

## **Works Council Cooperation and Codetermination Procedures**

### **Cooperation Procedure**

The right of the works council **to cooperate in management actions and decisions** applies to those actions specified in section 75, paragraph 1, numbers 1 and 2, paragraph 3, number 13, section 76, paragraph 2, numbers 5 and 7, section 78, paragraph 1, and section 79, paragraph 1 of the modified German Federal Personnel Representation Law (subsequently referred to as "the law"). In connection with these actions, which may only be initiated by management, the following principles and procedures apply:

- The objective of the cooperation procedure is to ensure that an action is taken with the moral support of the council rather than against the council's desire.
- The cooperation procedure requires the agency chief to discuss a planned action with the council before implementing it. The planned action will be discussed in enough time and detail to reach an understanding between the agency chief and the works council. The required discussion provides the works council an opportunity to recommend modifications, or to object to a planned action in its entirety.
- The required discussion does not necessarily involve a verbal discussion of the matter in a joint meeting of the agency chief and the works council unless a verbal discussion is specifically requested by the works council.
- The requirement of a discussion can also be met by an exchange of correspondence, provided the works council is furnished all pertinent facts and information in sufficient detail to permit the passing of a resolution. However, in matters other than those of a routine nature having a major or significant impact on the LN work force or individual LN employees, the chief of the agency will have a verbal discussion of the matter during a joint meeting with his or her works council.
- In connection with complex matters, prior official briefings of the works council by expert advisors of the agency chief and/or talks with the executive committee of the works council should be arranged to ensure the full understanding of the planned action by the works council. Also, such actions are suited to foster the agency chief's relations with the works council in the spirit and letter of the GPRL.

The procedures and time limits established by section 72 of the law are firm legal requirements which may neither be altered unilaterally by the agency chief or the works council nor by a mutual agreement of both. The agency chief will not take actions subject to works council cooperation before the cooperation procedure with the works council is completed. Failure to follow the prescribed steps of the cooperation procedure may void an action, if challenged in labor court. In exceptional situations, an action may be implemented by means of a preliminary arrangement pending the completion of the cooperation procedure, provided the action cannot be postponed because of its nature (Section 72, paragraph 6 of the law).

The chief of the agency must inform the works council of a planned action and request the council's cooperation and concurrence. Though not specifically required by law, such requests for cooperation will be in writing and signed by the agency chief or his or her designated representative in both English and German for proper documentation purposes. The works council's time period of 10 workdays for a reply to the planned action only starts on the workday following receipt of all information regarding the matter by the works council. Therefore, the request must contain complete information, justification, and documentation supporting the planned action in the English and German language.

If explicitly desired by the works council, the agency chief is required to discuss the planned action with the council. To avoid undue delays of planned actions, such discussions should be held during the time period allowed for the works council's reply. If the works council concurs with the planned action, does not object to it within the 10-day time limit, or objects without reasons or with reasons that are obviously unrelated to the action at issue, the agency chief may implement the planned action. If the works council's non-concurrence is based on reasonable grounds supported by a sound justification, or contains recommendations for a modification of the planned action, the agency chief will duly consider the works council's non-concurrence, render a final decision and communicate it in writing to the works council. The final decision must respond to all reasons for non-concurrence submitted by the works council, and contain

the agency chief's final determination on how to proceed with the planned action. In doing so, the agency chief may decide to withdraw the planned action based on the works council's comments, implement it as originally proposed, or implement it with all or some of the modifications suggested by the works council.

Within 3 workdays from receipt of the agency chief's final decision, the works council must duly consider the decision and the supporting reasons, and decide to either accept the decision or request a decision from the next higher level authority where a works council exists. This decision must be communicated in writing to the agency chief. If the works council accepts the decision, it may be implemented by the agency chief. If the works council decides to request a decision from the next higher authority, the agency chief must suspend the implementation of the planned action, and forward the request for decision through management channels to the next higher authority. Depending on the command structure, this could be the Intermediate Authority or the Highest Service Authority.

If the next higher level of authority is the Intermediate Authority, the local works council's request for decision will be reviewed by the chief of this authority. If he or she decides not to support the decision of the local agency chief, the latter will be informed accordingly by a memorandum of decision through the local agency's works council with information copy to the district works council that is established at the respective intermediate authority level.

If the chief of the intermediate authority supports the decision of the local agency chief, he or she must make a pertinent proposal to his or her district works council. Following that, the procedures and time limits outlined above apply analogously, except that the District Works Council must request a decision from the highest service authority.

At the highest authority level, requests for decisions submitted by either a local or a district works council will be reviewed by Commanding General, USAREUR/7A, or his designated representative. If the decision is to not support the decision of the chief of the intermediate authority or the local agency chief, it will be communicated to the respective chief through the appropriate works council, and the Head Works Council will receive an information copy of the decision.

If the Commanding General, USAREUR/7A, or the designated representative support the decision of the chief of the intermediate authority or the local agency chief, a pertinent proposal must be communicated in writing to the Head Works Council. The procedure outlined above apply analogously before the Commanding General, USAREUR/7A, or the designated representative renders a final decision. This decision is final and not subject to an appeal by the Head Works

Council. It will be communicated in writing to the chief of the intermediate authority or the local agency chief through the appropriate district or local works council.

The principles, procedures, and time limits described above also apply when an action is planned by the chief of an intermediate authority or the Commanding General, USAREUR/7A. In these instances, however, the preclusive time periods established for a response by the district works councils and/or the head works council will be doubled, i.e., 20 workdays (section 82, paragraph 2 of the law).

### **Codetermination Procedure**

The right to codetermine in actions specified in section 75, paragraph 1, numbers 3 through 7, section 75, paragraph 2, number 1 and 2, section 75, paragraph 3, numbers 1 through 17 (except 13), and section 76, paragraph 2, numbers 6, 8 and 9 is governed by the provisions of sections 69 and 70 of the law.

Actions covered by the above legal provisions, which may be proposed by both the agency chief and the works council, may only be implemented with the approval of the works council. If no agreement on a proposed action can be reached between the agency chief and the council, the codetermination procedure established in section 69, paragraphs 2 through 5 of the law will apply.

The objective of the codetermination procedure is similar to that of the cooperation procedure and is intended to provide for true partnership between the chief of the agency and the works council in matters of concern to the LN employees of the agency. However, there are major differences inasmuch as procedures, time limits and final decision making authority are concerned. In detail, the following different proceedings are applicable:

**Actions Proposed by the Agency Chief Pursuant to Section 75, Paragraph 1, Numbers 3 through 7 of the Law**

The agency chief will inform the works council in writing of the planned action in enough time and detail with full justification and documentation, and request the works council's approval within the time limit of 10 workdays vested in section 69, paragraph 2 of the law. In urgent cases, this time limit may be reduced to 3 workdays.

These time limits are mandatory; they may neither be extended nor reduced unilaterally by the agency chief or in agreement with the works council. An urgent case occurs only if there are extraordinary circumstances which do not permit a delay of the proposed action because otherwise it would result in the loss of legal entitlements for an employee, or be to the detriment of the agency which cannot be legally justified. Whether or not the urgency was caused by the agency is immaterial. The council may object to the reduction of the time limit. If the agency implements the action although the council had legitimately objected to the reduction of the time limit, the action may be null and void. Within the above time limits, on request of the council, the agency chief will discuss the planned action in a joint meeting with the council. However, the council may not demand a written rationale from the agency chief for proposed actions that are covered by the above legal provisions.

The planned action is considered approved if the council does not refuse its concurrence in writing by stating the reasons for the non-concurrence within the time limits referred to above. If in connection with its non-concurrence, the works council makes complaints and allegations of a factual nature that are disadvantageous or could become detrimental to an employee, the employee must be provided the opportunity to comment, and the comments will be made a matter of record.

If no agreement on the planned action is reached, the agency chief may submit the matter within six workdays from receipt of the council's non-concurrence through command channels to the next higher authority where a works council above the local level exists. Depending on the organizational structure, this may be an intermediate level authority where a district works council exists or the Commanding General, USAREUR/7A, at whose level the Head Works Council has been established. If the agency chief submits the matter to the next higher authority, he or she must inform the council accordingly in writing by stating the reasons and suspend the planned action.

If no agreement on the matter can be reached between the Commanding General, USAREUR/7A, and the Head Works Council, the conciliatory committee will decide within 2 months of the declaration by the Commanding General, USAREUR/7A, or the Head Works Council that a decision of the conciliatory committee is requested.

With respect to the matters covered by section 75, paragraph 1, numbers 3 through 7 of the law, the conciliatory committee determines whether or not there is a reason for non-concurrence within the meaning of section 77, paragraph 2 of the law.

**Actions Proposed by the Agency Chief Pursuant to Section 75, Paragraph 2 and Section 75, Paragraph 3, Numbers 1 Through 17 (Except 13) of the Law**

Procedures are identical to those prescribed above, except that in connection with matters covered by the legal provisions of this paragraph, the councils at each level may demand a written rationale from the respective agency chiefs for the proposed action. The decision of the conciliatory committee in these matters is final and binding. The decision may meet the request of the Commanding General, USAREUR/7A, or of the Head Works Council only in part.

**Actions Proposed by the Agency Chief Pursuant to Section 76, Paragraph 2, Numbers 6, 8 and 9 of the Law.**

Procedures are identical to those prescribed above, except that in connection with matters covered by the legal provisions of this paragraph, the councils at each level may demand a written rationale from the respective agency chiefs for the proposed action. In these matters, the conciliatory committee decides in the form of a recommendation if it disagrees with the opinion of the Commanding General, USAREUR/7A. Based on this recommendation, the Commanding General, USAREUR/7A, renders a final decision.

**Actions Proposed by the Works Council Pursuant to Section 75, Paragraph 3, Numbers 1 through 6 and 11 through 17 (Except 13) of the Law.**

The works council must decide by majority vote of all its members whether or not to submit a proposed action to the agency chief. If the proposed action only pertains to one of the two employee groups, only the works council members representing the respective group will make the decision.

The proposal must concern an action for which the agency has full responsibility. The works council must inform the agency chief in writing of the proposed action. Although not expressly stated in the law, the works council's proposal should be supported by a justification for the action. The agency chief is not obligated to respond to the works council within a specific time period. The time limits of 10 workdays, and 3 workdays in urgent cases, established by section 69, paragraph 2 of the law are not applicable. However, with view to the partnership between the works council and the agency chief envisioned and promulgated by the law, and depending on the scope and complexity of the proposal, the agency chief can reasonably be expected to respond within the 10-workday period or shortly thereafter. Notwithstanding that, the agency chief's silence to a works council proposal may by no means be misconstrued to constitute an approval of the proposed action. If an unreasonably long period of time has passed and the agency chief has not responded to the proposal, the works council is entitled to initiate the proceedings in accordance with section 69, paragraphs 3 and 4 of the law, i.e., to submit the matter to the next higher authority where an intermediate level works council exists.

In this case, the time limit of 6 workdays vested in section 69, paragraph 3 of the law for submitting the matter to the next higher authority is not applicable. If the agency chief rejects the proposal (rejection must be in writing), both the agency chief and the works council may initiate the codetermination procedure in accordance with section 69, paragraph 3 of the law, i.e., refer the matter to the next higher authority where a works council exists. In this case, the referral must occur within 6 workdays after receipt of the written rejection by the works council. In any case, the matter must be submitted through command channels, i.e., the submission of a matter to the next higher authority by the works council must be routed through the chief of the agency who is compelled to submit it to the chief of the next higher authority. If the chief of the agency submits a matter to the next higher authority, he must inform his works council accordingly.

Upon receipt of the matter by the next higher authority where a works council exists, the head of this authority must involve the works council existing at his level, i.e., either a district works council or, in the case of the highest service authority, the Head Works Council. Codetermination proceedings at the level of the next higher authority are considered to have been initiated only when the works council at the next higher level has received the matter from the head of the respective authority at the higher level. With the initiation of the codetermination procedure at the next higher level, the full and unrestricted codetermination right concerning the matter has been shifted from the works council that initiated the action to the appropriate higher level works council. The proceedings at the level of the intermediate authorities with their respective district works councils, and to the proceedings of the highest service authority with its head works council are identical to the proceedings at the local level, except that the respective works councils at the level of the higher authorities must communicate their decision concerning the matter to the respective heads of the higher level authorities within 10 workdays from receipt of the matter.

If no agreement on the matter can be reached between the Commanding General, USAREUR/7A, and the Head Works Council, USAREUR and Seventh Army, the conciliatory committee will decide within 2 months of the declaration by the Commanding General, USAREUR/7A, or the Head Works Council that a decision of the conciliatory committee is requested. The decision of the conciliatory committee in these matters is final and

binding. The decision may meet the request of the Commanding General, USAREUR/7A, or the Head Works Council only in part.

**Actions Proposed by the Works Council in Other Matters Subject to the Works Council's Codetermination.**

The procedures are identical to those prescribed above, except that in these matters, the Commanding General, USAREUR/7A, renders a final and binding decision.