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Annual Report

**Report of the Office of the Attorney
General of Switzerland on its
activities in 2018 for the attention
of the supervisory authority**

Foreword

I am delighted to present the 2018 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.

As far as the OAG's core business is concerned, the report year saw the conclusion of various, in some cases older, proceedings. Dealing with large case complexes by setting up task forces has proven its value. The law enforcement environment has changed, and the number of (complex) criminal proceedings will probably continue to rise. With resources stagnating at the same time, the pooling of strengths and the systematic development of the OAG are indispensable if it is to remain free to act as it requires.

In recent times, various areas of law enforcement have become genuine joint tasks for the Confederation and the cantons. In relation to combating terrorism, the operational coordination platform TETRA has established itself. In addition, in the report year a group of authorities launched the joint "Cyberboard" platform in order to take a coordinated, combined and uniform approach to combating cybercrime at a strategic and operational level.

In organisational terms, in the report year the OAG worked steadfastly on refining various aspects of governance. In addition, the OAG focused intensively on the issue of digital transformation: by using specialised software solutions, work processes that were previously carried out manually are being standardised and automated in order to cope more efficiently with the administration of complex cases involving large volumes of data in particular. A further organisational priority in the report year was the preparatory work for the forthcoming move to the new G1 administrative centre in 2019.

In the field of legislation, two important bills must be mentioned: the first relates to strengthening the legal instruments for combating organised crime and terrorism, the second the amendment of the Criminal Procedure Code. The OAG has worked and is working closely with the Conference of Swiss Public Prosecutors (CSPP) and the conference of the Cantonal Directors of Justice and Police (CCJPD) in connection with these two bills.

The OAG is looking back on a busy year. This report documents in excerpts how diverse the OAG's statutory duties are.

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 and commitment.

Michael Lauber
Attorney General of Switzerland

Bern, January 2019

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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 of Switzerland, who is appointed by the Federal Assembly and who has comprehensive powers to organise and manage the OAG. The Attorney General 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 prosecutors 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 FATF¹

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 2018 Switzerland continued with the implementation of the FATF recommendations on shortcomings identified in the country examination concluded in 2016 as part of the fourth evaluation. The OAG continued with its 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" and its working groups, 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 in particular involved in drawing up a report published in June 2018 on money laundering risks affecting legal entities² and two further reports on the risk of money laundering and terrorism financing through crypto assets and crowdfunding³ and on the money laundering risk related to the use of cash.⁴

2.2 GRECO⁵

In its report published in spring 2017 on the fourth evaluation of Switzerland, Greco made two recommendations that affect the OAG's activities. The OAG had firstly to complete its work on adopting rules of conduct for federal prosecutors and other OAG employees. Secondly, it had to introduce measures to ensure that 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.

1 Financial Action Task Force (working group on measures to combat money laundering).

2 www.newsd.admin.ch/newsd/message/attachments/52564.pdf

3 www.newsd.admin.ch/newsd/message/attachments/55111.pdf

4 www.newsd.admin.ch/newsd/message/attachments/55177.pdf

5 Group of States against Corruption.

The follow-up process of reviewing the implementation of the recommendations made in the abovementioned report began in 2018 and should be concluded in the spring of 2019. The OAG takes the view that it has implemented the recommendations, as it issued its code of conduct on 1 July 2017 and this was published on its website in autumn 2017, and because it has added a new section to its annual report which covers disciplinary investigations, if there are any, against federal prosecutors.

2.3 OECD⁶

In March 2018, a meeting was held at the OECD in Paris to discuss the report on the Phase 4 country examination. Switzerland had already expressed its views on the draft report, which had been prepared beforehand by the experts from two contracting states and the OECD expert based on the response to a comprehensive list of questions and a visit to Switzerland. As the competent prosecution authority in cases of international corruption, the OAG was involved both in responding to the list of questions and in commenting on the draft report. Led by the Attorney General, the OAG also participated in a discussion of the report in the plenary session of the Working Group on Bribery. At this open and positive discussion in the plenary session, various issues that are of importance to Switzerland were raised. The comments made by the Swiss Delegation have been included in the report.

The OECD acknowledged the increase in convictions of persons and companies for bribery of foreign public officials, Switzerland's pro-active approach to the confiscation and forfeiture of unlawfully acquired assets and its cooperation with other countries in the area of mutual assistance. It acknowledged in particular that Switzerland has convicted six persons and five companies since 2012 on charges of bribery of foreign public officials. At the same time, the OECD demanded more severe sanctions against companies and individuals as well as protection for whistle-blowers in the private sector. In addition, it called for the ongoing revision in the area of mutual assistance to be completed. Lastly, the OECD took the view that a more systematic publication of summary penalty orders in relation to international corruption would be expedient.

Switzerland will respond to the OECD on the implementation of the recommendations in March 2020 in a written report.

2.4 Genocide Network⁷

In the report year, the OAG attended the 24th and 25th meetings of the European Genocide Network in the Hague. This network comprises practitioners from prosecution services and justice and police authorities who work in the field of international criminal law and offers participants from EU countries and observer states (including Switzerland) continuing professional education on specific topics and an opportunity to exchange experiences. Subjects raised at the meetings in the report year included the collection, analysis, storage and use of open source information in international criminal law cases, serious international crimes against the Yazidis and the health risk of secondary trauma among prosecutors, interpreters and other staff working in the field of the international criminal law. Further topics included an initiative for a new international mutual assistance mechanism for serious international crimes, the SIRIUS platform and the Europol AP CIC analysis project, which aims to support member states, third countries and organisations in the prosecution of serious international 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 serious international crimes.

2.5 Participation in the 23rd Annual Conference of the IAP⁸

The annual conference of the IAP, which was organised by the National Prosecuting Authority of South Africa, took place from 9 to 13 September 2018 in Johannesburg.

This year the principal theme of the conference was "Prosecutorial independence – the cornerstone of justice to society" and the related issues of politics and prosecutorial independence, managing prosecution services between accountability and individual autonomy, protecting the individual prosecutor, and independent prosecution and confidence in the eyes of the public. In addition, at workshops and meetings of interest groups, topics such as the international criminal justice system, professional standards for prosecutors at the various stages of proceedings, trafficking in human beings, cybercrime and environmental crime were discussed in depth. More than 400 participants from 90 countries had the opportunity to meet and talk and

6 Organisation for Economic Cooperation and Development.

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

8 International Association of Prosecutors.

3 National cooperation

thus expand their own contacts. In addition, a meeting took place of the IAP Executive Committee, of which the Attorney General of Switzerland is a member.

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 assembly.

3.1 Federal Office of Police (fedpol)

Cooperation with fedpol at all levels can be regarded as good. In particular the procedures involving the OAG and the Federal Criminal Police (FCP), the Federal Security Service (FSS), and the Money Laundering Reporting Office (MROS) are well-established.

For the future, a programme known as “Joining Forces” (JF) has been set up in order to harmonise processes that play a role in the interaction between the various fields covered by fedpol, the OAG and the Federal Criminal Court. In particular, the aim is to standardise procedures and the unavoidable digitalisation. In this context, the Steering Committee for Resources (SCR) has an important task as the interface between the OAG and the FCP, by validating the interim results achieved in the JF programme. The SCR thus, over and above its remit hitherto, serves as a quality assurance body as well as a link between the joint development work in the JF programme and the OAG and FCP’s main operational activities.

3.2 Federal Intelligence Service (FIS)

Cooperation with the FIS in the report year was also good. The implementation of the recommendations that the Control Delegation made in their report entitled “Inspection following the arrest of a former FIS source in Germany” dated 13 March 2018 (2018 5045) is underway.

In relation to combating terrorism, the operational coordination platform TETRA (TErrorist TRacking) was used for the efficient coordination and optimisation of ongoing proceedings.

3.3 Swiss Financial Market Supervisory Authority (FINMA)

The OAG appreciates its close cooperation with FINMA in cases of money laundering and stock market offences. Stock market offences in particular are the subject of regular coordination meetings at which specialists from the OAG and the FINMA update each other on investigative measures, progress and results in cases in which both are involved. In general, cooperation could still be optimised and made simpler by setting up a *single point of contact* in both authorities.

3.4 Federal Tax Administration (FTA)

The FTA and the OAG further intensified their cooperation in order to exploit the synergies that their respective spheres of activity offer. In the course of the OAG’s investigations, tax-related irregularities are occasionally detected (e.g. private individuals who are not taxed on their entire income or who have not declared that they qualify as a professional securities trader; companies

taxed abroad that are in fact managed in Switzerland). The OAG can report these cases to the responsible tax authorities. Conversely ongoing tax proceedings can reveal practices that may become the subject of criminal proceedings by the OAG.

In this respect, the detection of relevant circumstances could be made easier and cooperation between the two authorities optimised by setting up a *single point of contact* as a link between the FTA's Penal Affairs and Investigations Division and the OAG.

3.5 Federal Department of Foreign Affairs (FDFA)

Under the Criminal Procedure Code, the OAG is responsible for conducting proceedings in cases involving offences that have largely been committed abroad, in particular cases of money laundering and international corruption. This means that a large volume of evidence has to be gathered in other countries, of necessity by means of international mutual assistance in criminal matters. Working meetings with the relevant foreign prosecution authorities is indispensable in order to achieve the best possible coordination of procedures. The OAG takes the view that the authorities best placed to prosecute these serious crimes are those in the countries where the focus of the criminal activity lies. The OAG aims in particular to prosecute private individuals or legal entities that have acted unlawfully in Switzerland, thereby protecting the integrity of the Swiss financial centre.

In cases involving non-European legal systems, the OAG regularly uses the services of the Swiss ambassadors or diplomatic representations to facilitate its contact with foreign prosecution authorities. Under Art. 3 of the Mutual Assistance Ordinance, the FDFA also plays a vital role in cases of political importance. In these cases, the Federal Office of Justice (FOJ) obtains the FDFA's opinion when it receives a request for mutual assistance in criminal matters from another country. Lastly, in relation to decisions on forfeiture made by the federal courts and the OAG, the FDFA can by analogous application of the provisions of Section 5 of the Federal Act on the Freezing and Restitution of Illicit Assets (FIAA; SR 196.1) be assigned the task of deciding how forfeited assets should be returned to foreign states, once the FOJ has concluded the procedure for national and international division (*sharing*).

3.6 Conference of Swiss Public Prosecutors (CSPP)

The Attorney General is the vice-president of the CSPP. The OAG regards it as 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 among the cantonal prosecution services themselves and with federal authorities, as well as to coordinate and uphold common interests. The CSPP encourages uniform practices and thus promotes legal certainty in 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, the law of criminal procedure and associated fields.

Expectations and the general environment have (also) become more complex for the CSPP in recent years: the regularity of revisions to legislation or new legislative bills has increased. Coordination is required to deal with *de facto* joint federal and cantonal responsibilities (e.g. cybercrime). The CSPP has to stay up-to-date and position itself as a specialist body. The public expects it to be able to provide information competently and reliably as the unified voice of the prosecution services. In a demanding legal and political environment, the CSPP has to plead the case for an independent prosecution system. These challenges require the CSPP to develop and to professionalise its structures. The OAG supports the forward-looking evolution of the CSPP.

In the report year, the Federal Office of Transport filed a criminal complaint with the OAG and the Office of the Cantonal Prosecutor Bern-Mittelland related to allegations of excessive subsidy payments claimed by Post Auto Schweiz AG. After investigating the reported circumstances and discussing the specific issues, both the OAG and the Office of the Chief Public Prosecutor of the Canton of Bern concluded that the allegations made in the criminal complaint were matters of administrative criminal law and that neither the national nor the cantonal prosecution authorities have jurisdiction to investigate cases of suspected subsidies fraud.

3.7 Swiss Transportation Safety Investigation Board (STSB)

The STSB's conducts investigations with the aim of improving air safety. Its investigations focus on finding out why accidents occur and thus on objective and subjective aspects of safety deficiencies in the aviation system. If criminal proceedings are conducted in parallel with the STSB investigation, coordination between STSB and OAG is essential, especially in the initial phase, where the interests of the two authorities overlap. Cooperation between OAG and the STSB works well – the following incident is a good example:

On 4 August 2018, a Junkers JU-52 aircraft crashed on the west flank of the Piz Segnas, a mountain in Graubünden. All 20 persons onboard lost their lives.

Thanks to extraordinary efforts from all the authorities and organisations concerned, the work to recover the bodies and salvage the wreck was concluded three days after the accident. All the victims of the plane crash were formally identified within five days by specialists from the Institute for Forensic Medicine at the University of Zurich and the organisation Disaster Victim Identification Switzerland. Cooperation with the authorities and organisations involved (Graubünden Cantonal Police, STSB, fire service, Rega, Swiss Air Force, Swiss Alpine Club, civil defence, Care Team Grischun, the commune of Flims, Canton of Graubünden Office for Nature and the Environment) worked smoothly.

The OAG's criminal enquiries have been and are being conducted in parallel and in close coordination with the STSB, which is seeking to identify the cause of the accident as part of a safety investigation. The investigations are still ongoing.

3.8 The Cyberboard

Cybercrime knows no territorial borders and evolves constantly and rapidly. As a consequence, combating cybercrime is a joint task of all federal and cantonal authorities involved in law enforcement. The aim is to jointly encourage the enforcement of national law in cyberspace throughout Switzerland.

Switzerland requires a joint law enforcement platform, in order to pool and coordinate efforts to combat cybercrime in a standardised manner at strategic and operational levels. At the start of 2018, several authorities joined to launch the Cyberboard, which brings together all those involved in combating cybercrime, i.e. both cantonal and national prosecution authorities and representatives of the organisations involved in prevention (e.g. the Reporting and Analysis Centre for Information Assurance MELANI and Swiss Crime Prevention).

While a strategic steering committee in the Cyberboard is drawing up suitable general requirements for combating cybercrime, cyber specialists in a second committee are discussing and coordinating operational issues and approaches. Each canton has nominated a public prosecutor as their *single point of contact* for the operational committee. At a policing level, fedpol and the police "Investigation Support Network for combating Digital Crime" are important members of the Cyberboard.

The OAG worked with fedpol to devise the concept for the Cyberboard. The OAG still plays a leading role in the Cyberboard's work, in that it organises and coordinates the meetings of both the strategic and operational committees. The Cyberboard will continually evolve, in line with the second National Strategy for Protection against Cyber Risks 2018–2022. In this way,

the Cyberboard can strengthen the law enforcement system and promote cooperation in cyber security and cyber defence.

4 General information for Parliament and legal issues

4.1 Amendments to the Criminal Procedure Code

At the beginning of the reporting year, the OAG participated in consultations on the amendment of the Criminal Procedure Code (CrimPC) and addressed the following key concerns:⁹

- Introduction of general federal jurisdiction for the prosecution of all offences directed against persons protected under international law and involving premises, archives or documents belonging to diplomatic missions and consular posts.
- Relieving the OAG of the duty to prosecute petty offences involving explosive substances (damaging dog waste bins, post boxes, parking meters, etc.) so that the OAG can concentrate on its core tasks.
- Considering the statutory basis for the possible transfer of prosecution to the OAG at the request of the Federal Council in complex administrative criminal law cases that require independent investigation outside the Federal Administration (such as that relating to Post Auto Schweiz AG, see p. 7, 3.6).
- Rules on rights of participation in interviews that meet the requirements of the European Convention on Human Rights (ECHR) and related legal precedent, in that any suspect in criminal proceedings has the right at least once during the proceedings to confront prosecution witnesses and ask them questions.
- Rules on the rights of participation for private claimants at interviews, in that these persons have the right at least once in the proceedings to be able to make a statement and ask questions, whereby this right can be granted in writing.
- Making it possible in investigations with numerous private claimants to send communications to private claimants and legal advisers who have their domicile, habitual residence or registered office abroad only to the designated address for service in Switzerland.
- Adhering to the summary penalty order procedure, which has proven its value in practice, is widely accepted and which complies with the rule of law, as each decision and each procedural act by the public prosecutor can be challenged or made subject to full judicial review by filing an objection against the summary penalty order.
- Considering the possibility of restricting the sealing of records and objects that require to be examined, as this often delays proceedings for months and thus prevents the identification of incriminating assets and the securing of evidence.

- Introducing the option of postponing indictment in criminal proceedings against companies, i.e. in order to reach an out-of-court agreement by which the company is provisionally not indicted and the proceedings are deferred for a probationary period provided the company meets or has met all the agreed requirements.
- Doing away with the OAG's right of appeal under Art. 381 para. 4 CrimPC, as the OAG has no reason to intervene in criminal proceedings that are subject to cantonal jurisdiction.

4.2 Changing the rules on jurisdiction under the Aviation Act (FAA)

The OAG in principle welcomes the initiative in the Candinas Motion 18.3700¹⁰ to make the criminal aspects of all aircraft accidents subject to federal jurisdiction. The OAG takes the view that Art. 98 para. 1 FAA (SR 748.0) should be amended as follows: "Offences committed on board an aircraft and offences committed on the ground that cause an aircraft accident or a serious incident are, without prejudice to paragraph 2, subject to federal criminal jurisdiction."

Investigations into the causes of an accident or of a serious incident are normally complex, time-consuming and expensive. Although the court can call on the results of the STSB investigation (see p. 7, 3.7), trying to evaluate its findings in criminal law terms requires extensive expertise on aviation matters. Under the current rules on jurisdiction, any canton could find itself responsible for a criminal investigation of this type; this makes it difficult to develop expertise and establish a standard interpretation of the law. The proposed uniform prosecution of offences, including those committed on the ground that lead to an aircraft accident or serious incident, by the federal prosecution authorities offers the advantage that related expertise and the required resources can be accumulated in one place. At the same time, minor offences will continue to be prosecuted and adjudicated by the Federal Office of Civil Aviation (FOCA).

4.3 Abolition of the OAG's party status in administrative criminal proceedings

The OAG has party status under the rules of administrative criminal law (Art. 24 and 74 para. 1 ACLA; SR 313.0), although – in contrast to the administration concerned – it neither participates in the investigation nor has any specialist knowledge of administrative matters. Accordingly, the OAG does not (actively) exercise its party rights,

⁹ The OAG's position can be read in full at www.admin.ch/ch/d/gg/pc/documents/2914/Organisationen_Teil_1.pdf, p. 22 ff.

¹⁰ www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20183700.

especially as the specialist authority responsible for the investigation (the administration) has full knowledge of the case and has its own party status.

The Financial Market Supervision Act (FINMASA; SR 956.1) places the judicial assessment of criminal acts under federal jurisdiction, subject to the requirements of Art. 50 para. 2. In these cases, Federal Department of Finance (FDF), which has sole responsibility for conducting the investigation, passes its files to the OAG for proceedings to be taken in the Federal Criminal Court. Arts. 73-83 ACLA apply by analogy, which means that the OAG and the FDF both have party status in these proceedings. The OAG does not (actively) exercise its party rights, as the FDF has full knowledge of the case and has its own party status. The OAG's activities are thus administrative only, "acting as a messenger", i.e. passing on the files from the responsible administration to the Federal Criminal Court.

The OAG's sole function in these proceedings is limited to acknowledging the arrival of related post and sending out and filing documents related to the proceedings. The OAG's party status therefore does not bring added value in any form, uses up the OAG's resources unnecessarily and generates extra work and costs for the court and for the parties.

From the OAG's point of view, its party status as provided for in the ACLA and FINMASA should be terminated.

4.4 Clarification of legal issues in the "MUS" criminal investigation

The epilogue to the "MUS" case came in a series of Federal Supreme Court judgments issued on 22 December 2017¹¹ which largely upheld the judgment of the Federal Criminal Court issued in October 2013¹². The allegations against the five main suspects, namely fraud, aggravated criminal mismanagement, forgery of documents and aggravated money laundering, were also upheld, as were the forfeiture orders and compensation claims.

The background to the case was the privatisation of the economy in the Czech Republic, where the five suspects, in a period from the end of 1996 to 1998, managed to acquire a majority shareholding in the company MUS, one of the largest energy companies in the country. The suspects, who included directors of the company concerned, unlawfully transferred more than

USD 150 million to accounts in Switzerland, in order to acquire the 46% of the shares that still remained in the ownership of the Czech Republic in 1998. The latter was fraudulently induced to sell the shares at a knockdown price to a Swiss company that was secretly controlled by the suspects. In acquiring MUS, the accused secured an illegal financial advantage worth over CHF 1 billion, which they then laundered via a complex financial structure comprising a multitude of letterbox companies.

The case is also of legal significance for the following reasons:

- The Federal Supreme Court confirmed inter alia the jurisdiction of the Swiss prosecution authorities to prosecute the offences for which the accused were convicted, and thus resolved what had proved to be a contentious issue for legal experts: aggravated criminal mismanagement is – like fraud and embezzlement – an offence that can be committed in two locations simultaneously, and one of these was in Switzerland, the place where the accused secured their unlawful enrichment.
- The Federal Supreme Court also accepted the OAG's request to recognise the Czech Republic as one of the parties suffering loss, but left the question open as to whether the country should be paid back a share of the forfeited assets. This is a question that the Federal Criminal Court will have to decide at a later date.

11 Federal Supreme Court judgments 6B_653/2014, 6B_659/2014, 6B_660/2014, 6B_663/2014, 6B_668/2014, 6B_669/2014, 6B_671/2014, 6B_672/2014, 6B_687/2014, 6B_688/2014, 6B_695/2014. For a complete report on the case, see Federal Supreme Court judgment 6B_668/2014.

12 SK.2011.24.

Interview

Interview with the Attorney General of Switzerland



“Working on cases is and remains our greatest challenge”

The proceedings conducted by the OAG are increasingly complex and mostly have an international dimension. Attorney General Michael Lauber is aware that the OAG operates in a challenging environment. Progress on cases alternates with setbacks, and criticism is often louder than praise.

Michael Lauber, when you look back on the past 12 months, how would you assess last year on a scale of 1 to 10?

Michael Lauber (ML): Last year there were as many pleasing moments as there were challenging situations. So, it is either a ten, on the basis that these contrasts are what the OAG is all about; or it is a five in the sense that these contrasts have balanced each other out.

What was the biggest challenge for the OAG?

ML: Our work on cases. This is and remains the greatest challenge for the OAG.

...and for you personally?

ML: Managing the OAG.

You say there was a balance between pleasing moments and challenges. What pleased you most then?

ML: What pleased me most was the way all our staff tackle their work every day with the same motivation and are basically never deterred from doing the right thing. Everyone knows that the work we are involved in at the OAG is never easy. And despite that, or maybe rather because of that, to accept the responsibility for prosecuting crimes at federal level, to have the motivation to do that, that deserves respect. I hope that we will show the same commitment next year and all our staff are aware that we can only do it if we work together. And if decisions are needed, then we have to make them. Having said that, you always have to make a proper assessment of the underlying situation beforehand.

In the autumn, the OAG made headline news on a number of occasions. Allegations against a member of management ultimately led to his departure and you yourself were also the target of accusations. Did this or does this put any cases at risk?

ML: The OAG works within the available legal rules in a challenging environment. Conducting proceedings is a complicated matter. Cases are not put at risk as a result of individual incidents, but rather by failing to assess the risks adequately and constantly.

It was also difficult to explain to the public how important coordination meetings with parties are to the complex cases that the OAG conducts.

What lessons have you learned from these events?

ML: There are rules that apply: coaching and controlling are key to all the OAG's cases. Leadership is also crucial, as is a common understanding of what leadership means.

A different subject: the OAG is working on some massive cases, like 1MDB, Petrobras or football. When will you reach the limit of your resources?

ML: Just as I told the parliamentary committees a year ago: the OAG is working at the moment at the limit of its capacities. We can optimise things further on our own by standardising essential operational processes and by digitalisation. In our preparations for the 2020 budget, our workload is one of the things we are also evaluating.

In my view, what has really proven its value so far is using task forces to deal with large case complexes. These teams are made up of all the specialists from our various sections who are needed to deal with the specific issues in the complex of cases.

The Federal Criminal Court handed down some significant judgments in 2018. Which was the most important for you and why?

ML: There are various judgments on key legal issues. As examples I could mention the following two decisions: the distinction made between an expression of sympathy that does not amount to a criminal offence, and issuing propaganda for jihadist terrorism, which is; and the admission by the Federal Criminal Court of statements from Italian Mafia witnesses who had turned state evidence.

In addition, I should mention various important interim decisions that we managed to secure in our complex white-collar crime cases.

On 1 January 2019, the newly created Appeals Chamber in the Federal Criminal Court begin its work. What does this mean for the OAG?

ML: The OAG's cases are the only cases that the Appeals Chamber has to pass judgment on. It is good that this chamber can finally begin its work.

For the OAG it is vital that the Appeals Chamber is made up of judges who have practical experience of complex criminal proceedings and who can reach their decisions impartially, both institutionally and as far as the specific case is concerned.

In 2018, the Cyberboard, a new platform for combating cybercrime, was set up. You were one of the driving forces behind its launch. Are you satisfied with this project?

ML: The OAG was entrusted by various important players in the Swiss law enforcement scene with planning this coordination platform and running it for this initial period. The motivation of all concerned and their commitment to this project was one of the highlights of the year for me.

Combating cybercrime is essentially a joint task in which everyone has a role to play. And already the development of this platform requires that all concerned regard their activity as an important contribution to the overall process. It really has worked well, and so I am happy.

In conclusion: Where will the OAG be at the end of 2019?

ML: The OAG will have further consolidated and made progress in various cases, and will also have had to accept a few setbacks and some criticism.

Operating Activity

1 Strategy 2016–2019

The prosecution scene is changing. The OAG takes the view that the number of (more complex) criminal proceedings will continue to rise. At the same time, the level of financial resources made available is stagnating. The OAG must safeguard its freedom to act as required by evolving systematically and pooling its strengths:

- Operational management is thematically based on the various fields of crime. The management have tools that enable them to reach management decisions within their sections and to prioritise and coordinate cases across the sections.
- The OAG has institutionalised its exchanges with fedpol on matters that they have in common, potential synergies and practical measures. They are working together to devise principles for digital transformation (see p. 27, 2.3).
- With the introduction of the software-assisted preparation of data obtained from banks, the OAG has optimised its organisational procedures in one sub-area of its working environment. The increased automation and standardisation of the processing of data obtained from banks provides support in particular to the focused investigation work carried out by the Forensic Financial Analysis Section.
- The General Secretariat has taken over additional tasks in order to relieve the burden on the sections that are working on cases.

2 Centralised processing of incoming communications at the OAG (ZEB)

The ZEB registers, analyses and triages in one location all incoming communications that are not directly connected with or which have to be processed separately from an ongoing criminal investigation. These communications consist primarily of criminal complaints, requests to take over proceedings from the cantons, and reports from the Money Laundering Reporting Office (MROS). If necessary, an incoming communication is passed on to a federal prosecutor or assistant federal prosecutor for consideration, and his or her proposal for further action is discussed in the Attorney General's operational committee (OAB). Clear cases are dealt with directly by the ZEB. This reduces the workload of units conducting proceedings in particular and fosters a *unité de doctrine* within the OAG.

A key part of the work of the ZEB is providing administrative support in combating cybercrime. Incoming communications in this field (in particular requests to take over proceedings from the cantons and MROS reports) undergo a triage process, are submitted to the responsible prosecutors for assessment and are then passed on to the FCP, which is also involved. The ZEB also carries out the finishing work on cases that have been concluded.

A total of 1832 incoming communications were processed in the report year. These included 223 requests to take over proceedings, of which 81 % of were assigned to federal jurisdiction by the OAB. A further 358 MROS reports were processed. 1334 incoming communications were passed on to the sections for further processing (including 765 relating to cases with multiple complainants) and 498 were processed and dealt with directly by the ZEB (rejection of requests to take over proceedings or decisions not to take action on criminal complaints).

3 Combating cybercrime

In 2018, the federal prosecutors in the Cyber Unit of the Wikri section made progress with several cybercrime cases that had been opened in 2017 at the offices in Lausanne and Zurich:

- One of these cases, which began with the takeover of several dossiers opened in various French-speaking cantons, was able to detect new cases of telephone fraud that mainly concerned businesses. The perpetrators are difficult to locate because they use complex anonymisation techniques and voice-over-IP communication services in order to acquire Swiss telephone numbers. Several countries provided mutual assistance; in one case Swiss officers travelled abroad. The mutual assistance enabled significant advances to be made in tracking the offenders abroad. In this way, several fraud attempts in Switzerland potentially involving sums of many millions of francs were successfully prevented.
- A further case involved numerous instances of e-banking sessions being diverted by introducing a Trojan horse into the victims' computers. Significant progress was also made in this case thanks to active mutual assistance from a country visited by representatives of the Swiss prosecution authorities. The close cooperation between the prosecution authorities should make it possible to track down and arrest the main perpetrators, who are based abroad.
- Since May 2017, the OAG has been conducting criminal proceedings on suspicion of computer fraud. An internationally active group is suspected of having obtained and then unlawfully used e-banking data by sending spam emails and making telephone calls (voice phishing). Some of those affected are customers of Swiss financial institutions. By working with the authorities in the Netherlands through mutual assistance channels, the suspected perpetrators were successfully identified and their operations base located in the metropolitan area of Rotterdam. With the support of the prosecution authorities in the Netherlands, fedpol and coordination through Eurojust, an operation was carried out on 17 July 2018 in the Netherlands in which two persons were arrested and buildings were searched. At the OAG's request, the FOJ has applied to the Dutch judicial authorities for the extradition of the person arrested who is suspected of making the phishing calls in Switzerland. The other person is being prosecuted as part of the criminal proceedings being conducted in the Netherlands. Combating international cybercrime is especially reliant on effective cross-border cooperation and

coordination. The case described is an excellent example of how international cooperation, when working well, can lead to the identification and prosecution of cyber criminals.

In addition, the plan for centralising phishing/pharming cases with the ZEB, which has been in operation from the start of 2017, has been adapted and simplified to take account of the substantial increase in the administrative workload; this has allowed the FCP to analyse cases more quickly in the aftermath of cyber-attacks.

Lastly the new national Cyberboard platform (see p. 8, 3.8) began its activities involving its Cyber-CASE operational module. The Cyberboard's members (public prosecutors, federal and cantonal police officers, representatives of MELANI and prevention organisations) have met four times since July 2018 in order to discuss cases that involve several cantons and to allow members to exchange the experiences and knowledge that they have of this particular field of crime.

4 Cases of public interest

The information about cases of public interest covers the period up to the end of 2018.

4.1 Criminal investigation into corruption involving public officials

For over ten years, an employee of the Swiss Federal Railways (SBB) unlawfully awarded more than 600 contracts with a total value of around CHF 4 million directly to a friend's company and then did the work – insofar as any work was done at all – all by himself in his spare time. In this way he unlawfully acquired around CHF 2 million and caused the SBB losses of the same amount. The same person received undue advantages from three directors of an electrical company in return for decisively influencing the award of contracts; these advantages took the form of electrical equipment, cash payments and other benefits valued at several hundred thousand francs. These benefits were financed by submitting excessive offers and bills that were paid by the SBB.

In September 2017, the OAG brought charges including misconduct in public office, bribery and accepting bribes, accepting and granting advantages and (commercial) fraud. The Federal Criminal Court largely followed the submissions made by the OAG and convicted the three main accused. The SBB employee received a 36-month custodial sentence, partially suspended, and a monetary penalty of 150 daily penalty units. Two of the directors of the electrical company received suspended monetary penalties amounting to 360 and 240 daily penalty units respectively. The court confirmed that SBB employees, who essentially perform public duties for the Confederation, are regarded as federal public officials, with the result that federal jurisdiction applied.

The judgment against the SBB employee has taken full legal effect, as he and the OAG chose not to appeal. In relation to the directors of the electrical company, as of the end of 2018 the judgment had not yet taken full legal effect.

4.2 Political espionage cases

Based on an official report from the FIS, in March 2017 the OAG opened criminal proceedings against two persons of Russian nationality and persons unknown on suspicion of political espionage. During a conference of the World Anti-Doping Agency in Lausanne, a computer belong to a participant was infected by the spyware SOFACY when it was connected to the WLAN in the conference hotel. SOFACY is software used by the Russian military intelligence agency (the GRU). The attack took place in September 2016. In September 2018, the FIS notified the OAG of the identity of a third person –

also a Russian national – who was involved in the incident in Lausanne. Very probably the three suspects, who all belonged to the GRU, were engaged in espionage on behalf of the Russian Federation. After the FDJP granted authorisation for prosecution under Art. 66 of the Criminal Justice Authorities Act, the OAG issued an alert for the three suspects in RIPOL, the computerised police search system. As the allegations relate to a political offence, an international alert was not possible.

In addition, the OAG opened proceedings on 16 March 2017 on suspicion of political espionage among the Turkish Diaspora in Switzerland against former employees of the Turkish embassy in Bern and persons unknown. FDFA enquiries at the OAG's request established that the two suspects did not enjoy diplomatic immunity. The OAG has issued a national warrant for their arrest. The investigation has been adjourned.

4.3 Counter-terrorism

The number of investigations relating to combating terrorism remained stable in 2018. The appeal of jihadist ideology has not changed, as is shown by the stable number of cases involving the use of social media for propaganda purposes. It can be noted that certain suspects who have travelled to the battle zone maintain close contacts with the jihadist scene in Switzerland. The report year was marked by continuous and close cooperation with France. Two agreements on forming joint investigation teams are now in effect. Thanks to the first agreement, which relates to a case opened in 2016 against a Swiss national, ten people were arrested at the end of 2017 in France. The persons arrested had been active on social networks and had in particular broadcast plans for campaigns of violence. The Swiss suspect was detained in France and is due to appear before a French court in 2019.

A further case related to the Islamic Central Council of Switzerland (ICCS). The persons 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 Federal Criminal Court held that this was propaganda for a terrorist organisation and thus confirmed the OAG's assessment of the case.

In the case relating to the Tamil Tigers (LTTE), in the main hearing, which was held at the start of 2018, the court focused on the distinction between members of a criminal organisation and freedom fighters. The issue related not only to the question of the admissibility of evidence obtained through mutual assistance

procedures from countries that have been criticised for their policy on human rights, but also to the evidential value of reports produced by international institutions such as the UN.

4.4 Investigations relating to criminal organisations

In 2018, the trial was held in Federal Criminal Court of a person who had been indicted on charges of being a member of and supporting 'Ndrangheta criminal organisations in Switzerland and abroad. The accused was inter alia alleged to have made arms shipments from Switzerland in order to supply the criminal groups with the firepower they required to assert their criminal power.

For the first time in Switzerland, the criminal investigations and the main hearing relied on statements from Italian witnesses who had turned state's evidence, who were questioned by video conference under Swiss criminal procedure law as persons providing information. The witnesses who had turned state's evidence had decided to break away from a criminal organisation of which they had previously been leading members, and to cooperate with law enforcement agencies. For the first time, the Federal Criminal Court had to consider the evidential value of statements in Swiss criminal proceedings from witnesses who had turned state's evidence: the court confirmed their admissibility. The statements, along with other evidence obtained by the OAG, led to the accused being convicted in Switzerland of the offence of criminal organisation (Art. 260^{ter} SCC).

The Federal Criminal Court imposed a custodial sentence of three years and eight months. As of the end of 2018, the judgment was not yet legally binding.

4.5 Series of cases concerning Petrobras

The proceedings relating to the semi-state-owned Brazilian company Petrobras and the conglomerate Odebrecht, which is being conducted by a task force, remains a priority for the White-Collar Crime Section. The task force first focused on concluding proceedings in cases involving persons in respect of whom proceedings had already been concluded in Brazil, then on the recipients of funds in Switzerland and the persons who had made the payments. Progress has been made on the work in these phases but it will continue for some time because of the complexity of the proceedings. In a third phase, the possibility of opening proceedings based on the information obtained in the two previous phases against persons and companies involved in Switzerland will be considered. In 2018, two separate proceedings were opened against financial institutions in Switzerland (corporate criminal liability).

As a consequence of the publicity surrounding the conviction of the Odebrecht conglomerate secured in cooperation with Brazil and the USA at the end of 2016, the FOJ received a large number of enquiries and requests for mutual assistance, which it delegated to the OAG and which were processed and dealt with by the task force. In cooperation with the FOJ and the Brazilian prosecution authorities, further cases were delegated to Brazil.

A substantial volume of assets has been seized so far in this complex series of proceedings. By the end of 2018, more than CHF 300 million had been returned to the Brazilian authorities with the consent of the institutions holding them. For the OAG and Switzerland, it is a particular concern that seized assets be returned to their rightful owners.

The task force is made up of members of staff at the OAG's four locations, in particular federal prosecutors, financial analysts and procedural assistants as well as fedpol employees. Close cooperation between the Swiss and foreign authorities is essential in complex cases of this size.

4.6 1MDB investigation

As part of the investigations connected with the embezzlement of several billion dollars from the Malaysian state-owned fund 1 MALAYSIA DEVELOPMENT BERHAD (1MDB), the OAG opened criminal proceedings in November 2017 against two former directors of the Geneva-based company PETROSAUDI primarily in relation to bribery of foreign public officials, aggravated money laundering, fraud and criminal mismanagement. In the course of these proceedings and the proceedings opened in 2015 against two management bodies of 1MDB and extended in 2016 to include two former company officers from the United Arab Emirates, the OAG is continuing its investigation into assets of criminal origin and to secure a claim for compensation with their confiscation.

Following the change of government in May 2018, a Swiss delegation led by the Attorney General travelled to Malaysia in July 2018 in order to guarantee effective international coordination.

4.7 Investigations in connection with world football

Since the first enquiries began in March 2015, the series of investigations relating to world football has expanded to include around 25 criminal cases of differing size and scope, and a total of 19 terabytes of data has been seized. In view of the international dimension to this case complex, the OAG has been working on the basis of 45 requests for mutual assistance with fifteen different countries, including Germany, France, Austria and the USA.

The extensive and complex evidence, the requirements of international mutual assistance and the media interest have posed special challenges for these investigations. The OAG is meeting these challenges with a task force of specialist prosecutors and assistant prosecutors, financial analysts, IT specialists and FCP investigators. By adopting this approach, it is possible in especially complex proceedings to set quantitative or qualitative focus areas quickly and flexibly, and to implement and, if necessary, adapt the procedural strategy and planning. The persons directing the proceedings are thus able to set and adjust the required priorities and request resources quickly and as needed.

Appropriate priorities were again consistently set in the report year and implemented with increased resources. As a consequence, in the report year alone, around 40 interviews were carried out with suspects, witnesses and persons providing information in Switzerland and abroad.

4.8 Criminal investigation in relation to stock market offences

On three occasions shortly before the company Holcim announced business results and twice before unannounced events, an asset manager traded on his own and his partner's behalf in related derivatives (underlying asset HOLN) as well as trading shares in Holcim and Lafarge for clients before the pre-announcement of the merger between the two companies. The profits amounted to around CHF 2.2 million. The Federal Criminal Court convicted this experienced trader, who denied the charges, of insider dealing as a third-party insider in the run up to the mergers, imposing a fine of CHF 7,800 and recognising damages claims of just over CHF 2 million (Decision SK.2017.19 of 19 December 2017). In this trial based on circumstantial evidence, the court accepted for the first time the evidence led by the OAG based on a detailed analysis of the trading pattern. This evidence also covered transactions involving Holcim securities in relation to which the accused was acquitted.

The court rejected the argument that there were multiple instances of the same offence where the accused, based on the same insider event (the merger), had invested in different securities at different times for different people. The OAG took the view that the trader's level of knowledge had steadily increased, thus determining his investment decisions in relation to derivatives and shares as well as the relevant securities account and that he had therefore traded on a new factual basis in each case.

In its assessment of the price relevance of insider information, the court for the first time applied the

"reasonable investor test" developed in the American law on insider dealing. According to this test, information is likely to have an effect on price if a careful investor would be highly likely to have used that information as part of the basis for his investment decision. In applying the test, the court followed recent expert opinion as well as the opinions of the OAG and FINMA (RS 2013/08) and expressly rejected the previous approach of using (depending on the doctrine, various) fixed percentage thresholds.

The asset manager, his partner and a client have filed appeals in Federal Supreme Court; as of the end of 2018, no appeal judgment had been issued.

4.9 Money laundering proceedings in connection with Angola

Since 26 April 2018, the OAG has been conducting criminal proceedings against persons unknown on suspicion of money laundering in connection with alleged property offences against the Angolan sovereign wealth fund (FSDEA) and the Angolan National Bank (BNA). It is suspected that the proceeds from these offences were laundered in Switzerland and abroad. The investigation into the predicate offences is being carried out in coordination with the prosecution authorities in the Republic of Angola. As part of their own criminal proceedings, the Angolan authorities have detained a Swiss-Angolan citizen, the former chairman of the supervisory board of the FSDEA, and the son of the former Angolan president.

In July 2018, the OAG returned USD 60 million to the FSDEA, which had filed a criminal complaint and taken on the status of a private claimant. At the end of 2018, the OAG had seized assets valued at around USD 150 million.

4.10 Anti-corruption proceedings in relation to commodities trading

The OAG is conducting criminal proceedings in connection with the GUNVOR Group and several persons. The investigations began in January 2012 against persons unknown on suspicion of money laundering in connection with acts of bribery believed to have been committed between 2010 and 2012 in order to secure oil deliveries from the state petroleum company in the Republic of the Congo. The main proceedings were extended in March 2016 to include a former employee of the GUNVOR Group and in May 2017 to include two companies in the Group on suspicion of bribery of foreign public officials (corporate criminal liability).

Against this background, a former employee of the Group admitted offences and requested the opening of accelerated proceedings. In August 2018, the Federal

Criminal Court found him guilty of bribery of foreign public officials. In view of the special circumstances of the case (in particular the voluntary admission of guilt), the accused was given a suspended 18-month custodial sentence and placed on probation for three years. According to the version of events agreed in the judgment, consultants engaged and paid by companies in the GUNVOR Group transferred a significant portion of their fees to foreign government officials in order to persuade them to make decisions in favour of the Group. Similar offences were committed in the Ivory Coast.

The judgment has become legally binding. The other criminal investigations mentioned above are continuing.

4.11 Criminal investigation under international criminal law

On 6 February 2017, the OAG assumed responsibility for criminal proceedings opened by the Public Prosecutor's Office of the Canton of Bern in connection with allegations of crimes against humanity committed by a former Gambian government minister (inspector general of the Gambian police and a member of the presidential guard in the Gambian armed forces). The suspect had applied for asylum in Switzerland. In the course of these criminal proceedings, the OAG has so far received nine criminal complaints from persons who have claimed the status of private claimants. The complaints relate to incidents that took place between the year 2000 and 2016. The extensions of pre-trial detention requested periodically by the OAG in the report year have in every case been granted by the compulsory measures court. Related appeals filed by the suspect have been rejected by the Federal Criminal Court and the Federal Supreme Court.

The case relates primarily to allegations of torture, which is a crime against humanity, as well as offences such as serious assault, endangering life, rape and sexual acts with persons in institutional care, prisoners and suspects. The allegations have been substantiated in particular by statements provided in interviews with the private claimants and witnesses, and by the evaluation of other evidence. Requests for mutual assistance have also been sent to various countries. In addition to the investigation of allegations of abuse by the police and prison authorities controlled by the suspect in the period in which the offences were committed, investigations are concentrating on possible collaboration between the services under the suspect's control and the Gambian secret service, which is believed to have carried out systematic acts of torture at its headquarters and in other unofficial detention centres.

4.12 The "Würenlingen" case

On 21 February 1970, a Swissair aeroplane crashed near Würenlingen in the canton of Aargau after a bomb exploded on board. All 47 occupants of the plane (38 passengers and 9 crew members) were killed. Despite extensive investigations and many years attempting to trace the perpetrators, no one was brought to justice. The OAG closed the investigation on 3 November 2000.

In response to a request to reopen the case from a private individual, the OAG conducted an examination of the substantive and legal aspects of the original "Würenlingen" proceedings. The basis for the request for a reopening was an FBI document from June 1970 that was publicised in the media and made available online that mentioned that unknown sources indicated the possible involvement of two unnamed persons from West Germany.

The examination of the FBI document revealed that it was not sufficient to meet the legal requirements for reopening the investigation, nor for opening proceedings against a different group of perpetrators. Furthermore, following the examination of the case files, it was concluded that the legal requirements for assuming that the offence was not time-barred had not been met either and that criminal proceedings in the "Würenlingen" case were in fact time-barred.

The Attorney General of Switzerland therefore ruled on 26 July 2018 that the proceedings were abandoned and would not be reopened.

5 Offences prosecuted on official authorisation

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 Art. 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).

In the report year, notice was received of four further decisions relating to pending applications from 2017 (two under Article 15 GLA and two under Article 66 CJAA). In all four cases, the authorisation for prosecution was granted.

5.2 Prosecution of political offences

Under Art. 66 CJAA, the prosecution of political offences requires authorisation from 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).

If authorisation is granted under Art. 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 2018

Applications to the GS-FDJP ¹ or to parliamentary committees ²	Number	Authorisation granted	Authorisation refused	Application unfounded	Decision pending
under Art. 15 GLA ¹	1	0	0	0	1
under Art. 66 CJAA ¹	7	7	0	0	0
under Art. 17 / 17a ParlA ²	1	1	0	0	0
Total	9	8	0	0	1

6 Enforcement of judgments

In 2018, the services conducting proceedings passed on around 270 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 28 judgments from the Federal Criminal Court for enforcement. Since the start of the report year, the cantons have been responsible for cases of falsifying motorway vignettes. This explains the fall in the number of new enforcement cases.

In 2018, the OAG and the Federal Criminal Court issued forfeiture and compensation orders for a total of around CHF 791 million. In the case of around CHF 785 million of this total, the proceeds may be used exclusively for the benefit of the parties suffering loss. Most of these forfeitures / compensation orders were issued in the “MUS” case (around CHF 660 million; see p. 10, 4.4) and in the case against Dieter Behring (around CHF 100 million). Around CHF 6 million was forfeited without being reserved for the benefit of parties suffering loss or being designated as claims for compensation. 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. In eight further cases, referral to the FOJ is being considered. Overall, assets amounting to around CHF 790 million are affected. If assets are used to benefit parties suffering loss, their claims take priority over sharing.

A total of CHF 5.1 million in assets is the subject of ongoing sharing procedures. In the report year, the FOJ concluded nine sharing procedures (some from previous years), involving the forfeiture of around CHF 45 million in assets. Around CHF 36 million of these assets will definitely be credited to the federal coffers.

Administrative Activity

1 Legal principles governing the organisation of the OAG

Under Art. 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 is organised into the following sections:

- The *OAG's Development Section* maintains the OAG's strategic project portfolio. The Directorate uses this to plan and control the implementation of the strategy and thus achieve the continuous development of the authority.
- The *OAG's Management and Controlling Section* provides support for the Legal Services Section, Finances, Human Resources (HR) and Directorate Assistance. This section supports the Directorate in its strategic and the direct management of the OAG.
- The *ICT and Central Services Section* is primarily responsible for operating the ICT infrastructure and providing essential services to the entire OAG. This section is also responsible for security, i.e. both the protection of OAG employees and for information security.

In addition to managing daily business, the General Secretariat's main activities in the report year were improving the OAG's management and control structures, preparing for the imminent move in 2019 to the new G1 administrative centre, processing the OAG's strategic development as well as a focused examination of employees' needs. A further exceptional event was the AB-BA's inspection of the General Secretariat in the second half of 2018.

2.1 Strengthening governance structures

Through the institutionalised inclusion of senior management, the Directorate sharpened its focus on core business. As a consequence, it was possible to plan and manage the work and priorities in the General Secretariat in line with the demands of the core business.

Quality assurance in business administration is essential for maintaining case files professionally according to the statutory requirements. To this end, new governance structures have been conceived that provide for the combined involvement of the employees responsible for quality assurance and the management staff responsible for procedural support.

The field of governance, there was also a need in the report year to overcome special challenges involving the processing extremely large volumes of data. It was possible to further consolidate operational processes in the ZEB (see p. 16, 2).

Lastly, in the report year the General Secretariat (also) actively supported with significant staff resources the efforts of the prosecution authorities throughout Switzerland in relation to cybercrime and the standardised production of bank data active.

2.2 Future working environment

In 2019, employees in the Bern office will move to the G1 administrative centre. This move will bring a major change in the future physical working environment. Plans for this were drawn up in the report year, based on analyses of how the OAG's employees do their various jobs, and a start was made on their implementation.

In parallel with this, the OAG tackled the question of its future digital workplace. The relevant requirements were specified and conceptualised. By means of a WTO tendering procedure, the OAG was able to evaluate a partner to realise this project to implement the digital workplace in 2019.

2.3 Digital transformation

Technological progress makes significant improvements in relation to working efficiency and quality possible in some of the OAG's activities. In the report year, the OAG worked with fedpol to devise fundamental concepts for digital transformation in federal criminal proceedings. The digital transformation will have a major influence on operational processes and job descriptions, and the cost and workload involved in the changes will be considerable. A key challenge will be supporting employees and their personal development, and adapting organisational models and structures.

The introduction of a central service for the standardised processing of documents and information obtained from bank records was an important priority for the General Secretariat. By using specialised software, what were previously manual operations have now been standardised and automated; in addition, data and information are now provided to the specialist investigators in the criminal proceedings in a structured form.

2.4 OAG employees

The employees are the most important factor in the success of the OAG's activities. Accordingly, the Directorate regarded the evaluation of the results of the survey of federal employees in 2017 as a matter of importance. The main issues were evaluated and communicated to the employees in detail. In order to process the main issues, measures were defined and their implementation begun. The most important issues in relation to human resources are organisational governance and HR management, as well as the employees' opportunities to develop and prospects of advancement.

In order to provide for the systematic professional development of assistant federal prosecutors, a scheme was introduced for their appointment as "federal prosecutors ad interim". The scheme has enjoyed a high level of acceptance. Following the implementation phase,

an evaluation is about to be conducted that will form the basis for any required adjustments.

2.5 Inspection by the AB-BA

In the second half of 2018, the OAG's Supervisory Authority (AB-BA) carried out a comprehensive inspection of the General Secretariat. In the OAG's view, the inspection was constructive and worthwhile. The AB-BA comments on the results of the inspection in its annual report.

For the General Secretariat, the results of the inspection offer a further opportunity to improve its operational processes and its services for the OAG's organisational units responsible for its core business.

3 Use of financial and material resources: 2018 accounts

The global budget submitted by the OAG for 2018 (expenditure and investment costs) amounted to CHF 65.2 million. At CHF 38.2 million (59 %), the largest item of expenditure in the budget is staff costs. In addition, CHF 25.8 million was allocated to material operating costs. The remaining CHF 1.2 million covers other operating expenses and investment costs. The global budget can be itemised according to types of financing as follows: CHF 57.5 million is allocated to expenditure outside the Federal Administration that has financial impact and CHF 0.4 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 1.2 million is made up primarily of official procedural fees collected in federal criminal proceedings, income 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 2018 will be published in due course on the relevant page of the Federal Finance Administration website.¹³

4 General directives

In 2018 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).

Following a pilot phase which began in 2017, on 1 March 2018 the Attorney General brought into force a "Directive on requests from heads of section for the appointment of federal prosecutors ad interim (a.i.)".

The internal work on revising the Regulations on the Organisation and Administration of the Office of the Attorney General of Switzerland was completed. It is planned to publish the new regulations in the Classified Compilation of Federal Legislation (SR) in 2019.

¹³ www.efv.admin.ch/efv/de/home/finanzberichterstattung/finanzberichte/staatsrechnung.html.

5 Code of Conduct

In July 2017, the OAG issued its own code of conduct as a prosecution authority. This contains principles on correct behaviour and good governance that OAG employees can use as guidelines for their own working practices. In the year and a half since the Code came into force, the advisory Professional Ethics Committee has mainly had to provide its opinion on the issues of secondary jobs and accepting gifts.

Based on its experiences and with the support of the HR Section, in mid-November 2018 the Committee proposed that the Directorate amend the Code in order to make the procedure for giving notice of and obtaining authorisation for secondary jobs simpler and more transparent. The Directorate approved the changes and they were introduced shortly afterwards.

In addition, the Committee twice published its opinions so they could be seen by all the employees, thereby developing its practices on professional ethics based on pertinent cases. This is firmly in line with the concept of the Code as a dynamic instrument to be used by the employees which is devoted to strengthening confidence in the institution and in particular its virtues of independence, impartiality, integrity and dignity, which are essential in order to guarantee the rule of law and the correct application of the law.

6 Human resources

6.1 2017 employee survey

In spring 2018, the results were issued of the 2017 survey of federal employees. At the OAG, 76 % of employees responded to the survey (Federal Administration: 68 %). The results in relation to job satisfaction (value: 68), commitment (value: 80) and target-oriented behaviour (value: 74) have remained stable when compared with the survey conducted in 2014. They are virtually identical to the overall results for the Federal Administration.¹⁴ The OAG is in the process of discussing the results at workshops and will then take measures.

6.2 Workforce as of 31 December 2018

At the end of 2018, the OAG had 238 employees (previous year: 234), who together held the equivalent of 229 full-time positions (previous year: 224). Of these 238 employees, 32 (previous year 32) are on temporary contracts. The following numbers of employees work at the OAG's various offices:

	31.12.2017	31.12.2018
Bern	177	182
Lausanne office	25	28
Lugano office	17	16
Zurich office	15	12

6.3 Staff statistics

The OAG's employees hold the following positions: Attorney General (1), Deputy Attorneys General (2), Secretary General (1), Head of External Relations (1), Federal Prosecutors / Head of Division (4), Federal Prosecutors (38), Assistant Federal Prosecutors (43), legal assistants (11), assistant case officers and chancellery staff (48), administrative staff (59) and experts and analysts in the sections FFA and WiKri sections (30).

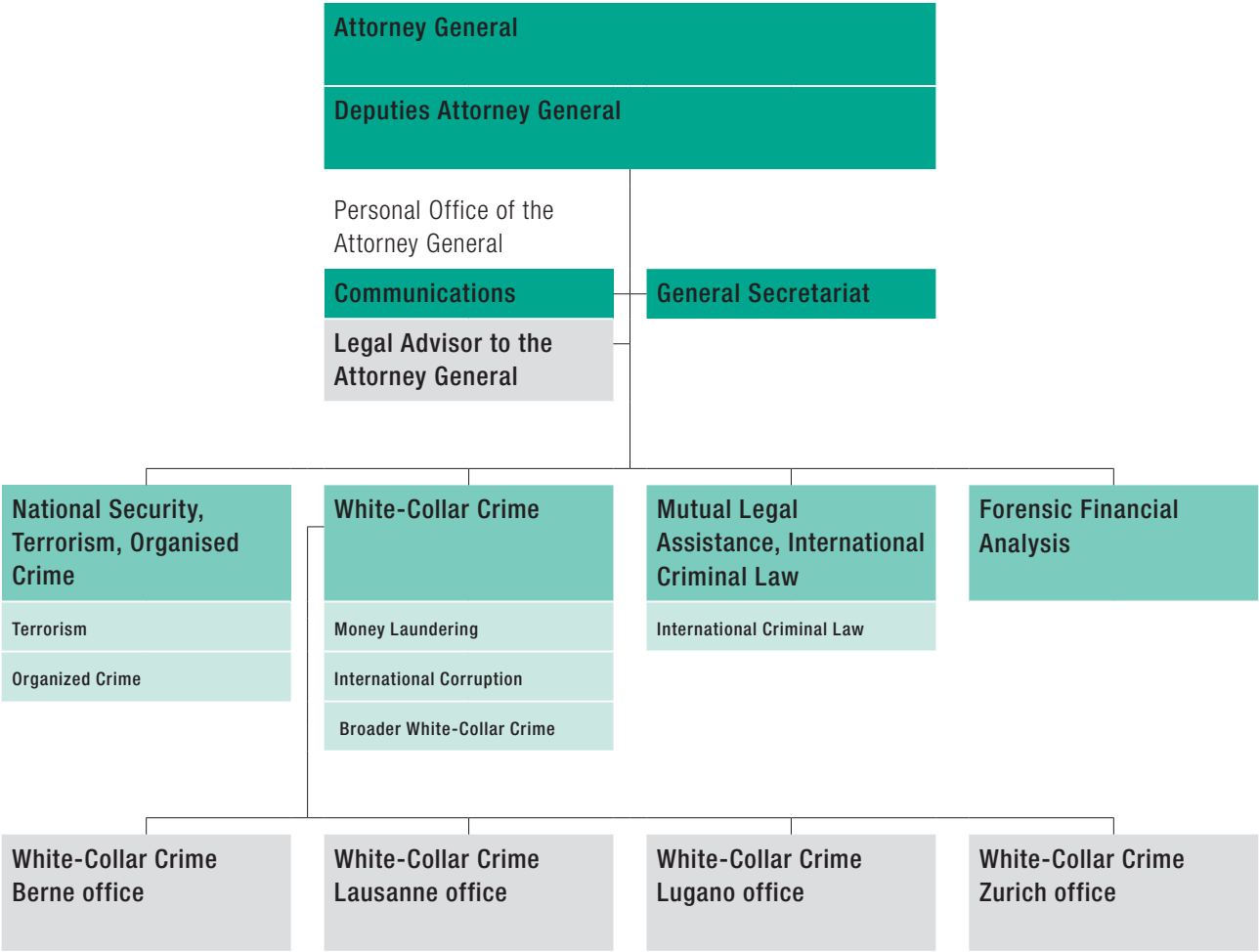
As of 31 December 2018, the OAG also employs 7 legal trainees and 3 trainees in the administrative section.

The average OAG employee is contracted to work 92.1 % of full-time working hours and is 39.4 years old. The breakdown of staff according to their first official Swiss language is as follows: German 147, French 69 and Italian 22. The OAG employs 140 women and 98 men. Staff turnover in the report year was 15.2 %.¹⁵

¹⁴ A summary of the most important results of the 2017 employee survey in the Federal Administration is available at www.newsd.admin.ch/newsd/message/attachments/51393.pdf.

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 01.01.2018 to 31.12.2018.

7 Organisational chart



- Directorate
- Leading cadres
- Cadres



From right to left:
Ruedi Montanari, Deputy Attorney General
Michael Lauber, Attorney General
Mario Curiger, Secretary General
Jacques Rayroud, Deputy Attorney General
André Marty, Head of External Relations

6.4 Disciplinary proceedings

In the report year allegations were made to the Attorney General against a senior federal prosecutor that on initial assessment could have led to criminal charges and therefore had to be reported to the Supervisory Authority for the Office of the Attorney General (AB-BA). Subsequently, a special federal prosecutor appointed by the AB-BA opened an independent investigation on 12 October 2018. In parallel with the criminal proceedings and as a precautionary measure, the Attorney General opened disciplinary proceedings on 31 October 2018, which were then adjourned pending the outcome of the criminal investigations. The investigation completely dispelled the initial suspicions and was terminated definitively on 9 November 2018 with the Confederation bearing all the costs. The federal prosecutor concerned left his position at the OAG amicably and by mutual agreement. This rendered the adjourned disciplinary proceedings pointless and they were duly terminated.

8.1 National Security, Terrorism and Organised Crime Section (STK)

The staff in this section have had to deal with a constantly high workload in recent years, although the spread of cases among the various areas of crime and the Swiss languages involved has changed to some extent. What has not changed and has remained high is the number of ongoing and new cases related to terrorism. The number of offences committed by or against public officials have increased, while the number of actual corruption offences has declined. There has been a rise in the number of offences of espionage, as well as a marked increase in counterfeit money crimes. In the report year, several large cases were initiated involving gangs operating throughout Switzerland that had put counterfeit money into circulation. These investigations are generally difficult because of the lengthy periods that suspects may have to spend in pre-trial detention and the high numbers of foreign suspects that are frequently involved.

Generally, there has been an increase in cases conducted in French. The section faces a challenge to cope with such unforeseeable developments with the available resources.

8.2 White-Collar Crime Section (WiKri)

Bern office

The staff at the Bern office had to work to their absolute capacity in the report year. The complex investigations posed considerable challenges for them, in particular in view of the time-bar issue. Furthermore, the absence of one case manager for several months because of illness placed an added burden on the office. Thanks to the flexibility of the pool system for resources, it was generally possible to cope with the peaks in the workload. Two employees on short-term contracts at the Bern office were engaged on permanent contracts as assistant federal prosecutors. A further assistant federal prosecutor was also appointed in order to deal with staff shortages in one large complex of cases.

Zurich office

At the Zurich office, cooperation with the other offices within the section WiKri was further intensified in the report year. The employees formed part of various task forces. This was accompanied by further training in the office in the areas of international corruption, money laundering and corporate criminal law. The implementation of international requests for mutual assistance directly connected with the OAG's own investigations was also a priority. Employees in the office carried out the conceptual work for developing structures in the

OAG for combating cybercrime. The constantly high overall workload was dealt with in part thanks to the coordinated prioritisation of cases throughout the sections, focused case management, flexible use of human resources and the hard work done by the employees.

Lugano office

For the Lugano office 2018 was marked by completing the takeover of cases in connection with the second phase of the Petrobras series of proceedings. The result is that the majority of cases conducted in Lugano (around 75 %) are currently related to Petrobras: in this connection, several requests to Switzerland for mutual assistance are being executed. This situation has made it possible for the Lugano office to become more closely integrated into the OAG, thanks to the synergies created by the Task Force. The office's workload remains high.

Lausanne office

For the Lausanne office 2018 was a year of change and adjustment. In organisational terms, the movement of federal prosecutors and above all of their cases to and from Bern had to be managed. Lausanne now not only deals with part of the Petrobras proceedings, but also the world football cases. In addition, the office is home to one of the two specialist cybercrime centres, the other being located in Zurich. Preparations had to be made for the arrival of new members of staff, primarily assistant federal prosecutors. In operational terms, it was a very busy year and the workload was high.

8.3 Mutual Assistance and International Criminal law Section (RV)

Because of their workload, all the employees in this section work both in mutual assistance and on international criminal law cases. However, the specialists in international criminal law work mainly in that field. The employees find working in both fields rewarding and the exchange of knowledge and continuous professional development is deliberately encouraged.

In the report year, the section executed requests for mutual assistance covering the OAG's entire sphere of responsibilities. It also supported the other sections with their mutual assistance questions. The number of requests has been increasing for years, as more and more states realise the importance of international co-operation. In addition, the federal prosecutors in this section are working on the mutual assistance aspects of various large case complexes that are being dealt with by other sections of the OAG. The numbers of international criminal law cases have also increased, as both the State Secretariat for Migration (SEM) and NGOs are

reporting an increasing number of instances of suspected criminal activity.

The OAG and the RV Section also benefited in the report year from their valuable cooperation with Eurojust, the European Union's unit for judicial cooperation.

8.4 Forensic Financial Analysis Section (FFA)

In 2018, the FFA shared their expertise in economics and finance in around 119 cases, with two case complexes (48 cases) claiming more than 35 % of their analytic resources. The FFA submitted numerous important reports in priority cases. Thanks to the closer cooperation between the FFA staff and their counterparts in all the OAG offices, the section's involvement in the OAG's case complexes and in developing investigation strategies in business and financial sector again increased.

In the course of 2018, the head of the white-collar crime sections at the OAG and the FCP and the FFA organised information meetings to raise employee awareness of how best to work together in the teams that all three sections are involved in.

The workload was particularly high in 2018, because of the constant demands on FFA resources and because five new FFA employees were integrated into the Bern team and new specialists were appointed in the Zurich office.

In 2018 the FFA took measures to harmonise reporting and financial analysis instruments. In addition, it proposed that the OAG introduce monitoring in relation to new financial technologies. The FFA's observations in connection with its own resources led to proposals being made on job descriptions, continued professional development and the management of the section. These proposals will be considered in 2019 processed.

Reporting

Reporting

Criminal investigations	as at 31.12.2017	as at 31.12.2018
Pending preliminary clarifications ¹	334	456
Ongoing criminal investigations ²	478	407
National security	111	103
Terrorism	34	30
Organised crime	62	56
International criminal law	11	14
Money laundering	243	203
International corruption	65	56
General white-collar crime	96	74
Suspended criminal investigations	227	264
Criminal investigations ongoing for more than two years ³	234	205
	2017	2018
Newly instigated	237	182
Completed		
Not accepted	128	176
Suspended	95	152
Referral/delegated/forwarded/returned to canton	100	128
Summary penalty orders ^{4/5}	788	170
Indictment filed	21	10
Indictment filed in accelerated proceedings	3	1
Referral of summary penalty order to court ⁵	25	13
Indictment rejected	6	2
Operative portion of judgment BStGer ⁶	36	35
	2017	2018
Requests received for mutual assistance	as at 31.12.2017	as at 31.12.2018
Ongoing mutual assistance proceedings	307	313
Requests received	31	21
Requests being examined	62	90
Request being executed	208	199
Objections to requests	6	3
Mutual assistance proceedings ongoing for more than two years	50	27
	2017	2018
Mutual assistance requests accepted	197	233
Completion of legal assistance proceedings	187	223
Back to FOJ for delegation to canton	13	22
Mutual assistance refused	8	4
Mutual assistance granted	131	146
Other completions (e.g. dismissal, withdrawal, etc.)	35	51

1 Including 173 cyber/phishing cases, being investigated with FCP/ KOBik and MELANI (see p. 17, 3).

2 Multiple answers are possible for the crime categories

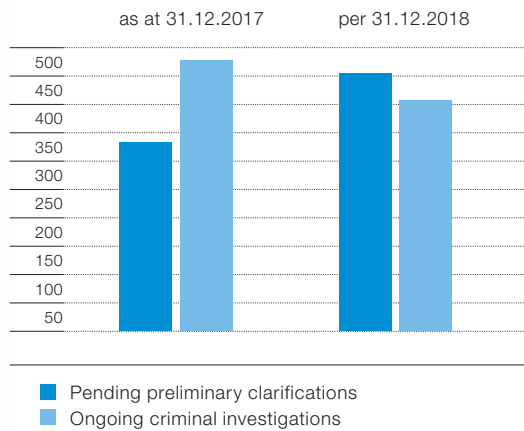
3 Including 62 in the major case complexes: 44 Petrobras (see p. 19, 4.5), 18 World Football (see p. 19, 4.7).

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.

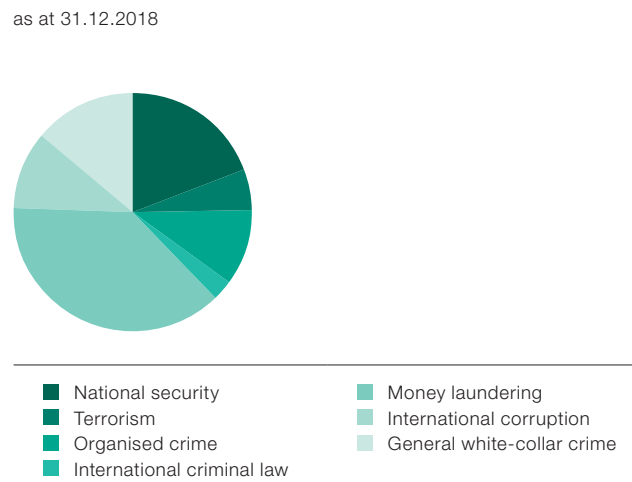
5 The fall is largely due to the OAG no longer dealing with Vignette cases (since 1.1.2018, a cantonal responsibility).

6 Judgments in summary proceedings and judgments in ordinary proceedings.

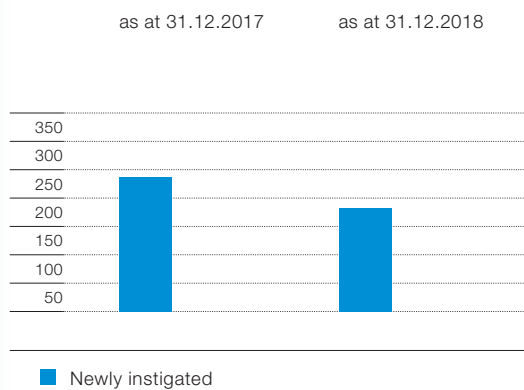
Criminal investigations 2017 / 2018



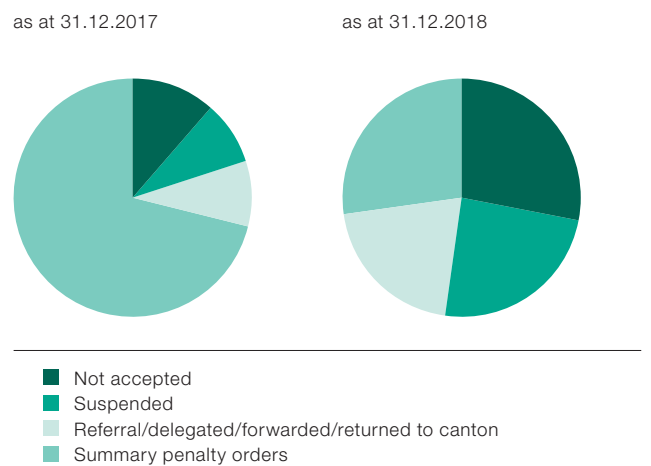
Ongoing criminal investigations 2018



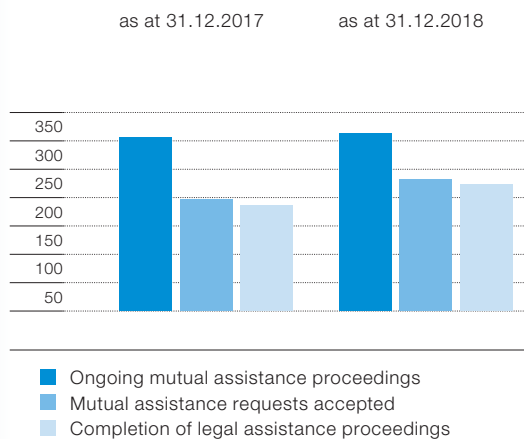
Criminal investigations 2017 / 2018



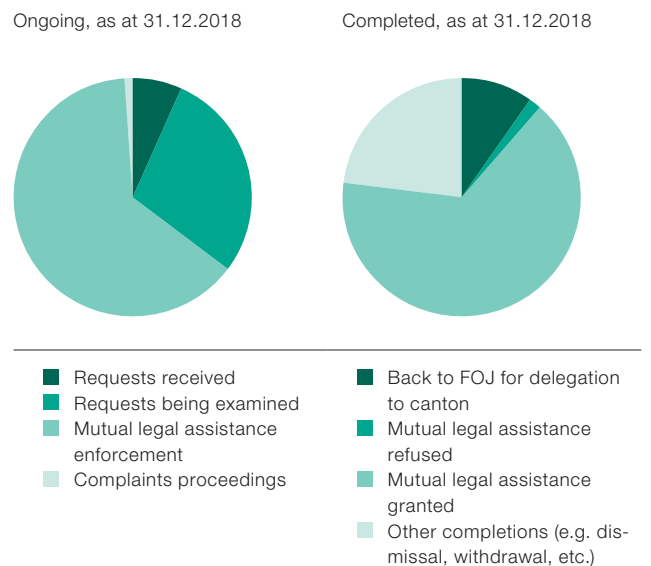
Completed 2017 / 2018



Requests received for mutual assistance 2017 / 2018



Requests received for mutual assistance 2018



Bulk business	as at 31.12.2017	as at 31.12.2018
Pending bulk business cases	167	159
	2017	2018
Newly received bulk business cases ⁵	1324	586
Completed bulk business cases ⁵	1304	533
Counterfeit money	236	169
Explosives	240	157
Aviation	19	10
Motorway vignette ⁵	629	8
Miscellaneous	180	189

Number and result of the main proceedings before the Federal Criminal Court

	2017	2018
First-instance main proceedings before the Federal Criminal Court (charges and referrals of penal orders)		
Number of proceedings	29	29
Of which in legal force as of 31.12.	9	15
Of which not or partly in legal as of 31.12.	20	14
Number of accused individuals	39	50
Of which convicted	25	29
Of which acquitted	14	19
Of which dismissed by the Federal Criminal Court	0	2
Summary proceedings		
Number of proceedings	2	2
Of which in legal force as of 31.12.	2	2
Of which not or partly in legal as of 31.12.	0	0
Number of accused individuals	2	2
Of which convicted	1	2
Of which returned	1	0

Complaints of the OAG with the Federal Supreme Court

Complaints filed in the reporting year	6
Complaints decided in the reporting year (partly filed in the previous year)	6
Of which granted or partly granted	3
Of which dismissed or not accepted	2
Of which irrelevant or suspensory effect	1

Complaints against the OAG with the Federal Supreme Court

Complaints filed in the reporting year	88
Complaints decided in the reporting year (partly filed in the previous year)	101
Of which granted	20
Of which dismissed, partly dismissed or not accepted	70
Of which irrelevant or suspensory effect	11

Complaints of the OAG with the Federal Criminal Court

Complaints filed in the reporting year	3
Complaints decided in the reporting year (partly filed in the previous year)	4
Of which granted or partly granted	1
Of which dismissed or not accepted	3
Of which irrelevant or suspensory effect	0

Complaints against the OAG with the Federal Criminal Court

Complaints filed in the reporting year	199
Complaints decided in the reporting year (partly filed in the previous year)	215
Of which granted	25
Of which dismissed, partly dismissed or not accepted	174
Of which irrelevant or suspensory effect	16

⁵ The fall is largely due to the OAG no longer dealing with Vignette cases (since 1.1.2018, a cantonal responsibility).

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
OAB	Attorney General's operational committee
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
ZEB	Centralised processing of incoming communications at the OAG

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