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# Annual Report

Report of the Office of the Attorney  
General of Switzerland on its  
activities in 2019 for the attention  
of the supervisory authority



# Foreword

I am delighted to present the 2019 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 (SA-OAG), and complies with its regulatory directives.

As far as the OAG's core business is concerned, the report year saw the conclusion of several important cases. The first indictments were filed in the two large case complexes that are being conducted by task forces, Petrobras-Odebrecht and World Football, as well as in cases involving international criminal law and cybercrime. Important indictments were also filed in terrorism cases. True to the principle that crime should not pay, in 2019 the OAG secured the forfeiture of substantial sums of money made from crime, in particular for restitution to persons or states that had fallen victim to criminal activities.

In organisational terms, the focus was on making a successful move to the new G1 Administrative Centre. The modern infrastructure at our new location benefits all our employees. Being accommodated in the same building as fedpol strengthens cooperation with one of the OAG's main partners. A further priority was continuing with the OAG's strategic development in order to constantly optimise the way in which the Office fulfils its statutory mandate.

The report year was marked by the controversial debate about my re-election for a further term of office. I was delighted to be re-elected and that Parliament placed its trust in me; I was equally pleased that my two deputies were also re-elected. This vote for continuity will allow us to carry on with the developments introduced and implemented since I assumed office in 2012, strengthening the OAG as an independent institution.

This should also bring continuity in the excellent cooperation the OAG enjoys with its numerous partner authorities and organisations at national and international level. A robust network is essential if we are to combat modern forms of criminal behaviour effectively.

The report year also saw us working closely with our parliamentary oversight authorities. This co-operation will continue in 2020, especially as the control committees have decided to conduct an inspection in order to resolve differences in the concept of supervision between the SA-OAG and the OAG.

The OAG is looking back on a demanding 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 dedication.

Michael Lauber  
Attorney General of Switzerland

Bern, January 2020



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

## 1.1 The OAG's organisational status

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

The OAG is subject to the comprehensive supervision of a supervisory authority, whose members are also appointed by the Federal Assembly (SA-OAG; Art. 23 ff. 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 specified in Articles 23 and 24 of the Criminal Procedure Code (CrimPC, SR 312.0) and in other specific federal legislation.

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

# 2 International Cooperation

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

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

In 2019 Switzerland continued with its implementation of the FATF recommendations made in response to 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 of 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 preparing a study published in July 2019 on corruption as a predicate offence to money laundering.<sup>2</sup>

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

On 22 March 2019, GRECO approved the report on Switzerland's compliance with the recommendations from the fourth evaluation round relating to preventing the corruption of members of parliament, judges and public prosecutors. Of the twelve recommendations made in the evaluation report published in spring 2017, two are relevant to the OAG's activities: firstly, the work on drawing up a code of conduct for federal prosecutors had to be completed and secondly measures had to be taken to retain data relating to any disciplinary proceedings concerning federal prosecutors.

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

2 [www.sif.admin.ch/dam/sif/de/dokumente/Integrit%C3%A4t%20des%20Finanzplatzes/nra\\_bericht\\_korruption.pdf.download.pdf/20190710\\_ber-korruption-geldwaescherei-d-final.pdf](http://www.sif.admin.ch/dam/sif/de/dokumente/Integrit%C3%A4t%20des%20Finanzplatzes/nra_bericht_korruption.pdf.download.pdf/20190710_ber-korruption-geldwaescherei-d-final.pdf) (German version).

3 Group of States against Corruption.

The OAG has implemented these recommendations, introducing its Code of Conduct on 1 July 2017 (accessible online since autumn 2017<sup>4</sup>) and by including a sub-chapter in its annual report devoted to any disciplinary proceedings against its attorneys. GRECO highlighted these changes in its compliance report of 22 March 2019 and commended the measures that the OAG has taken. Switzerland has therefore complied with GRECO's recommendations.

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

In March 2018 the OECD approved its report on the Phase 4 country review of Switzerland carried out by the OECD Working Group on Bribery. This report relates to the monitoring of Switzerland with regard to its implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 recommendation on combating the bribery of foreign public officials in international business transactions. In addition the report contains several recommendations in this field directed at Switzerland, some of which are relevant to the OAG's activities.

The OAG has begun the work required to make the data available at the beginning of 2020 that is required to draw up a written report on the implementation of the recommendations that will be submitted to the Working Group.

From January 2020 the OAG will be represented in the OECD by the federal attorney who has been responsible for the field of international corruption since 1 November 2019.

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

In the report year, the OAG attended the 26th and 27th meetings of the European Genocide Network in the Hague. This network offers the participants continuing professional education on specific topics and an opportunity to exchange experiences. Matters addressed at the 2019 meeting included the challenges and advantages of prosecuting "foreign fighters" for core international crimes and terrorism offences, the possibilities for cooperation with the UN investigation team UNITAD<sup>7</sup>, the considerable increase in international criminal law

cases, the rights of victims, and ways of accessing information from the battlefield. Further topics included an initiative for a new international mutual assistance mechanism for core international crimes, and the Europol AP CIC analysis project, which aims to support member states, third countries and organisations in the prosecution of core international crimes.

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

### 2.5 Participation in the 24th annual conference of the IAP<sup>8</sup>

The annual conference of the IAP, held from 15 to 19 September 2019 in Buenos Aires, was organised by the Central Public Prosecutor's Office for the Autonomous City of Buenos Aires.

The principal theme of this year's conference was "international cooperation across different legal systems". Discussions covered various related aspects such as differences in legal systems and the challenges that are similar, the role and responsibilities of state prosecutors and liaison prosecutors, relations between judges, public prosecutors and the police in complex cross-border investigations, the statutory principles governing the collection and sharing of evidence and informal and alternative methods to mutual assistance for gathering evidence. At workshops and meetings of interest groups, topics were discussed in more detail, including the difference between intelligence and evidence, electronic evidence, "mega-trials", environmental crime, trafficking in human beings and the security and independence of public prosecutors. More than 400 participants from 86 countries had the opportunity to meet and discuss their work and thus expand their own contacts.

In the run up to the conference, the OAG also attended a meeting of the "Association internationale des procureurs and poursuivants francophones" (AIPPF) and its annual general assembly.

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4 [www.bundesanwaltschaft.ch/mpc/en/home/die-bundesanwaltschaft/code-of-conduct.html](http://www.bundesanwaltschaft.ch/mpc/en/home/die-bundesanwaltschaft/code-of-conduct.html)

5 Organisation for Economic Co-operation and Development.

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

7 UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh / Islamic State in Iraq and the Levant.

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8 International Association of Prosecutors.

## 3 National Cooperation

### 3.1 Federal Office of Police (fedpol)

The excellent cooperation between the OAG and fedpol is not only based on the same basic understanding of shared goals and strategies, but also on a clear awareness of their respective responsibilities and tasks. This basis has been further consolidated with the completed move to new joint office premises at Guisanplatz in Bern. Cooperation benefits not only the fedpol management but also its individual units, in particular the Federal Criminal Police (FCP), the Federal Security Service (FSS) and the Money Laundering Reporting Office (MROS).

Cooperation with fedpol is not limited to an operational level. Future targeted collaboration and the relentless digital transformation are challenges that the OAG and fedpol will meet together in their “Joining Forces” programme. This aims to achieve the strategic further development of cooperation structures and the development of the required working instruments.

### 3.2 Federal Intelligence Service (FIS)

One priority in the report year in the excellent working relationship with the FIS was prompt coordination in the field of terrorism (using the TETRA operational coordination platform, “TErrorist TRacking”). In this connection an increasingly topical issue was that of “returnees” from crisis regions. In relation to espionage (Art. 272 ff. of the Swiss Criminal Code, SCC, SR 311.0), various persons and foreign agencies were identified as probable attackers thanks to close and efficient cooperation with the FIS in dealing with cyber-attacks and other espionage activities, in particular on the World Anti-Doping Agency (WADA).

The recommendations made by the Control Delegation in its report entitled “Inspection following the arrest of a former FIS source in Germany” dated 13 March 2018 (BBI 2018 5045) were implemented.

### 3.3 Federal Office of Justice (FOJ)

In its role as the central and supervisory authority for international mutual assistance, the FOJ provides support in executing mutual assistance requests from other countries and advises the OAG on cases where it is itself seeking mutual assistance. In addition, the FOJ deals with extradition requests made by the OAG, with questions relating to the delegation of prosecution and with the international distribution of forfeited assets. The OAG works with the FOJ on a daily basis, and their cooperation is excellent: contacts are made at a suitable level and any differences of opinion can generally be resolved in a pragmatic manner. However, this does not prevent the FOJ from carrying out its duties as a supervisory authority and, where appropriate, seeking

legal remedies against decisions made by the OAG that it regards as unjustified.<sup>9</sup>

In addition, Switzerland’s two liaison prosecutors at EUROJUST are also under FOJ supervision. EUROJUST has established itself as one of the OAG’s most important partners, above all in relation to coordinating international efforts to combat crime. In November 2019, Switzerland’s first ever liaison prosecutor, who had been posted to EUROJUST in 2015, returned to her position at the OAG.

### 3.4 Swiss Financial Market Supervisory Authority (FINMA)

The OAG continued to work with FINMA both in connection with ongoing proceedings and in general in carrying out their respective duties. Cooperation essentially related to cases of stock market offences, money laundering and international corruption involving financial intermediaries. In Decision 1B\_547/2018 of 15 January 2019, the Federal Supreme Court concluded that requests made by the OAG for the transmission of FINMA decisions based on Art. 194 CrimPC constitute mutual assistance measures between authorities in terms of Art. 44 CrimPC and are not therefore compulsory measures. Based on this judgment, the Federal Criminal Court held that the appellant was not entitled to request the sealing of FINMA decisions relating to him that had been obtained through mutual assistance between authorities (BB.2018.192 of 3 July 2019).

### 3.5 Federal Tax Administration (FTA)

The FTA and the OAG again worked closely together in the report year in order to exploit the synergies on offer in their respective spheres of activity. For example, in the course of its investigations, the OAG has sometimes come across possible tax irregularities (e.g. identifying untaxed assets or companies that should be paying tax in Switzerland). In such cases, the OAG reports the matter to the responsible tax authorities. At the same time, ongoing tax proceedings occasionally reveal practices that may become the subject of criminal proceedings by the OAG. In order to optimise the identification of relevant information and cooperation, *single points of contact* are used so the two authorities can liaise with each other.

### 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 the cantonal and federal prosecution services. In

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<sup>9</sup> See for example Decision RR.2018.287 of 29 April 2019.



particular, it aims to achieve an exchange of views between the cantonal prosecution services themselves and with federal services, as well as the coordination and upholding of common interests. The CSPP encourages uniform practices, which bring 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 related fields.

A key theme in the report year was the further development of the CSPP with an eye to the future, and the professionalisation of its structures, which the OAG also actively supported. The revision of the CSPP statutes has paved the way for a general secretariat that will be established and run by the CSPP committee. The staff of this general secretariat will be based physically and administratively in the OAG's offices in Bern; in professional terms, the secretariat will be subordinate to the CSPP committee. The new General Secretary of the CSPP will assume office on 1 January 2020.

### 3.7 Joint prosecution tasks

#### (1) Security Network Exercise 2019 (SVU 19)

In November 2019, Switzerland's security structures and processes were tested in a 52-hour exercise. The OAG and around 70 other organisations (staffs, federal agencies, cantons, cities and critical infrastructures) took part in this general staff exercise. The aim of the exercise was to examine how the security organisations concerned can cope in the event of a crisis and how they work together in a tense threat situation. The scenario involved attacks on critical infrastructures, extortion demands and other imminent attacks against the background of a long-standing terrorist threat.

At the OAG, operational teams, a communication team and a crisis team took part in the exercise. In the course of preparations made with the cantonal prosecution services and police forces essential principles were drawn up. Having a shared base (OAG/fedpol) at Guisanplatz in Bern simplified cooperation for the crisis team, the operational teams and for communication. The OAG judged the exercise to be a success.

#### (2) Terror Single Point of Contact

The prosecution services in all the cantons have designated a *single point of contact* for the OAG for the purpose of combating terrorism (OAG SPOC T). This will be the OAG's first contact partner in the canton if there is any suspicion of terrorist activity and for general questions on this subject. As the link to the OAG, the OAG SPOC T has direct contact with the head of the OAG's terrorist section. As the appointed contact partner, the

OAG SPOC T also provides a service to his colleagues in the canton. The OAG regularly provides the OAG SPOC T with information, which he passes on to his colleagues in the cantons in order to raise awareness of the issue.

#### (3) Cyberboard

Risks from cybercrime are increasing around the globe. The aim of law enforcement in this field is to make Switzerland and its national and international partners an unattractive target for cyber attacks. The Cyberboard is the established platform for law enforcement, facilitating a joint approach to fighting cybercrime. In order to organise this joint task effectively, the Cyberboard in particular encourages networking, coordination and knowledge transfer.

The linking of law enforcement with cyber security and defence is essential in order to establish a Swiss-wide system. The Cyberboard therefore brings the most important actors at federal and cantonal level together in a strategic committee known as Cyber-STRAT.<sup>10</sup> The issues currently being considered include improving international cooperation, prevention, and public-private partnerships. In addition, the committee discusses national developments, such as implementing the strategy to protect Switzerland against cyber risks for the period 2018–2022 (NCS II), along with matters arising in the operational committee, Cyber-CASE.

The Cyber-CASE committee ensures that the Cyberboard can participate in operational networking. National and cantonal contact persons are designated for matters related to cyber crime.<sup>11</sup> They meet to discuss the latest issues and problems arising from cybercrime. Depending on the issue, important partner authorities also attend the Cyber-CASE-meetings.<sup>12</sup>

Experiences with the Cyberboard have been positive. The OAG, as the organiser of the Cyberboard, would like to thank all its partner authorities for their constructive contributions.

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<sup>10</sup> In addition to the OAG and fedpol, the FIS, the Federal Department of Finance (FDF), the Conference of Cantonal Justice and Police Directors (CCJPD), the Conference of Cantonal Police Commanders (CCPCS), Swiss Crime Prevention (SKP), the Conference of Swiss Public Prosecutors (CSPP) and the Swiss Security Network (SVS).

<sup>11</sup> Analysts from the Reporting and Analysis Centre for Information Assurance (MELANI), specialist police officers from the Digital Crime Investigation Support Network (Netzwerk für die Ermittlungsunterstützung in der digitalen Kriminalität (NEDIK)) and the cyber single points of contact of the cantonal prosecution services.

<sup>12</sup> E.g. Eurojust, Europol, the FOJ and the Service for the Surveillance of Post and Telecommunications (BÜPF).

## 4 Legal Issues and General Information for Parliament

### 4.1 Audio-visual recording of hearings

In cases of white-collar crime in particular, the questioning of suspects and witnesses can often prove to be especially challenging. Conducting interviews with ongoing transcription is time-consuming and exhausting for all concerned, particularly where parties to the proceedings are being questioned about complex matters, if several interviews have to be held in parallel, if a witness from abroad is only available for a short time or if an interpreter is required. Furthermore, the authenticity and accuracy of the statements made may suffer. For these reasons, the OAG has begun recording interviews in such cases audio-visually, without ongoing transcription. The general aspects and formalities of the interview, the caution, start and end of the audio-visual recording, the evidence or exhibits shown and any special incidents during questioning are recorded in a general set of minutes which all the participants sign at the end of the interview. A written transcript of the statements made is drawn up following the interview. The recording itself, together with the general minutes, the exhibits and transcript is added to the case files as evidence.

The Criminal Procedure Code only provides for audio-visual recordings during trial hearings (Art. 78 para. 5<sup>bis</sup> CrimPC). However, the Appeals Chamber of the Federal Criminal Court approved the practice introduced by the OAG in a decision dated 27 June 2019 (BB.2019.19). The Appeals Chamber followed the opinion of the Federal Supreme Court in BGE 143 IV 408 E. 8.3 on the legality of recording and subsequently transcribing interviews in preliminary proceedings. Furthermore, the Federal Criminal Court took the view that the OAG may arrange for private service providers to transcribe the interviews. Thanks to this court decision, the OAG will in future be able to conduct demanding interviews quickly and efficiently, while safeguarding the rights of all the parties.

### 4.2 “Ne bis in idem”

In the MUS case, the Federal Criminal Court in October 2013 sentenced one of the suspects to 52 months in prison, a decision upheld by the Swiss Federal Supreme Court on 22 December 2017. The authorities in the canton of St Gallen responsible for executing the sentence refused to postpone the start of the sentence pending the outcome of a case being conducted in relation to the same matter in the Czech Republic. The convicted offender claimed that the Czech authorities were better placed to assess the circumstances of the case than the Swiss, and that an acquittal in the Czech case would enable him to call for a review of his Swiss conviction. However, if he had to begin his sentence in

Switzerland, the Czech authorities would be obliged to abandon the proceedings there according to the principle of “ne bis in idem” (double jeopardy), thus depriving him of the chance of an acquittal.

In Decision 6B 1019/2019 dated 3 October 2019, the Federal Supreme Court upheld the decision of the St Gallen authorities not to postpone the execution of the sentence. The Federal Supreme Court held that the principle of “ne bis in idem”, as set out in Art. 46 of the Convention implementing the Schengen Agreement, is intended to prevent a person from being penalised for the same act in two separate states. The provision does not however confer any right to be tried twice for the same act in the hope of receiving a more lenient sentence in one jurisdiction than in the other. The Swiss judgment therefore has to be implemented. This judgment shows the importance of coordinating cases properly where two or more states have competing jurisdiction over the same set of facts, in order to prevent any “forum shopping”.

### 4.3 Rejection of a indictment

In a decision dated 17 December 2019 (BB.2019.213 and BB.2019.215) in response to an appeal filed by the OAG, the Appeals Chamber of the Federal Criminal Court quashed the decision of the Criminal Chamber to refer the indictment in the case against the financier Florian Homm back to the OAG. It took the view that returning the indictment for amendment would have prolonged the proceedings unnecessarily and would therefore have been contrary to the requirements to conduct proceedings as expeditiously and economically as possible.

On 20 February 2019, the OAG filed an indictment in this case against four accused on charges of commercial fraud, criminal mismanagement with the aim of personal enrichment, embezzlement, aggravated money laundering, forgery of documents, fraudulent bankruptcy, obtaining a false certificate by fraud and violation of a duty of disclosure. In a decision dated 25 September 2019, the Criminal Chamber referred the case back to the OAG on the basis that, on certain points, the indictment did not comply with the principle that no case may be prosecuted and judged by the same authority. One of the accused and the OAG each filed an appeal against this decision, on 28 September and 7 October 2019 respectively.

In its decision to allow the appeal, the Appeals Chamber first noted that under the Federal Supreme Court case law returning an indictment to the prosecutor is only permitted in exceptional circumstances and that the legal precedent related primarily to cases were

indictments were returned for further investigations to be carried out or to take account of procedural obstacles, which did not apply in the present case. In addition, it held that in the case in question, where the OAG and the Criminal Chamber held differing views on matters of fact and law, the Appeals Chamber could not impose its own view, because the factual and legal assessment was a matter for the trial judge. Furthermore, such differences could be resolved by filing an appeal under a new procedure introduced at federal level on 1 January 2019, in which the competent court authority was entitled to review all matters of fact and law.

#### **4.4 Changing the rules on jurisdiction under the Aviation Act (FAA)**

As the OAG explained in its 2018 Annual Report (p. 9), it welcomes the Candinas Motion No 18.3700, which aims to make all aircraft accidents and serious incidents subject to federal jurisdiction. After the Federal Council requested that the motion be accepted, it was approved by the National Council and the Council of States on 28 September 2018 and 10 September 2019 respectively.

The motion will be implemented by amending Article 98 of the Civil Aviation Act (SR 748.0). The consequence is that federal jurisdiction will apply not only to all offences committed on board an aircraft, but also to offences committed on the ground that lead to an aircraft accident or a serious incident, which were previously a matter for the cantonal prosecution services.

This change will ensure that in the event of any incident, it is clear from the outset that jurisdiction for prosecution lies with the OAG. In the event of an incident, the OAG will continue to rely on close cooperation with the cantonal prosecution authorities at the site. However, the new provisions will guarantee uniform case law in this field and the centralised development of related expertise.

#### **4.5 Combating organised crime**

Efforts to combat criminal organisations and decisively curtail the spread of organised crime include legislative measures to reinforce the relevant statutory provisions and to upgrade the legal instruments that make it possible to take preventive measures and to enforce the law effectively. At the beginning of the year 2020, the parliament has opened a debate on the draft of a federal decree dated 14 September 2018 on the adoption and implementation of the Council of Europe Convention on the Prevention of Terrorism and its additional protocol. The decree also seeks to reinforce the legal instruments used to combat terrorism and organised

crime. The OAG takes the view that in contrast to what the bill envisages, there are two priorities that the legislature must take into consideration when amending the existing statutory provision that defines the offence of organised crime and lays down the penalties for those convicted of it.

The principle of subsidiarity, should be done away with. Those who participate in or support a criminal organisation must not be able to evade criminal liability for doing so. Where a member or supporter of a criminal organisation commits a serious crime as part of the criminal plan of a criminal association, the sentence imposed on the offender must run consecutively to that imposed for the offence of membership of a criminal organisation in accordance with the customary rules on offences committed concurrently.

The other priority to be considered when amending the existing statutory provision is an increase in the maximum penalty for the criminal organisation offence (for non-terrorist organisations as well) to 10 years – and to 20 years where the aggravating factor of exercising a decisive influence within the organisation applies. This increase in the maximum penalty would help to ensure that fewer offences are committed, by taking account not only of the retributive, but also of the preventive and deterrent function of the criminal penalty. The maximum custodial sentence of five years in the current Criminal Code, which is retained in the draft law of 14 September 2018 for non-terrorist criminal organisations, is not effective and in view of the seriousness of the offence and the danger it represents to society, not appropriate.



# Interview

## Interview with the Attorney General of Switzerland



**“The ability to act and to adapt is vital”**

2019 was the final year of Attorney General Michael Lauber’s second term of office. In this interview, the Attorney General looks back on an eventful year, as well as on developments since he assumed office in 2012. He also presents his outlook for his term of office from 2020 to 2023.

**Attorney General, this is the first time that a year has concluded in the new premises of the OAG at Guisanplatz in Bern. How have you settled in?**

Very well – the OAG moved its headquarters to the G1 Administrative Centre in June 2019 along with various other federal authorities. Thanks to meticulous planning by the project team, and following an intensive preparatory phase, the move went virtually without a hitch. Work could begin and continue without the need for any transition period, and we quickly settled into life at our new location. The modern infrastructure is certainly a plus and our staff have responded positively to their new working environment. The move placed a considerable burden on our internal services, but thanks to thorough preparation, we coped with the change very well.

**2019 was marked above all by your re-election for the period from 2020 to 2023. What do you think now, looking back at the election and the public controversy in the run up?**

It goes without saying that it was not an easy time, neither for me personally and my family, nor for the OAG and its employees. That’s why I would like to take this opportunity once again to thank everyone for all the support that I received in the past year, both as a private individual and as Attorney General of Switzerland.

I was delighted to be re-elected and that Parliament placed its trust in me. Being elected for third term of office shows that there is a will to continue with the developments introduced and implemented since I assumed office in 2012. Regardless of my personal situation, I think it is right and proper that we continue in the direction we have chosen. I have always stressed that the OAG as an institution needs stability and continuity.

**The institution of the OAG was also criticised, and in some cases the very essence of your work was called into question. How did you and your employees deal with this?**

As the federal prosecution authority, the OAG helps to ensure that the law is enforced in Switzerland, that the rule of law prevails and that we live in security. It is therefore of fundamental importance that we strengthen

the independence of the justice system in order to maintain our ability to act and to adapt. The OAG has a vital role in this system and because of its responsibilities occasionally has to deal with cases of enormous complexity, of political importance, of international reach and of public interest. It must be possible to place the criticism that comes with such exposure in its proper context. My main priority here is to safeguard my employees and the work that the OAG is doing, and thus ultimately the prosecution system as well. That is why we want people to better understand the complex interrelationships and specific challenges that we have to deal with and ultimately gain their trust as well.

For us it is crucial that we fulfil our statutory mandate and are a reliable partner in Switzerland and abroad. The fact that we are succeeding in doing this is borne out, for example, by the view taken by the Conference of Swiss Public Prosecutors (CSPP), which called for continuity at the OAG. In addition, various international organisations, including the OECD, have reviewed the efficiency of the OAG's methods of conducting proceedings, its organisational structure and institutional independence and given us highly positive ratings.

**That brings us to the OAG's core business. Where does the OAG stand in these large case complexes?**

When we look back on these so-called "highlights", something is often forgotten: the OAG is currently conducting around 700 criminal and mutual assistance proceedings in total. There is a constant process of adding new cases and concluding old ones. In addition, the OAG is not alone in being able to influence the course of individual cases or entire complexes of cases. Each development must therefore be seen in its own context: sometimes it is the moves that outwardly appear insignificant that require a lot of preparatory work and that can have a decisive influence over a case and its outcome.

The case complexes relating to 1MDB, Petrobras-Odebrecht and World Football attract attention around the world. Because of their high level of exposure and the pronounced international dimension, these cases tie up a great deal of resources and are conducted by task forces made up of specialists in various disciplines. In the past year, the first indictments were filed in the Petrobras-Odebrecht and World Football complexes. In Petrobras-Odebrecht, furthermore, by the end of 2019 more than CHF 400 million had been returned to Brazil.

**What other milestones were reached in 2019, in your opinion?**

There were cases with a marked international dimension: in 2019 the OAG filed the first indictment in Switzerland in the field of international criminal law in a case relating to violations of international humanitarian law in Liberia. In the course of investigations into money laundering relating to Uzbekistan, CHF 130 million was forfeited for the purpose of restitution. And the commodity trading company Gunvor was ordered to pay CHF 94 million in connection with acts of corruption in Africa. In addition, a notable conviction for money laundering was secured in connection with a former Greek defence minister. Another important success was the first ever prosecution and conviction for "voice phishing" in the field of cybercrime.

At the same time, milestones with a more Swiss dimension were reached: they included indictments and a coordinated operation with partner authorities in connection with combating terrorism. An indictment was also filed on charges of bribery in the procurement procedures involving SECO. And in the investigation relating to VW's manipulation of emission tests, we used an online questionnaire to gather information for the first time because of the record number of 175 000 complainants.

And of course this is by no means an exhaustive list – yet we can see in these examples the wide range of issues that the OAG has to contend with in its various cases.

**Now, at the end of 2019, you are not merely looking back at the calendar year that is over, but also on another term of office that you have completed. What are your provisional conclusions following your second four-year term as Attorney General of Switzerland?**

In addition to the milestones in our core operations, i.e. prosecutions and mutual assistance procedures, which have been set out in the various annual reports, for me it is important to mention the structural developments achieved in the areas of organisation and networking since I assumed office in 2012.

In relation to organisation, progress has been made with the internal administrative structure. This was necessary to carry out the mandate that the legislature gives to our independent prosecution authority. Modern forms of criminal behaviour demand flexible structures and an ability to adapt to changing conditions. In these circumstances, we devised a strategy and, building on that, set up an organisational model based on the following pillars: operational controlling, centralised processing of incoming communications (ZEB), the structuring of our core business into various

fields of crime, and the development of working practices, such as the task forces, that can be adapted to the changing crime scene.

Alongside modern organisational practices, effective law enforcement requires good networking. The involvement of the Attorney General and other senior staff in various networks, along with active participation in bodies and working groups at national and international level are crucial for combating modern forms of criminal behaviour. At national level, cooperation with the parliamentary committees and with partner authorities has been consolidated and expanded. And, of course, with the cantons as well, because combating terrorism and cybercrime, for example, is truly a joint task. At the same time, international cooperation and coordination have gained in importance: in this era of cross-border business activities and money transfers practically all cases now have an international dimension – not just the large case complexes.

**In conclusion, let's look in the other direction.**

**What are your goals for the 2020-2023 term of office?**

In our strategy for the next four years, we want to continue on the path we have chosen and carry on consistently with the developments made since 2012, which have strengthened the OAG's position. The OAG will make a strategic analysis of the various fields of crime, optimise its processes and instigate and support the legislative process in order to safeguard its ability to act and to adapt. Furthermore, we aim to consolidate our governance procedures, refine our concept of leadership, and encourage strategic human resources planning. And lastly, it is important to provide our staff with adequate instruments and technologies, and to remain an attractive employer by offering employment models like job sharing or teleworking. The world of criminality will change constantly and quickly, particularly in the digital domain, and by adopting this strategic direction, we will create the conditions that allow us to continue to fulfil our statutory mandate.



# Operational Activities

## 1 Strategy 2016–2019

The core of the 2016–2019 strategy is maintaining the OAG’s capacity to fulfil its mandate and to adapt. This objective is to be achieved through various measures:

- Fields of crime are defined and a strategy is systematically devised according to the subject matter. Each field of crime is analysed in the overall context of law enforcement, and any specific need to adapt is identified. This process is supported by regularly gathering management information (e.g. analysing the age structure of the portfolio for each field of crime).
- The OAG exploits potential for standardisation or opportunities to increase general efficiency- and effectiveness. In most cases this is done jointly with partner authorities (e.g. fedpol), in order to make use of synergies with other organisations.
- The OAG is an organisation of specialists where the key positions are assigned to the most suitable employees and succession planning is institutionalised. A modern working environment and up-to-date conditions of employment strengthens the OAG’s position as an attractive employer.

Whereas the 2016–2019 strategy sought primarily to stabilise the OAG, the 2020–2023 strategy focuses on developing the OAG further. The 2020–2023 strategy is based on the current priorities for crime policy. These will be expanded to cover developments identified in the past few years, i.e. the increase in international networking and the globalisation of serious crime and cybercrime, primarily through the digitalisation of crime. These developments mean that the OAG has to seek even closer cooperation with all its international partners.

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

The CPC 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 attorney or assistant federal attorney 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 CPC. This relieves the workload of units conducting proceedings in particular and fosters a *unité de doctrine* within the OAG.

MROS is an important partner for the OAG in combating money laundering. The new goAML data processing system, which MROS introduced on 1 January 2020, will also bring changes at the OAG, which are being implemented with close cooperation from the CPC. A further essential part of the CPC’s work in the report year was providing administrative support in connection with combating cybercrime.

A total of 1956 incoming communications were processed in the report year. These included 301 requests to take over proceedings, 85 % of which were assigned to federal jurisdiction by the OC-AG. A further 241 MROS reports were processed. 1476 incoming communications were passed on to the sections for further processing and 480 were processed and dealt with directly by the CPC (rejection of requests to take over proceedings or decisions not to take action on criminal complaints).

## 3 Cases of Public Interest

The information about cases of public interest covers the period up to the end of 2019.

### 3.1 Criminal investigation into corruption involving public officials

For ten years a former head of section at the State Secretariat for Economic Affairs (SECO) awarded several hundred contracts for IT procurements worth around CHF 99 million to a number of companies without going through the required public tendering process. In return he received undue advantages in the amount of more than CHF 1.7 million. In the spring of 2019, the OAG issued three company directors and one accountant with summary penalty orders, each of which have now taken full legal effect. At the end of September 2019, the OAG filed indictments against the former SECO section head and three further company directors in the Federal Criminal Court on charges of bribery and further offences.

### 3.2 Lobbying in the Federal Parliament

In March 2018, the OAG received an anonymous report that a businessman working as a lobbyist had paid for the SBB (Swiss Federal Railways) general travelcard worth CHF 4'635 used by a former member of the National Council. The former parliamentarian had used the ticket in the period after he stood down from parliament for journeys he made in his capacity as secretary of a group of parliamentarians which was not in receipt of federal funding and not an organ of the Federal Assembly. After parliament revoked the immunity of the former National Council member at the OAG's request, the OAG conducted criminal proceedings against him on suspicion of accepting bribes and accepting advantages and against the businessman on suspicion of bribery and granting advantages.

Following a detailed investigation, the criminal proceedings were abandoned in July 2019. The so-called militia system of part-time public service in the Federal Assembly that is favoured by the legislature permits parliamentarians to be paid financial compensation for being members of and representing the interests of parliamentary bodies. It follows from this that they may be offered and may accept such compensation and that the payments are not "undue advantages" as defined in the relevant statutory provisions.

### 3.3 Investigation into cybercrime

Since May 2017 the OAG has been conducting criminal proceedings based on suspicions of commercial computer fraud. An internationally active group was 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 were also 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 operating base located in the metropolitan area of Rotterdam. One person who was arrested in the Netherlands and identified as being responsible for the phishing calls to Switzerland was extradited to Switzerland. This person was given a partially suspended 30-month custodial sentence by the Federal Criminal Court in March 2019 in accelerated proceedings. This was the OAG's first conviction in a phishing case.

International cybercrime is a phenomenon that recognises no borders and therefore demands new approaches to law enforcement. The challenge of tracing and identifying professional criminal gangs based on leads from abroad can only be met by working in close cooperation with foreign partner authorities. Because the evidence regularly consists only of volatile data, prompt cross-border action is required. This pushes traditional mutual assistance measures to their limits. The International Convention on Cybercrime, which came into force in Switzerland on 1 January 2012, has created new instruments that simplify mutual assistance procedures.

### 3.4 Investigation into violations of international criminal law

In March 2019, following a 5-year investigation, the OAG filed its first ever indictment for offences under international criminal law in the Criminal Chamber of the Federal Criminal Court (Case No SK.2019.17). The accused is charged with violating the law of armed conflict while a member of a rebel militia during the civil war in Liberia from 1989 to 1996. The OAG in particular alleges that, between March 1993 and the end of 1995, he killed, participated in the killing of or ordered the killing of civilians or non-combatant soldiers, desecrated a civilian's dead body, raped a civilian woman, ordered the cruel treatment of civilians, recruited and deployed a child soldier, ordered looting on several occasions and ordered and/or participated in the forced transportation of goods and ammunition by civilians.

The trial hearing in the Federal Criminal Court has been scheduled for April 2020. The accused's time in preventive detention has been extended. In addition to the accused, seven private claimants and a dozen witnesses have been summoned to the trial hearing.

The OAG decided to abandon proceedings in relation to certain of the acts that the accused is alleged to have carried out; these acts could not be directly attributed to the accused, so he could not be held criminally

liable for them. The Appeals Chamber of the Federal Criminal Court rejected an appeal against this decision to abandon proceedings (Decision BB.2019.106 of 7 November 2019).

### **3.5 Investigation related to combating terrorism**

At the end of October 2019, the OAG filed an indictment in the Federal Criminal Court against a Swiss-Italian dual national (main accused) and a Swiss-Macedonian dual national.

The main accused has been charged with supporting and participating in a criminal organisation, the so-called Islamic state (IS), and with violating the ban on representations of acts of violence. He is alleged to have travelled to Syria, to the territory controlled by IS, where he joined the fighters of Jaish Al Muhajirin-Wal-Ansar, part of IS. The OAG's position is that there is proof that the accused, on his return to Switzerland, persuaded several persons to join IS. The OAG also alleges that the accused provided support to IS and related organisations by disseminating related propaganda material and that he was in possession of related representations of acts of violence.

The second accused is also charged with supporting or participating in the criminal organisation IS and with multiple violations of the ban on representations of acts of violence. He is accused of attempting to travel via Macedonia to Syria with the aim of joining IS. While in Macedonia, he was stopped from travelling any further by the local police. The OAG's position is that there is proof that he also recruited one person for IS. In addition, the OAG alleges that the accused supported the criminal organisation IS and related organisations by repeatedly disseminating related propaganda material and that he was in possession of related representations of acts of violence.

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

Since 2012, the OAG has been investigating Uzbek citizens, including Gulnara Karimova, the eldest daughter of the late president of Uzbekistan, Islam Karimov. On 22 May 2018, the OAG issued a summary penalty order convicting one of the suspects, a close associate of Gulnara Karimova, and ordering the forfeiture of over CHF 130 million. The convicted man had opened corporate accounts in Switzerland between 2004 and 2013 that were used to split up money transfers and to frustrate investigations into the origin and true purpose of the funds. He also signed falsified bank documents in order to conceal Gulnara Karimova's identity as the true owner of the funds. Following two decisions by the Appeals Chamber of the Federal Criminal Court on 8 May

2019 (BB.2019.25 / BB.2019.27), the summary penalty order has taken full legal effect.

The funds forfeited in terms of this summary penalty order are being returned to the Republic of Uzbekistan. The FDJP and the FDFA are responsible for arranging the return of the funds.

### **3.7 Money laundering proceedings (Greece)**

In August 2019, the trial was held in the Federal Criminal Court of a former high-ranking employee of the Swiss subsidiary of a major American bank. The OAG accused the banker of being part of a group of persons which wilfully carried out money laundering activities involving over CHF 20 million for a former Greek defence minister. The latter had accepted tens of millions of francs in bribes from a Russian dealer in ground-based aircraft defence systems in connection with an arms deal. The banker based in Switzerland helped the defence minister to launder the funds by opening a bank account in 1999 and by appointing a nominee as the beneficial owner instead of the defence minister as a front for his illegal activities. The former defence minister has already been given a lengthy prison sentence in Greece in connection with the offences.

In view of the Greek judgment, the Federal Criminal Court regarded the predicate offence of accepting bribes as proven beyond reasonable doubt. Given the abundance of incriminating evidence, the court took the view that there was no reasonable doubt either that the banker had acted with intent. The Federal Criminal Court convicted the former banker of money laundering as part of a criminal group, sentencing him to 30 months imprisonment, 15 months to be served immediately. In addition, the court imposed a monetary penalty of CHF 250,000 and ordered the forfeiture of CHF 2.4 million. As of the end of 2019, the judgment had not yet taken full legal effect.

These criminal proceedings, which the OAG opened in 2014, were notable for their extensive evidence gathering procedures, carried out primarily in Switzerland and Greece. The Greek and Swiss authorities supported each other through numerous requests for mutual assistance.

### **3.8 Series of cases concerning Petrobras-Odebrecht**

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 prioritised the conclusion of proceedings in cases involving persons for whom proceedings had already been concluded in Brazil, before focusing on

the recipients of funds in Switzerland and the persons who had made the payments. Progress has been made in both these two phases and several individual cases have been successfully concluded. In particular the first indictment in accelerated proceedings has been filed in the Federal Criminal Court. However, work 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

The number of enquiries and requests for mutual assistance dealt with by the Task Force rose once again in 2019. In this complex series of cases, a considerable volume of assets still remains frozen. As of the end of 2019, more than CHF 400 million had been returned to the Brazilian authorities with the consent of the persons concerned. The task force is made up of members of staff at the OAG's four locations, in particular federal attorneys, 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.

### **3.9 Investigations in connection with World Football**

In addition to a wide range of challenges in operational terms, the World Football investigations in the report year were affected by the controversy surrounding the coordination meetings between the heads of the OAG and FIFA. This led to several recusal requests, criminal complaints from suspects and general complaints. More than ten recusal requests were filed, not all based on the same grounds, against the Attorney General and members of the investigation task force. Three of the recusal applications were partly upheld, but all the others were dismissed with costs, insofar as they were considered at all.

In the recusal requests that were partly upheld, the court approved demands for the recusal of the Attorney General, a head of section no longer working for the OAG and a federal attorney. So far, however, the recusal of the Attorney General and the former head of section has had no direct consequences for investigations. The criminal complaints filed against employees of the OAG and the general complaints filed, in particular in connection with the decision to separate the proceedings against Franz Beckenbauer for health-related reasons, have had no consequences for the investigations: the special federal attorneys appointed to consider the criminal complaints decided not to take any proceedings.

The general complaints were all dismissed, insofar as they were considered at all.

The OAG was able to keep to its schedule for the proceedings and filed an indictment in the Federal Criminal Court in connection with the German Football Association (DFB) at the start of August 2019.

### **3.10 Criminal investigation in connection with the VW emissions case**

In the investigation that the OAG is conducting into VW's manipulation of emissions tests, new solutions have been required to inform the unprecedented number of parties (about 175 000) of their rights and of the possibility of participating in the proceedings as private claimants. In addition to providing a conventional paper form for potential claimants to complete, the OAG therefore devised an innovative, IT-based solution, providing an information and application form on its website from 3 September to 11 October 2019 in three official Swiss languages and in English. The form was first published in the Official Federal Gazette, and also actively publicised in the media. Despite a very high access rate at certain times, the chosen solution proved stable and allowed countless parties to register as private claimants in a quick and straightforward process.

The competent office within the OAG promptly answered any enquiries about registration by phone or email. The number and content of the questions suggest that the information provided and the registration form also proved to be user-friendly and could be used again in comparable scenarios. Although the information and registration page are no longer available on the website, registration is still possible, if requested, by completing a written or electronic form.

Many of the parties not only face procedural but also practical problems in asserting their rights to participate in hearings to gather evidence. In relation to this, the response to a specific question in the online registration form revealed that around 85 % of claimants wish to waive their right to participate in hearings to gather evidence or in any trial.

### **3.11 Criminal investigation into stock market offences**

The Federal Supreme Court confirmed the conviction of an auditor and member of the executive board of a major accounting and consulting company for insider dealing and infringements of the Auditor Oversight Act (Decision 6B\_90/2019 of the Federal Supreme Court of 7 August 2019; Decision SK.2018.26 of the Federal Criminal Court of 9 August 2018). The grounds for the conviction were primarily that the auditor exploited his knowledge of the acquisition plans of one of his clients,

using this insider information to acquire shares in the target company and make a profit of around CHF 29,000.

The auditor was convicted of insider dealing under the previous law (Art. 161 SCC previous version). Nevertheless, this led to findings that may be of relevance to the application of Art. 154 of the Financial Market Infrastructure Act (FinMIA, SR 958.1) which now applies in these cases:

(1) Insider information may also include plans or firm intentions, in particular merger talks, provided they have achieved a certain degree of substance and probability of being realised. It is irrelevant whether these plans or firm intentions actually become a reality at a later date.

(2) The Federal Supreme Court confirmed the view taken by the lower court and the OAG that the magnitude of the expected share price change need not be based on fixed percentages, but can be determined by the “reasonable investor test”. 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.

introduced and implemented since 2012. The OAG also recognised a claim for compensation of almost CHF 90 million francs. This sum corresponds to the profit that Gunvor made through the business activities under investigation in the Republic of Congo and in the Ivory Coast.

### **3.12 Anti-corruption proceedings in relation to commodities trading**

In a summary penalty order dated 14 October 2019, the OAG convicted several companies in the Gunvor Group, ordering them to make payments of around CHF 94 million, including CHF 4 million as a fine. As a result of serious deficiencies in its internal organisation, the oil trading company had not taken any measures to prevent the bribery of public officials in the Republic of Congo and the Ivory Coast between 2008 and 2011. The actual acts of bribery had the aim of gaining access to the oil markets in the two countries and were the subject matter of a previous judgment from the Criminal Chamber of the Federal Criminal Court dated 28 August 2018 (SK.2018.38).

The investigations revealed that in the period under investigation Gunvor had done nothing at an organisational level to prevent corruption in the company’s business operations: the commodities trader had neither a code of conduct, which would provide a clear signal and set of guidelines to its employees, nor did it have a compliance programme. The oil trading company had also failed to try to reduce the risk of corruption in dealings with agents for oil shipments, who were paid several dozen million US dollars in commission between 2009 and 2012. Gunvor had neither selected nor supervised the agents used.

The fine of CHF 4 million imposed on Gunvor takes account of the measures to fight corruption based on recognised standards that the company has gradually

## 4 Offences prosecuted on Official Authorisation

### 4.1 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 (see 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).

### 4.2 Prosecution of political offences

Under Article 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).

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

### 4.3 Requests for authorisation made by the OAG in 2019

Applications to the GS-FDJP <sup>1</sup> or to parliamentary committees <sup>2</sup>	Number	Authorisation granted	Authorisation refused	Application unfounded	Decision pending
under Art. 15 GLA <sup>1</sup>	3	2	0	1 <sup>13</sup>	0
under Art. 66 CJAA <sup>1</sup>	9	5	1	0	3
under Art. 17 / 17a ParlA <sup>2</sup>	0	0	0	0	0
Total	12	7	1	1	3

In the report year, notice was received of one further decision relating to a pending application from 2018 and in which authorisation for prosecution under Art. 15 GLA was granted.

<sup>13</sup> The BA decided to withdraw its request.

## 5 Enforcement of Judgments

In 2019, the services conducting proceedings passed on around 280 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 17 judgments from the Federal Criminal Court for enforcement.

In 2019, forfeiture and compensation orders for a total of around CHF 324 million were issued by the OAG and the Federal Criminal Court or took full legal effect. Twenty-seven 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 (DFAA, SR 312.4; "Sharing") applied, as forfeitures amounting to over CHF 100 000 had been ordered or the forfeiture was being enforced in cooperation with foreign authorities. In five further cases, referral to the FOJ is being considered. Assets amounting to around CHF 294 million are involved.

A total of CHF 74 million in assets is the subject of ongoing sharing procedures. In the report year, the FOJ concluded six sharing procedures (some from previous years), involving the forfeiture of around CHF 91.2 million in assets. Around CHF 90.1 million of these assets will definitely be credited to the federal coffers.



# Administrative Activities

# 1 Legal Principles governing the Organisation of the OAG

Under Article 16 of the Criminal Justice Authorities Act, the OAG is a self-governing authority that is independent of the Federal Council and the Federal Administration. The Attorney General is responsible for ensuring that it is appropriately organised and that it makes efficient use of its financial and material resources (Art. 9 para. 2 let. b and c CJAA). The OAG maintains its own accounts and has a global budget. The Attorney General submits a draft budget and accounts to the SA-OAG 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 the 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 direct management of the OAG
- The *OAG Service Section* is responsible for providing all the services relevant to the general working infrastructure (ICT operations, facility management, mass scanning, archiving). In addition, this section provides centralised services to assist in criminal and mutual assistance proceedings (e.g. preparations for obtaining records from financial intermediaries, organisation of language services, triage of post for the entire OAG). The section also carries out the statutory tasks related to enforcing judgments.

In addition to dealing with daily business, the General Secretariat's main tasks in the report year involved the consolidation of management and control structures, the move to the new G1 Administrative Centre, introducing strategic developments at the OAG, and preparing for and carrying out organisational changes (see Sec. V.2.1).

## 2.1 Further organisational developments

As an element of the 2016–2019 strategic implementation project, the OAG is creating the basis it needs to develop further systematically. Strategic analyses, along with the sub-strategies in the pilot areas of international criminal law and cybercrime, have provided significant impetus for making changes within the OAG:

- Fields of crime and specialist areas in which only a few specialised federal attorneys conduct criminal proceedings are now grouped into a single division (Mutual Assistance, International Criminal Law, Terrorism, Cybercrime). In most cases the person responsible for that field of crime manages a significant number of the cases themselves. The head of division does not conduct any proceedings; he or she is responsible for managing the division and achieving the strategic objectives.
- In the Forensic Financial Analysis (FFA) Division, the high demand for specialists has been harmonised with the current organisational structure. The focus is also placed on personal development opportunities for employees.

- The General Secretariat has separated “Development” and “Operations” into two sections. Organisational needs will be handled by a central OAG Services unit. The change from project to normal operations is also made more efficient and clearer in this way.

Following on from the current strategy and the pilot projects, with the start of the new 2020–2023 strategy, the two fields of money laundering and criminal organisations will be analysed and corresponding strategies will be devised.

## 2.2 Consolidating governance structures

The experience of working more closely with senior management has been evaluated and the governance structures have been further adapted. The tasks and responsibilities of the most important governance bodies – the Directorate, senior management, senior specialists – have been more clearly defined and their interaction has been tightened up.

## 2.3 Working environment

The relocation of the OAG’s Bern office to the GI Administrative Centre affected most of the OAG’s employees. The OAG has worked with the Federal Office for Buildings and Logistics (FOBL) to create a progressive working environment in the GI Administrative Centre. The focus is on conducting criminal proceedings and processing mutual assistance requests, and the working infrastructure is tailored to the functional requirements for this. The response in employee surveys has been positive; ongoing efforts to further modernise the working environment will continue in 2020.

## 2.4 Digital transformation

Thanks to related groundwork, it has been possible, working with fedpol and in line with partner programmes such as that on the “Harmonisation of information technology in the criminal justice system” (HIS), to make some major advances in exploiting the potentials that technological progress offers.

In handling information, the aim is to make a paradigm change: the focus should move away from simple business administration towards integrated data and information governance. File management should largely be controlled using meta-information. In the first quarter of 2020, the OAG and fedpol will start to make use of a shared application for the first time: this will facilitate consistent evidentiary exhibit management by using a mobile app in searches of houses and business premises and the automated administration of exhibits.

## 2.5 OAG employees

Results from employee surveys and workshops on specific topics formed the basis for devising the 2020–2023 strategy and for the continuous development of the OAG’s management culture. Closer cooperation with the senior management and the focus of the heads of division on their management work are direct consequences of the findings made.

## 2.6 Audit by the Swiss Federal Audit Office (SFAO)

The potential for development identified by the SFAO in its audit of procurements management will support the OAG in its further development. The OAG’s self-assessment and the assessment made by the SFAO coincide to a large extent. The SFAO recognises the constant efforts to develop made in recent years and therefore expects the continuous development of procurement competences in the OAG.

### 3 Use of Financial and Material Resources: 2018 Accounts

For 2019, the global budget submitted by the OAG (expenditure and investment costs) amounted to CHF 67.2 million. At CHF 38.7 million (58%), the largest item of expenditure in the budget is staff costs. In addition, CHF 27.3 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 59.2 million is allocated to expenditure outside the Federal Administration that has financial impact and CHF 0.5 million to depreciation. CHF 7.5 million is allocated to service accounting within the Administration (in particular for office rent, IT operating costs and other operating costs). The budgeted operating income of CHF 1.1 million is made up primarily of official procedural fees collected in federal criminal proceedings, income derived from charging for the costs of inspecting files and income from procedural fees in connection with summary penalty orders and the abandonment of proceedings.

The State Financial Statements for 2019 will be published in due course on the relevant page<sup>14</sup> of the Federal Finance Administration website.

### 4 General Directives

In 2019 the procedural manual was updated. In addition, the Code of Conduct (see Sec. V.5) was amended based on the experiences gathered by the OAG's Advisory Committee on Professional Ethics.

The planned publication of the revised OAG Regulations on Organisation and Administration was postponed as a result of changes made in the structure of the divisions at the OAG that were initiated and agreed in the report year and implemented at the start of 2020.

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<sup>14</sup> [www.efv.admin.ch/efv/de/home/finanzberichterstattung/finanzberichte/staatsrechnung.html](http://www.efv.admin.ch/efv/de/home/finanzberichterstattung/finanzberichte/staatsrechnung.html).

## 5 Code of Conduct

Two and a half years after the Code of Conduct (CoC) came into effect, the Advisory Committee on Professional Ethics is regularly requested to provide guidance and has established itself as an institution within the OAG. The issues raised in the report year related mainly to secondary jobs, accepting gifts and personal integrity.

In 2019, the Advisory Committee met six times. In September 2019 the Committee published its opinions in an email to all members of staff, thus further highlighting its views on professional ethics practice in specific cases. In December 2019, it discussed the report year and the issues that it had considered with the Directorate. The Committee then reported on its activities in more general terms in a newsletter article.

Through these measures, the ethics committee fulfils the purpose of the CoC of being a dynamic instrument that is dedicated to strengthening trust in the independence, impartiality and integrity of the institution. These are essential virtues that guarantee both the rule of law and the correct application of the law. In 2020, the accent was placed on advising and raising the awareness of the OAG's employees.

## 6 Human Resources

### 6.1 Employee survey 2017

Based on the feedback from the workshops on the results of employee surveys, a need for action has been recognised. The relevant issues have been dealt with in projects and integrated into the 2020–2023 strategy. Employees were provided with information about this in April 2019.

### 6.2 Workforce as of 31 December 2019

At the end of 2019, the OAG had 242 employees (previous year: 238), who together held the equivalent of 231 full-time positions (previous year: 229). Of these 242 employees, 42 (previous year 32) are on temporary contracts. The following numbers of employees work at the OAG's various offices:

	31.12.2018	31.12.2019
Bern	182	184
Lausanne office	28	29
Lugano office	16	16
Zurich office	12	13

### 6.3 Staff statistics

The OAG's employees hold the following positions: Attorney General (1), deputy attorneys general (2), Secretary General (1), lead federal attorneys/section managers (4), head of external relations (1), federal attorneys (43), assistant federal attorneys (40), legal assistants (12), assistant case officers and chancellery staff (42), administrative staff (65) and experts and analysts in the FFA and WhiCri sections (31).

As of 31 December 2019, the OAG also employs 9 legal interns and 1 administrative intern.

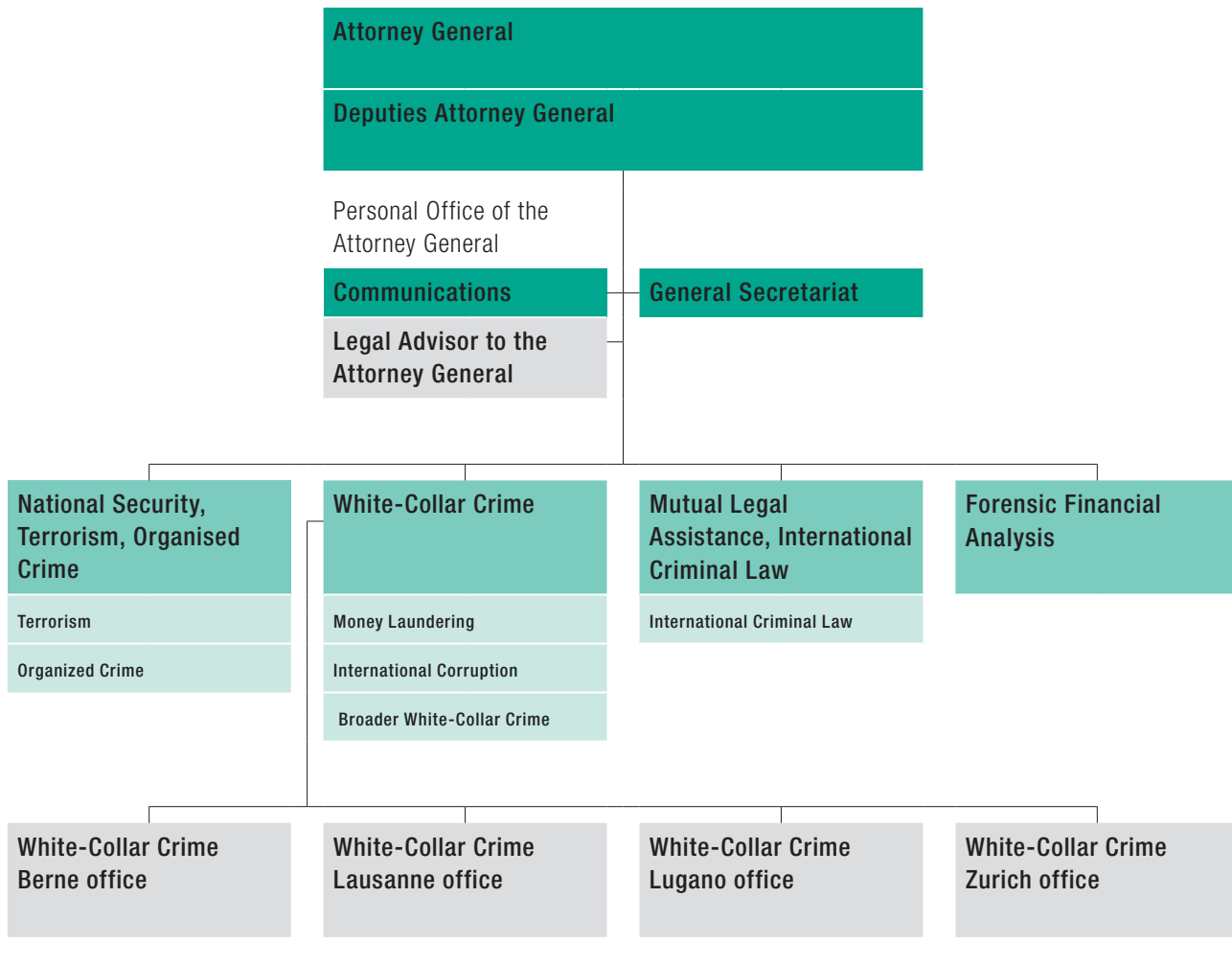
The average OAG employee is contracted to work 91.8% of full-time working hours and is 39 years old. The breakdown of staff according to their first official Swiss language is as follows: German 149, French 69 and Italian 24. The OAG employs 147 women and 95 men. Staff turnover in the report year was 11.65%.<sup>15</sup>

### 6.4 Disciplinary proceedings

The federal attorneys at the OAG are subject to the law applicable to federal employees, with the Attorney General taking decisions as their employer (Art. 22 para. 2 Criminal Justice Authorities Act and Art. 3 para. 1 let. f Federal Personnel Act, SR 172.220.1). In the event of any

<sup>15</sup> 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 1.01.2019 to 31.12.2019

## 7 Organisational chart



- Directorate
- Leading cadres
- Cadres



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

## 8 Work of the Individual Divisions

violation of employment law obligations, the Attorney General decides whether to open disciplinary proceedings and on any disciplinary measures (Art. 1 para. 1 let. c and Art. 98 ff. FPersO).

In the report year, no disciplinary proceedings under Art. 98 ff. FPersO were taken against any federal attorney at the OAG.

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

In numerical terms, the division's workload has marginally increased. As in the previous year, in the report year there was again a marked rise in "traditional" crimes against the state, in particular in espionage cases and counterfeit money offences. When tackling espionage, international cooperation poses a challenge, as the political offences in question are not crimes for which mutual assistance may be granted; procedures are no longer up-to-date when it comes to the prosecution of the forms of espionage that are increasingly encountered nowadays. A further challenge, for the police as well, is dealing with cases of organised crime, where the most commonly used working language is Italian. In relation to the linguistic spread of cases, the workload in French has increased disproportionately, and now accounts for around 25 % of the investigations. The situation is exacerbated by the fact that there are currently several vacancies open for French-speaking employees due to maternity leave absences.

As a consequence of the restructuring of the divisions begun in the report year, the terrorism section will become part of a different division from 1.1.2020. The same applies to the international criminal law section, which as a result of immediate measures temporarily became part of the STK division in February 2019.

Various positions have been advertised because of individual departures from the division. In order to reflect the linguistic spread of cases, one federal attorney post in particular should be filled by a lawyer whose mother tongue is French, or ideally is bilingual in French and Italian.

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

2019 was marked by significant changes in the WiKri-Division. The division has had a new head since March 2019 and since November 2019 its international corruption section is also under new leadership. These two positions, as well as the positions of the other two heads of section and other senior staff are essential for the division's effective operation. The division again had to contend with complex international proceedings, which provided a substantial workload because of their nature and extent. The division continues to rely on internal synergies and on working with partners within and outside the OAG in order to cope with this workload. The use of task forces again proved an effective and worthwhile instrument which facilitates a valuable exchange of information.

The workload is managed by defining the operational and administrative priorities; these priorities can

be achieved by using or bringing in resources efficiently and through the systematic and pragmatic use of digitalisation and the options for procedural efficiency that the law permits. The workload is also managed by increasing the geographical mobility of staff and improving cooperation between the WhiCri offices. Increasing digitalisation and the centralisation of certain administrative tasks makes cooperation between our offices and divisions and with external partners more efficient. Lastly, we try to make the best possible use of modern working instruments and practices such as job sharing, mobile working and part-time work.

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

For the RV section, 2019 was a year of far-reaching changes. In staffing terms, the required concentration on priority cases, together with long-term absences and the departure of the lead federal attorney meant that ongoing cases had to be divided up and prioritised. However, thanks to staffing measures (the appointment of two extraordinary federal attorneys) and the flexibility and dedication of the staff, progress was made with the caseload. In addition, the head of the STK Division took temporary charge of the international criminal law section.

The division shared its expertise with the other divisions in various joint ventures. Assisted by an ad-hoc team, it has been tasked with processing the numerous requests for mutual assistance relating to the Petrobras-Odebrecht series of cases, where these requests do not relate to ongoing criminal proceedings.

### **8.4 Forensic Financial Analysis Division (FFA)**

In 2019, the FFA, with its expertise in economics and finance, provided support in a total of 107 cases. Thirty-nine of these cases related to the Petrobras-Odebrecht, world football and 1MDB proceedings and claimed 45 % of its operational resources. Alongside its analysis reports, the FFA offered support at all stages of proceedings, from searches and interviews with suspects and witnesses to filing indictments. Certain cases gave the FFA the opportunity to refine its methods for determining the proceeds of money laundering or corruption in order to calculate the value of compensation claims. The FFA's staff were increasingly deployed as part of task forces or teams based in various locations; a related harmonisation of practices is therefore both necessary and useful.

In 2019, the FFA worked ever more closely with its main 'client', the WhiCri Division, which resulted in an optimisation of resources and the coordinated implementation of decisions. As well as supporting technological developments within the OAG, the FFA organised

an introductory seminar on *blockchains* and their importance in law enforcement.

As part of the evaluation of the OAG Profile Project within the FFA, the FFA reviewed the organisation of its operations. This review led to the standardisation of the roles of analysts, who now also have the roles of specialists in their field of competence: the OAG now commands a portfolio of constantly up-to-date economic and financial expertise, which meets its needs optimally and flexibly. The FFA's management structure also underwent minor adjustments to ensure coherence. The FFA's workload remained similar to that in previous years, although the human resources available were reduced due to two maternity leave absences and absences due to illness.



# Reporting

# Reporting

<b>Criminal investigations (as of 31.12)</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Pending preliminary clarifications <sup>1</sup>	112	129	334	456	501
Ongoing criminal investigations <sup>2</sup>	449	441	478	407	395
National security	77	93	111	103	147
Terrorism	47	35	34	30	31
Organised crime	71	67	62	56	46
International criminal law		10	11	14	13
Money laundering	247	231	243	203	145
International corruption	73	82	65	56	45
General white-collar crime	94	85	96	74	84
Suspended criminal investigations	170	210	227	264	307
Criminal investigations ongoing for more than two years	155	186	234	205	202
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Newly instigated	233	190	237	182	305
Completed					
Not accepted	93	158	128	176	335
Suspended	115	94	95	152	175
Referral, delegated, forwarded, returned to canton	16	65	100	128	130
Summary penalty orders <sup>3/4</sup>	580	1094	788	170	228
Indictment filed	20	14	21	10	17
Indictment filed in accelerated proceedings	5	3	3	1	7
Referral of summary penalty order to court	16	20	25	13	23
Indictment rejected	5	1	6	2	5
Judgment of the court of 1st instance <sup>5</sup>	21	32	36	35	30

1 Including 127 cyber/phishing cases investigated with the FCP/ CYCO and MELANI (see Sec. III. 3.7).

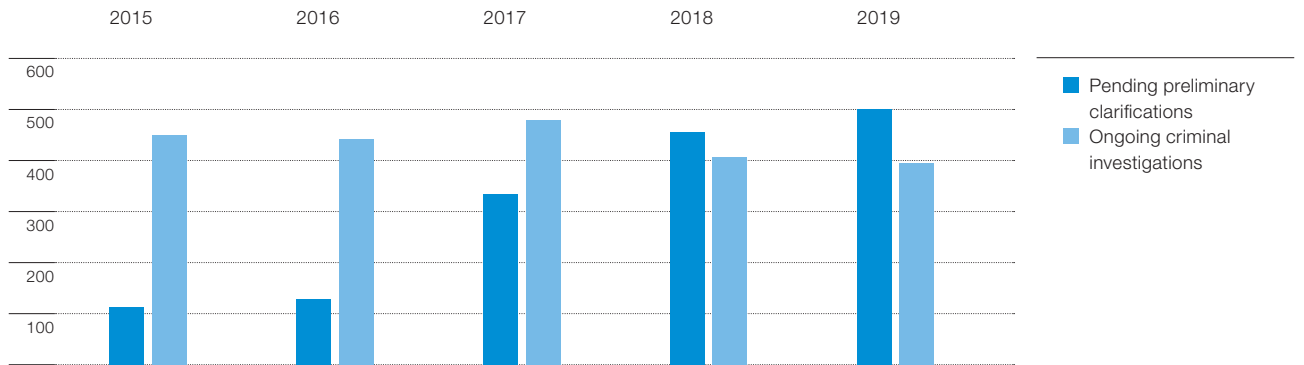
2 Multiple mentions are possible for the crime categories.

3 A summary penalty order can only be imposed on one person, so it is possible for several summary penalty orders to be issued in any single case. For the OAG's statistics the number of summary penalty orders is counted.

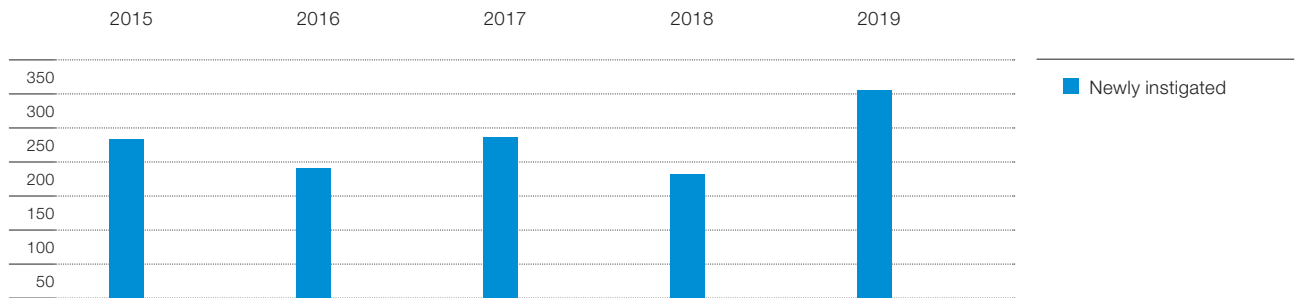
4 The fall in numbers after 2017 is essentially because motorway vignette cases are no longer included in the statistics (since 1.1.2018 subject to cantonal jurisdiction).

5 Judgments in accelerated proceedings, in ordinary proceedings and following transferral of summary penalty orders to the court.

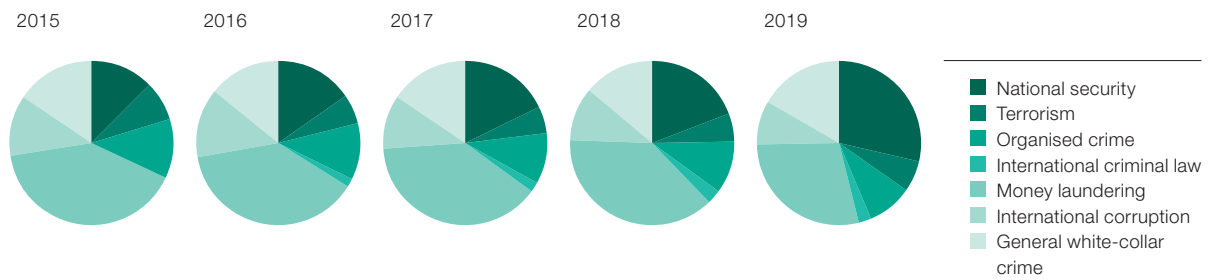
### Criminal investigations (as of 31.12)



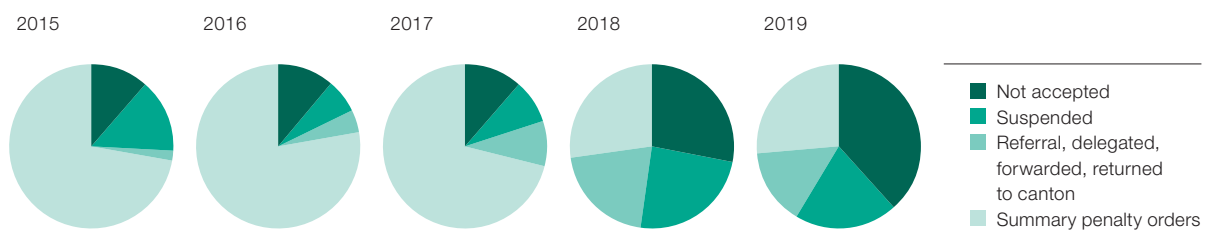
### Newly instigated



### Ongoing criminal investigations (as of 31.12)



### Completed



**Requests received for mutual assistance** (as of 31.12)

	2015	2016	2017	2018	2019
Ongoing mutual assistance proceedings	248	265	307	313	317
Requests received	19	16	31	21	14
Requests being examined	62	61	62	90	70
Request being executed	165	180	208	199	226
Objections to requests	2	8	6	3	7
Mutual assistance proceedings ongoing for more than two years	30	42	50	27	30

	2015	2016	2017	2018	2019
Mutual assistance requests accepted	145	193	197	233	244
Completion of legal assistance proceedings	144	186	187	223	248
Back to FOJ for delegation to canton	19	27	13	22	30
Mutual assistance refused	12	4	8	4	6
Mutual assistance granted	72	119	131	146	165
Other completions (e.g. dismissal, withdrawal, etc.)	41	36	35	51	47

**Bulk business** (as of 31.12)

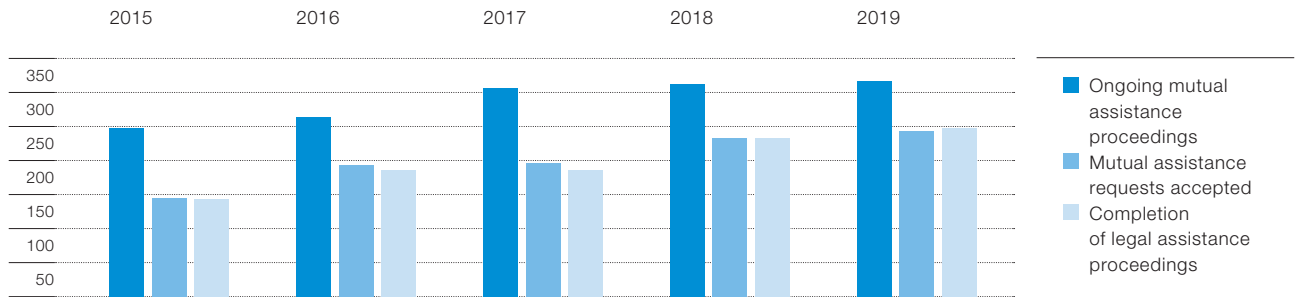
	2015	2016	2017	2018	2019
Pending bulk business cases	445	277	167	159	150

	2015	2016	2017	2018	2019
Newly received bulk business cases <sup>4</sup>	1350	1594	1324	586	688
Completed bulk business cases <sup>4</sup>	1109	1718	1304	533	642
Counterfeit money	227	304	236	169	181
Explosives	283	260	240	157	240
Aviation <sup>6</sup>	22	12	19	10	0
Motorway vignette <sup>4</sup>	436	926	629	8	0
Miscellaneous	141	216	180	189	221

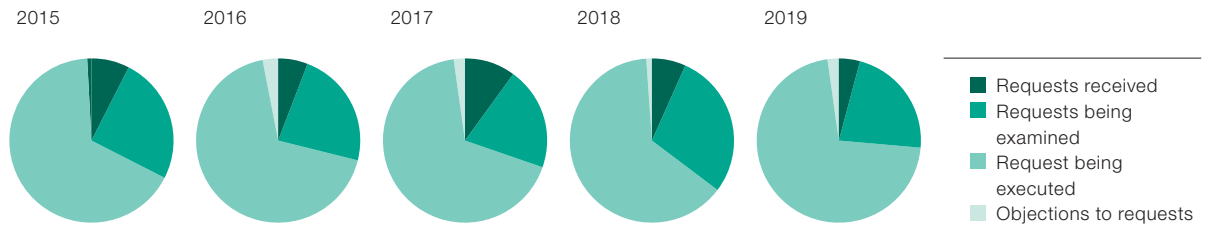
4 The fall in numbers after 2017 is essentially because motorway vignette cases are no longer included in the statistics (since 1.1.2018 subject to cantonal jurisdiction).

6 From 1.1.2019, aviation cases are no longer normally listed as bulk business cases.

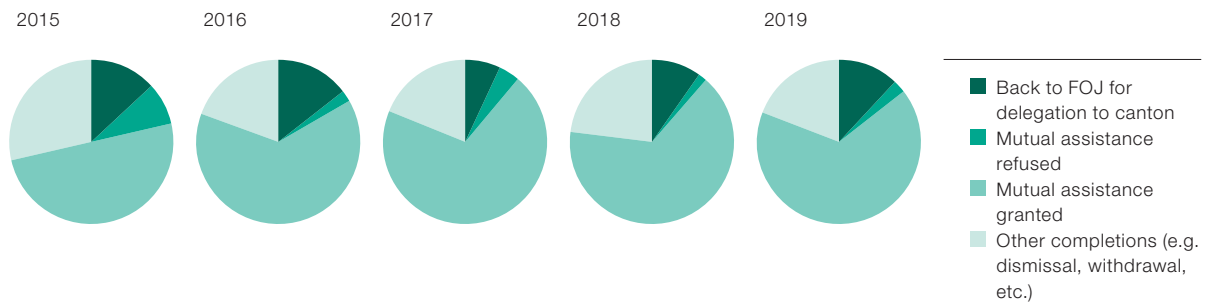
### Requests received for mutual assistance (as of 31.12)



### Ongoing mutual assistance proceedings (as of 31.12)



### Completion of legal assistance proceedings



<b>Number and result of the main proceedings before the Federal Criminal Court</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>First-instance main proceedings before the Federal Criminal Court (charges and referrals of penal orders)</b>					
Number of proceedings	19	26	29	29	18
Of which in legal force as of 31.12.	10	12	9	15	5
Of which not or partly in legal force as of 31.12.	9	14	20	14	13
Number of accused individuals	31	46	39	50	25
Of which convicted	26	30	25	29	22
Of which acquitted	5	16	14	19	2
Of which dismissed by the Federal Criminal Court	0	0	0	2	1
<b>Summary proceedings</b>					
Number of proceedings	3	5	2	2	6
Of which in legal force as of 31.12.	3	4	2	2	6
Of which not or partly in legal force as of 31.12.	0	1	0	0	0
Number of accused individuals	3	7	2	2	6
Of which convicted	2	4	1	2	6
Of which returned	1	3	1	0	0

## Numbers and results of complaints and appeals

### 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)	4
Of which granted or partly granted	3
Of which dismissed or not accepted	1
Of which irrelevant or suspensory effect	0

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

Complaints filed in the reporting year	77
Complaints decided in the reporting year (partly filed in the previous year)	66
Of which granted	6
Of which dismissed, partly dismissed or not accepted	55
Of which irrelevant or suspensory effect	5

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

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

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

Complaints filed in the reporting year	271
Complaints decided in the reporting year (partly filed in the previous year)	232
Of which granted	18
Of which dismissed, partly dismissed or not accepted	191
Of which irrelevant or suspensory effect	23

### Appeals of the OAG with the Appeals Chamber of the Federal Criminal Court

Appeals filed in the report year	4
Appeals decided in the report year	1
Of which granted or partly granted	0
Of which dismissed or not accepted	0
Of which irrelevant	1

### Appeals against the OAG with the Appeals Chamber of the Federal Criminal Court

Appeals filed in the report year	27
Appeals decided in the report year	10
Of which granted	0
Of which dismissed, partly dismissed or not accepted	6
Of which irrelevant	4

### Joint appeals of the OAG with the Appeals Chamber of the Federal Criminal Court

Joint appeals filed in the report year	1
Joint appeals decided in the report year	0
Of which granted or partly granted	0
Of which dismissed or not accepted	0
Of which irrelevant	0

### Joint Appeals against the OAG with the Appeals Chamber of the Federal Criminal Court

Joint appeals filed in the report year	3
Joint appeals decided in the report year	1
Of which granted	0
Of which dismissed, partly dismissed or not accepted	0
Of which irrelevant	1





## **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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