

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.

Diese Mandanteninformation enthält ausschließlich allgemeine Informationen, die nicht geeignet sind, den besonderen Umständen eines Einzelfalles gerecht zu werden. Sie hat nicht den Sinn, Grundlage für wirtschaftliche oder sonstige Entscheidungen jedweder Art zu sein. Sie stellt keine Beratung, Auskunft oder ein rechtsverbindliches Angebot dar und ist auch nicht geeignet, eine persönliche Beratung zu ersetzen. Sollte jemand Entscheidungen jedweder Art auf Inhalte dieser Mandanteninformation oder Teile davon stützen, handelt dieser ausschließlich auf eigenes Risiko. Deloitte GmbH übernimmt keinerlei Garantie oder Gewährleistung noch haftet sie in irgendeiner anderen Weise für den Inhalt dieser Mandanteninformation. Aus diesem Grunde empfehlen wir stets, eine persönliche Beratung einzuholen.

This client information exclusively contains general information not suitable for addressing the particular circumstances of any individual case. Its purpose is not to be used as a basis for commercial decisions or decisions of any other kind. This client information does neither constitute any advice nor any legally binding information or offer and shall not be deemed suitable for substituting personal advice under any circumstances. Should you base decisions of any kind on the contents of this client information or extracts therefrom, you act solely at your own risk. Deloitte GmbH will not assume any guarantee nor warranty and will not be liable in any other form for the content of this client information. Therefore, we always recommend to obtain personal advice.