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Welcome CORs!

Department of Defense Contractor Personnel Office (DOCPER)

NATO SOFA Status Accreditation for Contractors -- 2018 Training

Topics of Interest Briefing

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Today's Schedule

0730-0815 Arrival/Registration

0815-0830 Welcome and Administrative Information

0830-1015 Topics of High Interest

1015-1030 Break

1045-1145 Germany Status Accreditation--Overview

1145-1300 Lunch Break

1300-1330 Italy Status Accreditation--Overview

1330-1400 Writing a Good Job Description

1400-1430 TASS Overview

1430-1500 Q&A (Q&A also occurs throughout briefings)

1500-1515 Break

1515-1600 Q&A (continued)

1300-1700 Appointments with DOCPER teams will run concurrently with the afternoon training



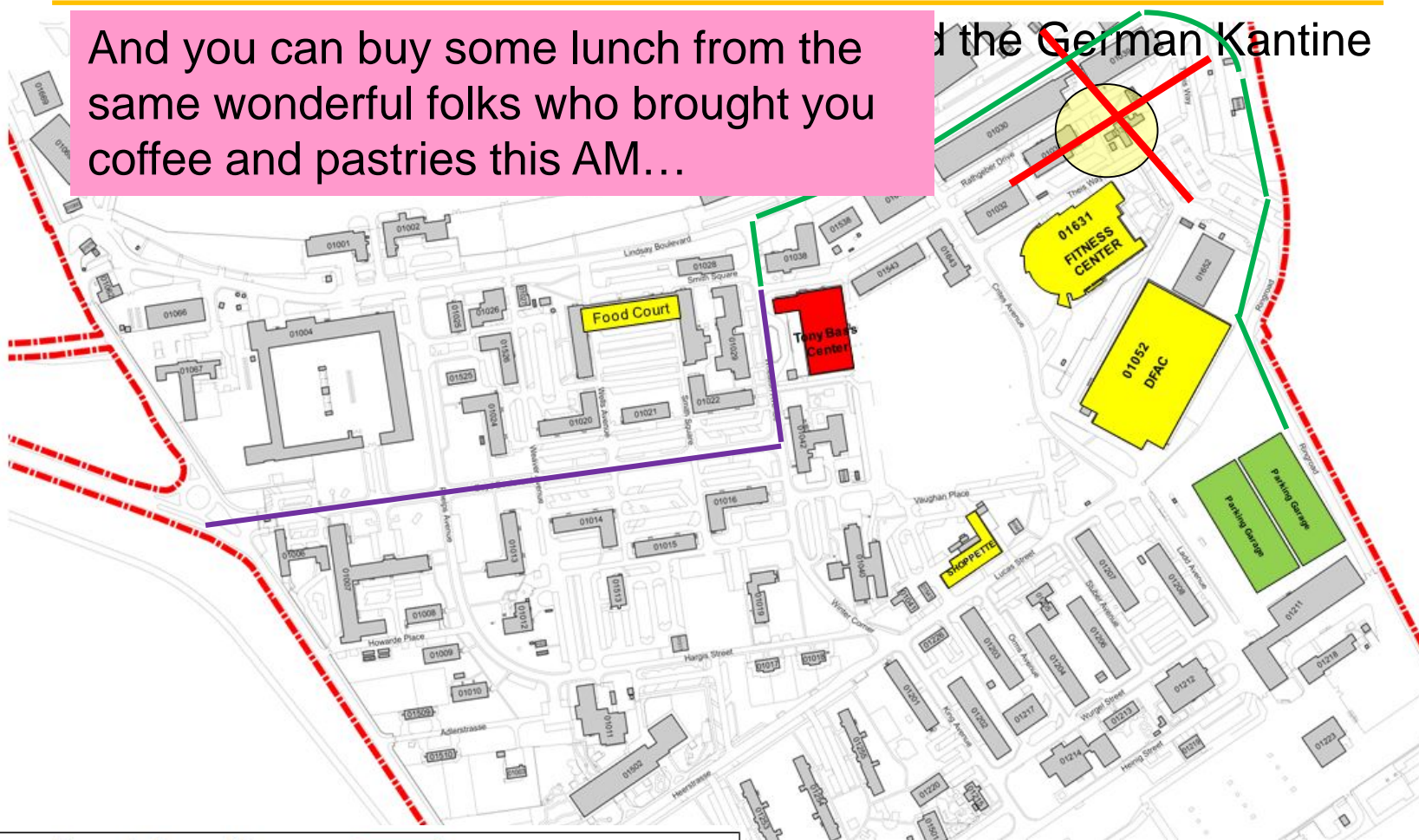
Administrative Items

- Coffee and snacks
- Restrooms
- Where to get some lunch **(NEXT SLIDE)**
- Setting up one-on-one meetings with DOCPER teams
- Asking questions
- Availability of the training slides after the event
- Please be certain that you have registered
- Providing feedback – Next year I wish you would...

Lunch

And you can buy some lunch from the same wonderful folks who brought you coffee and pastries this AM...

of the German Kantine



Training Event Location	
Parking	
Food / Exercise	
Road (Gate to Parking)	



The Team

- **NATO SOFA Status Accreditation: a Bilateral Process Conducted within a Framework of Multiple Agreements**
 - NATO Status of Forces Agreement (NATO SOFA)
 - NATO SOFA Supplementary Agreement
 - Implementing Framework Arrangements
- **We are a Learning Organization**
 - Differences in interpretations of Agreements
 - Organizational changes
 - Procedural changes
 - Court cases (but we do NOT give legal advice)
- **This World Revolves Around You, the COR**
 - You are the central switchboard for comms
 - You are connected thru the KO to the vendor company
 - You are connected to the applicant/employee
 - We understand the status accreditation process as well as anyone can, but we rely on our partnership with you

Topics of High Interest



Article 72 Challenges



Miscellaneous Issues of Interest



Yellow Card and Tax Implications



Time in Germany without Status



PCS-SOFA ID and Vehicle Issues



Fax-Back



Looking Ahead



Article 72 Challenges



Article 72: Current Status--1

- **Approximately 75 Article 72 contracts awaiting NVs**
 - **Analytical Support (AS) -- intel analysts, planners, etc.**
 - **Troop Care (TC) -- doctors, nurses, etc.**
 - **About 500 AS/TC positions unfilled**
- **Each AS or TC contract requires US/FRG diplomatic note (Note Verbale, or NV) approving the contract**
- **Until NV exchanges resume:**
 - **Existing missions mostly sustained by “incumbents”, i.e., contractor employees who had NATO SOFA status under a predecessor contract**
 - **No new accredited employees for existing missions**
 - **No new mission starts**



Article 72: Current Status--2

- **Recent “Good News”:**
 - Department of State (DOS) and German Ministry of Foreign Affairs (MFA) have agreed on new basic NV templates
 - Basic templates are those most commonly used
 - Long-standing disagreement about “legally binding” language has been resolved
 - German interagency group (MFA, Defense, Interior, and counter-intel elements) now reviewing
- **Next Steps:**
 - Final DOS-MFA agreement
 - DOS provides NV guidance/go-ahead to Embassy
 - NV signings commence (late Jun-Jul??)
- **NOTE: Sub-contractor template not yet approved**
 - Sub-contractors will not be approved until the template complete ...No estimated time of completion



Issues in the Aftermath

- **Issues will remain once NVs are signed**
 - **FRG (MFA and Laender authorities) need to recognize SOFA status of incumbents who supported the mission**
 - **FRG recognized status “retroactively” for incumbents prior to the May 2016 NV** **... So precedent is on the US side.....**
further retroactive recognition
 - **FRG already agreed and signed 3 “retroactivity” NVs clearing incumbents of tax and immigration issues**
 - **If no further “retroactive” status, there could be a threat of German taxation and immigration problems for employees**
- **Why is MFA resistant to further retroactive recognition?**
 - **DOS was responsible for May 2016 stoppage, and MFA believes “incumbency” issues are not their fault**
 - **Unclear to us, but may also involve some internal issues with other FRG agencies**



The “New” NVs: Respect German Law--1

- **Changes to paragraph 1:**

“The contractor **require the** **Government of the United States** employees respect German **contractor to certify** the **contractor** will take the following steps: 1) **ensure all** contractor employees complete required training and certification, 2) ensure that the contractor and all its employees are aware of the limitations and scope of work **require immediate reports** and that violations of German law could result in its employees’ loss of NATO SOFA status and all **immediately report** es subject to notification and due process, 3) **require** to representatives of the U.S. Forces in the Federal Republic of Germany any conduct of which **require** become aware that does not respect German law, and 4) **add a mandatory requirement for** a monthly report from the contractor and program management staff to certify that all activity conducted during the reporting period was conducted with respect for German law.”

- **“Government of the United States” = COR**



The “New” NVs: Incumbent Protection--2

- Before 2016, DOCPER granted contractor incumbents “status extension” pending a NV for an extension or follow-on contract (FOC)
- In 2016, MFA agreed to a new provision allowing incumbents to support the mission while NV pending
 - Provision in new paragraph 7 of each extension/FOC NV grants 60-days of SOFA status if certain conditions met
 - **KEY CONDITION: Timely notice of extensions and FOCs**
 - Eight (8) weeks before current contract (and NV) expire, need written notice from the contracting officer of extension or FOC
 - If not timely, we risk losing NATO SOFA status for any “incumbents”
- **We need the COR’s help to make that timeline**

Meeting the MFA Timeline

E-10 weeks: DOCPER sends notifies the contracting officer through the COR

KEY Timeline

“E” is the expiration date of the current NV.

E- 8 weeks: receive KO/PM response

If NO extension or follow-on contract,
SOFA status dies at contract expiration






E- 7 weeks: DOCPER forwards a draft NV to the Embassy for review at Embassy and Department of State, as required

E- 2 weeks: approved and completed draft NV is transmitted by the Embassy to the MFA

KEY Timeline

< E+2 Weeks: within 2 weeks of the NV expiration, ***provide the actual contract documentation to DOCPER.***

Miscellaneous Issues of Interest

-  *Passports (again...)*
-  *Requirements for Employment
Verification (or Offer) Letters (again...)*
-  *Major Certifications*
-  *Contract Reminders*
-  *Some Tax Issues*



Passports – Expiration Date for CAC

- As of 2016, DOCPER began requiring Germany applicants to upload the signed passport photo page
- Rationale:
 - Neither the CAC nor the SOFA ID should be issued beyond the expiration date of the passport
 - Without a current passport, the person would be illegally outside the U.S.
 - And both the CAC and SOFA ID need to have same expiration date
- Accordingly, CACs and SOFA IDs are now issued to expire on the earliest of the following dates:
 - Three (3) years from the current date
 - End of the contract
 - Expiration of the tourist passport



Passports – Validity Rules for Entry

- **State Department (Travel.State.Gov) says US passport must be valid “six months beyond planned date of departure from the Schengen area”**
 - Same language for both Germany and Italy
 - Germany and Italy may refuse you entry if your passport will expire within the next 6 months
- **Passport validity rules are imposed by foreign countries, not the United States**
 - You may not find out about the rule until you’ve landed
 - You may have to immediately book a ticket to return to the U.S.
 - More at: <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages.html>



Passports – DOCPER Policies/Procedures

- **DOCPER Policy and Procedure**
 - **Germany:** DOCPER will not issue a DD 1172-2 (CAC) or AE 600-77A (SOFA ID) unless there is at least 7 months remaining prior to expiration
 - Applies only to new applicants (those lacking current NATO SOFA status in Germany) ...does not apply to renewals
 - **Italy:**
 - **New applicants:** Italian consulates will not issue a mission visa in a passport that will expire in less than 12 months
- **Look ahead:** You can renew your passport nine (9) month before your passport expires
 - **NOTE:** Credentials may be authorized if DOCPER receives a copy of the appointment notification for passport pickup
- **Legal names:** If the name you now use does not match the name on your passport page, the **SOFA ID/Passport office will turn you away**



Requirements for Employment Verification Letters

- **DOCPER requires that employment verification or offer letters include the following:**
 - **Must be on company letterhead**
 - **Company name must = company listed on contract / DCOPS**
 - **Must be signed by a company official**
 - **Must state the applicant's name**
 - **Must state the applicant's annual base salary**
 - **Must state the applicant's position title**
 - **Position title must = position title applied for**
 - **Must state the applicant's primary work location/city**
 - **Location must = location of position applied for**
 - **Must be current (preferably within last 90 days)**
- **HINT: If any of the information is different from what is entered in DCOPS, something is wrong**



Major Certifications – Current List

-- Major certifications:

- For NATO SOFA status, a major certification = AA degree
- In order to be considered a “major certification”:
 - (1) it must be widely recognized;
 - (2) it must be independently administered; and
 - (3) it must be difficult to obtain
- As of 2011, DOCPER listed the following major certifications:

CCDP	Cisco Certified Design Professional
CCIE	Cisco Certified Internetwork Expert
CISSP	Certified Information Systems Security Professional
CCNP	Cisco Certified Network Professional
MCSE	Microsoft Certified Systems Engineer
MCDBA	Microsoft Certified Database Administrator
MCAD	Microsoft Certified Application Developer
MCSD	Microsoft Certified Solution Developer
MCSA	Microsoft Certified Systems Administrator
MCITP	Microsoft Certified IT Professional
MCM	Microsoft Certified Master
MCA	Microsoft Certified Architect
MCPD	Microsoft Certified Professional Developer



Additional Major Certifications-- 1

- **DoD Approved 8570 Baseline Certifications**
 - An extension of Appendix 3 to DoD 8570.01-Manual lists the baseline certifications required for IA personnel, based on position and level

All Level III certifications will be added to the “major certifications” accepted by DOCPER as equivalent to an AA degree, even when those same certifications show up in positions not coded as Level III

		Level III
	ical	Info Assurance Technical
		CASP CE
		CCNP Security
		CISA
		CISSP (or Associate)
		GCED
		GCIH
	ment	Info Assurance Management
		CISM
		CISSP (or Associate)
		GSLC
Security+ CE	CISM	
	CISSP (or Associate)	
	GSLC	
Info Ass Sys Architect Engineer	Info Ass Sys Architect Engineer	Info Ass Sys Architect Engineer
CASP CE	CASP CE	CISSP-ISSAP
CISSP (or Associate)	CISSP (or Associate)	CISSP-ISSEP
CSSLP	CSSLP	



Additional Major Certifications--2

- **Baseline certifications required for Cybersecurity Service Provider (CSSP) personnel are also documented in the extension of Appendix 3 to DoD 8570.01-Manual**
- **Level III certs (per previous slide) held by CSSP personnel will also be treated by DOCPER as equivalent to an AA degree**
- **CORs may ask DOCPER to consider other certs as equivalent to an AA degree on a case-by-case basis**

If the applicant's basis for qualifying for status is dependent on a major certificate, DOCPER will require evidence that the certificate was obtained

CONTRACTS – “Staying Alive”

- When a contract is about to end ***but*** the contractor keeps working in Germany or Italy, DOCPER needs to see contract documentation to support continuing NATO SOFA status
 - NATO SOFA status requires that a person be associated with a ***specific position*** on a ***specific contract*** for a ***specific performance period***
- **Example:**
 - Warranty work: Contract ends, but warranty work specified in the contract continues
 - Contracting Officer (KO) may not believe a contract modification is necessary nor appropriate, but DOCPER will require some official notification in order to maintain the right of the contractor employees to NATO SOFA status

Contract Positions: A Reminder

- **Article 72 vs. Article 73**

- Art 72: “Brainworkers” (analysts, intel, mil planners, trainers, etc.)
- Art. 73: “Hands-on” (IT, aircraft mechanics, etc.)
- Not qualified:
 - Logistics (most PDs won’t qualify)
 - Warehouse/supply, etc.
 - “Cable pullers”

But it’s still a pig...



- **Administrative positions do not qualify**

- Most common example: GS “work-alike”

- **NO “Enhanced” Position Descriptions (PDs)**

- Also called “beautified” PDs Or... “putting lipstick on a pig”
- If question on a PD, DOC PER may ask for:
 - Prospective employee resumes/Salary levels (unloaded)
- DOC PER is unable to approve “Enhanced” positions



GENERAL DISCLAIMER:

**DOCPER DOES NOT AND CANNOT PROVIDE
LEGAL OR TAX ADVICE**

***For specific tax or legal advice, we recommend
that you speak to professional practitioners.***



Taxing Working Dependents

- **DOCPER often reminds CORs that dependents working for a U.S. DOD contactor owe taxes**
 - **UNLESS they hold independent NATO SOFA status (through DOCPER for Articles 72 and 73)**
- **Article 15 of the German-US Double Taxation Treaty exempting income from taxation if a person is employed in Germany less than 183 days per year**
does not apply to those dependents
- **Thus, these working dependents lacking independent NATO SOFA status are subject to limited taxation (on the income earned in the job)**
 - **In Germany based on Article X, paragraph 2, of the NATO SOFA (relating to income from any “profitable enterprise”)**
 - **Not taxed on “world-wide” income**



Foreign-Earned Income

- Army tax centers will no longer exclude on IRS forms income which is exempt from HN taxes under NATO SOFA Supplementary Agreement
- Policy affects income earned under Articles 72 and 73. Quote below is from 7ATC Tax Center:
 - “Effective immediately, tax centers across 7 ATC will not exclude income which is tax-exempt pursuant to the tax treaty between the United States and Germany or NATO Status of Forces Agreement as foreign earned income. This policy is based on a growing trend of IRS Foreign Earned Income denials and U.S. Tax Court opinions.”
 - The policy does not affect income that is *not* exempt under the U.S.-FRG tax treaty (e.g., income of Family Child Care providers)



Tax Information Source at 21st TSC

- The Staff Judge Advocate (SJA) at 21st Theater Sustainment Command (21st TSC) has useful tax info
 - Web address: <http://www.eur.army.mil/21tsc/sja.asp>
 - Under “Legal Assistance and Information”, click on “Newsletters” (circled item below)

-- *German Tax Authorities Cracking Down*
(Winter 2016)

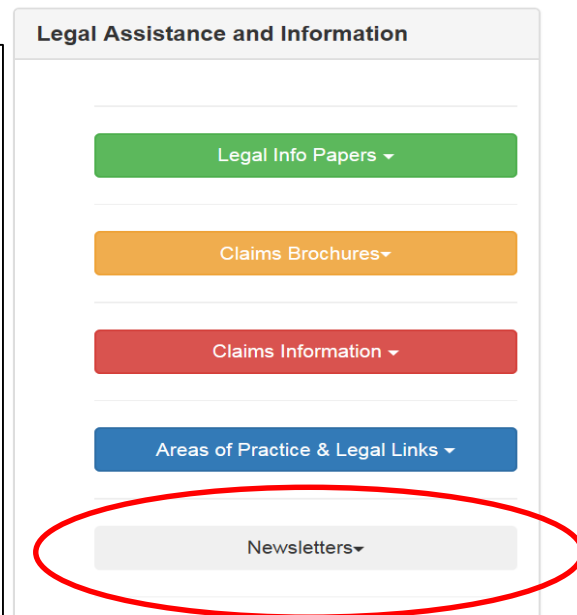
-- *Do Not Register at Your Local Town Hall*
(Fall 2015)

-- *Dual Citizenship for German Spouses*
(Summer 2015)

-- *Letters from Your German Bank (re “FATCA”)*
(Winter 2015)

-- *When the German Taxman Asks for Your W-2*
(Winter 2012)

.... and many more





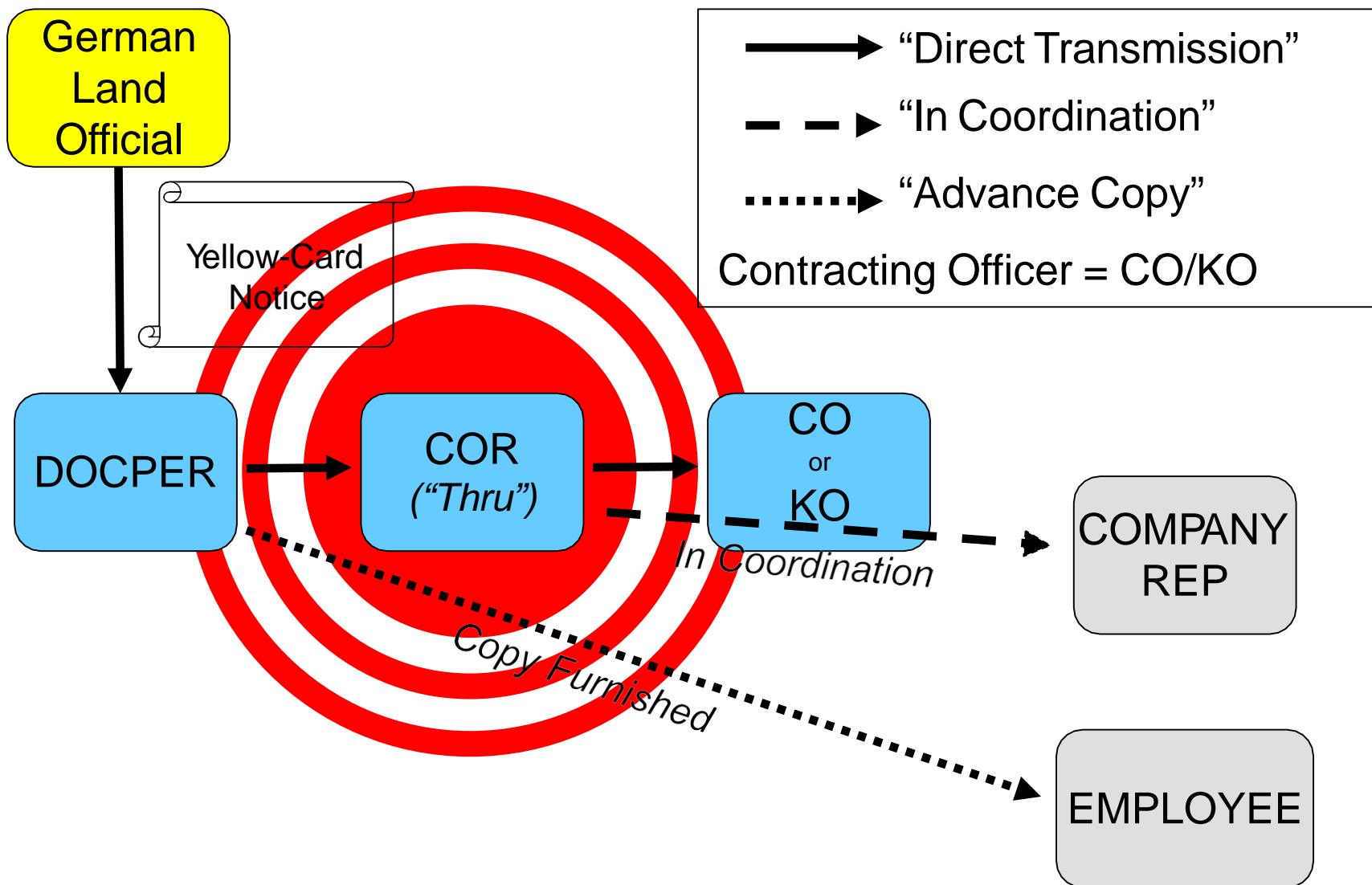
Yellow Card and Tax Implications



Yellow-card Decisions

- The “yellow-card” approval:
 - The Laender’s “kinder, gentler” way of saying an applicant appears to be “ordinarily resident” (OR), but without denying the applicant
 - “Yellow card” reflects the Land’s opinion, and is not “appealable”
- Basis for “yellow-card” decisions
 - Some combination of “ordinarily resident” factors
 - “Time alone”: 20 consecutive years in Germany
 - Some combination of the above (time in country + OR factors)

“Yellow-Card” Notification Flows





“Yellow-card” Listing a “Date Certain”

- A “yellow-card” from a Land authority will often give a “date certain”, i.e., a specific date, generally, when the contract is set to expire
 - The Land authority sends the applicant’s information to the local Finanzamt, which may use the “date certain” as a trigger
 - If the contract is extended, the Land authority does NOT generally inform the Finanzamt of the extension
- The applicant must assume that---
 - The applicant is “on the radar” of the Finanzamt
 - The Finanzamt will likely act around the “date certain”



DOCPER Policy under a “Date Certain”

- CORs who have applicants who have received a “yellow-card” (YC) will always be notified of the “date certain”
- The COR must advise the applicant and the vendor of the significantly greater risk of taxation after the “date certain”
- If the contract is extended beyond the date certain, **DOCPER will not process an automatic status extension unless the contracting officer agrees to such status extension**, irrespective of the increased tax risk to the contractor employee, the contractor and possible eventual cost liability of the U.S. Government



Options on Receiving a “Yellow-card”

If you receive a “yellow-card”:
Some scenarios...

What you can do...	Tax consequences?	Re-apply?
Leave Germany	Unlikely	After 2 years
Continue with TESA	On Finanzamt “radar”	Denial + tax (likely)
Convert to German taxpayer	Pay taxes	Not possible

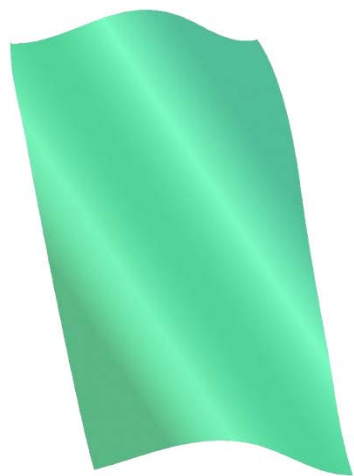


Time in Germany without Status



Time in Germany without Status

- **A 180 day Resident Permit:**
 - **Some local alien authority offices (e.g., Kaiserslautern) have issued 180-day temporary residence permits to U.S. personnel who have lost SOFA status (e.g., military retirees) to allow them to search for new SOFA employment**
 - **Although useful in the search for civilian employment, more than 90 days in Germany is disqualifying for those seeking contractor work with NATO SOFA status**
- **Seeking work as a contractor:**
 - **US/FRG bilateral agreements (Framework Arrangements) allow a 90-day window to regain NATO SOFA status as a contractor**
 - **No provision for a 180-day window**
 - **DOCPER had to recently disqualify a military retiree who had a 180 day resident permit ("Aufenthaltstitel")**



PCS Guidance



PCS Guidance: SOFA IDs and Vehicles

-- SOFA IDs:

- If the SOFA Identification card expires **more than 30** days beyond the **actual** PCS departure date, go to the Passport Office

The Passport Office will punch two holes on the right side of the certificate and place a stamp or label on the card giving an expiration on the last day of the month



- Retain the SOFA Identification card in case German immigration raise questions when departing Germany

--Vehicle Registration:

- De-register vehicles

OR

- Update registration information to reflect any change in status (e.g., contractor to GS employee)





“Fax-back” Basics

- “Fax-back” is a **German process (not DOCPER process)**
 - Short-hand term for "Request for Confirmation of Exemption from the Requirement to Obtain a Work Permit" in Germany
 - Contractor employee can work in TDY status not to exceed 3 months in a 12-month period
 - Allows contractors independent base access
 - Does NOT authorize logistical support (e.g., PX, commissary, fuel card)
- **Process: Between Company and the German authority**
 - **Initiated by contractor (the company)**, scanned and emailed to the Bundesagentur für Arbeit (BA) in Stuttgart
 - The BA signs + stamps with the German eagle, emails back to company
 - Contractor employee retains the signed form
- Do **NOT** use to support civilians on TDY, military or dependents already in Germany
- **All rules explained on the addendum to the form**



“Fax-back”: Things to Remember

- **Count on up to 10 business days for the BA to process**
 - But BA will likely do more quickly
 - Email to Stuttgart.009-OS@arbeitsagentur.de
 - **DO NOT** fax the “fax-back” to the BA
- **Fill out the form for the minimum time needed**
 - Easier for the BA to approve a new “Fax-back” then amend an old one
 - If more time needed, fill out subsequent forms as necessary
 - For a subsequent “Fax-back”, attach the predecessor “Fax-back” and explain the reason for the update/changes
 - If correction of an approved “Fax-back” is required, new request needs to include a copy of passport pages showing length of stay in Germany
- **Make sure the form is legible (it’s Word-fillable)**
- **Form is on DOCPER web-page (Google “DOCPER”):**
 - <http://www.eur.army.mil/g1/content/CPD/docper.html>
 - 2nd item under “QUICK Links and Downloads”



“Fax-back”: More Things to Remember

- “Fax-back” confirmation (signed by the BA) is required from the first day of work
 - You need to have it in hand before you start working
 - BA will NOT approve a fax-back with a begin date earlier than the date of approval.

- Below is a section of some points

Send in the “fax-back” at least 10 German business days before “Estimated Dates of Work” entered here

<i>Beschreibung auf Beiblatt</i>				
Estimated Dates of Work (in Germany)/voraussichtliche Zeiten der Tätigkeit	From/von (dd/mm/yy)	<input type="text"/>	Until/bis (dd/mm/yy)	<input type="text"/>
Fax-Number of Company/Fax-Nr. des Unternehmens	<input type="text"/>			
Email-Address/Email-Adresse	<input type="text"/>			
Place and Date/Ort und Datum	<input type="text"/>			
Name of Company Representative/Name des Bevollmächtigten des Unternehmens	<input type="text"/>			
Signature of Company	<input type="text"/>			

Where and when the form was signed by company rep SHOULD originate in the US



“Fax-back”: More Pressure for Details

- BA is tightening procedures after recent incident that drew police attention
- BA may request a copy of the contract, to include:
 - Cover page
 - PWS or job description
 - BA has asked at times for the whole contract, but if there is an issue in providing it, we suggest you send an email explaining the issue
 - BA looking to ensure kind of work to be done is authorized
 - Within scope of § 19 (1) Beschäftigungsverordnung
- Who does not need a “fax-back”?
 - GS employees, military, dependents already in Germany serving as contractors





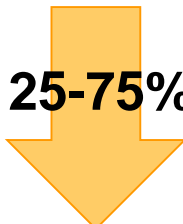
“Fax-back” Summary

- **Submit the “fax-back” at least 10 days before the start work date**
 - **The BA will not approve a fax-back with a begin date earlier than the date of approval**
- **You may need to submit parts of the contract if the “Description of Work” in the “fax-back” is unclear**
 - **The BA needs to ensure “fax-back” work clearly falls within the scope of German laws that allow the exemption**
- **Fill out the form properly**
 - **Ensure it’s legible**
 - **Use the European date format (dd/mm/yy)**
 - **Associate a location and date with the requestor’s signature**
- **DOCPER, in coordination with the BA, will provide revised instructions to help alleviate some of these concerns**



The Challenges of our Shared Future

A Look Back Before Looking Forward

- **DOCPER's processing actions up 20% over the past 2 years**  **20%**
- **DOCPER's operating staff decreased by 20% over the past 2 years**  **20%**
- **DCOPS/network processing speeds have slowed 25-75% since 1 Jan 18**  **25-75%**

Unfortunately, DOCPER's processing times have lengthened considerably



A Brief Look Forward

- **Should NOT expect the same responsiveness that we have historically demonstrated**
- **DOCPER's processing times will lengthen further for a while**
 - **Large effort committed to designing a DCOPS replacement**
 - **DOCPER will be short-staffed for next 6 months**
 - Both Russ and Ki leave in early June
 - Delays in hiring replacements
 - **When Article 72 issues are resolved, our workload will balloon**
- **Calls and e-mails to check on the status of your submission further slow the process for all**

Processing

First In . . .



First Out . . .



More as We Look Forward

- **NEW DCOPS:**
 - Building the new DCOPS is progressing
 - Estimated time of completion: November 2018
- **NEW website:**
 - Look for a new DOCPER website on 31 May 2018
 - Anticipated URL: <https://eur.army.mil/About-Us/Staff-Sections/G1-Human-Resources/>
 - We'll advise you of the new URL once confirmed



The COR's Role



Take-Aways And Follow-Up Actions



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QUESTIONS?