



**GUIDELINE ON THE  
MUTUAL AGREEMENT PROCEDURE FOR THE  
ELIMINATION OF DOUBLE TAXATION  
AGREEMENTS**

**OCTOBER 2019**

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This guideline has been prepared having regard to current double taxation agreements and applicable provisions of domestic law.

#### OUR MISSION

Our mission is to increase voluntary compliance by protecting taxpayer's rights and to collect taxes and other revenues by providing high-quality service.

#### OUR VISION

Our vision is to be an exemplary model as an administration that promotes formal economy by embracing economic activities, that provides voluntary compliance by protecting taxpayer rights and collects taxes and other revenues by offering quality services.

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Justice  
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Flexibility  
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Reliability  
Participation  
Transparency  
Responsibility  
Continuous Development  
Impartiality  
Efficiency  
Competency

THE PRESIDENCY OF REVENUE ADMINISTRATION

Department of European Union and Foreign Affairs

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## INTRODUCTION

All of the double taxation agreements Turkey has concluded, contain provisions related to the Mutual Agreement Procedure. MAP is generally stipulated under Article 25<sup>1</sup> of the agreements. Texts of the agreements concluded by Turkey which are still in force and the information about these agreements are available on our website: [www.gib.gov.tr](http://www.gib.gov.tr)

Despite comprehensive and carefully designed provisions of the Double Taxation Agreements, erroneous procedures and misinterpretations may sometimes occur in the course of the application of such provisions by related tax authorities of the Contracting States. It could also be seen that sometimes the provisions of the Double Taxation Agreements are not taken into consideration at all.

A common way for taxpayers who face such undesired circumstances and cannot solve their problems with the related tax authority is to have recourse to national remedies such as litigation and reconciliation procedures. The “Mutual Agreement Procedure” in the Double Taxation Agreements offers to taxpayers a way of solution to present their case either to the competent authority of the Contracting State of which they are residents or as the case may be, to the competent authority of the Contracting State of which they are citizens, irrespective of the national remedies provided by the domestic laws of those States. In this sense, the aim of this guideline is to inform taxpayers on the “Mutual Agreement Procedure” Article included in all Double Taxation Agreements as well as on the application of this Article.

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<sup>1</sup> Article number may be different in some double taxation agreements.

## 1. General Framework of the Article on Mutual Agreement Procedure:

The Mutual Agreement Procedure Article included in a Double Taxation Agreement explains the steps to be followed by the residents of one of the Contracting States when they consider that the actions taken by one or both of the Contracting States in respect of them are not or will not likely be in accordance with the provisions of the agreement.

Taxpayers facing such a situation have the right to present their cases;

- to the competent authorities of the Contracting State of which they are residents, irrespective of the remedies provided by the domestic law of the Contracting States,
- to the competent authorities of the State of which they are citizens if they are subject to an unfavorable taxation in the other State due to their nationalities compared to the citizens of that other State.<sup>2</sup>

The taxpayers, who consider that they have been subject to taxation in the other Contracting State not in accordance with the Double Taxation Agreement notifies the competent authorities of the State of which they are residents of their situation in a certain period of time. This period is

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<sup>2</sup> In recent years, within the scope of the development of the operation of the international tax system, some measures have been taken at the international level in order to increase the effectiveness of the Mutual Agreement Procedure mechanism and to make its operation more influent. "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" which includes these measures was opened for signature on 7 June 2017 and signed by many countries including Turkey. Upon ratification and entry into force of the signed Convention, the provisions of the Mutual Agreement Procedure Article contained in the Double Taxation Agreements will be implemented more effectively and the agreements will be in accordance with the international standards.

After the mentioned Convention also enters into force for Turkey, the provisions regarding the Mutual Agreement Procedure of the Double Taxation Agreements amended by this Convention shall also be affected. Within this scope, the following provisions will be possible to be implemented with regard to these agreements:

- The provisions that provides a person who considers that he has been subjected to actions not in accordance with to the agreement, with an opportunity to present his case not only to the competent authorities of the State where he is a resident but also to the competent authority of the other Contracting State within at least 3 years from the first notification;

- The provisions ensuring the implementation of the result of the mutual agreement regardless of the time limit stipulated in the domestic legislation;

- The provisions that provide the opportunity to use the mechanism of the Mutual Agreement Procedure for the settlement of double taxation arising in cases not included in the agreement.

regulated under the Double Taxation Agreements and varies as to the Agreements. The table illustrating these periods is available on the web site of the Revenue Administration.

Under the same Mutual Agreement Procedure Article, competent authorities of the Contracting States may try to resolve the problems arising from the interpretation or application of an Agreement with the use of the Mutual Agreement Procedure.

Accordingly, competent authorities of the Contracting States may commence a Mutual Agreement Procedure process for an incomplete or an ambiguous definition in a Double Taxation Agreement.

Additionally, the Mutual Agreement Procedure Article also states that competent authorities may consult to each other in situations where double taxation arises for transactions not covered by the Double Taxation Agreement.

According to this Article, competent authorities are not obliged to communicate through diplomatic channels in order to reach a mutual agreement; but they prefer to communicate directly with each other.

If the competent authority of the State receiving the taxpayer's demand on the basis that he is subject to taxation not in accordance with the provisions of the agreement, cannot resolve this problem on their own, the case may be presented to the competent authority of the other Contracting State and, depending on the situation, written or oral discussions may be held to reach a mutual agreement.

## **2. Who can make a request for the commencement of the Mutual Agreement Procedure?**

A taxpayer may request the commencement of a Mutual Agreement Procedure process if he is a resident of one of the Contracting States. However, persons whose cases fall under the scope of paragraph 1 of the Article titled "Non-discrimination" of a Double Taxation Agreement, namely citizens who have been subject to a discriminative treatment because of their nationalities, may also ask for the commencement of a Mutual Agreement Procedure process.

### **3. To which authority should the requests be filed for the commencement of the Mutual Agreement Procedure?**

Taxpayers shall apply to the competent authority of the Contracting State of which they are residents.

Taxpayers who have been subject to a discriminative treatment due to their nationalities may submit their requests to the competent authorities of the State of which they are citizens rather than to the competent authority of the State of which they are residents. On the other hand, if there is a special provision in the Double Taxation Agreement, a person who wants to benefit from this right is not required to be a resident of one of the Contracting States. In such a case, persons who are not a resident of either Contracting State have the right to request the commencement of the Mutual Agreement Procedure.

Additionally, if a taxpayer has transferred his residency to the other Contracting State after the administrative actions or procedures which have led to or may lead to taxation which is not in accordance with to the Double Taxation Agreement, he must request the commencement of the Mutual Agreement Procedure process in the State of which he was a resident on the date when the action or procedure was performed.

#### **Example 1: Competent authority for the applications to be filed by the residents of one of the Contracting States**

Yağız Yaman, a resident of Turkey, has derived income in France and considers that his income has been taxed in France not in accordance with the Double Taxation Agreement between Turkey and France. In this case, Yağız Yaman will apply to the competent authority of Turkey, of which he is a resident, in order to commence the Mutual Agreement Procedure process.

**Example 2: Competent authority for the applications to be filed by persons who are not residents of either of the Contracting States and who have been subject to discrimination in one of the States due to their nationalities**

Berkecan Bilge, a Turkish citizen who is a resident of Spain, has derived income in Belgium and has been taxed in Belgium on this income. He thinks that he has been subject to a heavier taxation than Belgian citizens due to his nationality. Since there is a provision in Article 24 of Turkey - Belgium Double Taxation Agreement that non-discrimination based on nationality shall also apply to persons who are not a resident of either or both of the Contracting States, that person has the right to apply to the competent authority of Turkey, of which he is a citizen, rather than to the competent authority of Spain, of which he is a resident.

**Example 3: Competent authority for the applications to be filed by persons who are residents of one of the Contracting States and who have been subjected to discrimination due to their nationalities**

When Melisa Sert, a Turkish citizen who is a resident of Italy, is subject to a discriminative taxation in Italy due to her nationality, she may apply to the competent authority of Turkey, of which she is a citizen, rather than to the competent authority of Italy, of which she is a resident, to eliminate the discriminative taxation.

#### **4. Who is the competent authority?**

The term “competent authority” is determined clearly in the Double Taxation Agreements with respect to the Contracting States. Related definitions are covered by the first paragraph of Article 3, under the heading “General Definitions” in Double Taxation Agreements.

Double Taxation Agreements state that the "competent authority" in Turkey means the Minister of Treasury and Finance or those authorized by the Minister. The Mutual Agreement Procedure within the scope of the agreement is currently executed by the Department of European Union and Foreign Affairs in the Presidency of Revenue Administration. The definitions of “competent authority” for other States are also given in Article 3 under the heading “General Definitions” in each Double Taxation Agreement.

Mutual Agreement Procedure applications in Turkey shall be made in a written form to the following address:

“Gelir İdaresi Başkanlığı  
Avrupa Birliği ve Dış İlişkiler Daire Başkanlığı  
Çifte Vergilendirmeyi Önleme Anlaşmaları Müdürlüğü  
Devlet Mahallesi, Merasim Caddesi No:9/1  
06450 Çankaya/ ANKARA”

## **5. Are the Mutual Agreement Procedure Applications that are made in Turkey charged?**

In Turkey, there is no fee taken for the Mutual Agreement Procedure applications made to the Revenue Administration.

## **6. In which cases can the commencement of the Mutual Agreement Procedure be requested?**

The Article on Mutual Agreement Procedure includes provisions intending to solve the problems that occur when a resident of one of the contracting states considers that the actions of one or both of the contracting States are not or will not be in accordance with the provisions of the agreement. Taxpayers may apply for a Mutual Agreement Procedure referring to more than one agreement when they face taxation problems connected with each other in the Contracting States.

Taxpayers have the right to apply to the competent authority of the State of which they are citizens or residents as the case may be, and to ask for the settlement of the problem between the competent authorities.

The Mutual Agreement Procedure Article also indicates the following cases in which MAP can be requested. It is certain that the cases are not limited to the following:

- Problems related to the attribution to a permanent establishment of a proportion of the executive and general administrative expenses which are considered as a deductible item when determining the profits of the permanent establishment, incurred by the enterprise under paragraph 3 of Article 7 “Business Profits” of the Double Taxation Agreement;

- Problems related to determining the residence of individuals or of legal entities;
- Problems concerning the existence of a permanent establishment in the other State under Article 5 of the Double Taxation Agreement;
- Under Article 9 of the Agreement, problems concerning price adjustments emerging in transactions between associated enterprises, and counter adjustments emerging as a result;
- Problems concerning withholding taxation to be applied in the source State (where the income is derived) related to the interest, dividends, and royalties defined in the Double Taxation Agreement and additional taxes emerging from the special relationship between those making these payments and the beneficial owners of the income;
- Problems involved within the scope of Article 11 and Article 12 (for instance, cases when the amount of interest paid in return for the debt-claim or the amount of the royalties paid for the right to use or in consideration for information is fictitious due to the special relationship between the payer and beneficial owner of the interest or between both of them and some other person);
- The matters concerning whether the services rendered in the other state are covered by Article 15.
- The situations where the taxpayer is not allowed to benefit from the Agreement in accordance with the provisions of the Prevention of Treaty Abuse.

Tax related interest and penalties shall be considered within the scope of the Mutual Agreement Procedure application and there is no need to submit another application.

## **7. Is there a specific time limitation for requesting the commencement of the Mutual Agreement Procedure?**

The specific time period in which a request can be made is regulated in each Double Taxation Agreement and the table illustrating these periods can be found on the web site of Revenue Administration. A taxpayer cannot request the commencement of the Mutual Agreement Procedure if the application is not made within the specified time period. This period starts from the taxpayer's awareness about the taxation which is not in accordance with the Agreement. *(see footnote No.2 in page 6)*

If a time period is not mentioned in the Double Taxation Agreements, then the time periods mentioned in the domestic legislations of the Contracting States will be taken into account.

## **8. Can the request for the commencement of the Mutual Agreement Procedure or the commencement of the Mutual Agreement Procedure by competent authorities be considered among the circumstances halting or interrupting the statute of limitation?**

Circumstances halting or interrupting the statute of limitations are regulated under our domestic legislation. Neither the taxpayers' request for the Mutual Agreement Procedure process nor the commencement of the Mutual Agreement Procedure process by competent authorities is considered among the above-mentioned conditions, therefore the statute of limitation will continue to exist in such cases.

The above-mentioned cases can halt or interrupt the statute of limitation, only if there is a specific regulation under our domestic legislation or there is an explicit provision to this effect in the Mutual Agreement Procedure Article under the agreements.

**9. Can the request for the commencement of the Mutual Agreement Procedure or the commencement of the Mutual Agreement Procedure by competent authorities halt the collection of taxes?**

Circumstances halting the collection of taxes are regulated under our domestic legislation. Neither the taxpayer's request for a Mutual Agreement Procedure nor the commencement of the Mutual Agreement Procedure by competent authorities halts the collection of taxes.

**10. What is the information that should be included in the petition given during the request for the commencement of the Mutual Agreement Procedure?**

Since there is no regulation prescribing the forms for the taxpayer's application request in Double Taxation Agreements, submitting the request of the taxpayers regarding the taxation not in accordance with the agreement through a letter of application to the competent authorities will be sufficient.

The following information must be included in the letter of application:

- a) Name – Surname / Title, address, tax identification number, individual and/or enterprise associated with the individual and/or the enterprise in the other Contracting State,
- b) If the case is negotiated with an official in the other state who acts on behalf of the competent authority determined in the Double Taxation Agreement, the contact information of the official,
- c) The exact nature of the case or transaction and the domestic legislation provisions applied in relation to the case and the relevant articles of the Double Taxation Agreement,
- d) Relevant taxation periods,
- e) The amount of the income derived for each taxation period and the amount of the adjusted tax,

f) Summary of the information related to the case in the original tax declaration,

g) If it is related to the case, the calculation made with the supporting data (financial or economic data, reports, the relevant documents and records of taxpayers as well as explanatory notes),

h) Whether or not an application has been made to the judiciary in Turkey to solve the problem originated from the Double Taxation Agreement and; if the application was made, the date of the application and a sample of the application documents,

i) Whether or not an application has been previously made to other administrative means (settlement, tax ruling, advance pricing agreement etc.) in Turkey to solve the problem originated from the Double Taxation Agreement and; if the application was made, the date of the application and a sample of the application documents,

j) If the application for Mutual Agreement Procedure has also been made to the competent authority of the other Contracting State, the date of application, the contact information of this competent authority and a sample of the application documents,

k) The following statement of commitment should also be included in the letter of application:

*“I confirm the accuracy of the information above and, if so requested, I undertake to provide additional information and documents on time.”*

The following additional information is also required for the cases related to transfer pricing:

l) The general framework of comparable transactions and methods of correction,

m) Explanation of the method applied for correction,

n) Explanation on the appropriateness of the transfer pricing method applied for correction,

If it is required, additional information and documents related to the case may be requested from the taxpayer within the time limit that will be given by the competent authority. If additional information and documents are not submitted to the competent authorities within that time limit, the application for Mutual Agreement Procedure will not be taken into consideration. However, if the applicant submits additional information and documents after the given time limit, the application will be accepted provided that the application was made within the period specified in the agreement.

## **11. How does the process continue after a taxpayer's request for the commencement of the Mutual Agreement Procedure?**

Taxpayers who consider that they are taxed not in accordance with the agreement, must submit these cases to the competent authorities within the application period. The competent authority to which the request is addressed should make the necessary evaluations on the case and determine whether the taxpayer's application is appropriate or not.

When it is determined that the taxpayer's application is appropriate after the evaluation by the competent authorities, in other words, when there is a taxation or a doubt for taxation not in accordance with the agreement, and if the problem cannot be resolved by the competent authority itself, it would be possible to initiate a Mutual Agreement Procedure by communicating with the competent authority of the other state.

As it can be understood from the explanations above, in order to communicate the case to the competent authorities of the other state, it is not enough for the taxpayer to present his case, but it must be accepted by the competent authorities of the resident state or if the case falls under the non-discrimination issue to the state of nationality. For that purpose:

- the subject of the taxpayer's application must comply with the relevant provisions of the Double Taxation Agreement, and
- the application must be made within the period specified in the Double Taxation Agreement

Once the application is determined to be appropriate, competent authorities of the Contracting States will communicate directly for discussion purposes

without using the diplomatic correspondence channels. Taxpayers are not involved in this discussion process, but they have the right to be informed on the process by their own competent authorities.

If the taxpayer's application is not deemed appropriate, then the competent authority will explain to the taxpayer and to the other contracting state the grounds for not approving the application. However, the taxpayers whose applications have not been approved may have recourse to national remedies provided by domestic laws (such as litigation and settlement), as long as they apply within the time periods specified in the related domestic legislation.

If the taxpayer's application is approved, there is no time limitation for concluding the discussions with the competent authorities of the other State. This period varies depending on the nature of the specific case. However, the international approach on the issue is that this period should not exceed two years and this approach is generally complied with in practice by our country.

## **12. Is the final decision reached by the competent authorities within the framework of the Mutual Agreement Procedure binding on the taxpayer?**

If the competent authorities of the Contracting States reach an agreement that there is taxation not in accordance with the Double Taxation Agreement, then the competent authorities of the State to which the taxpayer has made the application will inform the taxpayer on the final decision and the decision is implemented, provided that the taxpayer also accepts the decision.

The taxpayer must notify the competent authorities whether he accepts the result or not within the time given by the competent authorities. If this notification is not given by the taxpayer, it shall be assumed that the taxpayer does not accept the result of the Mutual Agreement Procedure.

Nevertheless, during the implementation of this decision, it is important to consider whether or not to take into account the statute of limitations for correction specified in the domestic legislation. The table indicating the

information on how the limitations are implemented by each country can be found on the web site of Revenue Administration.

Consequently, the agreement reached by the competent authorities at the end of the Mutual Agreement Procedure is not binding on the taxpayer. The taxpayer may accept the final decision agreed by the competent authorities or have recourse to other remedies specified in the domestic laws of the Contracting State of which he is a resident considering the time limits for these remedies.

### **13. What are the responsibilities of the competent authorities within the framework of the Mutual Agreement Procedure?**

Competent authorities are expected to review the taxpayer's application, commence the Mutual Agreement Procedure if they quite agree with the taxpayer and make an effort to reach an agreement. Double Taxation Agreements do not necessarily require that competent authorities of the Contracting States must reach an agreement at the end of a Mutual Agreement Procedure that has been commenced.

### **14. Mutual Agreement Procedure under the Double Taxation Agreement and National Remedies**

It has been mentioned in the previous sections that a taxpayer who considers to be taxed not in accordance with the provisions of the Double Taxation Agreement has two alternatives to solve the problem. These alternatives are to resolve the tax dispute through national remedies or to request the commencement of a Mutual Agreement Procedure under the relevant Agreement. One of the national remedies for tax dispute is settlement and the other is judiciary.

Settlement is an administrative remedy that taxpayers can apply to negotiate with the tax administration before they submit the assessed/to be assessed tax to the court. In the Turkish tax system there are two types of settlement; settlement before assessment and settlement after assessment. Taxpayers can benefit from only one of them.

Settlement before assessment is a right that can be used according to the related legislation by the taxpayer who is subject to tax audit. Settlement

before assessment takes place after the tax inspector concludes the tax auditing report.

If the settlement is reached between the taxpayer and the administration, there will be no need for the taxpayer to apply for the Mutual Agreement Procedure since the tax dispute would have been resolved. As a result of reaching a settlement before assessment, if a corrective assessment is required in order to avoid double taxation in the other State, an application for the Mutual Agreement Procedure may be accepted only in this case.

Settlement after assessment is a right that can be used by the taxpayer according to the related legislation after the tax assessment. In case the settlement is reached between the taxpayer and the administration, there will be no need for the taxpayer to apply for the Mutual Agreement Procedure since the dispute would have been resolved. However, if an adjustment is to be made in the other country in order to prevent double taxation which might arise as a result of the settlement, a Mutual Agreement Procedure application can be accepted only in this case.

On the other hand, in case a taxpayer had applied for the Mutual Agreement Procedure but that Procedure did not provide any results (the competent authority could not solve the problem itself and the competent authorities could not reach any agreement or the agreement reached was not accepted by the taxpayer), the taxpayer has the right to apply for settlement according to our domestic law. However, when the periods for application to settlement before or after assessment regulated under our domestic law are considered, a situation might occur that the taxpayer may not benefit from these settlements. It will be helpful to take this point into consideration.

The taxpayers who do not apply to settlement before and after assessment or to the Mutual Agreement Procedure described above, or the taxpayers who have made an application but reached no settlement or could not obtain a satisfactory solution have a right to litigate in the competent tax court within the framework of the general provisions and within the time provided in the law. In Turkey, the final decision of the court on taxation issues is binding and obligatory for both taxpayers and the public administration. Therefore, if the taxpayer resident in the other Contracting States is not satisfied with the final court decision taken in Turkey, there will be no use to request from his own competent authorities the solution of the

case through a Mutual Agreement Procedure. Even if the competent authority of the other State makes such an application, the Turkish authorities will reject the request, since they would not be able to commence a Mutual Agreement Procedure in existence of a court decision. However, if an adjustment needs to be made in the other country in order to prevent the double taxation which might arise as a result of the court decision, a Mutual Agreement Procedure application can be accepted only in this case.

On the other hand, for taxation problems being litigated in Turkish courts but not yet concluded, a Mutual Agreement Procedure process may be commenced between the competent authorities, only if the related taxpayer withdraws the case. But for the commencement of Mutual Agreement Procedure, the taxpayer must request a Mutual Agreement Procedure from the competent authority of the State of which he is a resident and that competent authority should decide if the taxpayer's request is justifiable and appropriate.

Besides, the taxpayers who are residents in Turkey and consider that they have been subject to taxation not in accordance with the agreement regarding their activities in the other Contracting State also have two similar alternatives for solving the problem as it has been mentioned above. Taxpayers may present their cases to the national judicial bodies of the other State or as a second option may request a Mutual Agreement Procedure from the Turkish competent authority together with the legal evidences demonstrating the taxation which is not in accordance with the agreement. In addition, if there is another method foreseen in the other country, they may apply for this method according to the legislation of the relevant country.

In cases where the decisions of the national court in the other State are not binding for or are not obligatory to be implemented by the tax administration of that State, a Mutual Agreement Procedure under the Double Taxation Agreement may be commenced, provided that the taxpayer resident of Turkey makes an application to the competent authorities of Turkey and it is decided that the application is appropriate.

## **15. Advance Pricing Agreements**

Advance pricing agreements are one of the alternative remedies to avoid possible tax disputes in transactions subject to transfer pricing. The determination of the method that will be applied for a certain period in identification of the transfer price related to the purchase or sale of goods or services made with the connected persons upon the request of the taxpayer by agreeing with the administration is called as an advance pricing agreement.

The taxpayer who has applied to the administration for the advance pricing agreement may request a unilateral, bilateral or multilateral advance pricing agreement. The process of the agreement shall be unilateral if it occurs between the taxpayer and the tax administration without the participation of the tax authorities of the other country; bilateral, if it occurs between two tax administrations in two different countries and the two connected taxpayers in the jurisdictions of these administrations; multilateral, if it occurs between administrations of more than two countries and more than two connected taxpayers in the jurisdictions of these administrations.

Requests for bilateral or multilateral advance pricing agreement are considered within the framework of the provisions of the mutual agreement procedure of the double taxation agreements in force.

It is possible that the provisions of the advance pricing agreement might be retroactive. If it is possible to implement the penitence and correction provisions of the Tax Procedure Law No: 213 and the terms of the agreement are also valid at the past taxation periods not barred by the statute of limitation, the taxpayer and the Administration may ensure that the specified method is implemented to the mentioned periods, by taking these periods into the scope of the agreement.

Information about the subject is available on

[http://www.gib.gov.tr/sites/default/files/fileadmin/user\\_upload/Tebliğler/5520/transferteblig1degisen.pdf](http://www.gib.gov.tr/sites/default/files/fileadmin/user_upload/Tebliğler/5520/transferteblig1degisen.pdf)

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**Department of European Union and Foreign Affairs**