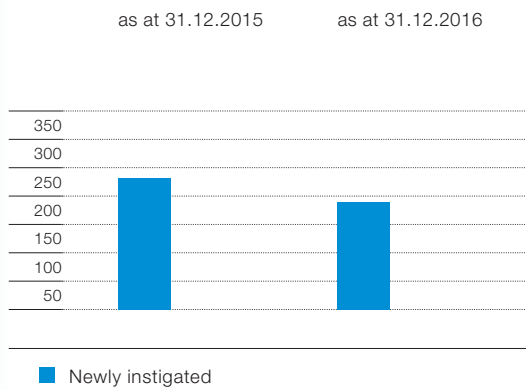
Criminal investigations 2015 / 2016



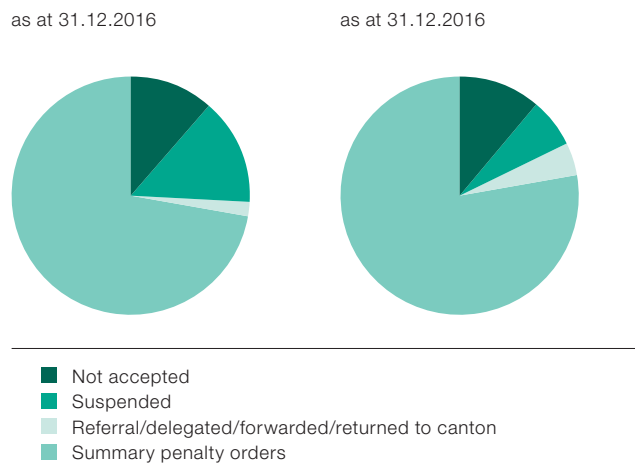
Pending criminal investigations 2016



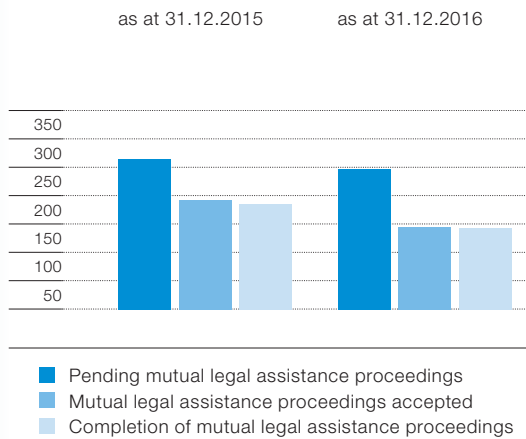
Criminal investigations 2015 / 2016



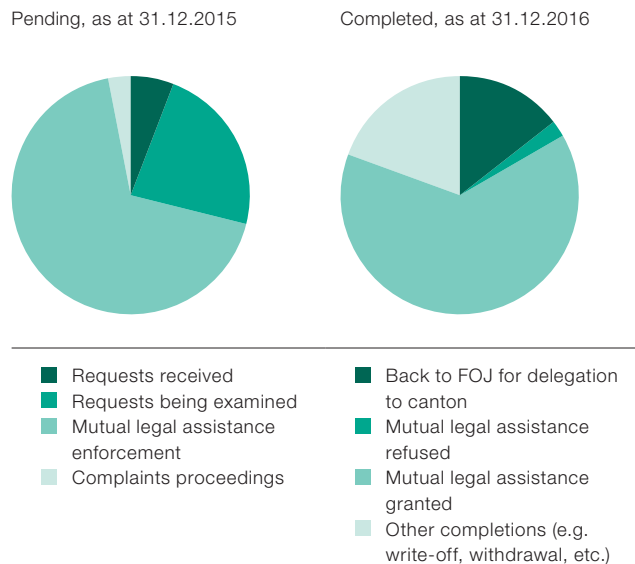
Completed 2015 / 2016



Passive mutual legal assistance 2015 / 2016



Passive mutual legal assistance 2016



Bulk cases	as at 31.12.2015	as at 31.12.2016
Pending bulk cases	445	277
	2015	2016
Newly received bulk cases	1350	1594
Completions of bulk cases	1109	1718
Counterfeit money	227	304
Explosives	283	260
Aviation	22	12
Motorway vignette	436	926
Miscellaneous	141	216

Number and result of the main proceedings before the Federal Criminal Court	2015	2016
First-instance main proceedings before the Federal Criminal Court (charges and referrals of penal orders)		
Number of proceedings	19	26
Of which in legal force as of 31.12.2016	10	12
Of which not or partly in legal as of 31.12.2016	9	14
Number of accused individuals	31	46
Of which convicted	26	30
Of which acquitted	5	16
Summary proceedings		
Number of proceedings	3	5
Of which in legal force as of 31.12.2016	3	4
Of which not or partly in legal as of 31.12.2016	0	1
Number of accused individuals	3	7
Of which convicted	2	4
Of which returned	1	3

Complaints of the OAG with the Federal Supreme Court

Complaints filed in the reporting year	0
Complaints decided in the reporting year (partly filed in the previous year)	5
Of which granted or partly granted	1
Of which dismissed or not accepted	4
Of which irrelevant or suspensory effect	0

Complaints against the OAG with the Federal Supreme Court

Complaints filed in the reporting year	59
Complaints decided in the reporting year (partly filed in the previous year)	48
Of which granted	4
Of which dismissed, partly dismissed or not accepted	41
Of which irrelevant or suspensory effect	3

Complaints of the OAG with the Federal Criminal Court

Complaints filed in the reporting year	1
Complaints decided in the reporting year (partly filed in the previous year)	0
Of which granted or partly granted	0
Of which dismissed or not accepted	0
Of which irrelevant or suspensory effect	0

Complaints against the OAG with the Federal Criminal Court

Complaints filed in the reporting year	200
Complaints decided in the reporting year (partly filed in the previous year)	157
Of which granted	14
Of which dismissed, partly dismissed or not accepted	133
Of which irrelevant or suspensory effect	10

Glossary

AB-BA	Supervisory Authority Overseeing the Office of the Attorney General
CrimPC	Swiss Criminal Procedure Code
FATF	Financial Action Task Force
FCP	Federal Criminal Police
FADP	Federal Data Protection Act
FDJP	Federal Department of Justice and Police
FINMA	Swiss Financial Market Supervisory Authority
FINMASA	Federal Act on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act)
FIS	Federal Intelligence Service
FOEN	Federal Office for the Environment
FOJ	Federal Office of Justice
GRECO	Group of States against Corruption
IMAC	International Legal Assistance in Criminal Matters
OAG	Office of the Attorney General
ParlA	Parliament Act
SFOA	Swiss Federal Audit Office
SIF	State Secretariat for International Financial Matters
SSK	Swiss Prosecutors Conference
StBOG	Law-Enforcement Authorities Organisation Act
TAAA	Federal Act on International Administrative Assistance in Tax Matters (Tax Administrative Assistance Act)
VG	Government Liability Act

Concept

Office of the Attorney General of Switzerland

Editing

Office of the Attorney General of Switzerland

Design concept

DesignDaniel Dreier SGD,
Daniel Dreier and Nadine Wüthrich

Photos

Marcus Gyger

Print

Boss Repro Bern AG

Papier

X-Per White

Edition

German 600 copies
French 300 copies
Italian 200 copies

Copyright

Office of the Attorney General of Switzerland

Other information

www.bundesanwaltschaft.ch

