

## Germany – Turkey: Mutual Legal Assistance in foreign bribery offences

Provision of Mutual Legal Assistance in foreign bribery offences, examined within the framework of German – Turkish relations.

The author examines the provision of Mutual Legal Assistance (“MLA”) in foreign bribery offences within the framework of German – Turkish relations. The concept of MLA is important, given the strong economic bonds that exist between the two countries and the subsequent need to maintain regulatory compliance.

Through Mutual Legal Assistance requests, Turkey provides information that is relevant for the investigation and prosecution in Germany of foreign bribery offences. Generally, Turkey does not reject these requests on the ground that the requirement of dual criminality is not met, with the exception of three cases.

On the occasion of the German Ministries’ of Justice recent decision to refrain from providing Mutual Legal Assistance (“MLA”) to Turkey for political acts, the author shortly examines MLA from the side of Turkey, in light of foreign bribery offences. For years, Germany and Turkey have developed strong economic bonds, which led to the establishment of more than 6,800 German companies and Turkish companies with German capital interest in Turkey (see [Federal Foreign Office's official website](#)). As a result of this collaboration and the subsequent need to maintain regulatory compliance, the concept of MLA comes into play.

Through MLA requests, Turkey sends information that is relevant for the investigation and prosecution in Germany of foreign bribery offences. As mentioned in the Report issued by the OECD Working Group on Bribery in 2014, *“Turkey’s framework for MLA has not changed since Phase 2 [2007]”* (see Phase 3 Report on Implementing the OECD Anti-bribery Convention in Turkey, October 2014, para 139). In particular, Turkey provides MLA within the framework of the 1974 agreement between the two countries, as well as the European Convention on Mutual Assistance in Criminal Matters (“Convention on Mutual Assistance”) and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Furthermore, the Turkish Ministry of Justice (“the Ministry”) undertakes the coordination of MLA. As long as the requesting country supplies complete information, the Ministry executes the requests within three to four months (Ibid. para 141).

Dual criminality (also known as “double criminality”) traditionally constitutes a prerequisite for MLA. In fact, numerous countries do not provide MLA if the offence committed by the suspect (individual or legal entity) is not punishable under both (i) their law and (ii) that of the requesting country. Nevertheless, Turkey is among the countries that do not reject MLA requests merely on the ground that the requirement of dual criminality is not met; with the following three exceptions.

First, Turkey has established a reservation in accordance with Article 5(1)(a) of the Convention on Mutual Assistance. This reservation states dual criminality as a prerequisite in MLA requests, which involve search and seizure. Same applies to seizure and confiscation requiring coercive measures, as stipulated in Article 28(1)(g) of the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. Lastly, dual criminality is required for the extradition of criminals in accordance with Article 2(1) of the European Convention on Extradition. The act on which the extradition is based must be an offence penalized by *“deprivation of liberty or under a detention order for a maximum period of at least one year”*, in both the requesting and the requested country.

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