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Annual Report

Report of the Office of the Attorney
General of Switzerland on its
activities in 2020 for the attention
of the supervisory authority

Foreword

We are delighted to present the 2020 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.

Following the resignation of Attorney General Michael Lauber, as the Deputy Attorneys General we jointly assumed leadership of the OAG from 1 September 2020 pending the appointment of a successor. With the valuable support of our staff, we will ensure that the OAG continues to fulfil its statutory tasks without exception in this transitional phase. Our aim is to guarantee continuity, stability and best possible conditions for our employees.

As far as the OAG's core business is concerned, several important cases were either concluded or came to trial in the report year. Work went on in the large, resource-intensive case complexes. In its proceedings the OAG was once again able to secure the forfeiture of substantial ill-gotten gains – true to the principle that crime should not pay. The reality of the reporting year sadly also made it clear that Switzerland is not immune from terrorist crimes and also highlighted the importance of effective coordination and cooperation among all national and international security services.

In organisational terms, the COVID-19 pandemic presented the OAG with a challenge. In response, a task force was set up, which devised and implemented comprehensive measures to protect our staff. Thanks to our efficient internal organisation, we were able to cushion the effects of the pandemic and guarantee the OAG's operations at all times.

The OAG is looking back on a demanding and, in many respects, extraordinary year. This report documents in excerpts how diverse the OAG's statutory duties are.

In conclusion, we 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 unstinting dedication.

Ruedi Montanari,
Deputy Attorney General
of Switzerland

Jacques Rayroud,
Deputy Attorney General
of Switzerland

Bern, January 2021

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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 oversight 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 Mutual legal assistance

As far as mutual assistance is concerned, 2020 was marked by the consequences of the COVID-19 pandemic. Law enforcement activities abroad seemed to slow down a little, going by the number of new requests for mutual assistance that the OAG received in 2020. Thanks to the pandemic safety measures it took, the OAG was able to maintain normal levels of activity, however, both in gathering evidence and in maintaining its personnel resources.

Wherever there was a need to conduct interviews abroad based on a request of for mutual assistance from the OAG, or to interview persons in Switzerland who do not live here, the pandemic had an effect. In the former case, this became apparent if the agreement with the requested state did not provide for the option of interviews by video conference and the requested state became less active in executing requests for mutual assistance because of the pandemic. In these cases, the OAG had to contend with delays and occasionally the cancellation of certain procedural hearings abroad, with potential consequences for the case. In the latter case, problems arose as travel restrictions were imposed and quarantine requirements were introduced. The situation was made even more complex by the extreme volatility of the pandemic-related measures. They often changed, becoming more or less severe, which made it impossible in the medium term to predict what action would be needed and how it should be organised.

In addition, in 2020 an unexpected effect of the introduction the Review Chamber in the Federal Criminal Court was noted, namely that applications for review against judgements of the Appeals Chamber in relation to mutual assistance (which had previously been dealt with by the Appeals Chamber itself) now come under the jurisdiction of the Review Chamber. Compared with normal appeals to the Federal Supreme Court (10 days, limited grounds for appeal and normally no exchange of written submissions), a review could mean that the transmission of documents abroad would be delayed by several months, even if the review had no prospects of success. While in the past ten years only a handful of judgements have been the subject matter of an application for review, the Appeals Chamber dealt with 17 applications for review in 2020. Aware of the risk of being exploited, the Appeals Chamber issued its judgments very quickly (e.g. Judgment CR.2019.11 of 20 December 2019, 4 days) or took a critical view of applications that aimed simply to delay the transmission of documents (Judgment CR.2019.10 of 24 February 2020).

2.2 FATF¹

The OAG participates as an expert in the Swiss working group led by the State Secretariat for International Financial Matters (SIF) that is involved in the work of the FATF. In this connection the OAG drafts opinions and proposals based on its experience in prosecuting the offences of money laundering and terrorism financing. The OAG also coordinates the gathering of statistics that the OAG and the cantonal prosecution services are required to keep for the FATF's purposes.

The OAG also participates 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 in particular took part in drafting a study with the title "Fraud and phishing related to computer fraud as a predicate offence to money laundering" in January 2020.²

2.3 OECD³

As a result of the COVID-19 pandemic, Switzerland's written report on the implementation of the recommendations of the Working Group on Bribery (WGB) issued in 2018, originally scheduled for March 2020, had to be postponed to October 2020. The discussion of this report took place at the plenary session of the WGB that was postponed to October and which was held virtually on "Zoom". The WGB's decision to use "Zoom" as the only option considerably restricted the opportunities for discussions, given the security concerns that relate to this platform.

In its review of the implementation of its recommendations, the OECD acknowledged the seven convictions of persons and companies that the OAG has secured since 2018 for the bribery of foreign public officials and noted that Switzerland, thanks to the OAG's consistent performances, is still one of the countries most active in prosecuting the offence of bribery of foreign public officials. In addition, the OECD stated that it would continue to closely monitor developments in certain of the OAG's

case complexes that have received so much media interest, even if these developments had not related to the issue the bribery of foreign public officials or had not adversely affected the OAG's conduct of investigations related to bribery offences. The OECD stands by its call for tougher sanctions against companies and protection for whistleblowers, in the private sector as well. In view of the fact that it had found that Switzerland had not implemented the recommendations on this, the OECD announced that it would be sending a letter on this matter to the Federal Department of Justice and Police (FDJP).

2.4 Genocide Network⁴

Because of the COVID-19 pandemic, only one meeting of the European Genocide Network was held in the report year; it took place by video conference and the OAG was in attendance. This network, made up of practitioners from prosecution services and justice and police authorities working in the field of international criminal law, offers members from EU-countries and observers from Canada, the USA, Norway, Bosnia-Herzegovina, the United Kingdom and Switzerland the opportunity to exchange experiences and to pursue continuing professional education on specific topics. The topics addressed at the 28th meeting included the situation in Libya, the serious crimes under international law committed in Libya and their connection with terrorism, people smuggling and violations of embargo sanctions, the independent investigative mechanism for Myanmar (IIMM), the implementation of the EU Directive on victims' rights⁵ and the current status of the initiative for an international mutual assistance mechanism for 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.

1 Financial Action Task Force.

2 French version: <https://www.fedpol.admin.ch/dam/fedpol/fr/data/kriminalitaet/geldwaescherei/nra-berichte/nra-bericht-jan-2020-f.pdf.download.pdf/nra-bericht-jan-2020-f.pdf>; German version: <https://www.fedpol.admin.ch/dam/fedpol/de/data/kriminalitaet/geldwaescherei/nra-berichte/nra-bericht-jan-2020-d.pdf.download.pdf/nra-bericht-jan-2020-d.pdf>.

3 Organisation for Economic Co-operation and Development.

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

5 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

3 National Cooperation

3.1 Federal Office of Police (fedpol)

The positive comments in past OAG annual reports on its cooperation with fedpol were again confirmed in the report year. Cooperation with fedpol is still good and characterised by a mutual understanding for the respective tasks and issues that the two authorities contend with. This assessment applies not only to the fedpol management, but also to its organisational units, such as the Federal Criminal Police (FCP), the Federal Security Service (FSS) or the Money Laundering Reporting Office (MROS).

The respect for each other's tasks, roles and specific challenges shown by all units concerned is particularly important to the prosecution of suspected terrorist offences. Although the OAG can only begin to act as a prosecution authority after an offence has been committed, and to that extent fulfils a repressive task, fedpol has various functions which in some cases also involve preventive aspects. Fighting crime effectively requires all authorities concerned – at federal and cantonal level – to work closely together in a coordinated manner.

3.2 Federal Intelligence Service (FIS)

The FIS is an important partner for the OAG, providing its assessment of the threat situation, in particular in relation to terrorism. Its cooperation with the OAG in this field is founded in particular on the TETRA (TErrorist TRacking) concept. This cooperation is very good, and guarantees the regular and rapid exchange of information. Security-relevant information assists in the early recognition and prevention of threats to internal and external security and must reach the OAG in good time and in the appropriate form in order to have the maximum effect. The interfaces between the FIS's preventive duties and those of prosecutors are recognised; they are each reviewed and discussed in partnership. The official reports issued by the FIS form a crucial basis for opening criminal proceedings. At present around 40% of criminal proceedings related to terrorism are based on these official reports, which can be used in court, and which are equivalent to criminal complaints.

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. As there is no statutory basis that permits direct contact, it is the FOJ which sends requests for mutual assistance and other communications from the Swiss prosecution authorities to their foreign counterparts. 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: contact is frequent, and problems are solved at the appropriate level. Any disagreements are normally resolved pragmatically. If this is not the case, they can be brought before the Federal Criminal Court under the procedure for contesting the OAG's decisions.

In addition, Switzerland's two liaison prosecutors at Eurojust are also subordinate to the FOJ. Eurojust is one of the OAG's most important partners, above all in relation to coordinating international efforts to combat crime. The liaison prosecutors and the Eurojust infrastructure also facilitates contact with foreign authorities.

3.4 Cooperation in the field of aviation

In order to guarantee consistent case law in the field of aviation and develop related expertise, the OAG has increasingly centralised aviation-related cases that have criminal implications. It does this on the basis of the existing federal jurisdiction in Article 98 paragraph 1 of the Civil Aviation Act (CAA, SR 748.0). In addition, the Candinas Motion 18.3700 ("Reassign criminal jurisdiction over aircraft accidents and serious incidents to the Confederation"), which has been approved by both chambers of the Federal Assembly, provides for an expansion of federal jurisdiction to cover misdemeanours and felonies in connection with aviation. A related amendment to the law has yet to be made.

The OAG is in the process of developing and consolidating close cooperation with the cantons and other partner authorities – in particular the FCP, the Swiss Transportation Safety Investigation Board (STSB), the Federal Office of Civil Aviation (FOCA) and the Air Force.

3.5 Swiss Financial Market Supervisory Authority (FINMA)

The OAG continues to work closely with FINMA in relation to stock market offences and money laundering. To this end, regular and ad hoc coordination meetings are held. In 2020 FINMA filed criminal complaints with the OAG related to suspicions of insider dealing in four cases.

3.6 Federal Tax Administration (FTA)

In the report year, the FTA and the OAG again worked closely together. They were able to make optimal use of the synergies resulting from their respective spheres of activity. The OAG successfully identified probable tax offences in the course of its investigations (e.g., untaxed income or companies that unlawfully fail to pay tax in

Switzerland). The OAG reports such cases to the responsible tax authorities in accordance with Article 302 of the Criminal Procedure Code (CrimPC). Conversely, from time-to-time practices come to light in ongoing tax proceedings that may then become the subject of criminal proceedings by the OAG. In order to identify relevant cases and optimise cooperation, single points of contact are used as links between the two authorities.

3.7 Conference of Swiss Public Prosecutors (CSPP)

The OAG regards it as important to participate in the CSPP, as the CSPP encourages cooperation between the cantonal and federal prosecution services. In particular, it aims to achieve an exchange of views between the cantonal prosecution services themselves and with federal services, as well 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.

In the report year, the priority issues were in particular the revision of the CrimPC that is currently before Parliament and the measures to maintain operations in the justice system during the COVID-19 pandemic.

3.8 Joint prosecution tasks

(1) 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 unit. 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.

(2) Cyberboard

Once again in 2020, a growth in cybercrime could be observed around the world. As the OAG noted in its strategy for 2020–2023, cybercrime is an important development for the OAG that must be taken into consideration on a continuous basis.

Coordinated efforts to combat cybercrime continue to be made via the established prosecution platform, the Cyberboard. The main themes considered in 2020 by

the strategic committee, Cyber-STRAT⁶ were improving international cooperation, preventing crimes and public-private partnerships. At a strategic level, Cyber-STRAT considered ways of dealing with the difficulties related to the digital gathering of evidence abroad. In relation to prevention, one of the issues discussed, in this case with the Swiss Federal Statistical Office, was recording cybercrimes. With regard to the issue of public-private partnerships, discussions led this year by the National Cybersecurity Centre focused on duties to report.

At an operational level, the Cyber-CASE⁷ body dealt in particular with the development of the national monitoring of cyber cases, exchanging expertise, operational coordination (e.g. investment fraud) and the current cyber threat situation.

The experiences on the Cyberboard were once again positive. By recruiting cyber consultants, the OAG has further strengthened its position as a reliable partner that can actively help to shape the cyber landscape in Switzerland. As organiser of the Cyberboard, the OAG wishes to thank all its partner authorities for their constructive commitment.

6 Members: OAG, Federal Department of Finance (FDF), fedpol, Conference of Cantonal Justice and Police Directors (CCJPD), Conference of Cantonal Police Commanders (CCPCS), FIS, Swiss Crime Prevention (SCP), CSPP and Swiss Security Network (SVS).

7 Members: analysts from the National Cybersecurity Centre (NCSC), specialist police officers from the Network for Digital Crime (NEDIK) and the Cyber-Single Points of Contact for prosecution authorities.

4 Legal Issues and General Information for Parliament

4.1 Supporting the cantons by taking over major investigations

The call for the effective prosecution of the persons pulling the strings behind sophisticated cross-border or supra-cantonal large-scale frauds involving up to hundreds of millions of francs in losses and thus affecting the entire economy goes back in some cases to experiences with the legendary European Kings Club and led at the end of the 1990s in the so-called “Efficiency Bill” to new investigative powers being given the OAG for combating this form of white-collar crime. These powers have proven their value and the system is much appreciated and used by the cantons.

For example, the OAG secured convictions in the Behring Case at the request of the Cantons of Zurich and Basel-Stadt, a case which involved around 2,000 fraud victims; it also investigated the Paysafe frauds at kiosks around the country and tackled the VW diesel scandal, in which around 175,000 parties suffered losses. All these cases were notable for their special challenges, which demanded new solutions: complexity, the need for international cooperation, managing numerous suspects and complainants or the increasing and ever more rapid anonymity across all borders. Because of its experience with these phenomena, the implementation of new technological approaches and international networking, the OAG is regularly requested to take over especially complex and resource-intensive cases, even by cantons with specialised investigation departments.

A current example of this can be seen in the phenomenon of suspected “debt rescheduling frauds”. In this connection cantonal prosecution authorities throughout Switzerland have received numerous criminal complaints as well as reports from MROS. There is a reasonable suspicion that up to 10,000 loan applicants have been deceived into thinking that they would receive loans after making certain advance payments, but the offenders, after receiving the advance payments, have not provided any satisfactory service in return. In this investigation, the OAG has taken over more than 200 cases from cantonal prosecution authorities – in particular from the cantons of Aargau, Basel-Stadt, Bern, Lucerne, St. Gallen and Zurich.

4.2 Consolidation and specification of the case law on the telephone surveillance of third parties

The OAG is conducting criminal proceedings against several persons on suspicion of aggravated money laundering, commercial fraud, fraudulent bankruptcy and forgery of documents. As part of the investigation, based on Article 270 letter b number 1 CrimPC, three months of real-time surveillance was ordered of the telephone

conversations of a third party who was not a party to the proceedings. After this third party was made aware of the measure ordered, the person appealed to the Federal Supreme Court. The court rejected the appeal on the following grounds (BGer 1B_134/2020 of 8 July 2020):

The Federal Supreme Court found that there was strong suspicion in terms of Article 269 paragraph 1 letter a CrimPC, in particular in connection with matters relating to fraudulent bankruptcy and forgery of documents. In view of the seriousness of the offences, it held that there had been no breach of the principle of proportionality and also that there was no breach of the principle of subsidiarity (Art. 269 para. 1 let. b and c CrimPC). It examined the application of Article 270 letter b number 1 CrimPC and concluded that it provided a sufficiently precise statutory basis for the surveillance of a third party’s telecommunications, given that the suspect was probably going to phone the third party. In reaching its judgment, the court specified that the surveillance of a third party in this context did not constitute a greater encroachment on a person’s constitutionally protected private domain than other forms of surveillance of post and telecommunications of third parties under Article 270 CrimPC.

The Federal Supreme Court also held that the telephone surveillance of the third party was permissible because of the following factors: the suspect mentioned in a telephone conversation (this call was intercepted) that he would call the third party in the coming days, and it was understood that the conversation would relate to the third party’s questioning by the authorities, which was scheduled to take place in the coming days. The telephone surveillance of the third party was not only intended to secure information relevant to the investigation, but also information about the suspect’s precise location (as he was in hiding from the authorities). As the suspect was in all probability abroad, the parallel interception of the third party’s calls was necessary in order to listen into all conversations between the third party and the suspect. On the one hand, the suspect was possibly using other telephone lines while abroad and on the other it was not possible for technical reasons to record all conversations between the suspect (abroad) and the third party via the suspect’s line alone.

4.3 Cybercrime: Legal status of the IP history

When logging in and logging out of an email mailbox, the IP addresses are saved (in what is known as the “IP history”). These IP addresses can provide vital leads in an investigation, which allow the identification of the holder and/or user of the email account. When collecting these data, the question arises of the legal status of

these log-in/log-out IP addresses. Are they simply basic data in terms of Article 21 of the Federal Act on the Surveillance of Post and Telecommunications (PTSA, SR 780.1) that can be obtained by the Post and Telecommunications Surveillance Service (PTSS) simply by sending requests for information to the providers? Or are IP addresses metadata in terms of Article 8 letter b PTSA, which can only be obtained with court approval using the procedure for identifying the subscriber in accordance with Article 273 CrimPC?

In its decision in BGE 141 IV 108, the Federal Supreme Court had categorised the IP history as metadata, which had led to criticism from legal experts. The issue of legal status was discussed at a Cyber-CASE meeting at which the PTSS was also represented. The unanimous opinion was that the IP history of an email mailbox was simple basic data and not metadata. The PTSS, as part of the ongoing revision of the Ordinance on the Supervision of Post and Telecommunications (SPTO; SR 780.11) introduced a related amendment to Article 42 SPTO, according to which the protocol used, the IP address and the port number of the clients on access to, logging into or logging out from the mailbox can be obtained by requesting information from the email provider. If the SPTO is revised in this way, log-in/log-out IP addresses for an email mailbox can in future be obtained by making a simple request.

4.4 Mutual legal assistance: Party status for electronic data stored in Switzerland

In the course of the Swiss criminal proceedings in the Petrobras case complex, Swiss investigators have located and seized several servers. The companies under investigation were using these to keep their parallel accounts and communicate covertly. The servers were located in “data centres” in Switzerland. The seized data were the object of requests for mutual assistance from abroad. In this context the OAG concluded that only the “data centres” had the right to object to the data being transmitted abroad. The companies concerned that used the servers were denied this right.

The Federal Criminal Court rejected the appeal against this decision (Judgment RR.2020.11, RR.2020.12 of 21 July 2020). Party status in mutual assistance proceedings is only accorded to the owner of the spaces searched who is in direct possession of the evidence. This rule also applies to servers, even if the companies involved also have direct access to the stored data. The fact that these companies had rights of participation in the Swiss criminal proceedings under Article 246 ff. CrimPC is of no relevance to the mutual assistance proceedings, which follow other rules. The Federal Supreme

Court declared the appeal against this judgment inadmissible (Judgment 1C_423/2020 of 5 August 2020).

4.5 Court decisions on meetings with foreign authorities

In the 1MDB case complex, a request was made for the recusal of the Attorney General of Switzerland and of a federal attorney. The request was based on the allegation that there had been contacts between the Swiss and Malaysian authorities at which no minutes had been taken for the files. Insofar as it related to a meeting mentioned in the OAG’s 2018 Annual Report, the Federal Criminal Court declared the recusal request inadmissible because it had been filed too late. The recusal request also related to an alleged courtesy meeting between the Attorney General of Switzerland and his counterpart from Malaysia in March 2019. On this occasion, the Attorney General was given the files on the execution of a request for mutual assistance by the Malaysian authorities; these files were placed in the Swiss case files with a note explaining their origin. The Federal Criminal Court declared this recusal request inadmissible insofar as it related to the Attorney General of Switzerland because the Attorney General does not exercise any direct control over proceedings and as a representative of the OAG has the right to accept files on the execution of a mutual assistance request from a foreign counterpart. The recusal request against the federal attorney in charge of proceedings was rejected. His decision not to include the details of the courtesy meeting in March 2019 in the files amounted to an interim ruling on evidentiary matters that should be contested through ordinary legal process and not by requesting the attorney’s recusal.

In this general context, several decisions have recently been issued at cantonal and federal level on the necessity of keeping records of meetings with foreign authorities. In general, the case law recognises that public prosecutors are entitled to discuss and coordinate their strategy and course of action with the foreign authorities involved in a case, without having to keep records of these meetings (see e.g. Judgment SK.2018.46 of 16 December 2019, E. 8.7.2; Judgment ACPR/584/2019 of 2 August 2019, E. 4.4). In contrast, records must be kept of evidence-gathering procedures, so that the parties to the criminal proceedings can establish on the basis of the files how the evidence was gathered (Judgment BB.2019.187 of 3 March 2020, E. 6.8; abovementioned Judgment ACPR/584/2019, E. 4.4).

4.6 Abolition of the OAG's party status under administrative criminal law

As already discussed in its 2018 Annual Report 2018 and in the consultations on the amendment of the CrimPC, the OAG is calling for the abolition of its right of appeal in Article 381 paragraph 4 CrimPC. As far as the OAG is concerned, there is no reason for it to intervene in criminal proceedings that fall under cantonal jurisdiction. In the current draft (2019 6789, p. 6801) and in particular in the dispatch (2019 6697, p. 6768 f.) on the amendment of the CrimPC, this concern is met by repealing Article 381 paragraph 4 CrimPC.

As the OAG also noted in the 2018 Annual Report, it is granted party status in administrative criminal law proceedings (Art. 24 and 74 para. 1 ACLA, SR 313.0) even though it is neither involved in the investigation nor has any particular expertise in administrative law matters. Once again, the OAG sees no reason why it should want to intervene or participate in administrative criminal law proceedings, especially as the specialist authority responsible for the investigation (the administration concerned) has full knowledge of the case and has its own party status. However, in accordance with Financial Market Supervision Act (Art. 50 para. 2 FinmaSA, SR 956.1), the OAG must forward the files of the Federal Department of Finance (FDF), which is solely responsible for the conducting the investigation, to the Federal Criminal Court. In view of these circumstances and in particular the existing party status of the competent specialist authority, the OAG does not actively exercise its party rights, but passes the files on in a purely administrative capacity as a 'messenger' who provides no added value. From the OAG's point of view, its party status under ACLA and its role in accordance with FINMASA should therefore be abolished – in the same way as it will be under Article 381 paragraph 4 CrimPC.

Interview

Interview with the Deputy Attorneys General



Ruedi Montanari,
Deputy Attorney General of Switzerland



Jacques Rayroud,
Deputy Attorney General of Switzerland

“Continuity despite numerous challenges”

Following the resignation of Attorney General Michael Lauber, the two Deputy Attorneys General, Ruedi Montanari and Jacques Rayroud, took over as joint interim heads of the Office of the Attorney General of Switzerland. In this interview, they look back on the various challenges and most important events of the year.

Mr Montanari, Mr Rayroud – You took charge of the OAG at the end of a turbulent period. What kind of year can you look back on?

Ruedi Montanari (RM): It was certainly an intense and demanding year. The public controversy surrounding Attorney General Michael Lauber weighted also the OAG’s staff. His resignation necessitated a reorganisation of many familiar processes, as Michael Lauber had characterised the OAG for many years. However, both my colleague Jacques Rayroud and I have already worked as Deputy Attorneys General for a long time. In this position, we were always aware that we might sometime have to ‘step into the breach’. We were familiar with the management duties and their various challenges and points of tension.

Jacques Rayroud (JR): Despite our extensive experience and best preparations, the joint leadership of the OAG has proved a serious challenge, as we had to continue to carry out many of our previous duties at the same time. It was as if we had two jobs at once, and so we were reliant on support and flexibility. Thanks to the active assistance from our heads of division, those responsible for the various offence areas and all our

other members of staff, not to mention excellent cooperation with partner authorities such as fedpol, the FOJ, the FIS and others, however, we have succeeded in leading the OAG through this transitional phase during difficult times.

How have you developed the OAG in this transition period?

JR: In a transitional phase a complete reorganisation is not appropriate. Our aim was to ensure continuity, peace and stability amid the numerous challenges. This meant we continued to follow the same path as before in relation conducting proceedings, strategy or project development. As a result, vital projects could be implemented, such as an exhibit management system for making an inventory of seized data and other property. And the OAG filed more indictments in the Federal Criminal Court in the report year than ever before. The OAG still managed to fulfil its statutory mandate even under the exceptional circumstances of 2020.

RM: In addition to the transitional phase under our joint leadership, the measures necessitated by the COVID-19 pandemic represented a challenge for our employees. It was important that we took any concerns and needs on board and dealt with them. This was one of the reasons why we made internal communication one of our priorities in the transitional phase. That’s why, for example, we introduced our “open ear” policy, so our staff can address their concerns directly to us. We also have a weekly video conference, which serves as an information forum, and which has also been made accessible to all our staff. At the same time, by introducing

the “expanded Directorate”, we have created a body that involves the heads of division more closely in the OAG’s management.

The COVID-19 pandemic has hardly made the situation any simpler for the OAG either. What effects did the pandemic have on the authority and how has it coped with it?

RM: As soon as the pandemic broke out in March 2020, we set up a task force and began working with it to develop and implement comprehensive measures to protect our employees, taking account of the different situations at each of our four locations in Bern, Lausanne, Zurich and Lugano. A core team from the task force led by the general secretary monitored the developments constantly and reviewed the measures taken continuously, adapting them to ongoing situation. The staff were regularly informed about the developments. This rapid and consistent course of action has proven its value. Until autumn 2020 we had no cases of COVID-19, and we have been able to respond well to the cases among our staff that have occurred since.

JR: And thanks to our internal organisational system, we were well placed to cushion the effects of the pandemic and guarantee operations at all times. In particular, the COVID-19 pandemic has had no serious impact on the conduct of criminal proceedings. Although individual interviews had to be postponed or reorganised, for example, thanks to the OAG’s modern workplace infrastructure, we were able to find a practical solution for most situations. The OAG has been able to fulfil its statutory mandate at all times. The main area where the pandemic had an influence on operations was in relation to court hearings, which the Federal Criminal Court had to postpone on several occasions, such as with the eagerly awaited trial involving offences under international criminal law in connection with the Civil War in Liberia. Or the high-profile football trial in the spring, which the Federal Criminal Court had to postpone and then abandon.

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

JR: If we are talking about case complexes, then we certainly have to talk about the football cases. We regret that because of the situation around the COVID-19 pandemic, the court was unable to assess the charges brought in context of the German Football Association (DFB). What was positive on the other hand was that in February 2020 an indictment could be filed in another high-profile case in connection with the award of media rights; in the autumn this led to the first instance conviction of a former FIFA general secretary. In addition,

various other cases in the football environment were successfully concluded with legally binding decisions. In the autumn, the OAG ordered the restitution of more than CHF 36 million in unlawfully acquired funds. The other cases are still progressing, but we can’t make any prognoses. What must be remembered is that prosecution authorities are duty bound to look into all the circumstances relevant to a potential offence and a suspect, and until a legally binding judgment is issued the presumption of innocence applies to all concerned.

Alongside football, the case complexes surrounding 1MDB and Petrobras-Odebrecht generate global attention every year. In connection with Petrobras-Odebrecht, for example, the Federal Criminal Court in February 2020 handed down a judgment for the first time and convicted a former asset manager. The major case complexes tie up considerable resources and are managed by interdisciplinary task forces. A special challenge is the complexity that results from the international dimension of these cases, from the foreign origins of many of the parties and from the need to evaluate cross-border business activities and money transfers involving several countries. In this area, the OAG is always reliant on cooperation with other countries by way of mutual legal assistance as well.

What other milestones characterized the year 2020, in your opinion?

RM: Apart from the change in leadership, the COVID-19 pandemic and the major case complexes, there were numerous other cases that caught the public’s attention: for example, the proceedings opened in connection with the “Crypto Affair”, a coordinated anti-Mafia operation in Switzerland and in Italy, and an indictment for insider dealing. The decision to abandon proceedings in connection with Swiss maritime navigation also drew a lot of attention. Here I want to make a point that often receives too little attention: I sometimes have the impression that in public discussions, the work of prosecution authorities is only regarded as being successful if it leads to indictments or convictions. Our task is not to work towards securing a conviction. Instead our task, which is based on the rule of law, is to investigate the incriminating and exculpatory circumstances with the same degree of care. If a case has to be abandoned on the basis of such an investigation, this is not a failure, but the culmination of complex investigative activities that have ultimately led to an exculpatory result. This is how we fulfil our statutory mandate.

Another important element in 2020 was our prosecution of terrorism offences. The OAG filed two indictments, one in April and one in July 2020; in both cases the Federal Criminal Court handed down convictions,

largely agreeing with our assessment of the cases. In addition, in October 2020 we secured another conviction in the Federal Criminal Court, based on an earlier indictment filed by the OAG. Furthermore, in 2020 the OAG took over complex investigations in other cases that received close media attention, such as the homicide in Morges and the knife attack in Lugano. Overall, the OAG, working closely with its partner authorities, was able to record significant achievements in this security-relevant field.

Operational Activities

1 Strategy 2020–2023⁸

The 2020–2023 strategy was launched at the start of 2020 and is based on the OAG's Vision and Mission Statement. The vision, which forms the OAG's objective for the coming years, states that the OAG is committed to ensuring that crime does not pay, by strengthening the rule of law. The Mission Statement, which provides a framework for the OAG's activities, focuses on the OAG's commitment to uphold the rule of law and establish the truth by conducting criminal proceedings, providing mutual assistance and working effectively with partner organisations.

In order to implement the Vision and the Mission Statement, the OAG will adopt the following four strategic approaches in the 2020–2023 period:

- *Safeguarding its freedom to act and remain flexible:* The OAG formulates strategies specific to each field of crime, in order to be able to develop systematically and in a structured manner in relation to these fields of crime. For example, in the report year the measures for the fields of international criminal law and cybercrime led to the creation of the new RTVC section and the recruitment of the cyber experts. The OAG also formulated the strategic analysis and strategy for the field of money laundering. To safeguard its freedom to act, the OAG is optimising internal processes through standardisation and centralisation and using new tools to simplify the prioritisation and management of cases. In addition, the OAG is consolidating its existing cooperation with fedpol and encouraging new forms of collaboration.
- *Strengthening leadership:* The OAG is investing in strengthening its leadership by further consolidating the concept of leadership and its specialist and leadership structures. Their roles and interplay will be reviewed over the next few years and modified if necessary. Through the active consolidation of the concept of leadership among the managers, the OAG culture that is experienced will be refined and further developed.
- *Encouraging strategic human resources planning:* As an organisation of experts, the OAG focuses on its employees and the fulfilment of their duties. Consequently, the OAG wants to develop its working methods and offer improved prospects and encouragement to its employees, in order to remain an attractive employer. In addition, the OAG places a deliberate focus on succession planning, to ensure positions are filled by the best candidates

and to plan for the transfer of knowledge and experience at an early stage.

- *Further developing technology / IT instruments:* The OAG is continuously working with its most important partner authorities to develop its IT instruments, so that its employees have the support they need for their daily work and their efficiency and effectiveness can be increased. Since 2020, for example, fedpol and OAG have together been running an application for evidentiary exhibit management (see Sec. V.2.1). A key element in this is the involvement of staff in defining the requirements for IT instruments and the associated change in work processes. The focus is not only on the IT instrument itself, but also on proper support for employees when introducing and using the technologies.

The strategy is managed on the basis of a "roadmap", i.e. a rolling 12-month plan, an essential element that also covers the OAG's entire project portfolio. This contains the projects needed to implement the strategy. They are prioritised on the basis of their importance and the availability of resources.

⁸ <https://www.bundesanwaltschaft.ch/mpc/en/home/die-bundes-anwaltschaft/vision.html>

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 reports of criminal offences, 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 (OC-AG). 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. On 1 January 2020 MROS introduced a new data processing system (goAML). The OAG's procedures had to be adapted in some cases, which has led to an increase in the CPC's workload. A further essential part of the CPC's work in the report year was providing administrative support in connection with combating cybercrime; the related procedures and the division of tasks between the RTVC section and the CPC will be modified at the start of 2021, which should relieve the pressure on the CPC.

A total of 1985 incoming communications were processed in the report year. These included 479 requests to take over proceedings, 95 % of which were assigned to federal jurisdiction by the OC-AG. A further 172 MROS reports were processed. 1603 incoming communications were passed on to the sections for further processing and 382 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 proceedings up to the end of 2020.

3.1 Maritime navigation

In 2020, the OAG issued a ruling abandoning proceedings in the so-called Maritime Navigation Affair. The object of these criminal proceedings was a former chief of staff at the Federal Office for National Economic Supply (FONES), who faced allegations of misconduct in public office and fraud. The case related on the one hand to the granting of federal loan guarantees to secure bank loans that had been given to various shipping companies in order to fund deep-sea vessels. At the same time, administrative practices in connection with the authorisation of payment deferrals came under scrutiny. By means of the payment deferrals, the FONES allowed the shipping companies to avoid making loan repayments to the lending banks. Practically all the credit guarantees covered by the ruling abandoning proceedings were enforced from 2017 onwards by the lending banks, which led to the Federal Treasury having to pay out over CHF 230 million.

The OAG firstly reached the general conclusion in its assessment that the FONES' statutory mandate covered the granting of the loan guarantees and that most of the guarantees were granted within the "boom phase" for maritime navigation which prevailed until 2008. The financial crisis in the market which broke in 2009 was not foreseeable at the time, but it was a key factor in necessitating the payment deferrals, most of which were approved after 2009, and the crisis subsequently led to the claims under the loan guarantees.

The OAG then considered in detail the mechanisms of the FONES' loan guarantee policy as well as the individual loan guarantees and payment deferrals that were granted. In sum, the OAG concluded that the assessment and the management of the loan guarantee risks was adequate and the decisions were taken at the FONES as part of a process in which there was an appropriate separation of functions and a functioning "second pair of eyes" principle. The FONES practices were largely supported by the external audit and partner agencies. In addition, it has been established that after the economic crisis began in 2009, the FONES scope for action was considerably restricted as a result of the specific characteristics of loan guarantees and the statutory principles applicable at the time. In particular, there was practically no possibility of exerting any influence over the shipping companies' business practices. The finding that the FONES' practices on payment deferrals essentially remained the same after the then chief of staff departed in March 2012 was telling.

In its ruling abandoning proceedings, the OAG largely concluded that as far as the official activities of the former FONES chief of staff were concerned, there was no indication of any breaches of duty that could have been a criminal offence and there was insufficient evidence of any intention to give unlawful advantages to shipping companies.

3.2 Investigations in connection with world football

The report year saw the OAG move into the concluding phase in various cases connected with world football.

At the end of 2019, the OAG handed down a third conviction in this context, finding a former secretary general of CONMEBOL, the South American Football Confederation, guilty of complicity in multiple counts of aggravated criminal mismanagement. The OAG was able to return around CHF 20.5 million in previously seized assets to CONMEBOL in 2020. This increased the current total of assets forfeited or refunded in connection with cases related to world football to more than CHF 37 million.

In the proceedings in connection with the German Football Association (DFB), the OAG filed an indictment in the Federal Criminal Court at the beginning of August 2019, following some three-and-a-half years of investigations. After reserving dates for hearings in January and March 2020, the Federal Criminal Court began hearings in March 2020. As a result of the COVID-19 pandemic, the hearings had to be adjourned, with the result that the case became time-barred in April 2020.

In the proceedings opened in March 2017 in connection with the award of media rights by FIFA, the OAG filed an indictment in February 2020 against three accused. At the end of October 2020, the court found a former FIFA Secretary General guilty of multiple counts of forgery of documents and imposed a suspended monetary penalty. The court considered it proven, following the OAG's submissions, that the President of the BeIN Media Group LLC and the beneficial owner of TAF Sports Marketing SA had each made corrupt arrangements with the former FIFA Secretary General by granting him undue advantages so that he would exert influence over the award of media rights and that the former Secretary General had breached his obligations towards FIFA. The court however acquitted the accused of several charges of serious criminal mismanagement and bribery of private individuals. These decisions were based on legal aspects related to the losses incurred and the scope of the former Unfair Competition Act. The accused were ordered to pay all the procedural costs. The former FIFA Secretary General was also ordered to repay around CHF 1,750,000 to FIFA. The OAG has announced to file an appeal against this judgment.

3.3 1MDB

As part of the investigations surrounding the misappropriation of several billion dollars from the state-owned fund 1 Malaysia Development Berhad (1MDB), the OAG is conducting several proceedings at the same time, such as that against two former public officials in the United Arab Emirates and two former members of 1MDB management, one against two former senior executives in the company Petrosaudi and two against Swiss banking institutions. The proceedings are running to schedule. Due to the international dimension, numerous requests for mutual assistance have been filed, including requests to the USA, the United Kingdom, Singapore and Malaysia. Some of these are still pending.

In the case involving the former executives of Petrosaudi, decisions were recently taken about a recusal request and an appeal.

The recusal request was filed in March 2020 against the Attorney General of Switzerland and a federal attorney (BB.2020.68) and related firstly to a delegation led by the Attorney General of Switzerland that travelled to Malaysia in 2018 in order to ensure effective international coordination, and secondly to a courtesy visit made by the Attorney General of Switzerland in 2019, during which evidence was handed over to him that had previously been requested by way of mutual assistance. The appeals in connection with the 2018 delegation were declared inadmissible as they had been filed too late, and in relation to the courtesy visit in 2019, the Federal Criminal Court rejected the application (see Sec. III.4.5).

The appeal dated from May 2020 (BB.2020.100). It related to a request for mutual assistance made in October 2019 to Malaysia which called for interviews to be carried out. Before deciding on the request, the Malaysian authorities asked to be sent the questions that the OAG wanted put to the persons being questioned. The OAG invited the suspects to give notice of their questions as well. The appellants demanded to have the list of persons to be interviewed and the list of the OAG's questions before they provided their own list. The OAG wrote back to them, saying that they would receive the list of questions when it was sent to Malaysia and that the persons to be interviewed were named in the request for mutual assistance. An appeal was filed objecting to this letter. The appeal demanded that the request for mutual assistance be withdrawn because it amounted to "entraide sauvage" (i.e. did not meet the formal requirements), and that the appellants should be given the list of questions and the list of persons who had attended official meetings in 2018 and 2019 between the OAG and the Malaysian authorities. The Federal Criminal Court declared all these complaints to be inadmissible and unfounded. Essentially

it found that unlawful “entraide sauvage” should be contested by the appropriate method of appeal, that mentioning suspicious transactions without sending bank records does not amount to “entraide sauvage”, because the relevant details must be provided in order to execute a request for mutual assistance, and that the contested letter did not constitute a case in which an appeal is possible against ongoing requests for mutual assistance under the Federal Act on International Mutual Assistance in Criminal Matters (IMAC).

3.4 Series of cases concerning Petrobras-Odebrecht

The series of cases relating to Petrobras-Odebrecht remains one of the major investigations for the White-Collar Crime Division, and is being conducted by task force.

In an initial phase, the investigations concentrated on the payment recipients (the persons bribed) and in a second phase on the persons making the payments (the bribers). In view of the extensive nature of this complex of investigations, work in both phases is still ongoing, even through numerous individual cases have been successfully concluded.

In the third phase, enquiries are concentrating in parallel on the criminal liability of the financial intermediaries in Switzerland, based also on the findings made in the first two phases. In the report year another criminal investigation was opened against a bank in Switzerland. In addition, the Federal Criminal Court this year confirmed the legality of a simplified procedure, which was an important step in the entire proceedings. Furthermore, the number of requests for mutual assistance that the FOJ delegated to the OAG for execution increased considerably in 2020.

Both the national proceedings and the requests for mutual assistance, not to mention the refunds to the Brazilian authorities which Switzerland facilitated with the consent of those concerned testify to the effectiveness of good cooperation between national and international authorities in a complex series of investigations of this type.

3.5 Money laundering proceedings (Russia)

In 2011, in response to a criminal complaint against the company Hermitage Capital Management Ltd and reports from MROS, the OAG opened proceedings on suspicion of money laundering against persons unknown. The case relates to suspected acts of money laundering committed in Switzerland between 2008 and 2010 and connected with a fraud against the Russian tax authorities committed in Russia at the end of 2007 which led to an illegal tax refund amounting to the equivalent of USD 230 million. The proceeds of the offence were apparently

laundered first in Russia and then in other countries, including Switzerland. In this context the OAG ordered the seizure of the equivalent of around CHF 17 million. This is a complex investigation, in which it has been necessary to make numerous requests for mutual legal assistance.

On 6 November 2020, the parties to the proceedings were notified of the imminent conclusion of the investigation in accordance with Article 318 paragraph 1 CrimPC, at which time the OAG planned to abandon the Swiss criminal proceedings and order the forfeiture of a portion of the assets currently seized.

3.6 Money laundering proceedings (Ukraine)

In June 2020 the trial of Mykola Martynenko, a former member of the Ukrainian Parliament and chairman of the parliamentary nuclear energy committee, and one other Ukrainian citizen took place in the Federal Criminal Court. The OAG accused the two of wilful money laundering as part of a criminal group.

Even in the absence of a judgment in the Ukraine, the court recognised on the basis of the files that, as a predicate offence, Mykola Martynenko had been involved in organising activities in Ukraine that constituted misconduct in public office. As a result, Enerhoatom, the Ukrainian state operator of nuclear power stations had purchased components from the Czech supplier Skoda JS at a price that was around 18 % higher than it should have been. On receiving payment from Enerhoatom, the supplier Skoda JS transferred the excess to an account in Switzerland whose beneficial owner was Martynenko. The court found that 57 transfers involving a total of CHF 3.7 million that Martynenko and his co-accused made from the account in Switzerland to accounts abroad had the aim of frustrating the forfeiture of the feloniously obtained funds. The court convicted the former Ukrainian member of parliament of money laundering as part of a criminal group and sentenced him to 28 months' imprisonment, combined with a monetary penalty of 250 daily penalty units of CHF 1,000. The second Ukrainian accused received a custodial sentence of 24 months and a monetary penalty of 180 daily penalty units of CHF 200. In addition, the court ordered the forfeiture of proceeds from the felony still in Switzerland amounting to CHF 3.37 million and upheld a compensation claim against Martynenko for the amount laundered of CHF 3.7 million. As of the end of 2020, Judgment SK.2019.77 of the Federal Criminal Court was not yet legally binding.

The criminal proceedings were notable for their extensive procedures to gather evidence, particularly in Switzerland, Ukraine and the Czech Republic. The authorities in these countries supported each other based on a complex series of requests for mutual assistance.

3.7 Money laundering in connection with a criminal organisation

Following complex and extensive investigations, the OAG on 15 December 2020 filed an indictment in the Federal Criminal Court against the bank Credit Suisse AG, a former employee of the bank and two members of a criminal organisation from Bulgaria who were involved in importing several dozen tonnes of cocaine into Europe from South America.

Since 1 February 2008, the OAG had been conducting criminal proceedings in connection with the Swiss business activities of a criminal organisation from Bulgaria. Its leader and other members of the organisation had already received lengthy custodial sentences in several European states, where the courts had found that they were participants in a criminal organisation involved in trafficking several tonnes of narcotics. Between September 2008 and June 2015, the OAG continually extended the investigation relating to suspicions of aggravated money laundering and participation in a criminal organisation so that it ultimately involved eleven suspects, including a Bulgarian wrestler living in Valais and another Bulgarian who was the right-hand man and financial advisor to the head of the organisation. A client adviser at the bank Credit Suisse AG who looked after the business with the criminal organisation was also suspected of aggravated money laundering, as was Credit Suisse AG itself.

Credit Suisse AG is alleged to have failed to take all the required and reasonable organisational measures to prevent the offence of aggravated money laundering committed by the client advisor who was responsible for the bank's business relationships with the criminal organisation. The three natural persons deny the charges of aggravated money laundering. The right-hand man of the head of the organisation and the Bulgarian wrestler are also accused of participating in a criminal organisation, and of forging documents.

3.8 Prosecuting and combating organised crime

In July 2020, the OAG and the public prosecutor in the Calabrian province of Catanzaro conducted a coordinated operation against a criminal organisation with links to the 'Ndrangheta.

The complex investigations – in which the OAG was also able to question two witnesses who had turned state's evidence in Italy – had revealed that the suspects had carried out various illegal activities. The investigations uncovered their international involvement in arms and drug trafficking, money laundering and importing counterfeit money from Italy. The investigations led to arrests in Switzerland and in Italy, house searches and

the seizure of significant amounts of assets, goods and weapons. In Switzerland, the OAG, working with the Federal Criminal Police and with valuable support from numerous cantonal police authorities, carried out compulsory measures in the cantons of Aargau, Solothurn, Zug and Ticino. It was revealed that the suspects, in addition to various illegal activities in Switzerland, where one person was arrested, also pursued legal activities, such as making investments, lending money or running restaurants. It is suspected that these activities helped to increase the influence of the 'Ndrangheta-organisation.

The OAG is conducting a series of proceedings against criminal organisations, most of which are Mafia-type organisations. The various investigations relate to a wide range of offences, but the focus of the investigations in each case is the offence of participating in or supporting a criminal organisation. Organised crime is dynamic phenomenon that does not recognise borders; combating it requires close cooperation between the prosecution authorities in the countries involved. The use of joint procedures and instruments is vital; this includes setting up joint investigation teams (JITs) for the direct and efficient coordination of international investigations.

3.9 Terrorism cases (1)

In a judgement issued on 11 September 2020, the Federal Criminal Court found a Swiss-Italian dual national guilty of supporting the terrorist organisation "Islamic state" (IS) and of possessing images representing violent acts. It imposed a custodial sentence of 50 months. The OAG had filed an indictment against the man in October 2019, having opened criminal proceedings against him in February 2015. The court regarded it as proven, as alleged in the indictment, that the accused had supported IS in Syria and recruited several persons for IS. In order to achieve his aim of recruiting persons for IS, the Swiss-Italian dual national posed as a Salafist leader in Switzerland and was in contact with several convicted IS recruiters in Europe.

This was the first time that the Federal Criminal Court defined and recognised the act of recruiting for a terrorist organisation. The accused was in charge of coordinating the Koran distribution campaign known as "Lies" and had deliberately used this to win persons over to the ideology propagated by IS. As of the end of 2020, the Federal Criminal Court's judgment was not yet legally binding.

3.10 Terrorism cases (2)

In a judgement dated 8 October 2020, the Federal Criminal Court convicted an Iraqi citizen of participating in the terrorist organisation "Islamic state" (IS). It imposed

a custodial sentence of 70 months and an expulsion order effective for 15 years. The OAG had filed an indictment against the man in April 2020, having opened criminal proceedings against him in November 2016. The extensive investigations were conducted by a joint investigation team comprising the FCP and the Zurich Cantonal Police and headed by the OAG. Three countries and eight national authorities provided the OAG with valuable mutual assistance.

The court regarded it as proven, as alleged in the indictment, that the accused was a middle-ranking member of IS operating from Switzerland. He had carried out numerous activities for IS in the period from 2016 up to his arrest in May 2017. These included encouraging a woman living in Lebanon to carry out a suicide attack there on behalf of the IS. In addition, he had repeatedly supported IS financially, using the “Hawala” system (an informal system for transferring money). The court also held that the accused had recruited persons for IS with the aim of smuggling them into Syria or Iraq to join up with IS.

In addition to convicting him of membership of IS, the Federal Criminal Court also found the man guilty of possessing images representing acts of violence and of multiple counts of driving without a licence. He was acquitted of a charge of large-scale benefits fraud.

For the first time in connection with Jihadist terrorism, the OAG had called for a sentence of lifelong incarceration. It did so on the grounds that the accused represented a continuing terrorist danger to the population, as it was seriously to be expected that he would commit further offences similar to those for which he had been convicted. The court, however, rejected the request for lifelong incarceration. As of the end of 2020, the Federal Criminal Court’s judgment was not yet legally binding.

3.11 Pilot proceedings in relation to cybercrime

For a number of years, the phenomenon of the “Microsoft Support Scam” or “Tech Support Scam” has been rife. The perpetrators, operating from Indian call centres, call up their victims and pretend to be Microsoft employees. Claiming that the victims’ computers have a software problem, they persuade the victims to allow them access to the computers using remote maintenance software and then to pay them for allegedly “rectifying the defect”.

Investigations by the Zurich Cantonal Police have revealed that in Switzerland at least 17 cantons are affected and that incidents of this type are reported to the police practically every day; in some cases, they are filed unprocessed in the police archives, or the case is immediately abandoned by the prosecution services.

An agreement was reached with representatives of the cantonal prosecution services and of NEDIK (Network for Digital Crime) that the OAG should conduct a pilot case, in which all resources, in particular mutual assistance with India, should be used. The findings from these pilot proceedings are to be shared with prosecutors throughout Switzerland and should lead the way for dealing with future cases.

Thereafter on 1 February 2019 the OAG opened a comprehensive pilot investigation against persons unknown on suspicion of fraud that covered several incidents. The investigation quickly showed that a number of European countries were conducting similar proceedings. On 26 February 2019, an agreement was reached between prosecutors and investigators from Germany, the Netherlands and Switzerland at a Eurojust meeting that in order to increase the chances of success, the requests for mutual assistance made to the Indian authorities by these three countries should be coordinated with regard to their content and time of sending. In June 2019, the three countries sent coordinated requests for mutual assistance to the Indian authorities. As of the end of 2020, all these requests for mutual assistance remained unanswered despite contacting the Indian authorities on several occasions.

Without the support of the Indian authorities, the perpetrators cannot be identified and brought to justice, which is why the pilot proceedings are being abandoned. The OAG will share its findings from the pilot proceedings with the cantonal prosecutors and the representatives of NEDIK, so that future cases can be dealt with more effectively and using fewer resources, based on the experiences gained; in this way, despite the unsatisfactory outcome of the pilot proceedings, some added value can be gained.

3.12 International criminal law: Current situation and challenges

The OAG is currently conducting more than twenty preliminary investigations and criminal proceedings in relation to war crimes, genocide and/or crimes against humanity. The events date from both before and after 2011, when the new provisions in the SCC and in the CrimPC came into force. In March 2019 the OAG filed an indictment for the first time in based on international criminal law.

Since 2011, over 70 cases have been submitted to the OAG. The relate to incidents that have taken place in a total of 28 countries, in particular Syria, Afghanistan, Bosnia, the Democratic Republic of Congo, Gambia, Iraq, Kosovo, Algeria, Liberia, Libya and Sudan. The places where the crimes were committed and the long time

that has sometimes elapsed since the offences were reported can hamper the gathering of evidence; in some cases it is even impossible. In the field of international criminal law, international judicial cooperation with the countries in which the crimes were committed, as well as with third countries and international organisations, is therefore crucial.

The exceptional circumstances brought about by the COVID-19 pandemic, in particular the travel restrictions and the measures imposed around the globe to curtail the spread of the virus have had repercussions for the enforcement of international criminal law that should not be neglected, in particular in relation to gathering evidence.

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 Article 15 of the Government Liability Act (GLA, SR 170.32). In the case of members of authorities and senior federal officials appointed by the Federal Assembly, the competent committees of both councils, i.e. the Immunity Committee of the National Council and the Legal Affairs Committee of the Council of States, decide whether to grant authorisation (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 paragraph 1 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 3, 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 filed by the OAG in 2020

Applications to the GS-FDJP* or to parliamentary committees ²	Number	Authorisation granted	Authorisation refused	Application unfounded	Decision pending
under Art. 15 GLA*	3	1	0	1	1
under Art. 66 CJAA*	10	7	0	0	3
under Art. 17 / 17a ParlA**	0	0	0	0	0
Total	13	8	0	1	4

In the report year a further 3 decisions were issued that related to applications pending from 2019 and in which authorisation to prosecute under Article 66 paragraph 1 CJAA was granted. 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.

5 Enforcement of Judgments

In 2020, the services conducting proceedings passed on around 350 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 22 judgments and 18 decisions from the Federal Criminal Court for enforcement.

In 2020, forfeiture and compensation orders for a total of around CHF 64.3 million were issued by the OAG and the Federal Criminal Court or took full legal effect. Thirteen 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 11 further cases, referral to the FOJ is being considered. Assets amounting to around CHF 63.3 million are involved.

If the assets are used to compensate the victims, their claims take precedence over sharing.

At the end of 2020, the Federal Supreme Court and Federal Criminal Court issued decisions⁹ in two criminal cases confirming forfeitures and compensation awards involving substantial sums: CHF 167.1 million (forfeited) and CHF 81.9 million (compensation) in the “MUS” case, and USD 210 million (forfeited in terms of a summary penalty order) in a money laundering case related to Uzbekistan.¹⁰ Steps will be taken in 2021 to enforce these forfeitures/compensation awards, taking account of any claims by victims or that arise from sharing procedures.

⁹ Judgment 6B_67/2019 of the Federal Supreme Court of 16 December 2020; Order SN.2020.34 of the Criminal Chamber of the Federal Criminal Court of 3 December 2020.

¹⁰ See OAG Annual Report for 2018, p. 10 (Sec. 4.4, “MUS”), and 2017, p. 20 (Sec. 4.7, Money laundering proceedings relating to Uzbekistan), each available at <https://www.bundes-anwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>.

Administrative Activities

1 Legal Principles governing the Organisation of the OAG

1.1 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 (GS) 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 unit, Finances, Human Resources (HR) and Directorate Assistance. This section supports the Directorate in its strategic and direct management of the OAG and through the Legal Services unit carries out additional tasks for which the OAG has been assigned a statutory mandate.
- The OAG Services Section is responsible for providing all the services relevant to the general working infrastructure. In addition, this section provides centralised services to assist in criminal and mutual assistance proceedings. 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 discharge of the core business, the digital transformation and introducing strategic developments at the OAG.

2.1 Further organisational developments

The 2020–2023 Strategy (see Sec. IV.1) is being implemented on the basis of a rolling 12-month-plan ("the Roadmap"). As part of the Roadmap, the following developments were implemented in the three sections of the GS, giving new impetus to the organisation.

(1) OAG development

The OAG Development Section has since June 2020 included not only the Organisation and Strategy Team but also the Technology and Security Team. The following developments, made on the basis of the Roadmap, are of key importance in relation to this:

- Based on the 2020–2023 Strategy, a start was made on developing standard values that apply throughout the OAG. Because the general situation was made more difficult by the COVID-19 pandemic (working from home), the Directorate decided to suspend the project, which will be resumed as soon as possible.
- In the autumn of 2020, a centralised exhibit service was successfully introduced as part of the closer cooperation between OAG and fedpol/FCP on the searching of houses and business premises and

exhibit management. This is responsible for the standardised handling and management of exhibits and makes continuous exhibit management possible that the participant organisations could not achieve individually. Experiences so far are positive and confirm that the efficiency gains have benefited the teams conducting proceedings.

- The digital transformation is being tackled in various ways: by setting up the basic infrastructure for a digital workplace, in 2020 it was possible to establish the foundations for process automation as well as digitally-supported cooperation in the OAG. For criminal and mutual assistance proceedings, a system has been created that can be used to develop and introduce the digital file step by step. This will be carried out in line with important national projects, such as Justitia 4.0¹¹.
- Based on the findings made using the strategies devised in previous years in the pilot areas of international criminal law and cybercrime, a strategy was devised for money laundering offences. The work done and findings made so far have again given impetus to organisational activities, for example the further development of the centralised controlling instrument for cases or the recruitment of a “cyber expert”, whose responsibilities include the strategic further development of the Cyberboard (see Sec. III.3.8).

(2) OAG management and control

In the report year, the OAG successfully implemented four of the five recommendations made by the Swiss Federal Audit Office (SFAO) following its review of procurement management. In future, procurement procedures will be more closely defined in a new project in order to exploit the potential for development identified by the SFAO and complete the implementation of all the recommendations.

The Legal Services unit also had a substantial workload to deal with in 2020, carrying out a range of tasks in a variety of legal fields. It ensures that the OAG fulfils the tasks assigned to it by law, insofar as these do not concern the conduct of criminal or mutual assistance proceedings. This includes guaranteeing that individuals and authorities can exercise their rights to information and to inspect documents, while complying with the data protection, freedom of information and archiving provisions. In addition, the Legal Services unit drafts the OAG's reports for legislative procedures and coordinates the response to parliamentary proposals. It draws up

legal opinions on the instructions of the Directorate on specific legal questions, in particular those of fundamental importance to the OAG, and issues information on legal issues to all the organisational units of the OAG. As the competent body for data protection law in the OAG, the tasks of Legal Services unit include responding to requests from third parties to see summary penalty orders, abandonment and no-proceedings orders (under the principle of freedom of information in the justice system). The legal examination of the requests and redacting the decisions before they are sent out often involves a considerable amount of work.

(3) OAG Services

In the second half of 2020, the OAG Services Section recorded an increase in the number of assignments in all its areas of responsibility. The workload of the teams in this section is basically dependent on the needs of the units conducting proceedings and therefore hard to plan for. In order to compensate for the fluctuating volume of work, use is made of the resources of all the teams, depending on requirements. Additional optimisations, e.g. by making more flexible use of staff and centralising additional activities, are being planned.

A specific example of this type of centralisation is the Financial Intermediaries Productions Service, which process requests to obtain bank records and provides the units conducting proceedings with electronic copies of documents submitted by banks. The standardisation and computerised processing of bank records relieves the units involved in the core business of these administrative burdens.

2.2 Consolidating governance structures

The increased involvement of senior management, in particular the heads of section and the HR manager in the Directorate's decision-making processes, implemented in the report year, has proven its value. It has resulted on the one hand in broader support for decisions and on the other in their pro-active implementation. Based on these experiences, the expanded Directorate (participants: Directorate and senior management) meets once a month.

The tasks and responsibilities of the most important governance bodies – the Directorate, senior management, senior specialists – were more clearly defined in 2020 and their interaction was tightened up.

2.3 Working environment

Following the Bern office's move to the GI Administrative Centre, several employee surveys have indicated a high degree of satisfaction with the progressive working

¹¹ <https://www.justitia40.ch/de>

environment. Efforts to tailor the working infrastructure to the functional needs of conducting criminal and mutual assistance proceedings have succeeded. In all locations, the archive and exhibit storerooms have been modernised to facilitate the newly introduced processes in evidentiary exhibit management.

2.4 Dealing with the COVID-19 pandemic

In response to the COVID-19 pandemic, the OAG set up a task force with the aim of maintaining operations under the general circumstances now faced. In 2020 this proved a success, underlined by positive survey results within the organisation. The task force's efforts to guarantee the smooth running of operations ties up considerable resources in the General Staff.

The OAG has a dynamic instrument at its disposal in the form of the task force, which monitors the continually changing situation and keeps up to date with the principles for introducing the measures required to protect the health of staff. As a result, the OAG can continue to guarantee the statutory fulfilment of its tasks. The digitalisation of physical documents, the use of modern and mobile IT infrastructures, the consistent implementation of appropriate protection measures and the fulfilment of the management responsibilities by the senior staff at the OAG are important success factors when it comes to coping with this exceptional situation.

At the same time, Human Resources is there for the management staff and other employees when there are specific challenges or questions. The law applicable to federal employees in relation to flexible methods of working, in particular working outside the office, is undergoing revision. The new rules will be implemented appropriately at the OAG after they come into force (planned for 1 April 2021).

2.5 Digital Transformation

Thanks to related groundwork in recent years, 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. The intention is to manage digital files using meta-information. With a view to achieving this, in 2020 the OAG and fedpol brought their joint exhibit service, including a jointly developed software system, into operation (see Sec. V.2.1).

2.6 Review by the Swiss Federal Audit Office (SFAO)

As part of the programme being conducted with fedpol, and in particular efforts relating to the digital case file and the comprehensive cooperation on law enforcement at federal level ("Joining Forces"), the SFAO conducted a further review at the OAG. The SFAO is expected to complete its report on this review in the first semester of 2021.

3 Use of Financial and Material Resources: 2020 Accounts

For 2020, the global budget submitted by the OAG (expenditure and investment costs) amounted to CHF 71.4 million. At CHF 41.4 million (58 %), the largest item of expenditure in the budget is staff costs. In addition, CHF 29.2 million was allocated to material operating costs. The remaining CHF 0.8 million covers other operating expenses and investment costs. The global budget can be itemised according to types of financing as follows: CHF 62.3 million is allocated to expenditure outside the Federal Administration that has financial impact and CHF 0.5 million to depreciation. CHF 8.6 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 1.2 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 2020 will be published in due course on the relevant page¹² of the Federal Finance Administration website.

4 General Directives

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

In addition, the Attorney General of Switzerland issued a directive in 2020 relating to the COVID-19 pandemic, which was amended regularly to take account of the changing situation. This directive in particular supports case managers in their task of taking appropriate decisions tailored to the specific case that comply with the legal requirements and take account of the exceptional situation.

The internal work on updating the OAG Regulations on Organisation and Administration could largely be concluded. The revised regulations are expected to come into force and be published in the Classified Compilation of Federal Legislation (SR) in the first trimester of 2021.

¹² <https://www.efv.admin.ch/efv/en/home/finanzberichterstattung/finanzberichte/staatsrechnung.html>.

5 Code of Conduct

In the course of 2020, the Advisory Committee on the Code of Conduct (CoC) were regularly requested to provide opinions. The issues that both employees in various positions and the Directorate raised were quite diverse. The main themes once again included working in other part-time jobs, accepting gifts and personal integrity. The Committee received more enquiries than in the previous year. In 2020, the Committee met eight times and took decisions five times by way of circular correspondence. In December 2020, it sent out its opinions by email to the entire staff. It discussed its activities and the issues that it dealt with in this period with the Directorate at the beginning of 2021.

The Ethics Committee planned to increase its visibility in the report year in accordance with its goal of raising awareness of its work. It introduced a process of making initial direct contact with new employees at the OAG on their appointment in order to familiarise them with the CoC and the Committee's role, activities and opinions. In addition to this direct email contact, new employees still receive a copy of the CoC when they start work with the OAG and still attend a presentation on the CoC on their induction day. The Committee provided clearer instructions on procedures for contacting it to request an opinion and revised its intranet page accordingly. In addition, it reported on its activities in an article in the OAG's internal newsletter.

The Committee also amended the CoC and added a reference to the general declaration of impartiality for procurements. In addition, in 2020 the declaration acknowledging the terms of the CoC had to be signed again, as it has to be signed every two years.

6 Human Resources

6.1 Employee surveys in 2017 and 2020

Issues that arose in the 2017 employee survey were included in the strategy for 2020-2023, in particular under the two strategic headings "Strengthen leadership" and "Encourage strategic human resources planning". In autumn 2020, the next employee survey was carried out. Its results will be available in 2021.

6.2 Workforce as of 31 December 2020

At the end of 2020, the OAG had 252 employees (previous year: 242), who together held the equivalent of 232 full-time positions (previous year: 231). Of these 252 employees, 39 (previous year 42) are on temporary contracts. The following numbers of employees work at the OAG's various offices:

	31.12.2019	31.12.2020
Bern	184	192
Lausanne Office	29	28
Lugano Office	16	15
Zurich Office	13	17

6.3 Staff statistics

The OAG's employees hold the following positions: Attorney General (0/ position vacant), Deputy Attorneys General (2), Secretary General (1), lead federal attorneys/section managers (4), head of external relations (1), federal attorneys (47), assistant federal attorneys (43), legal assistants (9), assistant case officers and chancellery staff (47), administrative staff (68) and experts and analysts in the FFA and WhiCri and RTVC sections (30).

As of 31 December 2020, the OAG also employs 11 legal interns and 1 administrative intern.

The average OAG employee is contracted to work 92% of full-time working hours and is 39.9 years old. The breakdown of staff according to their first official Swiss language is as follows: German 157, French 71 and Italian 24. The OAG employs 151 women and 101 men. Staff turnover in the report year was 6.58%.¹³

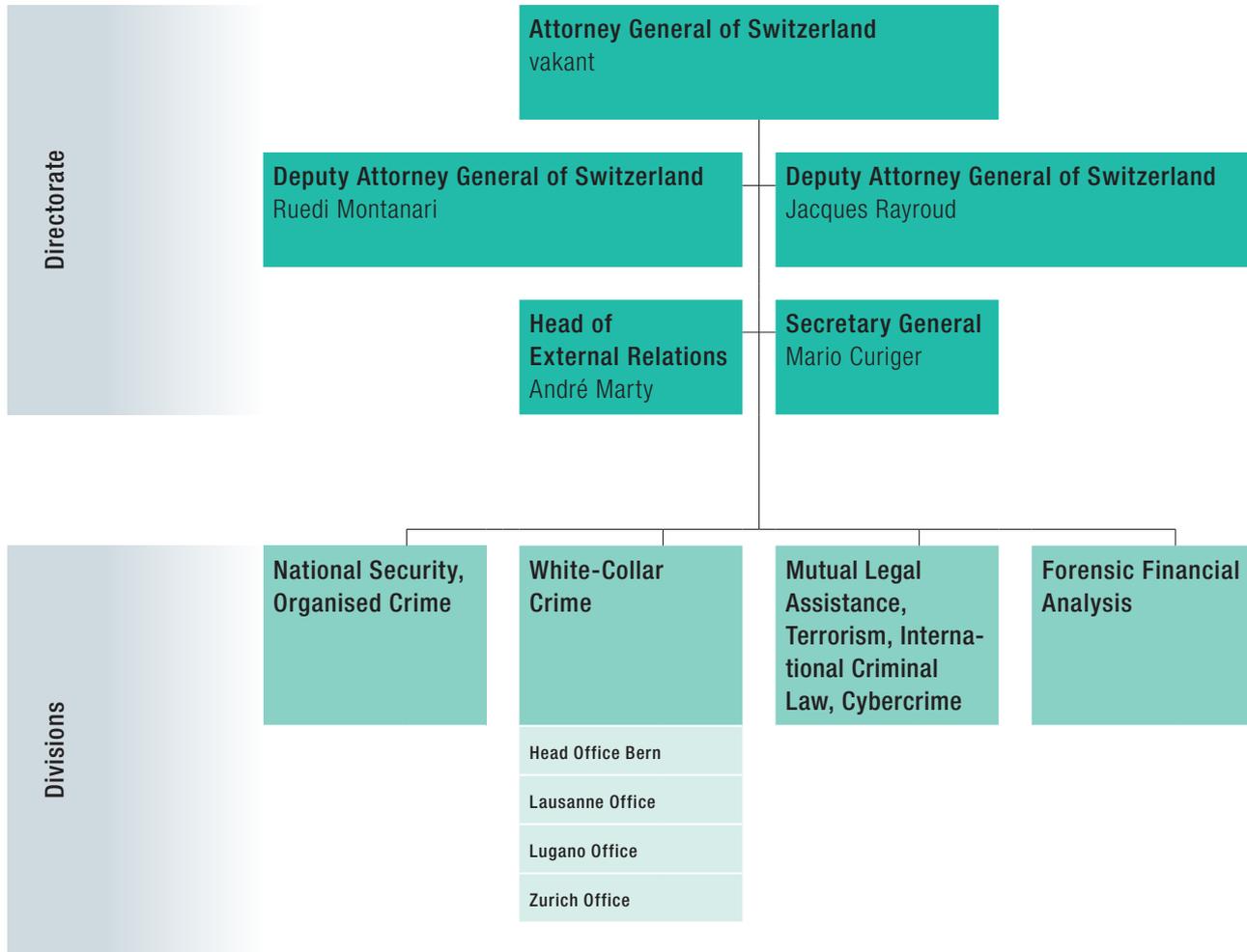
¹³ The staff turnover rate reflects the ratio of departures of employees on permanent contracts to the average number of employees on permanent contracts in the period from 1.01.2020 to 31.12.2020

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 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 Article 98 ff. FPersO were taken against any federal attorney at the OAG.

7 Organisational chart



8 Work of the Individual Divisions

8.1 National Security, Organised Crime Division (SK)

The Division's caseload once again increased in numerical terms in comparison with previous years. What should be highlighted are the growing number of attacks on ATMs using explosives, which in some cases led to complex investigations with an international dimension. There were also several cases involving forged Euro banknotes put into circulation by foreign gangs in Switzerland. On top of that there were a substantial number of reports relating to espionage, in particular industrial espionage. In addition, a number of air accidents had to be dealt with. A rise in cases has also been noted in relation to violence and threats against authorities and public officials. In addition, there were complex investigations into criminal organisations in the report year.

The SK Division provided the on-call service for the entire OAG, confirming that the on-call service is generating an increasing number of new cases. Thanks to the recruitment of a French-speaking federal attorney, it was possible to better spread the workload of cases being conducted in French. With the move of the terrorism unit to another section, the SK Division has become smaller. One challenge in the report year was case support work, because procedures had to be reorganised in some cases as a result of the COVID-19 pandemic and the associated change between working from home and working in the office, and because there was additional work related to scanning incoming postal deliveries.

8.2 White-Collar Crime Division (WhiCri)

In contrast to previous years in the WhiCri Division, 2020 was not notable for personnel changes. WhiCri updated its regulations to make certain processes clearer and to guarantee the flow of information. The Division is constantly confronted with complex international cases, which, because of their nature and size, make for a permanently heavy workload. The extent and international dimension of these cases are an intrinsic aspect of the OAG's responsibilities and are therefore a characteristic of the Division's activities as well.

Despite the COVID-19 pandemic, the Division was able to make progress with its work and guarantee efficiency and quality. Digitalisation and the hardware available to staff certainly helped, not to mention the employees' flexibility and solidarity. Work went on, sometimes from a distance and sometimes from the office, and operations were guaranteed. There were no internal delays related to the pandemic; on the other hand, there were difficulties when persons living abroad had to be questioned in Switzerland (travel restrictions and quarantine requirements). The same applied to executing requests for mutual assistance in cases where a video

conference was not an option or the hearings could not be held because of the public health situation in the requested state.

The Division continues to rely on and make use of synergies, both in-house and with the OAG's external partners. This cooperation is in fact essential, also in the form of task forces, which have proved their value as a useful and effective instrument. 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.

8.3 Mutual Legal Assistance, Terrorism, International Criminal Law, and Cybercrime Division (RTVC)

As part of the OAG's continuous development and optimisation as a modern and efficient prosecution authority, the new RTVC Division was established on 1 January 2020. This new operational unit is responsible for the fields of international mutual assistance, terrorism and international criminal law, as well as cybercrime, which involves a diverse range of offences. Until the new Head of Division took up his post on 1 July 2020, the Division was headed ad interim by the former Attorney General, Michael Lauber.

The COVID-19 pandemic also had its effects on the RTVC Division. In particular in relation to international mutual assistance and international criminal law, which rely on close and intensive cooperation with foreign authorities in their proceedings, the pandemic resulted in a slight fall in the number of incoming requests for mutual assistance and to delays in investigative activities abroad relating to crimes under international criminal law, which are difficult at the best of times. Thanks to the measures taken throughout the organisation, the Division was able despite the pandemic to make efficient progress with numerous cases and to successfully conclude many of these.

The number of cases in the fields of international criminal law and terrorism showed a small increase in comparison with the previous year. In December 2020, the first trial relating to charges brought by the OAG under international criminal law began in the Federal Criminal Court. The Terrorism Unit recorded a clear rise in reports of persons who may pose a threat and in cases of persons whose criminal acts have "hybrid" causes, i.e. both jihadist motives and mental health issues. The steady increase in cybercrime continued in the report year. By expanding the Cybercrime Unit, the OAG indicated its determination to meet its responsibilities; since September 2020 a cyber expert has strengthened the

team in the cyber competence centre, a key part of the new RTVC Division. The International Criminal Law and Terrorism Units were also strengthened in the report year, with each appointing one additional federal attorney.

The number and complexity of the cases being conducted by the Division meant a constant, heavy workload for all staff in the report year. The most recent terrorist attacks in Switzerland, which occurred in close succession, posed a massive challenge for the operational units. Resource requirements in the Division are monitored constantly order to maintain high levels of quality and efficiency in proceedings, and in particular to be able to guarantee the efforts required to combat terrorism.

8.4 Forensic Financial Analysis Division (FFA)

The FFA supports the OAG's other operational divisions with its expertise on economic and financial matters at all stages of criminal and mutual assistance proceedings. In 2020, the FFA was involved in 110 criminal cases, 50 of which (including the proceedings relating to Petrobras, FIFA and 1MDB) used up 73 % of its operational resources. Several cases in which the FFA played a substantial role culminated in indictments. The FFA's flexibility in being able to spread its resources around the OAG's four locations was further increased.

The FFA's specialists defined their priorities so that the OAG can have a portfolio of economic and financial competences that meet the current needs for its proceedings. One of the specialists published an article proposing an innovative approach to calculating compensation claims under corporate criminal law, an area in which the FFA was particularly active in 2020. For the first time the FFA was called on to provide its expertise in two cyber cases and one international criminal law case. In addition, the FFA continued to actively support the technological developments in the OAG.

By anticipating the official recommendation to work from home, the FFA was able, despite the pandemic situation, to continue to provide a stable level of service in terms of both quantity and quality. After the summer, there was a strong rise in requests for FFA resources, and recruitment for 3.1 new full-time equivalent positions is currently underway. In order to reduce the risk of a concentration of expertise, the FFA is currently working to implement the OAG Directorate's decision to integrate the financial crime analysts currently assigned to the WhiCri Division into the FFA. Integration is planned for 2021.

Reporting

Reporting

Criminal investigations (as of 31.12)	2016	2017	2018	2019	2020
Pending preliminary clarifications ¹	129	334	456	501	481
Ongoing criminal investigations ²	441	478	407	395	428
National security	93	111	103	147	196
Terrorism	35	34	30	31	26
Organised crime	67	62	56	46	39
International criminal law	10	11	14	13	12
Cybercrime ³					5
Money laundering	231	243	203	145	119
International corruption	82	65	56	45	41
General white-collar crime	85	96	74	84	83
Suspended criminal investigations	210	227	264	307	345
Criminal investigations ongoing for more than two years	186	234	205	202	162

	2016	2017	2018	2019	2020
Newly instigated	190	237	182	305	255
Completed					
Not accepted	158	128	176	335	377
Suspended	94	95	152	175	114
Referral, delegated, forwarded, returned to canton	65	100	128	130	171
Summary penalty orders ^{4/5}	1094	788	170	228	203
Indictment filed	14	21	10	17	29
Indictment filed in accelerated proceedings	3	3	1	7	4
Referral of summary penalty order to court	20	25	13	23	10
Indictment rejected	1	6	2	5	4
Judgment of the court of 1st instance ⁶	32	36	35	30	32

1 Including 129 cyber/phishing cases investigated with the FCP and MELANI.

2 Multiple mentions are possible for the crime categories.

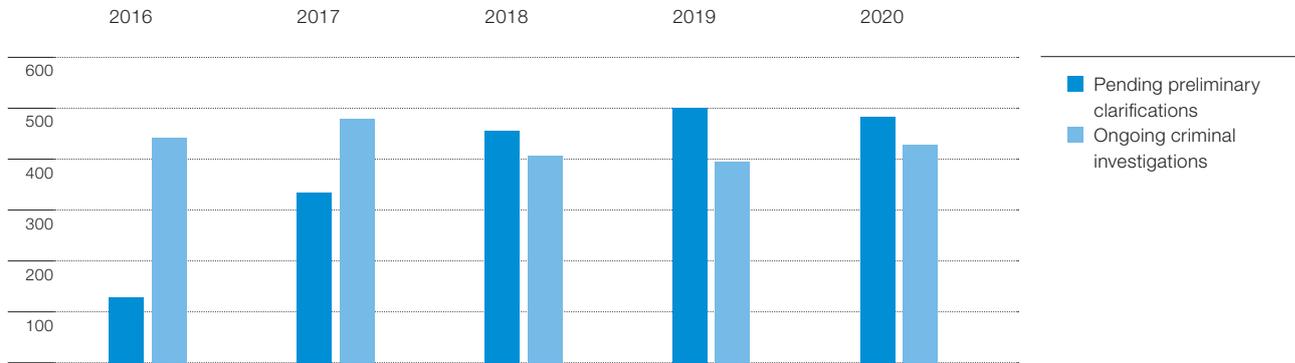
3 "Cybercrime" has only been a separate category of offence since 2020; previously these cases were included in the "General white-collar crime" category.

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).

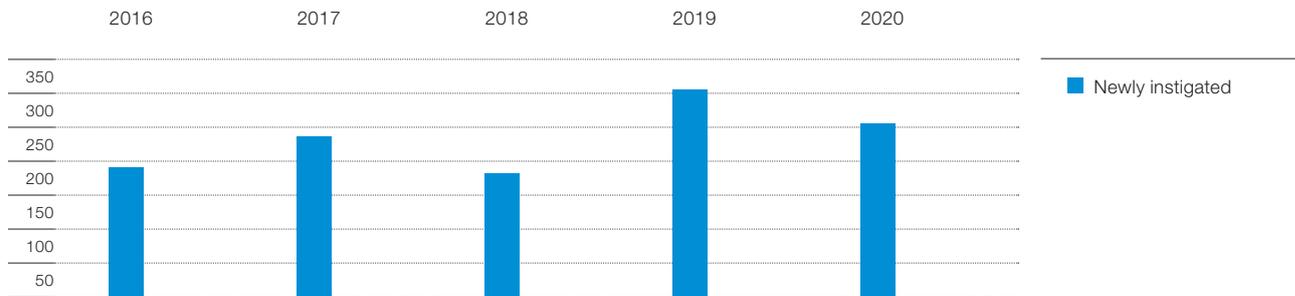
5 Judgments in accelerated proceedings, in ordinary proceedings and following transferral of summary penalty orders to the court.

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

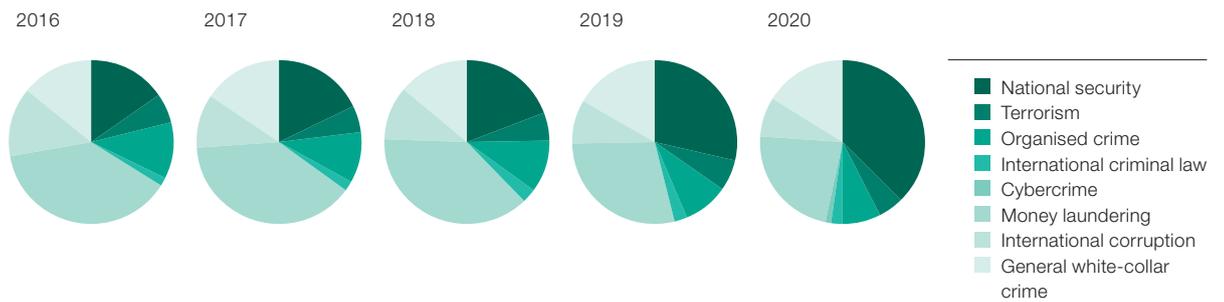
Criminal investigations (as of 31.12)



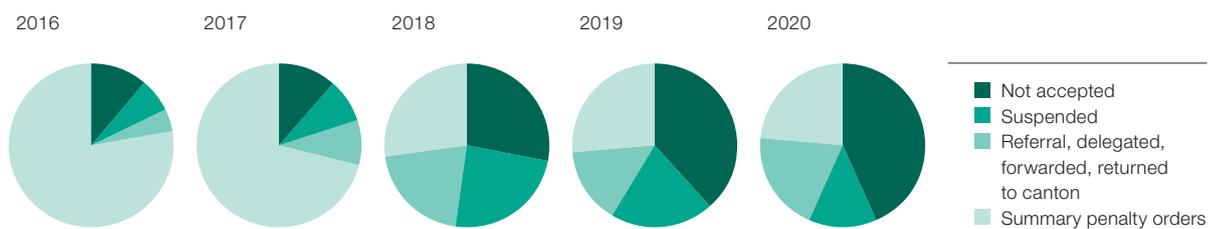
Newly instigated



Ongoing criminal investigations (as of 31.12)



Completed



Requests received for mutual assistance (as of 31.12)

	2016	2017	2018	2019	2020
Ongoing mutual assistance proceedings	265	307	313	317	249
Requests received	16	31	21	14	10
Requests being examined	61	62	90	70	50
Request being executed	180	208	199	226	183
Objections to requests	8	6	3	7	6
Mutual assistance proceedings ongoing for more than two years	42	50	27	30	39

	2016	2017	2018	2019	2020
Mutual assistance requests accepted	193	197	233	244	213
Completion of legal assistance proceedings	186	187	223	248	269
Back to FOJ for delegation to canton	27	13	22	30	20
Mutual assistance refused	4	8	4	6	6
Mutual assistance granted	119	131	146	165	209
Other completions (e.g. dismissal, withdrawal, etc.)	36	35	51	47	34

Bulk business (as of 31.12)

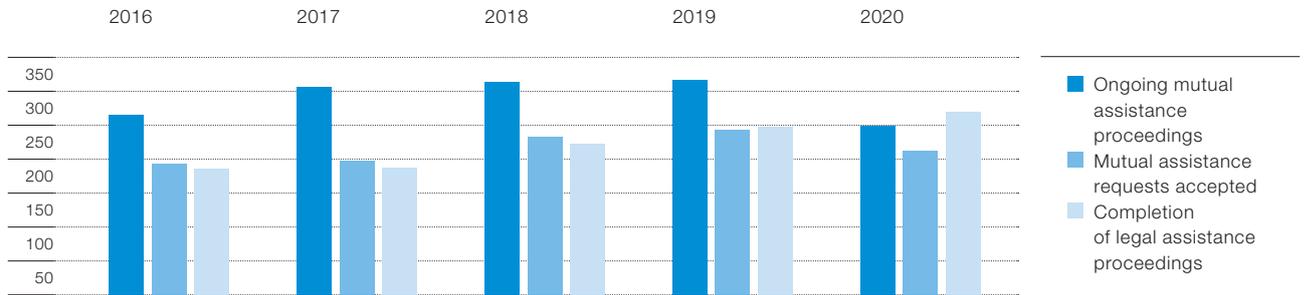
	2016	2017	2018	2019	2020
Pending bulk business cases	277	167	159	150	172

	2016	2017	2018	2019	2020
Newly received bulk business cases ⁵	1594	1324	586	688	652
Completed bulk business cases ⁵	1718	1304	533	642	590
Counterfeit money	304	236	169	181	181
Explosives	260	240	157	240	181
Aviation ⁷	12	19	10	0	0
Motorway vignette ⁵	926	629	8	0	0
Miscellaneous	216	180	189	221	228

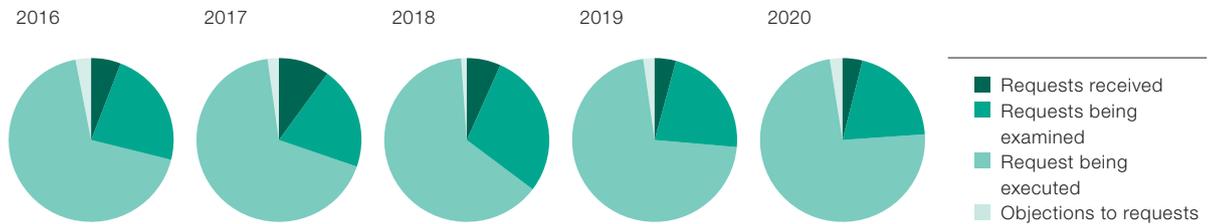
5 The fall in numbers after 2017 is essentially because motorway vignette cases are no longer included in the statistics (since 1.1.2018 subject to cantonal jurisdiction).

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

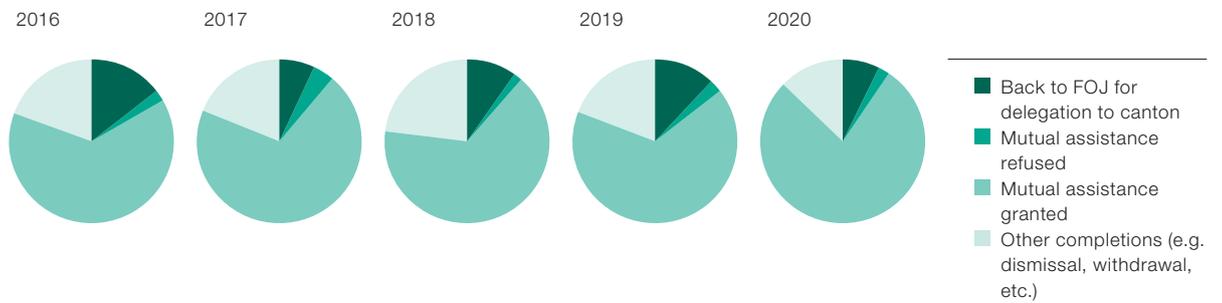
Requests received for mutual assistance (as of 31.12)



Ongoing mutual assistance proceedings (as of 31.12)



Completion of legal assistance proceedings



Number and result of the main proceedings before the Federal Criminal Court	2016	2017	2018	2019	2020
First-instance main proceedings before the Federal Criminal Court (charges and referrals of penal orders)					
Number of proceedings	26	29	29	18	23
Of which in legal force as of 31.12.	12	9	15	5	12
Of which not or partly in legal force as of 31.12.	14	20	14	13	11
Number of accused individuals	46	39	50	25	32
Of which convicted	30	25	29	22	27
Of which acquitted	16	14	19	2	5
Of which dismissed by the Federal Criminal Court	0	0	0	1	0
Summary proceedings					
Number of proceedings	5	2	2	6	4
Of which in legal force as of 31.12.	4	2	2	6	4
Of which not or partly in legal force as of 31.12.	1	0	0	0	0
Number of accused individuals	7	2	2	6	4
Of which convicted	4	1	2	6	4
Of which returned	3	1	0	0	0

Numbers and results of complaints and appeals

Complaints of the OAG with the Federal Supreme Court

Complaints filed in the reporting year	0
Complaints decided in the reporting year (partly filed in the previous year)	6
Of which granted or partly granted	0
Of which dismissed or not accepted	6
Of which irrelevant	0

Complaints against the OAG with the Federal Supreme Court

Complaints filed in the reporting year	115
Complaints decided in the reporting year (partly filed in the previous year)	94
Of which granted	5
Of which dismissed, partly dismissed or not accepted	89
Of which irrelevant	0

Complaints of the OAG with the Federal Criminal Court

Complaints filed in the reporting year	4
Complaints decided in the reporting year (partly filed in the previous year)	3
Of which granted or partly granted	1
Of which dismissed or not accepted	2
Of which irrelevant	0

Complaints against the OAG with the Federal Criminal Court

Complaints filed in the reporting year	310
Complaints decided in the reporting year (partly filed in the previous year)	339
Of which granted	51
Of which dismissed, partly dismissed or not accepted	273
Of which irrelevant	15

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

Appeals filed in the report year	5
Appeals decided in the report year	
Of which granted or partly granted	1
Of which dismissed or not accepted	2
Of which irrelevant	1

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

Appeals filed in the report year	34
Appeals decided in the report year	34
Of which granted	1
Of which dismissed, partly dismissed or not accepted	29
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	3
Joint appeals decided in the report year	2
Of which granted or partly granted	1
Of which dismissed or not accepted	0
Of which irrelevant	1

Joint Appeals against 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	2
Of which granted	0
Of which dismissed, partly dismissed or not accepted	2
Of which irrelevant	0

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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