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...
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
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
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 Land authorities) need to recognize SOFA status of incumbents who supported the mission
    • FRG recognized status “retroactively” for incumbents prior to the May 2016 NV
      • 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
• Changes to paragraph 1:

“The contractor is responsible for ensuring that its employees respect German law. To that end, 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 and that violations of German law could result in its employees’ loss of NATO SOFA status and all associated privileges subject to notification and due process, 3) immediately report to representatives of the U.S. Forces in the Federal Republic of Germany any conduct of which it becomes 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

**E- 8 weeks:** receive KO/PM response

**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

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

< **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)
  – 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:

<table>
<thead>
<tr>
<th>Certification</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCDP</td>
<td>Cisco Certified Design Professional</td>
</tr>
<tr>
<td>CCIE</td>
<td>Cisco Certified Internetwork Expert</td>
</tr>
<tr>
<td>CISSP</td>
<td>Certified Information Systems Security Professional</td>
</tr>
<tr>
<td>CCNP</td>
<td>Cisco Certified Network Professional</td>
</tr>
<tr>
<td>MCSE</td>
<td>Microsoft Certified Systems Engineer</td>
</tr>
<tr>
<td>MCDBA</td>
<td>Microsoft Certified Database Administrator</td>
</tr>
<tr>
<td>MCAD</td>
<td>Microsoft Certified Application Developer</td>
</tr>
<tr>
<td>MCSD</td>
<td>Microsoft Certified Solution Developer</td>
</tr>
<tr>
<td>MCSA</td>
<td>Microsoft Certified Systems Administrator</td>
</tr>
<tr>
<td>MCITP</td>
<td>Microsoft Certified IT Professional</td>
</tr>
<tr>
<td>MCM</td>
<td>Microsoft Certified Master</td>
</tr>
<tr>
<td>MCA</td>
<td>Microsoft Certified Architect</td>
</tr>
<tr>
<td>MCPD</td>
<td>Microsoft Certified Professional Developer</td>
</tr>
</tbody>
</table>
### 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.
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.
• 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”

• Administrative positions do not qualify
  - Most common example: GS “work-alike”

• NO “Enhanced” Position Descriptions (PDs)
  - Also called “beautified” PDs
  - If question on a PD, DOCPER may ask for:
    - Prospective employee resumes/Salary levels (unloaded)
  - DOCPER is unable to approve “Enhanced” positions

But it’s still a pig…

Or…”putting lipstick on a pig”
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
  - 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 \textbf{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

- **German Land Official**
  - Yellow-Card Notice
  - DOCPER
    - COR ("Thru")
      - CO or KO
        - "Direct Transmission"
        - "In Coordination"
        - "Advance Copy"
  - Contracting Officer = CO/KO
  - In Coordination
  - Copy Furnished
  - COMPANY REP
  - EMPLOYEE
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…

<table>
<thead>
<tr>
<th>What you can do…</th>
<th>Tax consequences?</th>
<th>Re-apply?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leave Germany</td>
<td>Unlikely</td>
<td>After 2 years</td>
</tr>
<tr>
<td>Continue with TESA</td>
<td>On Finanzamt “radar”</td>
<td>Denial + tax (likely)</td>
</tr>
<tr>
<td>Convert to German taxpayer</td>
<td>Pay taxes</td>
<td>Not possible</td>
</tr>
</tbody>
</table>
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
(… again and again)
“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](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

<table>
<thead>
<tr>
<th>Beschreibung auf Beiblatt</th>
<th>From/von (dd/mm/yy)</th>
<th>Until/bis (dd/mm/yy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Dates of Work, (in Germany)/voraussichtliche Zeiten der Tätigkeit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fax-Number of Company/Fax-Nr. des Unternehmens</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Email-Address/Email-Adresse</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Place and Date Ort und Datum</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name of Company Representative/Name des Bevollmächtigten des Unternehmens</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature of Company</td>
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</tbody>
</table>

*Where* and *when* the form was signed by the 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
- DOCPER’s operating staff decreased by 20% over the past 2 years
- DCOPS/network processing speeds have slowed 25-75% since 1 Jan 18

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 . . .
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
QUESTIONS?