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# Annual Report

Report of the Office of the Attorney  
General of Switzerland on its  
activities in 2017 for the attention  
of the supervisory authority



# Preface

I am delighted to present the 2017 Annual Report of the Office of the Attorney General of Switzerland (OAG). The report includes the annual report to the Supervisory Authority for the Office of the Attorney General of Switzerland (AB-BA), and complies with its regulatory directives.

The OAG's main operations in the report year once again focused on major case complexes, which can only be handled by setting up case teams. At a more general level, the OAG and its partner authorities have been closely involved in combating terrorism and cyber-crime. In the course of the report year numerous cases were concluded, some of which had been open for a considerable time.

In organisational terms, the report year was marked by the implementation the OAG's strategy for the 2016–2019 term of office. The introduction of new governance structures underlines the importance of clear procedural strategies and the need for a standardised way of conducting proceedings in order to fulfil the OAG's core statutory remit.

In connection with the implementation of the OECD Anti-Bribery Convention, in 2017/2018 Switzerland is undergoing a country examination. The OAG is providing support with the complex work involved in this evaluation. At an international level, the increasing importance of Eurojust, the European Union's judicial cooperation unit, should be highlighted. There has been an increase in coordinated activities benefiting the cantonal prosecution services and the OAG, with the result that the OAG, in consultation with the Federal Office of Justice (FOJ), has expressed its willingness to fund an additional Swiss representative at Eurojust.

The OAG is looking back on a very busy year. This report in its various sections documents the diversity of the statutory tasks that the OAG has to carry out.

In conclusion, I would like to thank the OAG's numerous partner authorities in the Federal Administration and in the cantons for their excellent cooperation, and the OAG's staff for all their hard work.

Michael Lauber  
Attorney General of Switzerland

Bern, January 2018



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# 1 Status and Statutory Mandate of the Office of the Attorney General of Switzerland (OAG)

## 1.1 The OAG's organisational status

Under Article 7 of the Criminal Justice Authorities Act (CJAA, SR 173.71), the OAG is the federal prosecution service. It is headed by the Attorney General, who is appointed by the Federal Assembly and who has comprehensive powers to organise and manage the OAG. The Attorney General of Switzerland has two deputies, who are also appointed by the Federal Assembly and who may exercise all the Attorney General's powers when acting on his behalf. The appointment of the federal attorneys and the recruitment of other staff is the Attorney General's responsibility. He is an independent employer under federal personnel law.

The OAG is subject to the comprehensive supervision of a supervisory authority, whose members are also appointed by the Federal Assembly (AB-BA; Art. 23 ff. Criminal Justice Authorities Act CJAA).

## 1.2 Statutory operational mandate

As the federal prosecution service, the OAG is responsible for investigating and prosecuting offences that fall under federal jurisdiction, as outlined in Articles 23 and 24 of the Criminal Procedure Code (CrimPC, SR 312.0) and in other specific federal legislation.

These firstly include traditional crimes against the state, i.e. offences that are primarily directed against the Swiss Confederation or have significant consequences for its interests. Secondly, they include the prosecution of more complex intercantonal or international cases of organised crime (including terrorism and its funding), money laundering and corruption. The OAG may also assume jurisdiction in cases of white-collar crime that have a national or international dimension. Lastly the OAG's tasks include the execution of requests for mutual assistance from foreign law enforcement agencies.

# 2 International Cooperation

## 2.1 FATF<sup>1</sup>

The OAG participates as an expert in the Swiss working group led by the State Secretariat for International Financial Matters (SIF) that is involved in the work of the FATF. In this connection the OAG analyses the numerous documents prepared by the FATF's working groups; it drafts opinions and proposals based on its experience in prosecuting the offences of money laundering and terrorism financing.

In 2017 the focus was on implementing the FATF recommendations on shortcomings identified in the country examination concluded in 2016 as part of the fourth evaluation round. Switzerland is therefore currently involved in a follow-up process and is working to prepare its first follow-up report, which must be submitted to the FATF in February 2018.

As part of this work, the OAG participated as the representative of the Swiss prosecution authorities in the ad-hoc group that is preparing the follow-up to the evaluation report. It has also been involved in the review and revision of statistics that are required for the evaluation in connection with the OAG and the cantonal prosecution services, and in coordinating and raising awareness in the cantons for the FATF recommendations.

The OAG also took part in the "Interdepartmental Coordination Group for Combating Money Laundering and Terrorism Financing", which, acting on behalf of the Federal Council and under the leadership of the SIF, is responsible for identifying and assessing money laundering and terrorism financing risks in Switzerland and through which the Federal Council implements the related FATF recommendation on the national risk assessment. In this context, the OAG was involved in drawing up the report published in June 2017 on the risks in relation to money laundering and terrorism financing in non-profit organisations.<sup>2</sup>

## 2.2 GRECO<sup>3</sup>

In 2016, GRECO conducted the fourth evaluation of Switzerland, assessing the effectiveness of the country's mechanisms for preventing corruption among members of parliament, judges and public prosecutors. With regard to public prosecutors, GRECO directed its attention towards the OAG and issued two recommendations that directly concerned the OAG:

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1 Financial Action Task Force (working group on measures to combat money laundering).  
2 Available at <https://www.news.admin.ch/news/message/attachments/48921.pdf>.  
3 Group of States against Corruption.

- That the work in progress with a view to the adoption of rules of conduct for members of the Attorney General's Office of the Confederation be completed, that the resulting rules be accompanied by explanatory comments and/or practical examples and that they be brought to the attention of the public, and (ii) that additional implementing measures be taken, such as offering confidential advice and practical training for federal prosecutors (paragraph 244);
- That measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning prosecutors, including the possible publication of the relevant case law while respecting the anonymity of the persons concerned (paragraph 281).<sup>4</sup>

On 1 July 2017, the Attorney General issued a directive entitled "Code of Conduct of the Office of the Attorney General of Switzerland", which applies to all OAG employees. The employees were informed of the changes that result from this directive. Worth noting above all are stricter and more precise regulations on secondary occupations, own businesses and informing superiors when compared with Article 91 ff. of the Federal Personnel Ordinance (FPersO; SR 172.220.111.3). In addition an advisory committee has been set up, with the main tasks of answering questions from employees and recording case histories. The Code of Conduct was published in the autumn of 2017 on the OAG website (see p. 28, 4 and 5).

The second recommendation made by GRECO has also been taken into account, in that the OAG decided that any disciplinary investigations opened or carried out in the report year against federal attorneys will be mentioned in a special section of the annual report. This is a new feature of the report (see p. 29, 6.3).

### 2.3 OECD<sup>5</sup>

In connection with the implementation of the OECD Anti-Bribery Convention, Switzerland is undergoing a Phase 4 country examination in 2017/2018. Experts from two contracting states – in this case Belgium and Austria – are responsible for conducting the examination. Switzerland filed a comprehensive statement in June 2017 in response to an extensive list of questions from the OECD. In September 2017 the experts and members of the OECD secretariat paid a one-week visit to Bern. Every day, several panels were held with various experts from the Confederation, cantons, courts, universities, corporate groups and SMEs from various economic sectors. As it has jurisdiction to prosecute international corruption cases, a team of several persons from the OAG led by a deputy attorney general was involved both in numerous panels and in drafting Switzerland's statement.

A draft of the OECD's report was sent to Switzerland for comment at the end of 2017. In March 2018, the OECD's *Working Group on Bribery* will approve a final version of the report in a plenary session. As part of the prior consultations, Switzerland, including the team from the OAG, will comment on the examination report and its recommendations and will be able to submit proposals for consideration in the plenary session.

### 2.4 Genocide Network<sup>6</sup>

In the report year, the OAG, acting as an observer, attended the 22<sup>nd</sup> and 23<sup>rd</sup> meetings of the European Genocide Network in The Hague. This network, which comprises practitioners in the field of international criminal law from prosecution services, the judiciary and the police, offers members from EU countries and observers from Canada, the USA, Norway and Switzerland the opportunity to exchange experiences and information and learn more about their specialist field. The topics considered by the meetings in the report year included the 'international, impartial and independent mechanism for investigating persons responsible for the most serious crimes under international law committed in Syria since March 2011', 'Frontex and the analysis of migration flows', 'Europol and its new competencies on core international crimes', 'Benefits and risks to collaboration between prosecution authorities and NGOs' and an 'Initiative for a new treaty on mutual assistance for core international crimes'.

4 The GRECO report with its recommendations is available at <https://rm.coe.int/16806fceda>.

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.

In addition, representatives of prosecution authorities were able to hold discussions at meetings specially reserved for them for the purpose of ensuring the networked and coordinated prosecution of core international crimes.

## **2.5 Permanent Working Group on International Criminal Law**

OAG representatives regularly attend the annual meetings of the Permanent Working Group on International Criminal Law. The Permanent Working Group was established in 2005 with the aim of providing a forum for German-speaking scholars and practitioners of international criminal law.

The 13<sup>th</sup> annual meeting of the Permanent Working Group was held on 12 and 13 May 2017 in The Hague, at the Institute for Global Justice.

On a theoretical level, the Permanent Working Group discussed aspects related to developing provisions and securing justice in international criminal law, the recent case law of the International Criminal Court and the most recent developments on the definition of the crime of genocide in German law. On a more practical level, the participants were given an insight into the activities of the newly created Kosovo Specialist Chambers and Specialist Prosecutor's Office at the Federal Court of Justice and into the practices of the Public Prosecutor General, who is responsible for the prosecution of offences under the German International Criminal Code (VStGB). In addition, the Permanent Working Group considered the activities of the International Criminal Tribunal for the former Yugoslavia, which ceased to exist at the end of 2017.

## **2.6 Participation in the 22<sup>nd</sup> Annual Conference of the IAP<sup>7</sup>**

The annual conference of the IAP, which was organised by the Prosecutor General of the Supreme People's Procuratorate of the People's Republic of China, took place from 11 to 14 September 2017 in Beijing.

The principal theme of the conference, "Prosecution in the public interest – facing the challenges and opportunities in changing societies", and the various aspects associated with this issue such as prosecution in the public interest, the challenges of prosecution and judicial cooperation in the digital era and the difficulties of prosecution in large cities, gave the participants the opportunity to discuss their own experiences. In the course of the conference, specific questions about

matters such as digital evidence, radicalisation and subcultures were also dealt with. More than 450 participants from 97 countries had the opportunity to meet and speak to each other and thus expand their own contacts. In the run up to the conference, the OAG also attended a meeting of the "Association internationale des procureurs et poursuivants francophones" (AIPPF) and its annual general meeting.

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<sup>7</sup> International Association of Prosecutors.

## 3 National Cooperation

### 3.1 Cooperation with the Federal Criminal Police (FCP)

The OAG conducts its investigations in close cooperation with the FCP. Cooperation with the FCP ran smoothly in the report year and may justifiably be regarded as good.

### 3.2 Cooperation with the Federal Intelligence Service (FIS)

Cooperation between OAG and FIS in the report year was good, both in general terms and in specific cases.

The Swiss authorities involved in combating terrorism coordinate and optimise their work with the aid of the operational coordination system TETRA (TErrorist TRACKing). In the area of counter terrorism, the coordination work between the OAG and the FIS is now based on the TETRA-Case instrument. At these weekly meetings, all known cases are discussed.

### 3.3 Cooperation with the Swiss Financial Market Supervisory Authority (FINMA)

The OAG welcomes its good cooperation with FINMA, primarily in relation to stock market offences and money laundering offences. As a result, the OAG has successfully conducted several criminal proceedings based on reports or decisions by FINMA. Conversely findings obtained by FINMA based on compulsory measures ordered by the OAG have enabled FINMA to make progress with investigations in their own proceedings. Thanks to these synergies, state action has been made more effective in several cases.

### 3.4 Increased cooperation with the tax authorities

The Federal Tax Administration (FTA) and the OAG intend to intensify their cooperation in order to exploit the synergies that their respective spheres of activity offer. The OAG's investigations occasionally make it possible to identify tax irregularities that could lead to prosecution under the law on tax offences. Conversely, ongoing tax proceedings may reveal practices that could become the object of an investigation by the OAG.

In order to optimise cooperation in this area and facilitate reciprocal requests for mutual assistance, the OAG and the FTA's Penal Affairs and Investigations Division have set up a *single point of contact* to act as a link between the two authorities.

### 3.5 Cooperation with the Conference of Swiss Public Prosecutors (CSPP)

The Attorney General has been vice-president of the CSPP since the report year. The OAG regards it important to participate actively in the CSPP, as the CSPP

encourages cooperation between cantonal and federal prosecution services. In particular, it aims to achieve an exchange of views between the cantonal prosecution services themselves and with federal services as well to coordinate and uphold common interests. The CSPP encourages uniform practices in relation to criminal law and the law of criminal procedure. It comments on federal legislative projects, issues recommendations and influences opinion on issues relating to criminal law and the law of criminal procedure and related fields.

The priorities for cooperation include consolidated CSPP opinions on a variety of items of draft legislation that are of significance to the cantonal prosecution services and the OAG. The CSPP thus voiced its criticism during the consultation phase on the implementing ordinances for the totally revised Federal Act on the Surveillance of Postal and Telecommunications Traffic (SPTA). It also commented in detail on the comprehensive legislative project relating to amendments to the Swiss Criminal Code in connection with the approval and implementation of the Convention of the Council of Europe on the prevention of the terrorism and the strengthening of instruments available under the criminal law to deal with terrorism and organised crime.

The Attorney General also chairs the CSPP's working group on white-collar crime. In the report year, this working group focused in particular on procedures for obtaining electronic bank records, the results and recommendations of the FATF evaluation report (fourth evaluation round), the criminal statistics to be compiled for the FATF about the effectiveness of money laundering and terrorism financing prosecutions, and the issue of cybercrime.

## 4 General Information for Parliament and Legal Issues

### 4.1 Change in jurisdiction for “vignette cases”

The motorway vignette<sup>8</sup> is technically an official stamp that may not be forged or altered. In terms of Article 245 of the Swiss Criminal Code (SCC, SR 311.0), anyone who manipulates a vignette or uses it on more than one vehicle faces a custodial sentence of up to three years. Under the law, the OAG has been responsible for prosecuting such offences (Art. 23 para. 1 let. e CrimPC).

In order to relieve the OAG of the burden of prosecuting such petty offences, Parliament used the bill for the complete revision of the Fixed Penalties Act (FixPenA) as an opportunity *inter alia* to implement the Favre [Ribaux] Motion 13.3063 (“The Office of the Attorney General of Switzerland should concentrate on its real tasks”) and decided that the falsification of motorway vignettes will now be prosecuted and adjudicated at cantonal level.

The totally revised FixPenA was approved by Parliament on 18 March 2016. However, before the Federal Council can bring the entire FixPenA into force, an amended will be required to the Fixed Penalties Ordinance (FixPenO). Because of the results of the consultation procedure on the FixPenO, it will not be possible to bring the revised FixPenA and FixPenO and the new list of penalties into force before 2019.<sup>9</sup> Accordingly the Federal Council decided on 22 November 2017 to bring the change in jurisdiction for “vignette cases” approved by Parliament and the amended Article 23 paragraph 1 letter e CrimPC and Article 15 paragraph 1 of the National Highways Charge Act (NHCA, SR 741.71) into force on 1 January 2018 (AS 2017 6559, S. 6565).

### 4.2 “Dynamic mutual assistance”: Early transmission of surveillance reports stopped

The OAG executed a French request for mutual assistance requiring the telephone surveillance of suspects resident in Switzerland. The French authorities requested transmission of the result of the surveillance before the suspects had been informed that it had been carried out. The intention was to prevent the suspects from destroying evidence in France before it could be seized. The OAG agreed to this request. Unfortunately, the Federal Supreme Court (BGE 143 IV 186) decided that there was no statutory basis for early transmission even though such transmission was justified in the interests of bringing a successful prosecution. The Federal

Supreme Court held that the transmission was unlawful and stated that it was the responsibility of Parliament to change the law in this area.

This judgment illustrates the inadequacy of the current mutual assistance system for dealing with cross-border crime. A bill for the partial revision of the Federal Act on International Mutual Assistance in Criminal Matters that will address this issue is being drafted.

### 4.3 Continued development of practices relating to Article 53 SCC

Evaluating, handling and concluding a specific case scenario in the field of corporate criminal law has revealed – vicariously – the new practice of the OAG of no longer recognising reparation in terms of Article 53 SCC as grounds for not bringing proceedings against transnational companies. In reaching this decision, the OAG accorded more importance to the interest of the general public in a prosecution, the principle in criminal procedure that reported crimes must be investigated and the need to avoid any appearance of ‘selling indulgences’ in such situations than to the fact that the company concerned had voluntarily reported its own criminal conduct (see p. 20, 4.10).

A voluntary report, together with active cooperation from the outset, comprehensive support with enquiries, implementing measures aimed specifically at rectifying recognised organisational deficiencies and not least the financial capacity of the company were criteria regarded as being worthy of special consideration when deciding on the penalty.

In line with foreign, in particular Anglo-American, instruments and forms of disposal as well as certain international trends that can be observed, the OAG has also used its discretion in order to take suitable account of the economic and financial consequences for the company concerned both in Switzerland and abroad. For example, it has expanded – within the statutory framework – the content of a summary penalty order issued so as to include preliminary remarks, a history of the proceedings and other assessments and shown a willingness to include additional explanations of the legal context.

<sup>8</sup> Sticker affixed to the vehicle windscreen as evidence of payment of the charge for using national highways.

<sup>9</sup> Federal Council press release dated 22 November 2017, available at <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-68901.html>.





# Interview

## Interview with the Attorney General



### “The Office of the Attorney General must keep fit”

The Office of the Attorney General of Switzerland (OAG) has consistently tailored its strategy and organisational system towards combating crime efficiently, whether in the national or the international environment. Attorney General Michael Lauber finds the way his staff are facing up to this change especially pleasing.

### **Attorney General, two years ago you began implementing the strategy for 2016–2019, at the same time as re-organising the OAG in line with this strategy. Where does the OAG stand today?**

Michael Lauber (ML): The current cases show that re-organisation and the introduction of a new form of governance were necessary; in short, without this strategy, the OAG would not be able to carry out its core tasks as a self-governing authority. You can only deal with major case complexes through teamwork. You can only deal with international cases expeditiously if you have clear procedural strategies. The OAG can only act effectively and earn respect if it has a consistent approach to fundamental procedural and substantive issues, what we call a *‘unité de doctrine’*. From time to time, courageous decisions lead to public controversy. But they can also stimulate interest among the highly motivated and highly qualified people who might wish to join our team. So right now the OAG is in a good place and has emerged from its reorganisation in good shape.

### **You mean the effects can already be seen at case level?**

ML: In the fight against terrorism, it is clear to everyone how effective a *‘unité de doctrine’* and clear procedural strategies are. What is not so immediately obvious to the general public are the positive effects in complex money laundering and international corruption cases. In these areas, effective controlling is key: I don’t want any more new cases like the old ones and, by means

of the procedural strategies demanded, I want to achieve a situation where, even in enormous international cases, the principle that criminal cases must be brought to court in good time can be respected.

### **And how have the staff implemented this strategy?**

ML: The case portfolios show the cases the OAG regards as a priority. The Directorate holds regular resources meetings, which means that a constant evaluation has to be made of resource issues in the sections. Regular monitoring by our controlling section requires case managers not only to deal with the case itself but also to keep in mind what is happening around it. I have noticed an increased awareness in the office of issues relating to the OAG’s remit in general.

### **As a consequence of globalisation, cases are getting bigger and more complex. Does the OAG have enough resources to deal with these cases efficiently and effectively?**

ML: You are right to suggest that a large majority of cases are complicated and have an international dimension. At the same time, the law demands that although we must act independently, as an institution we are still subject to certain important parliamentary procedures. This means that Parliament ultimately decides from an overall perspective on what resources are made available. In my experience, Parliament is willing to allocate the OAG additional resources if there are credible reasons for doing so. This is why the OAG will be able to increase the number of assistant federal attorneys in its white-collar crime team in 2018.

### **Will this help to reduce the heavy workload that the staff have been dealing with for years?**

ML: Basically, the cases come up in the way they come up. In organisational terms, with sensible procedures, careful triage and strict prioritisation, we can help make sure that the workload is kept within certain limits. Institutionally, we can try, by raising awareness in Parliament and among the general public, to ensure that expectations remain realistic as far as law enforcement is concerned. At an individual level, by achieving a decent work-life balance – by showing a healthy commitment to work and also by keeping a healthy distance from work – we can all help to ensure that the burden stays reasonable. As an employer, I am open to flexible models such as part-time work or job sharing, but I also have to keep an eye on our operational processes. As a whole, the OAG’s employees can support one another in coping with the daily challenges, for example by working well with their colleagues in other sections.

**Last year, the OAG issued a code of conduct. Why now and what is special about it?**

ML: The OAG has been looking carefully into the question of professional ethics for quite some time. When implementing the strategy and the reorganisation, these ideas were put into specific terms and issued as a code of conduct on 1 July 2017. I also see the code of conduct as a useful platform on which to develop the OAG culture. I would like the code to be expanded to include specific practical examples; I don't want it to remain a paper of limited relevance to our lives and work. As a result, the OAG has set up an advisory committee in-house, and that is also a special thing about our code of conduct; I am rather proud of that.

**A different subject: The OAG is in the news practically every day. Is this because of its big international cases, or how do you explain it?**

ML: I welcome a public debate about the cases that the OAG investigates and the related fundamental questions that commonly arise, about criminal law and its function in society. In our perception, these discussions about international cases, those involving large sums of money and/or concerning familiar personalities for example, are normally conducted in an effective way in the media. For the individual citizen, however, these cases are often more abstract and more remote than offences that they might be directly confronted with, such as burglaries or road traffic offences. At the same time, I see that society commonly expects the criminal law to be used to achieve what are actually political objectives. The criminal law though is no cure-all and cannot live up to these kinds of expectations.

**Recently you said in the media that you want to develop a centre of excellence in the fight against cybercrime. What form will this take, and what purpose will a centre like this serve?**

Combating cybercrime is essentially a joint task for the prosecution authorities at federal and cantonal levels. The Confederation must fulfil its responsibility just as much as the cantons do, and in particular create some clarity in relation to questions of jurisdiction, providing coordination services to assist the cantons and dealing with urgent cases in which jurisdiction has yet to be decided. The proposed federal centre of excellence should build on the existing structures and allow close cooperation with the various players. We are working with fedpol to make these ideas reality and to take the first practical steps in 2018.

**Does attaching more importance to the prosecution of cybercrime mean that you have set or plan to set new priorities in other fields of crime?**

ML: As a result of court decisions made since 2011, the OAG, in addition to its operational activities, is also involved in creating some clarity on how to deal with the phenomenon of cybercrime in structural terms. We all live in and with cyberspace, a place where any form of criminal behaviour is conceivable. The OAG cannot be responsible for everything though. Cyber matters are and always have been a question of strategy. Above all, 'cyber' must permeate prosecution procedures as an attitude. The way of thinking and with that the way of acting must adapt to the possibilities that cyber offers, to prevent the creation of undesirable legal vacuums. We have made a start with our cyber-prosecutors.

**You are kicking off the second half of your current term of office. What was the highlight of the first half for you?**

ML: Personally I was delighted to see how quickly our staff adapted to the new procedures and structures. This adaptation did not take place in a vacuum; we have had to give up some cherished habits, we have had to deal efficiently with major cases, of which there have been an increasing number since 2015, and we have had to integrate many new, highly qualified employees. To sum up: the OAG's ability to adapt and integrate is what pleases me the most.

**Let's look to the future: what priorities are you going to set in the next two years?**

ML: The OAG must keep itself fit so as to meet the current challenges of criminal court cases and other procedures. This means a consolidation of processes and structures and constant prioritisation in relation to cases. Therefore, we must develop an attitude to change that is characterised by persistence and by flexibility. This is essential if we in the OAG are to be able to master the tasks that we face.

**And to sum up briefly, what are your expectations?**

ML: I expect us to be conducting complex criminal proceedings with both a national and international dimension in a highly professional manner, upholding Swiss sovereignty in matters of criminal law and achieving continued professionalisation in our self-management. I also expect that the OAG will be respected as an independent body in Switzerland and abroad and regarded as a reliable partner, an attractive employer for highly motivated and qualified people and will fully appreciate the enormous experience of its long-standing members of staff.



**Operating activity**

## 1 Strategy 2016–2019

In the report year, the OAG consolidated its new structures as the basis for working consistently towards its strategic goals:

- All proceedings that the OAG conducts are assigned according to subject matter to a specific field of crime/area of expertise. This allows managers to recognise interrelations with other areas of expertise and to set clearly focused priorities for the prosecution.
- The fields of crime are divided into three divisions: National Security, Terrorism, and Organised Crime (STK); White-Collar Crime (WiKri); and Mutual Legal Assistance, International Criminal Law (RV). Each case is monitored by the controlling section using tried and tested management instruments, and priorities are discussed and set every quarter for all sections.
- A specific strategy is devised for each field of crime that takes account of the initial situation and which, by setting an objective, supports the efficient, comprehensible and transparent management of the case in the relevant field of crime and the specific positioning of the OAG. In the report year, in addition to devising the method, a focus was placed on the fields of international criminal law and general white-collar crime.
- The Forensic Financial Analysis Section (FFA) will be able to deliver their services in investigations in an even more focused manner in 2018 thanks to the new software-assisted processing of data obtained from banks, which will help increase efficiency in conducting proceedings. The required technological and organisational principles were drawn up in the report year.
- The services provided by the General Secretariat are consistently tailored to the needs of the sections that are conducting proceedings. This is done in part by centralising services (ZEB, initial processing of data obtained in investigations), and in part by creating structures that make it possible to find suitable solutions whenever there are new organisational needs.
- A further reason for implementing the strategy is the institutionalised commitment of the OAG and the Federal Office of Police (fedpol) to a joint programme to consolidate their cooperation and coordination in relation to digital transformation.

## 2 Centralised Processing of Incoming Communications at the OAG (ZEB)

ZEB has the aim of identifying at an early stage the incoming communications that the OAG must follow up in its criminal investigations, thus relieving the operational units of the burden of this task. To this end, all incoming communications that are not directly connected with an ongoing investigation are registered centrally, analysed and made subject to a triage. This process is applied in particular to criminal complaints, requests to take over proceedings from the cantons and reports from the Money Laundering Reporting Office (MROS).

When it emerges from an initial analysis by the ZEB team that an incoming communication must be assessed in more detail, this task is given to a federal attorney. Based on the results of this assessment, the Attorney General's operational committee (OAB) decides on what further action is required. If it is decided to open a criminal investigation or to agree to a cantonal request to take over proceedings, the file is passed on to the persons placed in charge of the investigation. In this way, the Directorate is deliberately seeking to achieve a *unité de doctrine*.

If the OAB decides not to take the matter further, the ZEB team works with the OAB to conclude the matter. The ZEB team informs the persons and authorities involved of the decision. It deals directly with all other incoming communications, thus relieving the sections of this workload.

A total of 1161 incoming communications were processed in the report year. These included 171 requests to take over proceedings, over 80 % of which were assigned to federal jurisdiction by the OAB. A further 367 MROS reports were processed. Around 150 other incoming communications were passed on to the sections for further processing.

ZEB is also the single point of contact for internal enquiries and for partner authorities. In the report year, the ZEB team also took on the task of supporting the administration of the new 'cyber' concept developed by the WiCri section (see p. 17, 3).

### 3 Developing a Structure at the OAG to combat Cybercrime

The OAG's team responsible for cybercrime, a relatively new field of expertise, was strengthened by the arrival on 1 April 2017 from the Zurich prosecution service of a federal attorney who specialises in this field. On 1 June 2017, the team of cyber prosecutors was further expanded by the appointment of an assistant federal attorney to the branch office in Lausanne. Working with the National Security Section and the ZEB team, the federal attorneys in the cybercrime unit in the WiKri division evaluate cantonal requests to take responsibility for proceedings in cases of cybercrime where the OAG could have jurisdiction.

Based on a detailed analysis of the case law from the Federal Criminal Court, a concept has been drawn up with a list of precise criteria that can be applied when deciding on whether the OAG has jurisdiction in this field, taking account in particular of the international character of the case, its technical difficulties and the extent to which the case has connections with Switzerland. While devising this concept, it also became clear that the OAG has to take a global approach to tackling cybercrime and cannot restrict itself to the issue of jurisdiction under Articles 23 and 24 CrimPC. Cooperation with other national, international, private and state actors in combating cybercrime and the issue of resources and the goals to be achieved are matters that must be addressed with a view to achieving an effective and concerted procedure. The cyber prosecutors have passed on specific observations in relation to this to various sections in the OAG.

At the request of the cantons, several cases have already been taken over, in particular in connection with phishing (voice phishing and phishing using Trojan horses (pharming) which are currently being investigated at the offices in Lausanne and Zurich in close cooperation with investigators from the FCP and MELANI<sup>10</sup>. Two smaller cases have already been concluded. In addition, at the start of the year, a joint effort from the teams from both branch offices saw the successful conclusion of a cybercrime investigation involving more than 450 cases of phishing/pharming.

A further concept for processing all new cases of phishing/pharming has been drawn up in active cooperation with the ZEB team for having the cases analysed by the FCP (CYCO<sup>11</sup> – IT and Forensics Section), so that serial cases are quickly identified and the required investigations carried out.

### 4 Cases of Public Interest

#### 4.1 Throwing fireworks in a football stadium

At the Swiss Super League match on 21 February 2016 between FC Lucerne and FC St. Gallen, two smoke bombs and two firecrackers (of the types "Rauchtopf" and "Kreiselblitz") were thrown onto the pitch from the away fans' sector (St. Gallen fans' section). One spectator sustained serious injuries to his ear. As a result of comprehensive evidence gathering and the careful evaluation of photographic and video evidence, the offender, who is part of the 'Ultras' scene and was masked at the time, was successfully identified. During a police operation, around 100 kg of pyrotechnic material was seized at the offender's home. The use of some of this material is prohibited in Switzerland. Among the material seized were also pyrotechnic devices of the types thrown at the football match in question.

The Federal Criminal Court convicted the accused of multiple counts of misuse of explosives and toxic gases with criminal intent, aggravated assault, multiple counts of criminal damage and multiple contraventions of the Explosives Act. It imposed a custodial sentence of 3 years (of which 18 months was suspended), a suspended monetary penalty of 180 daily penalty units and a fine of CHF 700. The offender was also ordered to pay the victim CHF 12,000 in compensation for personal injury and suffering. In addition, he was ordered to pay property damage compensation to the victim and to the stadium operator, with CHF 13,000 going to the victim. The victim and the offender appealed to the Federal Supreme Court against the judgment of the Federal Criminal Court. The Supreme Court's decision is still pending.

#### 4.2 Parcel bomb sent to newspaper offices

The initial enquiries into a viable parcel bomb sent to a newspaper's offices in 2002 produced no leads as to the perpetrators, with the result that the investigation against persons unknown was suspended in the autumn of 2003. After a match was made with forensic material obtained when investigating an offence of brawling at the end of 2016, the parcel bomb investigation was reopened and a suspect was identified. This suspect admitted to having built the parcel bomb, which he sent to the Zurich offices of the newspaper Bote Sot in September 2002. In later interviews, the suspect disputed that bomb would have caused any damage had the parcel been opened. However, careful analysis by the Zurich Forensic Science Institute confirmed that if the parcel had been opened in the normal manner, that would have triggered the bomb, and people located in its immediate surroundings could have been fatally injured. Only a stroke of luck prevented anyone from being hurt when the parcel bomb was opened.

10 Reporting and Case Analysis Centre for Information Assurance.

11 Cybercrime Coordination Unit Switzerland.

The Federal Criminal Court convicted the accused of multiple counts of attempted murder and multiple counts of offences under the Weapons Act. It imposed a custodial sentence of 10 years and – as an additional penalty to a summary penalty order from 2015 – a monetary penalty of 40 daily penalty units. Furthermore, the offender was ordered to pay three persons at the offices of Bota Sot compensation for personal injury and suffering of between CHF 2,500 and 10,000 each. The judgment is not yet legally binding.

#### 4.3 Counter-terrorism

In 2017, 17 criminal proceedings were opened and 8 requests for mutual assistance were made in relation to terrorist offences. This shows that the phenomenon is still relevant despite the military defeat of the so-called Islamic State.

The terrorism cases from 2017 are characterised by their many transnational ties and by the involvement of numerous members of Syrian-Iraqi jihadist groups. Two suspects qualify as returned combatants.

One case was opened based on the findings from an investigation into two persons who had attempted to reach the Syrian-Iraqi zone. The case was also based on a request for mutual assistance from the Belgian authorities, which detailed the ties between the accused and a person held in Belgium on suspicion of terrorist offences. A joint French-Swiss investigation team was set up.

A further agreement to set up a joint investigation team with France was reached in 2017 during proceedings against a Swiss citizen who has ties to a terrorist cell comprising several French nationals, who had been planning a terrorist attack.

In addition, the OAG indicted a suspected jihadist foreign fighter in the Federal Criminal Court. He is accused of offences under the Federal Act on the Prescription of the Groups “Al-Qaeda” and “Islamic State” and related organisations.

The OAG also indicted three members of the board of the Islamic Central Council of Switzerland (ICCS) in the Federal Criminal Court. The persons, who are responsible for the ICCS’s “Department of cultural production”, are accused of producing video material in Syria featuring a leading representative of the proscribed terrorist organisation Al-Qaeda. The videos were subsequently used as propaganda for this Al-Qaeda representative. The OAG alleges that the accused provided this leading Al-Qaeda representative with a prominent, multilingual and multimedia platform in order to advantageously propagate and present him and the ideology of a terrorist organisation.

These indictments are confirmation of Switzerland’s consistent policy of prosecuting anyone who attempts to take part in jihadist terrorism or to support it by means of propaganda material.

#### 4.4 Investigation of a criminal organisation

In November 2009, the OAG opened a criminal investigation into several persons living in north-east Switzerland on suspicion of being members of a criminal organisation in terms of Article 260<sup>ter</sup> SCC. The criminal proceedings included numerous hearings to gather evidence to substantiate leads provided by the German “Santa” investigation and the Italian “Crimine” operation. These had shown that persons living in Switzerland were members of a cell of the ‘Ndrangheta that formed part of the Fabrizia (VV) cell in Calabria. In view of the cross-border nature of this organised criminal group and with the aim of facilitating international cooperation in criminal investigations, the OAG and the responsible Italian judicial authorities signed an agreement on a joint investigation team, which ensured coordinated and concerted collaboration during the criminal proceedings in Italy and Switzerland. The international investigations not only revealed the existence of a Swiss cell of the ‘Ndrangheta, a Mafia-style organisation, and in particular links between the ‘Ndrangheta cell in Frauenfeld and the Fabrizia cell, but also verified its origin in and dependence on the Calabrian “Crimine” and therefore confirmed the export of the ‘Ndrangheta model to other countries. As part of the Italian “Helvetia” operation, at the end of 2014 the public prosecutor’s office in Reggio di Calabria issued arrest warrants for 18 members of the ‘Ndrangheta living in Switzerland. In Italy, two of these persons have been convicted in first and second instance proceedings of being involved in Mafia-type activities in terms of Article 416<sup>bis</sup> of the Italian Criminal Code.

The Italian authorities filed an extradition request in Switzerland at the beginning of 2015 for the purpose of prosecuting all persons under investigation for being involved in Mafia-type activities. At the end of 2016, the Federal Office of Justice decided to extradite 13 persons named in the extradition request. The Federal Supreme Court and the Federal Criminal Court rejected all appeals against the extradition orders, and accordingly the individuals were handed over to the Italian authorities in November 2017. In each case the prosecution of the suspects will take place where the criminal activity began and developed. This court decision, which has proved to be fruitful and opportune, was encouraged and supported by the OAG. The OAG therefore intends to suspend the Swiss proceedings,

as their outcome is dependent on the outcome of the Italian proceedings.

#### **4.5 Final phase in the “Arab Spring” series of cases**

In the summer of 2017, the OAG discontinued the mutual assistance proceedings based on all the requests that the Arab Republic of Egypt had submitted to Switzerland in 2011 and 2012 and which had been transferred to the OAG for execution. These decisions were made in particular because the requests had become obsolete as a result of developments and conclusions reached in the Egyptian proceedings, the court judgments issued in Egypt and the reconciliation agreements reached.

The OAG's decisions neither compromise mutual assistance relations with the Arab Republic of Egypt nor the rights of that state, which presented itself as a private claimant in the Swiss criminal proceedings. The related Swiss criminal proceedings, which were initiated in 2011 on suspicion of money laundering and criminal organisation, are still pending and are currently being brought against six persons. A total of CHF 430 million in assets has been frozen in connection with this case.

In the further context of the series of cases related to the Arab Spring, the OAG returned around CHF 3.8 million to Tunisia in early 2017. These funds had previously been seized in the course of the Swiss criminal proceedings. This restitution followed a request for mutual assistance that Tunisia submitted to Switzerland in relation to cases pertaining to the Arab Spring.

#### **4.6 Criminal investigation in the field of international criminal law**

On 6 February 2017, the OAG took over criminal proceedings previously handled by the Cantonal Prosecutor's Office in Bern. The cantonal prosecutor's office had opened the case against a former Gambian cabinet member and general inspector in the Gambian police force on suspicion of crimes against humanity (Art. 264a SCC). The Gambian national had submitted an application for asylum. In the course of this procedure, the OAG received seven criminal complaints pertaining to incidents that took place between 2006 and 2016. The main allegations include, along with crimes against humanity, aggravated assault, endangering life, rape, and other sexual offences committed against persons in institutional care, prisoners and persons on remand.

The compulsory measures court granted the extensions of pre-trial detention periodically requested by the OAG. The Federal Criminal Court rejected the suspect's related appeals. In addition the Federal Supreme

Court acknowledged the suspicions of crimes against humanity committed in the Gambia and thus Switzerland's and, more precisely, the OAG's jurisdiction (Judgments 1B\_271/2017 of 16 August 2017 and 1B\_417/2017 of 7 December 2017). In the judgment dated 16 August 2017, the Federal Supreme Court had its first opportunity to pronounce on the constituent elements of the felonies in Art. 264a SCC, which has only been in force since 1 January 2011.

In the course of the investigations, in addition to numerous other lines of enquiry, the OAG interviewed several persons, including the suspect. In addition, requests for mutual assistance were sent to various countries and requests for administrative assistance were submitted to authorities in Switzerland.

#### **4.7 Money laundering proceedings (Uzbekistan)**

Since July 2012 the OAG has been conducting criminal proceedings against six persons on suspicion primarily of acts of money laundering in connection with corruption offences committed in the telecommunications sector in Uzbekistan. So far the OAG has seized assets amounting to more than CHF 800 million. Since opening the Swiss criminal proceedings, the OAG has conducted mutual assistance proceedings involving a total of 19 countries, in particular Sweden, the Netherlands and the USA, which had requested the freezing of assets through mutual assistance procedures. These three states had opened cases in the same context that reached decisions against two telecommunications companies in February 2016 and September 2017. The two companies admitted to corruption offences and were fined USD 835 million and over USD 1 billion respectively.

#### **4.8 Series of cases concerning Petrobras**

One of the current focal points for the White-Collar Crime Section is the work of a special taskforce on cases connected with the semi-state-owned Brazilian company Petrobras. After the conclusion of the proceedings against the Odebrecht conglomerate at the end of 2016, the priority shifted to concluding proceedings involving persons who were the subject of already closed proceedings in Brazil. In cooperation with the Federal Office of Justice (FOJ) and the Brazilian prosecution authorities, it was also possible to transfer cases to Brazil.

As a consequence of the publicity garnered by the OAG for work with the authorities in Brazil and the USA in successfully securing the conviction of the Odebrecht conglomerate, a large number of enquiries and requests for mutual assistance from other countries involved

were submitted to the FOJ and were subsequently delegated to the OAG. At present the taskforce is processing and implementing over 50 requests for mutual assistance. At the same time the taskforce is concentrating on persons and companies involved in Switzerland.

Over CHF 1 billion in assets have been seized in the course of this series of cases. It is a particular concern of the OAG that Switzerland refunds seized assets to their rightful owners. So far, over CHF 200 million has already been refunded to the Brazilian authorities in relation to the Petrobras / Odebrecht cases.

#### **4.9 Investigations in connection with world football**

During the reporting year, the OAG carried out various compulsory measures to secure and gather evidence as part of around 25 criminal cases in this complex of investigations. In addition the OAG conducted a detailed analysis of around 19 terabytes of seized documents.

As a result of findings in the ongoing proceedings, the OAG opened a new case against Jérôme Valcke (former FIFA Secretary General), Nasser Al-Khelaifi (CEO of the BEIN MEDIA GROUP LLC), and a businessman in the field of sports rights. The proceedings relate to suspicions of private sector bribery (Art. 4a para. 1 in conjunction with Art. 23 former Unfair Competition Act) and other offences.

In the course of the new proceedings, thanks to close cooperation with the authorities in France, Greece, Italy and Spain, simultaneous searches of houses and business premises in various different locations were carried out in October 2017. These took place through mutual assistance procedures at the request and in the presence of the OAG. A Eurojust Coordination Centre made the coordination of the operation in the various countries possible.

In addition, in the report year the OAG concluded the first case in the football investigation series. A former employee of a Swiss bank was convicted in terms of a summary penalty order of forgery of documents and a violation of the reporting obligation under the Anti-Money Laundering Act. The payments amounting to USD 650,000 which this former bank employee had feloniously obtained were forfeited to the Swiss Federal Treasury. The issuing of the summary penalty order that concluded the proceedings was timed and coordinated between the American law enforcement authorities and the OAG. The offences covered by the guilty plea in the USA were accordingly not pursued in Switzerland (to avoid duplicating the penalty).

#### **4.10 Voluntary report by a company (corporate criminal law)**

At the end of 2015, a company reported itself to the OAG in connection with possible bribery offences in Nigeria (Art. 102 para. 2 in conjunction with Art. 322<sup>septies</sup> SCC). It was the first ever instance of a company voluntarily reporting itself to the OAG. The OAG quickly completed its investigation, primarily thanks to cooperation from the company, and concluded the case in March 2017 by issuing a summary penalty order against the company. The level of the sentence was significantly influenced, within the framework of the relevant sentencing criteria, by factors such as the company's voluntary report, its active cooperation from the outset and its comprehensive support in devising and implementing specific measures to rectify recognised organisational deficits. Accordingly, the company was ordered to pay a symbolic fine of one Swiss franc. The OAG calculated the profits that were to be forfeited by taking account of the EBIT<sup>12</sup> margin achieved in the relevant time period. The claim for compensation, ultimately set at CHF 35 million, was determined by taking account of the economic capacity of the company, as prescribed by the law.

Persons not involved in the proceedings appealed against the summary penalty order, which had been accepted by the company. A court decision on the admissibility of these appeals is still pending.

As a result of the investigations into the company, further criminal proceedings against former employees were opened, which are currently still underway.

#### **4.11 Voluntary report based on a stock market offence**

The publicity surrounding the arrest of a company director in November 2016 raised awareness among the general public and the insider trading community of the extent to which the OAG applies compulsory measures in insider investigations. In January 2017 this led to a lawyer contacting the OAG in connection with an unnamed client who was considering reporting himself for insider dealing. The client was the member of a project team in an international group of companies that had been preparing for the takeover of a Swiss company listed on the stock exchange. In this phase in October 2016, the client had bought shares in the target company on behalf of a third party, selling them at a profit in January 2017.

The OAG and the offender's lawyer analysed the circumstances of the case and the legal position. The offender made a detailed voluntary report a day after the company takeover was announced.

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<sup>12</sup> Earnings before interest and taxes.

## 5 Offences prosecuted on Official Authorisation

Two months after the report was filed, the OAG found the offender, who had made a confession, guilty of insider dealing as a primary insider (Art. 154 para. 1 of the Financial Market Infrastructure Act, SR 958.1) and sentenced him to a suspended monetary penalty of 30 daily penalty units. The OAG took account of the voluntary report, the admission of guilt and the fact that the offender had donated the unlawfully acquired profits to charity, and therefore decided not to combine the monetary penalty with fine under Article 42 paragraph 4 SCC. However, the OAG did not consider the offender's charitable donation to constitute restitution of the unlawfully acquired monies and ordered the transaction profit to be paid back by the third party who had directly benefited.

### 5.1 Prosecution of federal employees / Members of the Federal Assembly

The prosecution of federal employees for offences related to their official activities or position (not including road traffic offences) requires authorisation from the FDJP pursuant to Article 15 of the Government Liability Act (GLA, SR 170.32). In the case of members of authorities and senior federal officials appointed by the Federal Assembly, the competent committees of both councils, i.e. the Immunity Committee of the National Council and the Legal Affairs Committee of the Council of States, decide whether to grant authorisation (cf. Art. 14 ff. GLA).

Likewise, members of the Federal Assembly can only be prosecuted for criminal offences that are directly connected with their official position or activity with the authorisation of the competent committees of both councils (Art. 17 para. 1 Parliament Act, ParlA, SR 171.10).

### 5.2 Prosecution of political offences

Under Article 66 CJAA, the prosecution of political offences requires authorisation by the Federal Council. There are cases in which political interests – in particular foreign policy interests – outweigh the interest in prosecution, with the result that the national government is permitted to intervene by way of exception. The Federal Council has delegated the power of authorisation to the FDJP (Art. 3 let. a FDJP Organisation Ordinance, SR 172.213.1).

With authorisation under Article 66 CJAA, authorisation from the FDJP under the Government Liability Act is also deemed to have been granted (Art. 7 Ordinance to the GLA, SR 170.321).

### 5.3 Requests for authorisation made by the OAG in 2017

Applications to the GS-FDJP <sup>1</sup> or to parliamentary committees <sup>2</sup>	Number	Authorisation granted	Authorisation refused	Application unfounded	Decision pending
under Art. 15 GLA <sup>1</sup>	9	6	1	0	2
under Art. 66 CJAA <sup>1</sup>	10	8	0	0	2
under Art. 17 / 17a ParlA <sup>2</sup>	0	0	0	0	0
Total	19	14	1	0	4

## 6 Enforcement of Judgments

In the report year, notice was received of two further decisions from the previous year (2016), relating to pending applications under Article 15 GLA and Article 66 CJAA respectively. In both cases, the authorisation for prosecution was granted.

In 2017, the services conducting proceedings passed on around 550 legally enforceable decisions taken by the OAG (summary penalty orders, no proceedings orders, etc.) to the judgment enforcement service with a request for further action to be taken. The service also received judgments from the Federal Criminal Court for enforcement. Its duties also included cases of falsifying motorway vignettes; persons resident in Switzerland who commit this offence were no longer being asked to pay a deposit towards their fines and so these cases had to be dealt with through the ordinary enforcement procedure.

In the report year, the OAG and the Federal Criminal Court issued legally binding forfeiture and compensation orders for a total of around CHF 244.6 million. Around CHF 100,000 of this total is not subject to 'sharing' and can be credited directly as forfeited assets or compensation to the federal coffers.

Eight of the aforementioned decisions and judgments were referred to the FOJ in order to clarify whether the Federal Act on the Division of Forfeited Assets (TEVG, SR 312.4; "Sharing") applied, either because forfeitures amounting to more than CHF 100,000 had been ordered or because the forfeiture was ordered in cooperation with a foreign state. In relation to CHF 40.5 million, sharing procedures were commenced; in relation to CHF 204 million, the assessment relating to possible sharing or whether the TEVG applies is ongoing.





**Administrative activity**

# 1 Legal Principles governing the Organisation of the OAG

Under Article 16 of the Criminal Justice Authorities Act, the OAG is a self-governing authority that is independent of the Federal Council and the Federal Administration. The Attorney General is responsible for ensuring that it is appropriately organised and that it makes efficient use of its financial and material resources (Art. 9 para. 2 let. b and c CJAA). The OAG maintains its own accounts and has a global budget. The Attorney General submits a draft budget and accounts to the AB-BA every year, which are ultimately placed before the Federal Assembly for approval (Art. 17 para. 1 and Art. 31 para. 4 CJAA).

As a self-governing authority, the OAG is basically free to procure the goods and services that it needs to satisfy its logistical requirements (Art. 18 para. 2 CJAA).

# 2 General Secretariat

The General Secretariat's strategic priority in the report year was recruiting new staff, establishing management and governance structures and continuing consistently to meet the requirements set by the Directorate and by the core business. This highlighted the working focus on three tasks assigned to the General Secretariat (OAG development, OAG management and controlling, and IT and central services).

## 2.1 OAG Development Section

The OAG's strategic project portfolio is maintained by the OAG Development Section. This is where all the measures relating to strategy implementation in projects are planned and controlled. The most important projects in the report year were:

- "Unavoce": The "Unavoce" initiative involves drawing up strategic principles for individual fields of crime and for all organisational units in terms of the 2016-1019 Strategy (see also p. 16, 1). In addition, short-term focus areas are identified and prioritised. In the report year, these were scanning and eDiscovery.
- "Joining Forces": The "Joining Forces" programme is being carried out jointly with fedpol. It aims to achieve the strategic development of collaboration structures, including related organisational structures and the development of the required working instruments. In the report year, the programme structures were put in place and a start was made with the first two projects.
- "7up": The processing of documents obtained from financial intermediaries requires a considerable administrative workload. Standardising and digitalising the required activities increases efficiency and quality and in the medium term will allow human resources to be moved to other core prosecution activities.
- "Ariadne/G1": The work in the report year related to the planned move in 2019 to the "New Guisan" administrative centre focused on occupancy planning, security, building operations and the selection of the catering provider.

## 3 Use of Financial and Material Resources

### 2.2 OAG Management and Controlling Section

The OAG Management and Controlling Section provides support for the Legal Services Section, finances, Human Resources (HR) and directorate assistance.

As a result of the new intake of staff in the General Secretariat, the main challenge in the report year was ensuring that basic duties were fulfilled. As part of the Unavoce initiative, a start was made with the strategic analysis and reorientation of HR. One operational focus area was assisting with the recruitment of several new members of staff in the report year. The recruitment process for assistant prosecutors and forensic financial analysts went very well, thanks to the numbers of high quality candidates. Recruiting senior prosecutors and filling certain special positions in the General Secretariat (e.g. software engineer) proved more difficult. These experiences underline the importance of training and continuing professional development measures within the OAG.

### 2.3 ICT and Central Services Section

In the report year, the implementation of the strategy for the ICT Section continued and the organisational structure was expanded as a result of recruitments. The discipline of the business architecture was re-created, primarily in order to sustainably establish the changes resulting from the projects. ICT services were successfully expanded and standardised with the introduction of "Mobile Device Management" (MDM). Processes (e.g. the electronic production of bank data) are being digitalised and automated thanks to the effective use of technology.

Information security was made a priority for the integrated security system in the report year. With the launch of the new "B.Aware" campaign, an instrument is now available that offers various measures to raise the awareness among staff of security issues. In organisational terms, the measures were complemented with directives and guidelines. With the newly introduced security management system and the establishment of the security committee, the security processes have been systematically revised in a standardised procedure.

### 3.1 2017 Accounts

For 2017, the global budget submitted by the OAG (expenditure / before general spending cuts) amounted to CHF 62.7 million. With the general spending cuts, the global budget was reduced by CHF 0.7 million, resulting in an available budget of CHF 62.0 million. At CHF 36.7 million (59 %), the largest item of expenditure in the budget is staff costs. In addition, CHF 24.9 million was allocated to material operating costs. The remaining CHF 0.4 million covers other operating expenses and investment costs. The global budget can be itemised according to types of financing as follows: CHF 54.5 million is allocated to expenditure outside the Federal Administration that has financial impact and CHF 0.2 million to depreciation. CHF 7.3 million is allocated to service accounting within the Administration (in particular for office rental, IT operating costs and other operating costs). The budgeted operating income of CHF 1.1 million is made up primarily of official procedural fees collected in federal criminal proceedings, income derived from charging for the costs of inspecting files and income from procedural fees in connection with summary penalty orders and the abandonment of proceedings.

The State Financial Statements for 2017 will be published in due course on the relevant page<sup>13</sup> of the Federal Finance Administration website.

### 3.2 New management model for the Federal Administration (NFB)

The NFB will bring a new approach to OAG controlling. The systematic linking of tasks and funding/resources and services will improve budgetary control. This will bring improved goal and result-oriented administrative management thanks to increased transparency of costs and performance. The NFB forms the basis for a comprehensive management and controlling system in the OAG. The OAG has summarised all the services it provides in a single group entitled 'Federal Prosecution'.

<sup>13</sup> <https://www.efv.admin.ch/efv/de/home/finanzberichterstattung/finanzberichte/staatsrechnung.html>.

## 4 General Directives

In 2017 the procedural manual was updated (see Art. 17 of the Regulations on the Organisation and Administration of the Office of the Attorney General of Switzerland, SR 173.712.22).

On 1 July 2017, the Attorney General issued a directive on professional ethics in the OAG, the *Code of Conduct*, based on Articles 9, 13 paragraph 1 letter a and 22 paragraph 2 CJAA. This directive specifies the obligations of OAG employees with regard to their behaviour in the workplace in terms of Art. 94d FPersO. It is also a response to one of the recommendations made by GRECO (see p. 4, 2.2). The Code of Conduct has been published on the OAG website.<sup>14</sup>

## 5 Code of Conduct

As a prosecution authority in a state governed by the rule of law, the OAG has a vital and sensitive task. The OAG issued its own Code of Conduct in 2017, which came into force on 1 July, and thus has a specific directive in this area. The principles in the Code of Conduct set out how to behave and lay down the rules of good administrative practice. They apply to all employees of the OAG. To guarantee the trust both of persons involved in OAG proceedings and the general public, the principles of independence, impartiality, integrity and dignity are given special emphasis, as they are essential qualities required of those who seek to safeguard the rule of law and apply the law correctly.

The Code of Conduct meets the needs of those working for the OAG by remaining true to the reality that OAG employees experience. The Code is dynamic, in that it remains continually in line with current needs. In order to guarantee this second point and to make the Code constantly relevant, feedback from OAG employees is indispensable. This is achieved in particular through the work of the advisory committee, made up of OAG employees and representing all the OAG's offices and functions. The committee's composition means that it can act realistically as a barometer and allows it to react while taking account of the various sensibilities. The advisory committee helps to implement the general principles of the Code in specific terms and assists with its implementation and future development.

The Code in its current form can serve as the basis for integrating further issues that become the focus of the debate on professional ethics. For the OAG, it was important not just to have a directive that incorporates all internal and external sources with an eye on their practical aspects but also to offer employees the chance to contact an advisory committee that is not part of the management hierarchy.

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<sup>14</sup> <https://www.bundesanwaltschaft.ch/mpc/de/home/die-bundes-anwaltschaft/code-of-conduct.html>.

## 6 Human Resources

### 6.1 Workforce as at 31 December 2017

At the end of 2017, the OAG had 234 employees (previous year: 221), who together held the equivalent of 224 full-time positions (previous year: 202). Of these 234 employees, 32 (previous year 30) are on temporary contracts. The following numbers of employees work at the OAG's various offices:

	31.12.2017	31.12.2016
Bern	177	166
Lausanne office	25	25
Lugano office	17	17
Zurich office	15	13

### 6.2 Staff statistics

The OAG's employees hold the following positions: Attorney General (1), Deputy Attorneys General (2), Secretary General (1), Federal Prosecutor / Head of Division (4), Head of External Relations (1), Federal Prosecutors (38), Assistants Federal Prosecutor and Solicitors (39), legal assistants (13), proceeding assistants and chancellery staff (53), administrative staff (54) and experts and analysts in the FFA and WiKri divisions (28).

As of 31 December 2017, the OAG also employs 7 legal trainees and one trainee in the communication section.

The average OAG employee is contracted to work 92.3% of full-time working hours and is 39.3 years old. The breakdown of staff according to their first official Swiss language is as follows: German 143, French 68 and Italian 23. The OAG employs 132 women and 102 men. Staff turnover in the report year was 11.9%.<sup>15</sup>

### 6.3 Disciplinary proceedings

This is a new heading in the OAG's Annual Report, in response to the recommendation made by GRECO "that measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning prosecutors, including the possible publication of the relevant case law while respecting the anonymity of the persons concerned." The OAG shares the view of GRECO, "that transparency is an essential means of building public trust in the functioning of the prosecution service and making sure that the profession is not seen by the public as being more

interested in protecting itself and furthering its own interests."<sup>16</sup>

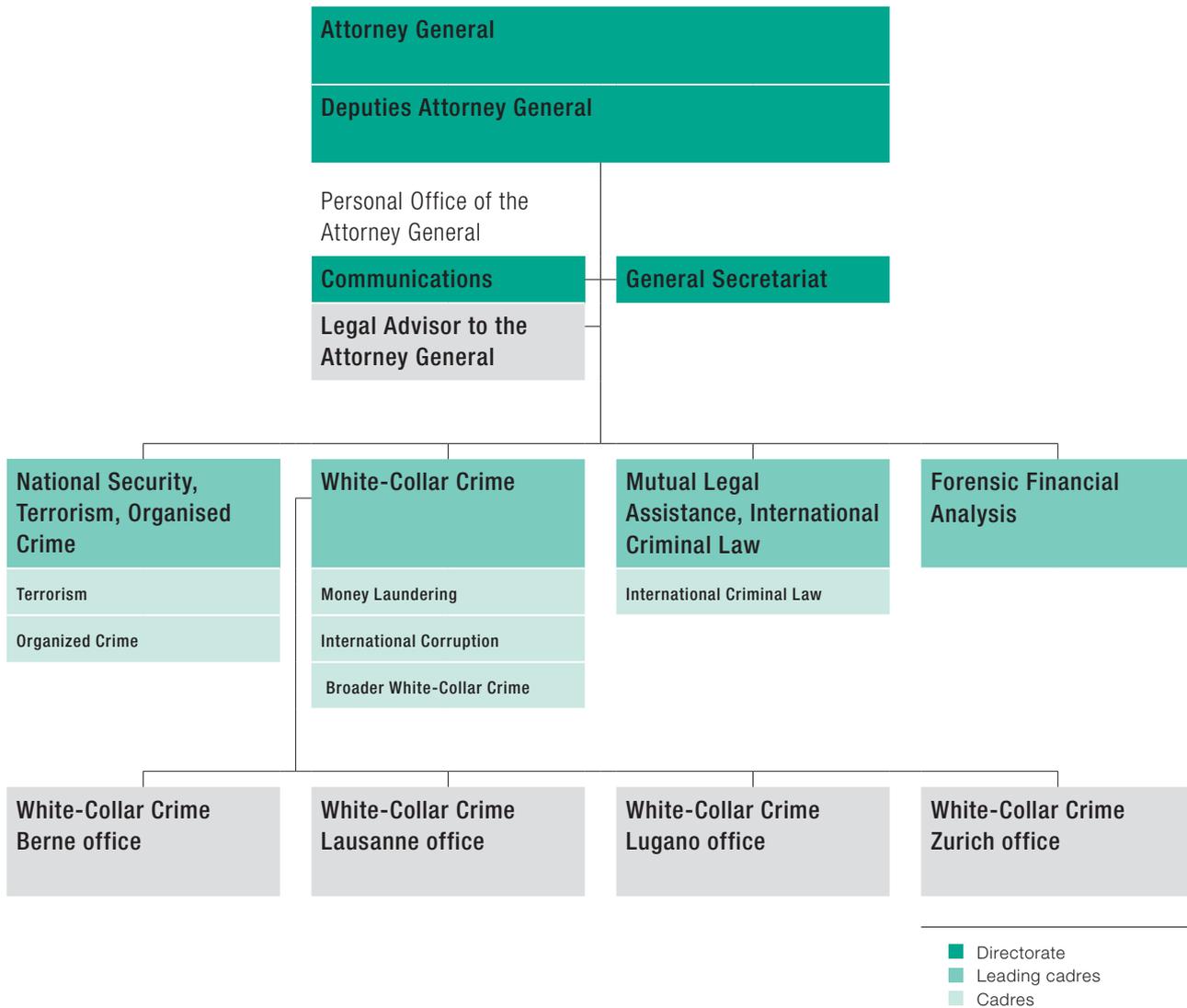
The federal prosecutors are subject to law on federal personnel, with the Attorney General acting as the employer and making employment decisions (Art. 22 para. 2 CJAA and Art. 3 para. 1 let. f of the Federal Personnel Act, SR 172.220.1). If a federal prosecutor is alleged to have violated his or her employment obligations, the Attorney General decides whether to open disciplinary proceedings and whether to impose any disciplinary measures (Art. 1 para. 1 let. c and Art. 98 ff. FPersO).

In the report year, no disciplinary proceedings under Article 98 ff. FPersO were taken against any federal prosecutor.

15 The staff turnover rate reflects the ratio of departures of employees on permanent contracts to the average number of employees on permanent contracts in the period from 01.01.2017 to 31.12.2017.

16 GRECO Evaluation Report on Switzerland, Fourth Evaluation Round, Paragraphs 281 and 291.xii., available at <https://www.bj.admin.ch/dam/data/bj/sicherheit/kriminalitaet/korruption/gre-coberichte/ber-iv-2016-5-d.pdf>.

## 6 Organisational chart



André Marty  
Head of External Relations

Jacques Rayroud  
Deputy Attorney General

Michael Lauber  
Attorney General

Ruedi Montanari  
Deputy Attorney General

Mario Curiger  
Secretary General

## 8 Work of the Individual Divisions

### 8.1 National Security, Terrorism, Organised Crime Division (STK)

The staff in this division had to deal with a constantly high workload in the report year, both in operational and administrative terms, due in part to colleagues leaving the OAG. The recruitment programme required as a result of reorganisation (merging the areas of national security, terrorism, and organised crime) and the retirement of certain members of staff has still to be completed.

The main areas of activity in 2017 were espionage, corruption involving public officials, a large number of cases relating to terrorism and several cases of organised crime. These cases are very time-consuming and use a great deal of resources, both at the OAG and in the FCP.

The workload in connection with ‘Massengeschäften’ (bulk business cases) is still high, especially as these cases – quite apart from their administrative processing and keeping the file up-to-date – must be conducted in compliance with the Criminal Procedure Code.

The work related to “vignette cases”, which has been consistently high in recent years and had to be dealt with without any additional support, will come to an end as a result of a statutory change in jurisdiction as of 1 January 2018 (p. 8, 4.1). The related resources can now be used for the section’s core tasks.

### 8.2 White-Collar Crime Division (WiKri)

Once again 2017 was notable for complex, international proceedings that imposed a considerable workload on the division due to their difficulty and quantity.

This burden is being countered by seeking and exploiting synergies within the section and with partners within and outside the OAG. A good example of this is the work of the Petrobras Taskforce, which is now shared among the OAG’s four offices; the Taskforce is also being actively supported by one member of the RV division and one from the communication service.

When setting priorities, it is also ensured that resources are allocated efficiently and that accelerated solutions provided for in the Criminal Procedure Code are used consistently. Nevertheless, the workload has certain limits, not least because of additional duties such as cooperating with the country reviews conducted by international organisations.

Finally, it may be noted that one vacancy for a federal prosecutor has been filled by two female prosecutors sharing the job in question. This modern way of working has proved to be an efficient solution for a position at this level.

### 8.3 Mutual Assistance and International Criminal Law Division (RV)

Once again 2017 was notable for the reorganisation measures implemented. The pool system, in which everyone works with everyone else, requires increased willingness to communicate and coordinate among staff. In the report year, one further vacancy for an assistant prosecutor was filled.

The work in this section consists primarily of the mutual assistance proceedings that are assigned and resulting investigations (for the most part relating to MROS reports), as well as investigations in the field of international criminal law. The workload in the RV division is high, the federal prosecutors involved in mutual assistance cases also working on large longer-term, time-consuming case complexes – such as Petrobras, FIFA or 1MDB – with other divisions.

### 8.4 Forensic Financial Analysis Division (FFA)

The FFA division assists the OAG’s operational sections by providing specialist advice and support in all phases of criminal and mutual assistance proceedings. In comparison with 2016, an increased level of operational support was again provided, primarily at the expense of project work and training. The division was involved in around 125 criminal proceedings, whereby two case complexes (44 cases) claimed more than 34 % of its resources. The offences that the section’s staff had to contend with included corruption, money laundering, criminal mismanagement, fraud and corporate criminal liability cases. The division also provided active support with processing MROS reports and the administrative work related to seized assets.

The procedures for the analyses have been continually optimised in the division in line with the prosecution strategies in order to be able to cope better with growing number of cases and using the limited resources available. The situation was also tackled by increasing the mobility of members of staff and through more intensive cooperation between various offices.

The division gave consideration to possible – short, medium and long-term – solutions for coping with the increase in the volume of data to be processed and the rapid technological developments in the field of forensic financial analysis. It also organised a training day on the subject of compliance in the para-banking sector.

In view of the significant workload, the situation as regards resources was difficult and exacerbated by the fact that certain positions remained vacant for part of the year, and that two members of staff also left the division.



# Reporting

# Reporting

<b>Criminal investigations</b>	<b>as at 31.12.2016</b>	<b>as at 31.12.2017</b>
Pending preliminary clarifications <sup>1</sup>	129	334
Ongoing criminal investigations <sup>2</sup>	441	478
National security	93	111
Terrorism	35	34
Organised crime	67	62
International criminal law	10	11
Money laundering	231	243
International corruption	82	65
General white-collar crime	85	96
Suspended criminal investigations	210	227
Criminal investigations ongoing for more than two years <sup>3</sup>	186	234

	<b>2016</b>	<b>2017</b>
Newly instigated	190	237
Completed		
Not accepted	158	128
Suspended	94	95
Referral/delegated/forwarded/returned to canton	65	100
Summary penalty orders <sup>4</sup>	1094	788
Indictment filed	14	21
Indictment filed in accelerated proceedings	3	3
Referral of summary penalty order to court	20	25
Indictment rejected <sup>5</sup>	1	6
Operative portion of judgment BStGer <sup>6</sup>	32	36

<b>Requests received for mutual assistance</b>	<b>as at 31.12.2016</b>	<b>as at 31.12.2017</b>
Ongoing mutual assistance proceedings	265	307
Requests received	16	31
Requests being examined	61	62
Request being executed	180	208
Objections to requests	8	6
Mutual assistance proceedings ongoing for more than two years	42	50

	<b>2016</b>	<b>2017</b>
Mutual assistance requests accepted	193	197
Completion of legal assistance proceedings	186	187
Back to FOJ for delegation to canton	27	13
Mutual assistance refused	4	8
Mutual assistance granted	119	131
Other completions (e.g. dismissal, withdrawal, etc.)	36	35

1 Including 118 cyber/phishing cases, being investigated with FCP/ KOBIK and MELANI (see p. 17, 3).

2 Multiple answers are possible for the crime categories

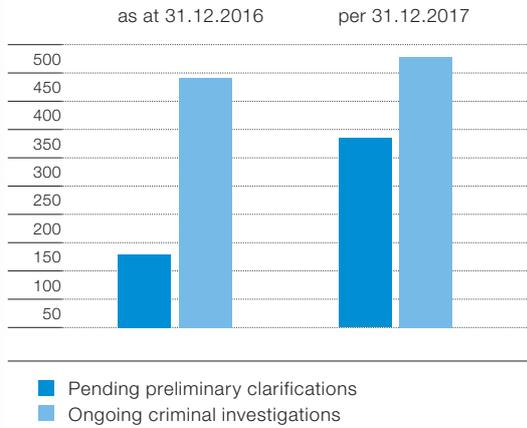
3 Including 64 in the major case complexes: 45 Petrobras (see p. 19, 4.8), 14 World Football (see p. 20, 4.9) and 5 Arab Spring (see p. 19, 4.5).

4 A summary penalty order can only be imposed on one person; it is therefore possible that several summary penalty orders are imposed in one set of proceedings. For the statistics of the OAG, the number of summary penalty orders is counted.

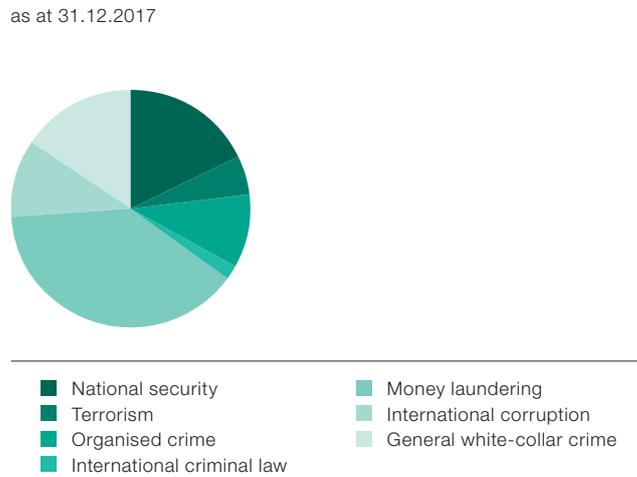
5 Rejections in summary proceedings (2017: 1) and in ordinary proceedings (2017: 5).

6 Judgments in summary proceedings and judgments in ordinary proceedings.

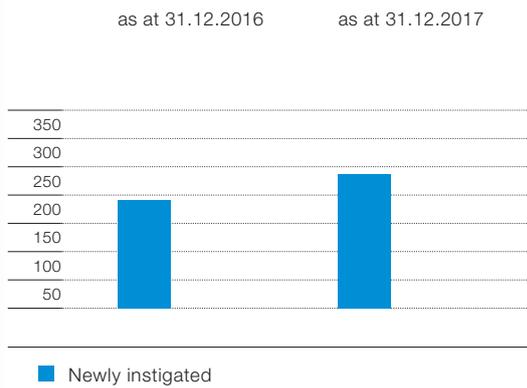
### Criminal investigations 2016 / 2017



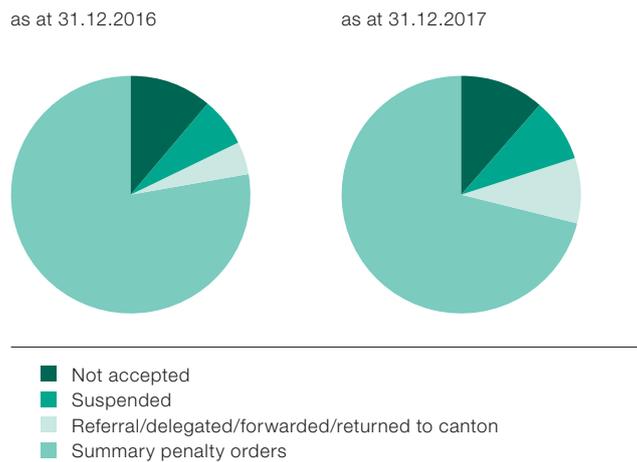
### Ongoing criminal investigations 2017



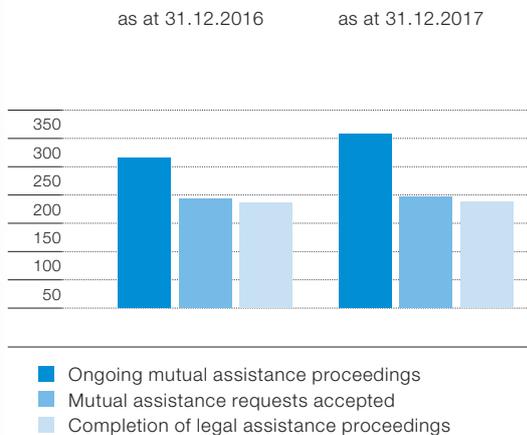
### Criminal investigations 2016 / 2017



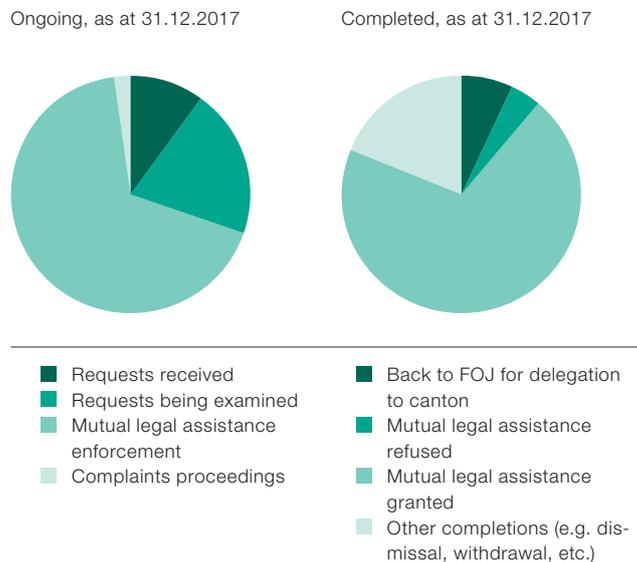
### Completed 2016 / 2017



### Requests received for mutual assistance 2016 / 2017



### Requests received for mutual assistance 2017



<b>Bulk business</b>	<b>as at 31.12.2016</b>	<b>as at 31.12.2017</b>
Pending bulk business cases	277	167
	<b>2016</b>	<b>2017</b>
Newly received bulk business cases	1594	1324
Completed bulk business cases	1718	1304
Counterfeit money	304	236
Explosives	260	240
Aviation	12	19
Motorway vignette	926	629
Miscellaneous	216	180

<b>Number and result of the main proceedings before the Federal Criminal Court</b>	<b>2016</b>	<b>2017</b>
<b>First-instance main proceedings before the Federal Criminal Court (charges and referrals of penal orders)</b>		
Number of proceedings	26	29
Of which in legal force as of 31.12.	12	9
Of which not or partly in legal as of 31.12.	14	20
Number of accused individuals	46	39
Of which convicted	30	25
Of which acquitted	16	14
<b>Summary proceedings</b>		
Number of proceedings	5	2
Of which in legal force as of 31.12.	4	2
Of which not or partly in legal as of 31.12.	1	0
Number of accused individuals	7	2
Of which convicted	4	1
Of which returned	3	1

#### **Complaints of the OAG with the Federal Supreme Court**

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

#### **Complaints against the OAG with the Federal Supreme Court**

Complaints filed in the reporting year	80
Complaints decided in the reporting year (partly filed in the previous year)	78
Of which granted	6
Of which dismissed, partly dismissed or not accepted	70
Of which irrelevant or suspensory effect	2

#### **Complaints of the OAG with the Federal Criminal Court**

Complaints filed in the reporting year	4
Complaints decided in the reporting year (partly filed in the previous year)	2
Of which granted or partly granted	0
Of which dismissed or not accepted	2
Of which irrelevant or suspensory effect	0

#### **Complaints against the OAG with the Federal Criminal Court**

Complaints filed in the reporting year	230
Complaints decided in the reporting year (partly filed in the previous year)	261
Of which granted	17
Of which dismissed, partly dismissed or not accepted	223
Of which irrelevant or suspensory effect	21

## **Glossary**

AB-BA	Supervisory Authority Overseeing the Office of the Attorney General
CJAA	Criminal Justice Authorities Act
CrimPC	Swiss Criminal Procedure Code
CSPP	Conference of Swiss Public Prosecutors
FADP	Federal Data Protection Act
FATF	Financial Action Task Force
FCP	Federal Criminal Police
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
FPA	Federal Personnel Act
FPerSO	Federal Personnel Ordinance
FTA	Federal Tax Administration
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
TAAA	Federal Act on International Administrative Assistance in Tax Matters (Tax Administrative Assistance Act)
VG	Government Liability Act

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