

Frequently Asked Questions -- and Answers

Bilateral Agreements, Notes Verbale, Consultative Commission

Contract-Related Questions

Applicant-Related Questions

General

Military Exigency

Ordinarily Resident Issues

Denials and Reconsiderations

ID Card/CAC Questions

SOFA Stamps, Individual Logistics Support (ILS), and Privileges

Termination and Enforcement

Temporary Duty

TDY: Proper Procedures

TDY: Improper Procedures

Article X, “Yellow Cards” and the “6-Year Rule”

Contractor Verification System (CVS)

Bilateral Agreements, Notes Verbale, Consultative Commission

(1) What is the Consultative Commission and how does it work?

The Consultative Commission is a German-American body created in the Exchange of Notes of 27 March 1998 regarding the application of Article 73 of the NATO SOFA SA (Technical Experts), with the intent that it will serve to review implementation of that agreement. It is co-chaired by the US Embassy and the German Foreign Office and includes representatives from the Laender and the US Forces. The Commission has been used to address problems raised by either party regarding the implementation and interpretation of the Exchange of Notes implementing Article 72 (Troop Care and Analytical Support) as well as Article 73 (Technical Experts). Currently the Consultative Commission convenes on an as-needed basis in Berlin.

(2) Will the Consultative Commission overturn a decision by a Land to deny a position as Technical Expert (TE), or to deny an individual seeking TE Status Accreditation (TESA)?

No. The Consultative Commission will not overturn any Laender decisions. In case of lack of agreement between Laender and US Forces officials over the terms used in the bilateral Arrangement or over its application, the Consultative Commission shall meet following receipt of a written request from either representatives of the Laender or of the US Forces to seek resolution and issue a written report, which usually contains a written recommendation.

(3) Are the examples listed in the Exchange of Notes for Article 73 NATO SOFA SA the only types of Technical Experts (TEs)?

No. By definition, an example is a representative of a group. Therefore, the examples are not exhaustive. But following basic provisions must be met: A TE refers to "a person with a high degree of skill or knowledge for the accomplishment of complex tasks of a technical military nature, or of a technical scientific nature, as distinguished from routine mental, manual or physical processes. The skill and knowledge must have been acquired through a process of higher education, or through a long period of specialized training and experience."

(4) The Exchange of Notes indicates that concurrence may be assumed if the German authorities have not provided any response after 5 weeks in the case of contracts and after 6 weeks in the case of individual applications. Doesn't presuming concurrence involve a large degree of risk for the Contractor, contractor employee and the US Government?

The language of the Exchange of Notes that provides the basis for this assumption follows: "If no response is given within six weeks, it shall be assumed that no objections exist." In practice, there has been no indication that presuming concurrence has involved risk for the Contractor, contractor employee or the US Government. Although there have been cases with no definitive answer within the agreed upon time limits, there has always been some written correspondence with objections or statement of deferral. Please note that the 5 weeks timeline does not apply for contract approvals IAW Art. 72 NATO SOFA SA (Troop Care services, Analytical Support Services) through the German Foreign Office.

(5) The Exchange of Notes indicates that approvals under Article 73 (TESA) can take up to 18 weeks (8 weeks for contract approval followed by 10 weeks for applicant approval). A 4.5 month delay would severely impact our mission. Is there anything that can be done to accelerate the TESA process?

TESA approval is the result of a bilateral, two-phased process and we understand that there is an impact to the mission if approval takes the full 18 weeks allowed by the Exchange of Notes. For that reason, DOCPER will accept individual applications as soon as the contract has been successfully reviewed and approved by DOCPER. While this is not quite a simultaneous submission (that would be contract and individual application at the very same time), it does allow for individual application, review, and DOCPER approval to proceed while contract approval is in process. In addition, DOCPER can provide immediate status upon application approval on the basis of Military Exigency (ME) if such a request has been made by the COR. This means that an individual applicant can apply for and receive ME status even before the contract has been reviewed and approved by the German authorities.

It must be remembered that ME status is temporary, unilateral, and conditioned upon approval of both the contract and the individual application by the German authorities. For that reason, DOCPER will only grant ME status for applicants that are clearly qualified and relatively free of those factors related to being ordinarily resident. An applicant granted ME status by DOCPER could still be denied by the German authorities. Therefore ME-approved applicants should consider carefully the consequences of shipping household goods, signing lease agreements, and selling property prior to approval by the German authorities.

[Back to Top](#)

Contract-Related Questions

(6) When an approved contract is expiring and the decision has been made to continue providing the same services under a completely new contract, what means are available to ensure that any incumbent contractor employees under the old contract are able to maintain uninterrupted status if they continue under the new contract?

For Technical Experts under Article 73, applicants may apply for status with a request for immediate status on the basis of military exigency (an ME request) as soon as the contract has been reviewed and approved by DOCPER. If the new contract is awarded in a timely fashion, and if DOCPER is promptly provided with the required information and documentation for that contract, individuals can usually receive status with little or no break between the old contract and the new. This assumes, of course, that the individuals are qualified under the requirements of the position descriptions approved with the new contract and also that the applicants are not ordinarily resident in Germany.

For Analytical Support personnel under Article 72, applicants may not apply for status with a request for immediate status on the basis of military exigency (an ME request) until the contract has received enterprise approval (through the German Foreign Office). It is the practice of DOCPER, however, to grant "conditional status" to incumbent contracted employees that will be providing continued services under a new contract. Conditional status is granted unilaterally for a period of up to 60 days in order to allow sufficient time for a contract to receive enterprise approval. Conditional status is only granted after DOCPER has received all of the necessary information and documentation necessary to begin a review of the contract. Once a contract has received enterprise approval, requests for immediate status on the basis of military exigency (an ME request) are possible. Conditional and ME status assume that the individuals are qualified under the requirements of the position descriptions approved with the new contract and also that the applicants are not ordinarily resident in Germany.

For Troop Care providers and Troop Care IT providers under Article 72, there is no provision for the granting of immediate status on the basis of military exigency. It is the practice of DOCPER, however, to grant conditional status to incumbent contracted employees that will be providing continued services under a new contract. Under this informal process, agreed with the Laender, new CACs for the employees are "conditionally approved" while the new Article 72 contract is being reviewed by the German Foreign Office pending "enterprise approval." This "conditional approval" effectively continues the status of the incumbent personnel while a NV is being developed for a new delivery order, or for a new contract, but **only for those cases wherein the privileged employees (incumbents) and the work will remain the same**. Specifically, the incumbents from the previous contract must remain in the same job descriptions as defined in the Appendix of the governing Exchange of Notes. This

conditional status assumes that the individuals are qualified under the requirements of the position descriptions approved with the new contract and also that the applicants are not ordinarily resident in Germany.

In all cases DOCPER will do everything reasonable to ensure that required contractor support is able to continue. DOCPER will not, however, attempt to compensate for delayed contract awards and/or incomplete information and documentation provided in support of the status accreditation process.

(7) We operate under Task Order/Delivery Order contract. The detailed information for a specific OCONUS job is contained in the tasking documents and in our cost estimate for performing the task. Does each individual order require status accreditation or can we seek approval at the basic contract level?

The type of approval described in this question is usually referred to as "Umbrella" approval and such approvals are increasingly uncommon. It is the general policy and practice of DOCPER to treat each order under a given contract as if it were a unique and separate contract. DOCPER will not approve any contract, basic or otherwise, unless we can be certain of the types of work to be performed, the locations where the work will be performed, the number of required positions at each location, and the specific vendor that has been contracted to perform the work. This level of detail is usually not available in or associated with the basic contract, but becomes known only when a particular order has been issued. For this reason it is not generally possible for an "Umbrella" approval to take place. DOCPER is willing to consider a request for "Umbrella" approval on an exception basis, but only if the detailed information necessary for contract approval is available.

(8) We used to provide new contracts and individual applications in hard copy and also on disk. Later, submissions were also made by email or encrypted email. We have heard that now all submissions must go through a web-based application called DCOPS. Can we still submit by email or can I provide hard copies instead?

No. DOCPER will only accept contract information and individual applications through the DOCPER Contractor Online Processing System (DCOPS), a web-based application that is available through any computer with internet access and a web browser capable of 128 bit encryption. DCOPS automates many processes that were previously done manually and it has therefore accelerated the status accreditation process. DCOPS has also help simplify the status accreditation process and reduced the number of errors in processing. Most importantly, though, DCOPS provides a secure method for the submission of procurement sensitive information and privacy act information.

Contracting Officers' Representatives (CORs, QAPs, QARs, TMs, ACORs, COTRs, etc.) can gain access to DCOPS by providing DOCPER with a copy of their designation

letter or memo as signed by the contracting officer. Individual applicants are provided access to DCOPS by their CORs.

(9) Is a follow-on contract to a contract previously used in Germany considered a new contract?

Yes. Please see AE Regulation 715-9. A "new contract," which must be notified and approved, includes follow-on or successor contracts even when awarded to the same company. Paragraph II.8.a., Contract Extensions, states..." The practice of assigning a new contract, delivery order (DO), or task order (TO) number to exercise an option under a notified and approved contract will not require submitting another contract notification or going through the individual accreditation process." The same rules apply to AS and TC contracts. Thus, the general rule is that if the contract number changes, then the contract must be re-notified. If exercising an option of an existing contract, re-notification is not required. Contract extensions, such as delivery orders to continue working in the next FY, are for these purposes equivalent to option exercises ("work-alikes"). But if a delivery order changes the SOW and/or the JDs, or if the periods of performance of the preceding and new delivery order are not contiguous (i.e., there is a gap between when one contract ends and the other begins), re-notification will be required.

Although not requiring notification to the German authorities, option exercises of existing contracts (including delivery orders to continue working in the next FY) need to be reported to DOCPER, and the paperwork uploaded in DCOPS.

(10) Can non-DoD contracts be used in Germany? For example, could contractor employees doing Troop Care work under a Department of Labor contract be granted status?

Yes. Non-DoD contracts can be used in Germany, and may be approved for TE/AS/TC work if the work is exclusively in support of the forces.

(11) When are non-DoD (i.e., GSA) contracts reviewed: (a) at the time of contract award? (b) when an order is issued for performance in Germany? or (c) when the contract is awarded and each time an order for work in Germany is issued?

Non-DoD (GSA) contracts are reviewed when the delivery/task order is issued for work to be performed in Germany.

(12) Can the TESA process be applied to contracts and contracted employees in support of other NATO Forces in Germany, vice in support of the US Forces in Germany?

DOCPER deals only with contracts in support of the U.S. Forces, and not contracts supporting NATO. After consulting with Army legal counsel, it appears that NATO does not have a system that parallels the contractor-related provisions of the Supplementary Agreement to the NATO SOFA. That is, there appears to be no formal process for granting tax-free status and certain other privileges to contractor employees under contract to NATO.

(13) When a task or delivery order (TO/DO) is awarded for work to be performed in Germany, do we provide DOCPER with information and documentation from the basic contract or from the actual TO/DO?

It is the policy and practice of DOCPER to treat each TO/DO under a given contract as if it were a separate and unique contract. This is because it is usually at the TO/DO level that there is sufficient specificity to meet the requirements of the status accreditation process. Unless you receive specific guidance from DOCPER to the contrary, you should always provide information and documentation from the TO/DO.

(14) For large contracts with multiple task or delivery orders (TO/DOs), the general scope of the contract is defined at the basic contract level. Why, then, does DOCPER treat each TO/DO as if it were a separate and unique contract for status accreditation purposes?

There are four specific pieces of information that must be known before a contract can be approved, but that are usually not all available at the basic contract level. They are: the vendor that will perform the work (for multivendor award, IDIQ contracts), the location (German city and state) where the work will be performed, the position titles for the work to be performed at each location, and the number of approved positions required for each position title at each location. This information generally becomes known only once a TO/DO has been awarded, necessitating approval at the TO/DO level.

(15) If a contract is approved, doesn't that mean that all jobs under the contract are approved? How is it possible to later deny the job?

Contract approval does not imply that all positions under the approved contract have been approved. Each position under a contract must individually be approved or denied in addition to overall contract approval. Early on, when the bilateral contractor accreditation process had just been implemented, there were times when a position that had previously been approved was subsequently denied. When an approved position

was subsequently denied, it was generally because repeated submissions of lesser-qualified applicants made it apparent that the job description had been "beautified." Therefore, comparison of the job description and applicants actually submitted resulted in later denial of the position. As DOCPER and the German authorities gained more experience and reviewing and evaluation position descriptions, such instances ceased.

(16) Can a job description alone be provided to the Germans for a decision as to whether or not it qualifies for TE work?

No. A job description is only provided to the German authorities in the context of the contract under which it operates, and/or in conjunction with an individual resume. There is no provision in the bilateral agreement for submission of a job description in the abstract.

DOCPER, however, will review a position description at the request of the COR in order to assist the COR in submitting with a high probability of success.

(17) Can you tell us what the rules are on subcontractors? It seems like the rules are always changing.

The rules on subcontractors are briefly described in the revised summary chart found at http://www.eur.army.mil/g1/content/CPD/docper/docper_germanyLinks.html?tab=1&framepage=miscellaneous.html#top. In short, use of subcontractors is unrestricted under Article 73, but the bilateral agreement of 10 Dec 2003 emphasizes that the Laender must be informed by DOCPER regarding their use.

Under Article 72, Analytical Support, subcontractors are allowed to gain "enterprise approval" (contract approval) as a result of the bilateral agreement of 11 Aug 2003, but only after the signing of a Prime-Sub agreement (also signed by DOCPER), specifying the subcontractor's responsibility to abide by Article 72 and its implementing agreements. See the template for this agreement on the Forms page at http://www.eur.army.mil/g1/content/CPD/docper/docper_germanyLinks.html?tab=2&framepage=docpergermanyforms.html#top (Form 10). In addition, there is a practical limit of 15-20% of subcontractor employees to overall contractor employees. A subcontractor employee may, however, be authorized even if he/she the sole employee under the combined prime/sub effort.

Under Article 72, Troop Care and Troop Care IT, no subcontractors are allowed.

(18) Why does the DOCPER ask for the number of non privileged personnel working under a contract?

The questions asked by DOCPER through DCOPS are required in order to gather the information necessary to populate the contract notification form, AE 715-9A (enclosure 1 to AE Regulation 715-9). The purpose of AE 715-9A is to aid both the German and American side in the review process by providing summary level information. The requirement to provide numbers of contractor employees is not new and stems from the Exchange of Notes implementing Article 73 of the NATO SOFA SA. Para 3.a. states:

"As early as possible during the acquisition process for a contract whose performance is likely to require the employment of a technical expert, the responsible authorities of the U.S. Forces shall notify the responsible authorities of the Land concerned of the nature and scope of the work the technical experts are expected to undertake. Such notification shall contain information as to the nature of the work to be performed by the contractor, at what locations in Germany the contractor is to operate, how many of its staff are to be employed at such locations as well as how many are to be employed as technical experts pursuant to Article 73 of the NATO SOFA SA."

Similarly, the requirement to provide the numbers of technical expert and non-technical expert employees to the German authorities is also referred to in guidance provided by the Director, Defense Procurement, Office of the Under Secretary of Defense, in a Memorandum for Directors of Defense Agencies, dated May 22, 1998. Paragraph 4.a.(4) Pre-solicitations states:

"Requests for Approval of TCP [troop care provider] and/or TE positions, and paragraph 6 a.(7) reads notification shall include: total numbers of employees (including TCP/TE personnel) to be employed at each location."

In general, the Laender are interested in shifts in non-TE vs. TE positions. Thus, a shift in a follow-on contract between non-TE vs. TE positions may draw their attention. Also, the subject is sometimes raised in the context of "senior" level jobs without any corresponding "junior" level jobs or, if the job description calls for non-TEs to report to TEs, then in the context of "too many chiefs and not enough Indians." If your contracts specify non-TE jobs, these should clearly be identified. Basically, the information on the AE 715-9A contract notification form should track with the information provided in the contract documentation.

(19) If we, as a contractor company, choose to hire non-accredited personnel (or individuals otherwise without independent status under NATO SOFA), what is our obligation to submit paperwork to DOCPER and in what format?

None. Contractors do not need to contact DOCPER unless NATO SOFA status for a contracted employee is desired. You, as a contractor company, may have obligations

associated with German labor and tax law, however, so we would strongly encourage you to seek guidance from corporate legal counsel when hiring individuals who will not have independent status under NATO SOFA.

(20) When a contracted employee has received SOFA status under a particular approved position, can they also perform work under a different position?

There are certain types of "other" work that may jeopardize a contracted employee's tax exempt status, as well as his or her entitlement to accreditation under the NATO SOFA SA. First of all, the contractor is required to work a minimum of 20 hours per week in order to be eligible for status accreditation. It must be remembered that SOFA status for contracted employees is always associated with a specific approved position under a specific approved contract. Therefore if an individual performs work that is billed to a different contract, or even to a different labor category under the same contract, their tax exempt status and their accreditation under the NATO SOFA SA may be at risk. It must also be remembered that contracted employees who have received NATO SOFA status must exclusively serve the US Forces in the context of his or her accredited status. "Moonlighting" of any sort, therefore, may jeopardize a contracted employee's tax exempt status. No additional employment outside the US Forces (nor self-employment) is permitted.

There are also some types of "other" work that can reasonably be performed by an accredited contractor employee. Very short term assignments and projects that fall outside of the duties of the approved position should not put an individual's tax exempt status or entitlement to accreditation under the NATO SOFA SA at risk. This is because the individual's principal duties remain those of the position under which he was approved. Again, a contract employee must exclusively serve the US Forces. In addition, income earned through non-privileged employment within the US Forces may be subject to German taxation.

(21) Can contracts and individual applications be processed by DOCPER at the same time?

Individual applications can be received and processed by DOCPER as soon as the contract has been approved by DOCPER. Individual applications that fall under Article 73 may (under the military exigency clause) be approved unilaterally and conditionally before the German authorities have completed their review of the contract. Individual applications that fall under Article 72 may be reviewed by DOCPER, but will only be sent to the German authorities for their approval after the contract had been approved through the German Foreign Office in Berlin.

[Back to Top](#)

Applicant-Related Questions

General

(22) Does the agreement reached with the Germans require that all aircraft mechanics have either an Airframe & Powerplant (A&P) or Federal Communications Commission (FCC) license?

No. The agreement reached on 3 May 2000 between the U.S. Forces and the German authorities was a specific compromise that addressed only tactical (helicopter) aircraft mechanics, excluding inspectors and crew leaders.

The A&P or FCC license is required for tactical aircraft mechanics seeking TESA. Although the compromise was made in the context of specific contracts, the German authorities have applied the same licensing requirement to follow-on contracts.

The agreement requiring either an A&P or FCC license does not apply to mechanics of fixed-wing aircraft. Nevertheless, the German Laender have generally not approved fixed-wing mechanics who did not have either an A&P or FCC license.

In early 2002, however, some fixed-wing mechanics holding non-destruction inspection (NDI) certifications were granted TESA, after DOCPER discussions with Laender officials. Personnel qualified and certified under National Aerospace Standard (NAS) 410, "NAS Certification and Qualification of Nondestructive Test Personnel" (May 1996) and holding appropriate proof of current certification are likely to be approvable for TESA. The NAS 410 standard establishes minimum qualification and certification of personnel for non-destructive testing (NDT), non-destructive inspection (NDI) and non-destructive evaluation (NDE).

(23) Are there minimum education and experience requirements in order for a TE job description to be approved under Article 73?

The bilateral agreement with Germany does not establish minimum requirements for accreditation of TE's. In 2005, however, DOCPER established an internal policy regarding baseline education and experience requirements for TE job descriptions to be approved under Article 73. This policy was based on DOCPER's experience with various positions submitted to the German authorities and it was established in order to both (1) "lock in" the precedents established through our interactions with the German authorities, and (2) to prevent the possibility that one vendor might gain a competitive advantage over other vendors by the successful approval of a job description with lower (less expensive) education and experience requirements.

Here are the guidelines we work under:

A Technical Expert should have:

- A bachelor's degree plus 3 years of recent specialized experience, OR;
- An associate's degree plus 7 years of recent specialized experience, OR;
- A major certification plus 7 years of recent specialized experience, OR;
- 11 years of recent specialized experience

Please note that experience must be related to the position in question in order to be considered "specialized." General experience usually plays no part in gaining TE status. In this baseline, education is exchanged for experience on a 1:2 basis, therefore an associate's (2 yr.) degree requires 4 additional years of experience over what is required for a bachelor's (4 yr.) degree.

It is important to understand that there are qualifications for the job, and then there are qualifications necessary to obtain NATO SOFA status. For all parties concerned, things work for the better when the two sets of qualifications coincide. DOCPER does not -- and never does -- tell anyone who they must hire. But whether that contractor employee gets SOFA status (i.e., treated like a member of the civilian component) is a separate issue resolved under our bilateral agreement with Germany.

For status accreditation purposes, a major certification is considered to be the equivalent of an associate's degree. There are, however, a limited number of certifications that DOCPER considers to be "major." In order to be considered a major certification, the certification must pass a three part test: (1) it must be widely recognized; (2) it must be independently administered; and (3) it must be difficult to obtain. Examples of major certifications would include:

- 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

The list is current as of Dec 2011. The list is generally updated through our annual conferences (see PowerPoint slides on "Changes and Updates" on the DOCPER web site.)

(24) Why doesn't DOCPER deal directly with contracted employees or with contract Program Managers? Also, why do DOCPER staff sometimes seem reluctant to answer questions on the telephone?

AE Regulation 715-9 details the duties and responsibilities of CORs with respect to the status accreditation process. The direction given in that regulation and given in the Federal Acquisition Regulation (FAR) is meant to ensure that DOCPER does not and cannot preempt the role of the COR. DOCPER is not delegated authority by contracting officers to provide direction and guidance to vendors or their employees. Because DOCPER is not given and does not seek such authority, it is very important that DOCPER work through the COR as he or she is delegated appropriate authority from the contracting officer.

On the issue of providing guidance by telephone, DOCPER prefers to have a written record of information provided to CORs and others. Telephone conversations leave no lasting record of information requested or shared, and are more subject to varying interpretation than written correspondence. Accordingly, DOCPER prefers email correspondence through the COR.

(25) Why do CORs and vendors need to check to see if an applicant the vendor wishes to hire is on a "bar" list?

In times past, installation commanders maintained a list of individuals that had, for one reason or another, been barred from a particular installation. This list was simply referred to as the "bar" list. It is more common today for an individual to receive a bar letter than to be placed on a bar list, but the effect is the same. The identification and privilege cards issued as the result of status accreditation provide general physical access to a wide range of installations and facilities. For this reason, DOCPER cannot provide status accreditation to individuals that have been barred from one installation or another. It is the responsibility of the vendors and the associated CORs, not DOCPER, to ensure that they are not hiring an individual who has received a bar letter.

(26) Can we resubmit individual applications that have been rejected or denied by DOCPER and, if so, how?

Individual applications are generally rejected by DOCPER because there are deficiencies in the applicant information provided in DCOPS, or with the required supporting documentation. DOCPER staff should provide a list of those deficiencies when the application is rejected. Once the deficiencies have been corrected, the application may be resubmitted to DOCPER for review and approval.

(27) How many hours does a contracted employee have to work to be considered eligible for ILS?

AE Regulation 600-700 defines a full time employee as "An employee who works 20 hours or more a week in a paid status." A civilian employee must therefore work 20 hours or more per week in order to be eligible to receive ILS. DOCPER will apply the same standard to contracted employees applying for NATO SOFA status. It should be noted, however, that under the requirements of the Exchange of Notes a contracted employee accorded NATO SOFA status must exclusively serve the US Forces. No additional employment outside the US Forces or self-employment is permitted.

(28) I want to work as a TE. Do I need an ID card as a TE? As retired military, can't I use my retired Military ID card to gain entrance to the PX, Class VI, and Commissary?

As a US military retiree you are eligible for limited ILS, but you are not eligible for status under NATO SOFA. You may use your retired military ID card to gain access to the PX, Class VI and commissary, but if you do not have status under NATO SOFA, taxes will be due on any purchases made there. Retirees who are in, or will be in, Germany in excess of 30 days may obtain an authorization (customs "card") from the Zollamt (local German customs office) to make purchases at US tax-free facilities and pay the customs fees/taxes at the Zollamt every 30 days (once per month).

A military retiree who has received NATO SOFA status in a TE, AS, or TC position is eligible for full ILS, including certain tax and customs exemptions. Most importantly, income from employment as a contractor with NATO SOFA status is generally tax-exempt in Germany.

(29) Can I apply for TESA status while I am on terminal leave?

Yes, you may. You cannot, however, have dual status as both a member of the military and as a TESA/ASSA - approved contractor. DOCPER will therefore not knowingly issue a DD 1172-2 to an approved individual on terminal leave until we have verified via their DD-214 that they have separated from the forces. If you have accepted a position with a US contractor in Germany, you should apply for status immediately. You should also immediately request to have your DD-214 issued. You may upload a copy of your DD-214 into DCOPS yourself, or you can provide it to the COR at your sponsoring agency. Once you have been approved, DOCPER will issue a DD 1172-2 valid on the day following your separation date.

(30) When a new application is created in DCOPS, the COR or PM is asked to provide a start date and an end date. Which dates should be entered into those fields?

It is expected that an individual will begin working under an approved contract only after their individual application has been approved. The start date should therefore be the date it is estimated that an individual applicant will be approved and begin work. DCOPS will not allow the start date to be entered as a date in the past. The end date should be the end of the contract.

(31) Why does DOCPER require that an individual applicant provide a local German address?

This requirement is taken directly from the Exchange of Notes pertaining to Articles 72 & 73. According to the Exchange of Notes, full status can only be provided after an individual applicant has provided a home address in Germany. Since it is expected that an individual applicant will receive approval prior to beginning work under an approved contract in Germany, DOCPER allows as much as 120 days of conditional status in order to allow time to establish a residence. If an individual applicant has not established a residence within 120 days of conditional approval, or even if the German address has simply not been provided, DOCPER may terminate the individual's NATO SOFA status and demand that the individual surrender their identification and privilege CAC. When such action is taken, it is to ensure that the US Forces remain in compliance with the Exchange of Notes.

(32) My company sent me, my family and household goods to Germany, but customs won't release my belongings unless I can demonstrate NATO SOFA status. What do I need to do in order to get my belongings released?

A contracted employee receives NATO SOFA status upon approval of their individual application and not before. Contracted employees should therefore seek to be approved prior to their arrival in Germany. By doing otherwise, the company and individuals assume significant risk.

(33) I've been told that the resume I submitted with my application is insufficient. What type of resume is required for TESA?

The resume submitted to DOCPER with an individual application is used to determine whether the applicant is qualified according to the education and experience requirements on the approved job description and it is also used to help DOCPER determine whether the applicant is ordinarily resident. Remember that the resume submitted to DOCPER is not used to make a hiring decision, but is used instead to

make a status accreditation decision. Very often the resume used to make a hiring decision will prove inadequate when it comes to status accreditation.

In general, the resume should go back 15 years or the entire work history, whichever is less. If the work history starts with time spent in Germany, the applicant should go back further as necessary to a time when they were not in Germany. Likewise, if 15 years is insufficient to show that the applicant meets the requirements in the job description, the applicant should go back further, as necessary.

The following additional tips will help to produce a resume that meets the needs of the status accreditation process:

- The resume submitted to DOCPER should be in chronological order with no gaps of time.
- Dates of employment should include both month and year.
- The resume must clearly state where the duties of a particular job or position were performed.
- The duty descriptions should be detailed and include a description of what work was performed, but please note that in the duty description the complexity of the equipment is not as important as what an individual does with the equipment.
- Active-duty military work should be clearly distinguished from civilian employment, and should include the military rank and, if applicable, the date of separation.
- Any positions where an individual had NATO SOFA status should be clearly distinguished from other types of positions.
- Education and relevant training must be included.
- Partial or anticipated degrees should not be listed.

(34) How can a person with several years serving in a job designated as TE be denied as a TE when serving in that same job?

Under the Bottom-Up Review (BUR), some individuals were denied on qualifications, but the position they occupied was not denied. In such cases, the Laender tax officials believed that the incumbent did not have the characteristics of a TE under the Exchange of Notes, yet believed the position itself was a TE position. In general, if all the jobs under a particular position description are occupied by individuals who do not have the experience and education of a TE, as described in the Exchange of Notes, the position itself will not be determined as a TE position, regardless of how the position description is written. In a few cases, however, a position was not denied under the BUR, even though most of the incumbents were denied on qualifications.

(35) Is salary a factor for TESA?

Salary is not a factor in and of itself, but in evaluating the total circumstances, Laender tax officials may be influenced by higher salaries in the consideration of whether a

position is a TE position.

(36) Are there any published rules with enough definition to allow contractors to predict accurately whether a job description or an individual applicant will be TESA approved?

Yes, although the amount of guidance available varies by the type of status accreditation being requested. For TE positions approved under Article 73, the only published guidance concerning jobs and qualifications is found in the Exchange of Notes itself and here in the DOCPER FAQs.

For TC positions approved under Article 72, the published guidance is available in the Exchange of Notes, 27 March 1998, which (together with amendments) list the approved TC positions. (For a complete list of TC positions, see http://www.eur.army.mil/g1/content/CPD/docper/docper_germanyLinks.html?tab=1#Guidance.)

For IT positions approved under Article 72 (so-called TC-IT positions), published guidance is only available on the DOCPER web page. All IT position descriptions submitted to DOCPER must have education and experience requirements at no less than the level defined in the published guidance. Positions requiring less education and experience than the level defined in the published guidance will be denied and returned to the COR.

For AS positions approved under Article 72, published guidance is available in the Appendix to the Exchange of Notes (Article 72) Analytical Support Services, which is available on the DOCPER web page. (See http://www.eur.army.mil/g1/content/CPD/docper/docper_germanyLinks.html?tab=1#Guidance.) All AS position descriptions submitted to DOCPER must have education and experience requirements at no less than the level defined in the published guidance. Positions requiring less education and experience than the level defined in the published guidance will be denied and returned to the COR.

Individual applicants are not measured against a published standard, but are instead measured against the experience and education requirements found in the position descriptions approved with the contract.

(37) Two people apply for and receive TESA under an approved position title. Two more apply and are denied by Germans based on qualifications but are hired by the company as non-TEs because they can do the work. Are all positions now jeopardized?

Not necessarily. As described, the individuals were submitted through the TESA process and denied by the Laender. The company, on its own, then decided to hire

these individuals as non-TEs. By doing so, the company is making a statement that it believes these individuals are fully qualified, despite the denial of TE. If, however, the company persists in hiring denied TE applicants, the established pattern could erode the TE status of the position itself. DOCPER does not appeal the denial of TE status for an applicant for a position that has been "approved" as a TE position, if: (1) the denial is based on the applicant's lack of qualifications, and (2) DOCPER agrees the applicant (though perhaps meeting minimum qualifications) is weaker than previous applicants. Continued submission of weak applicants for an approved job category puts the position at risk, suggesting that if lower-qualified people can do the work, the work may not require a TE.

(38) Can a non-US citizen receive TE/AS/TC status?

Yes. Under both Articles 72 and 73, U.S. citizens and citizens of other NATO nations, except Germany, may be granted NATO SOFA status.

(39) Does the resume I submit to DOCPER need to include my entire work history?

Not necessarily. DOCPER provides the following guidance regarding how far a resume should go back:

--Normally a resume should go back at least 15 years, or back to your last time as a full time student, whichever is less. Also, you should ensure that your resume goes back far enough to establish your qualifications for the position for which you are applying.

--Your resume must go back to, at the very least, your last position outside of Europe, not including deployments or TDY. This is true even if that requires more than 15 years of work history. DOCPER reserves the right to ask for a longer work history in the resume if it is felt necessary for any reason.

[Back to Top](#)

Military Exigency

(40) DOCPER has relaxed the requirements for submitting a "military exigency" (ME) request. That's good, but why the change?

DOCPER sent out an e-mail to CORs in Sep 07 changing policy with respect to the granting of immediate status on the basis of military exigency (ME requests). The main points of that e-mail are reiterated below:

--Written ME requests will no longer be required. DOCPER will accept ME requests made directly by the COR. DOCPER will no longer track the number of ME requests associated with any particular contract or organization.

--As a general rule, DOCPER will in issue 1172-2s to those ME-approved individuals for 3 years or the useful life of the contract, whichever is less. DOCPER reserves the right to issue 1172-2s for periods of less than 3 years when deemed necessary by DOCPER staff.

The reasons for the change are based largely on greater efficiencies achieved through the DOCPER Contractor Online Processing System (DCOPS). Overall processing efficiency has reached the points where the number of MEs no longer appeared to affect the speed at which DOCPER processes non-ME applications.

In addition, no German office has denied an applicant for whom DOCPER has approved a ME for several years. Accordingly, the risk of disruption of the military mission and to the life of the contractor employee himself that would be occasioned by the denial of a ME by German authorities has become negligible.

Broadened use of MEs allows DOCPER a convenient mechanism to adapt to the complexity and variety of various contract instruments (e.g., Indefinite Delivery/Indefinite Quantity multi-vendor contracts). The use of the ME will generally mean that how long it takes to approve a contractor employee is no longer a function of the complexity of the contract.

DOCPER will work to approve ME requests within 5 working days of complete submission.

Troop Care (TC) and TC Information Technology (TCIT) remain unavailable for ME requests. DOCPER will only approve ME requests that have near certainty of bilateral approval.

(41) I was granted a Military Exigency by DOCPER and my company sent me, my family and household goods to Germany. However, I was subsequently denied TESA.

Under a "Military Exigency", TESA is conditional and requires the concurrence of the German authorities. DOCPER only forwards strong candidates as Military Exigencies. Sending more than the individual to Germany (vs. family and household goods) is a risk assumed by the contractor and not an action recommended by DOCPER.

(42) Why does DOCPER issue TESA for a Military Exigency (ME)? Why cannot a General Officer issue TESA under the ME provisions?

TESA or ASSA accreditation under a ME is still TESA/ASSA accreditation, albeit conditional and unilateral, and thus falls under the DoD Executive Agent responsibilities of DOCPER. As the DoD Executive Agent for the status accreditation of contracted employees within Germany, DOCPER alone has ME authority for all DoD components

and agencies. As a matter of internal policy, DOCPER checks with the POC/COR for any ME that DOCPER proposes to deny, whether the proponent for the ME is in USAREUR, EUCOM, AFRICOM, USAFE or other DoD agency.

(43) I was denied for a “Military Exigency” (ME) request, even though I was previously approved as a Technical Expert? Why?

DOCPER will not approve ME requests for individual applicants who are at risk of denial by the German authorities. Risk of denial might exist because of marginal qualifications or, more likely, because the applicant has one or more OR factors. DOCPER will also deny an ME request for an individual that will begin work while on terminal leave from active duty in order to be certain that an individual is not given dual status. DOCPER will not, however, challenge the mission-criticality rationale of a request for a ME.

(44) If an individual is approved for an ME by DOCPER, but then is subsequently denied by the German authorities, what is the person's status during the period worked in Germany?

CORs and applicants are strongly encouraged to remember that the approval associated with an ME request is unilateral, temporary, and conditional, pending notification and consultation with German state government authorities. If the German authorities object to the individual's approval, then the individual is considered to have been in Germany without status from the day of arrival. As long as the individual has been in Germany for less than 90 days, there is no violation of the German work permit laws (assuming the work qualifies for one of the exemptions to the work permit laws) or residency laws.

It must be noted, however, that working in Germany for more than 90 days in a 12-month period without NATO SOFA status places a person in violation of German work permit provisions. Thus if an individual worked under the denied ME and then returned to Germany under a Fax-Back or as a "tourist" to perform additional work, for a total combined total time of more that 90 days during the same 12-month period, German work permit laws would clearly have been violated.

[Back to Top](#)

Ordinarily Resident Issues

(45) Why does DOCPER make decisions on who is or who is not "ordinarily resident" (OR)? That's a call under German law, so why not let the Laender do it?

As a basic proposition, the US Forces determine the composition of its force and its civilian component. The US Forces make an OR determination in every GS and NAF

recruitment action. By agreement with the German government, this proposition has been modified with respect to accreditation of technical experts and troop care provider employees.

It is not in the best interest of the U.S. Forces to concede their role under the Exchange of Notes by leaving OR determinations solely to the Laender tax officials. Implementation of the Exchange of Notes for both Articles 72 and 73 is a bilateral process and it was never intended that the process would become unilateral in any way. The provisions of the Exchange of Notes for both Articles include a definition of OR that is unique to the Exchange of Notes, and less restrictive than the definition that would otherwise be applied under German tax laws. In addition, DOCPER frequently requests reconsideration of Laender determinations of OR. Were DOCPER to concede all OR determinations solely to the Laender tax officials, DOCPER would have no basis on which to request reconsideration. In fact, DOCPER has requested reconsideration on OR determinations and achieved reversal of Laender decisions.

(46) I was approved as a Technical Expert under the BUR, but was determined "ordinarily resident" when I applied for a new job. How is that possible?

Individuals are subject to a new review when applying for a new job or resubmitting a TESA application under a follow-on contract. Each review stands by itself, and the totality of circumstances is again weighed to determine whether an individual has shifted the main focus of vital interests to Germany. It is possible that a change in personal circumstances will influence the weighing of factors in the direction of an "ordinarily resident" determination. It is VERY IMPORTANT to note that those turned down as "ordinarily resident" when applying for a new position lose their privileged status under their old position as well. Thus, even if previously granted status in connection with your current position, a denial on the basis of being "ordinarily resident" when applying for a new position will cause privileged status under the current position to be revoked.

(47) I was determined to be "ordinarily resident" and someone else just like me was not. How is that possible?

Although it may appear that the circumstances are identical, this is likely not the case. Determinations of "ordinarily resident" at the Laender level are very fact-specific, and small variations can be significant. In weighing the totality of circumstances in different cases, a different outcome is possible.

In some cases, however, the rationale for why one individual was found to be OR and another not, is unclear. To the extent possible, DOCPER monitors these differences and asks for reconsideration in cases that fall outside obvious patterns.

(48) Can an individual that enjoys dependent status, for example, as a spouse, be found to be ordinarily resident (OR) when reviewed for full status under Article 72 or Article 73?

Yes. A family-member can be determined OR for purposes of Articles 72 and 73. Such a determination means that the family-member cannot independently qualify for SOFA status as a TE/AS/TC. The family member can still receive SOFA status (ILS) as a dependent, but he or she will not qualify on his/her own.

(49) If an approved TE applies for another job and is found to be OR, how does that affect their current status?

When an individual applies for a new job and submits a new TESA/ASSA/TCSA application, he/she is evaluated as a new applicant. Consequently, in weighing the totality of circumstances, he/she may be found to be OR by the German authorities. If such a decision is upheld, the OR determination applies in all situations (i.e., whether a different German state is involved, and whether or not the individual accepts the job). Thus, if found OR, the individual will lose their current TESA status. Although a separate FAQ states that TESA/ASSA/TCSAs will be good for the length of the contract, this assumes that the individual remains in the same job on the same contract and is not subject to another TESA/ASSA/TCSA review. When applying for a new job -- whether on the same contract or a different contract -- the applicant must expect to be reviewed for OR purposes.

(50) After serving in Germany while on active duty, I went on terminal leave in February 07. I was hired by a contract vendor and began working for them here in Germany shortly after beginning terminal leave. I began working on my TESA application about the time I formally separated from active duty, in June of 07. Unfortunately my TESA package was not sent to DOCPER until mid-October and I was denied status because I was ordinarily resident (OR). I don't see how I can be OR, since I don't have a German wife, a home in Germany, kids, or any other OR factor.

There are two distinct problems here. The first problem is that under the bilateral agreement with Germany, an individual losing status has no more than 90 days in Germany to regain that status as a privileged contractor employee under the NATO SOFA SA. Therefore if an individual who is separating from the forces within Germany has not received NATO SOFA status within 90 days of their separation date, they become OR.

The wording of the bilateral agreement with Germany follows: "Individuals who have been present in the territory of the Federal Republic of Germany as members of the U.S. Forces or its civilian component or as dependents of such members may, within a period of 90 days after terminating their activity as members of the forces or its civilian

component or their status as dependents, commence work as technical experts without being deemed - solely on the basis of this fact - to have become ordinarily resident in the territory of the Federal Republic of Germany within the meaning of Article 73, sentence 2, letter (d), NATO SOFA SA. Hardship cases will be sympathetically considered. Continued privileged status shall, however, only be applicable if the individuals have not become ordinarily resident in the territory of the Federal Republic of Germany within the meaning of Article 73, sentence 2, letter (d), NATO SOFA SA, prior to commencing their work as technical experts."

The second issue is that the individual started working as a contractor employee in Germany prior to applying for TE status. Although the individual still had SOFA status while on terminal leave, until leaving the forces in June 07, he had not been approved as a TE and so his second income was thus taxable by German authorities. The tax exemptions extended to members of the forces under NATO SOFA do not extend to income earned as a contractor employee.

(51) If an individual is determined to be "Ordinarily Resident" in Germany, and returns to the U.S., how long before that person could return to Germany as a "technical expert"?

There is no specific amount of time established in the Exchange of Notes that an individual must spend outside of Germany in order to become not "Ordinarily Resident." Determination of whether an individual is "ordinarily resident" (OR) is based on "weighing the totality of the circumstances to determine whether the individual has shifted the main focus of vital interests from another nation to the territory of the Federal Republic of Germany." The same process would apply in reviewing a TESA/ASSA application from someone previously found to be OR, and now applying from the U.S. The criterion of the "totality of circumstances" would be re-applied to determine if the individual's "main focus of vital interests" had now shifted to the U.S. Length of time in the U.S., while not an explicit factor in the determination of OR in Germany, may well be important as a showing that the "main focus of vital interests" of the individual had now shifted to the U.S. In informal discussions with the Laender, it has been expressed that the total time in the U.S. should be at least two years.

In addition, a contracted employee denied under the BUR because either the job was deemed not TE, or the individual's qualifications were insufficient to sustain the TE status, are also considered "ordinarily resident", since they were in effect working in Germany without TE status during the time preceding their disapproval under the BUR. The "two-year" rule-of-thumb applies to them as well. In addition, those denied under the BUR because of individual qualifications should be able to document further schooling or training that has enhanced their qualifications.

[NOTE: If a person denied under the BUR leaves Germany without resolving any German tax liability that may be due, the German authorities are unlikely to approve the individual for TE status, regardless of the circumstances. DOCPER will not -- and

cannot -- determine whether an individual with a prior tax liability has settled that liability, and will thus forward applications to the German authorities if, under DOCPER's review, the individual is deemed to be eligible for TE status. The German officials, however, have indicated that they will check prior records to assure that tax liabilities of the individual have been settled.]

(52) Why does DOCPER consider an individual that has worked under a German work permit to be ordinarily resident (OR)?

In determining whether an individual is OR, DOCPER and the German authorities rely on the wording of the Exchanges of Notes, which calls for "weighing the totality of the circumstances, whether the individual has shifted the main focus of vital interests from another nation to the territory of the Federal Republic of Germany." The Exchanges of Notes list nine factors that may be considered relevant to determining whether one has "shifted the main focus of vital interests" to Germany. Holding a work permit is only one of those factors, but the weight of that factor is significant as obtaining a work permit is viewed as a declaration of German residency. An individual who has worked under a German work permit has registered with the German government, has been subject to German taxation, and has been eligible for German social benefits. Thus, TCSA/TESA/ASSA applicants who have obtained work permits will be deemed "ordinarily resident" and ineligible for accreditation, unless they have clearly re-established "residency" in the United States (or established residency in another non-Schengen country).

As a general rule, DOCPER's policy is to maintain consistency with USAREUR civilian personnel rules (USAREUR Supplement 1 to AR 690-300.301), which calls for disqualification of any applicant who obtained a German work permit (and subsequently worked in Germany), unless that person had returned to CONUS for at least a year.

(53) We have a dependent of an active duty military member who works 3 months for Ponds Security Service. Because he is the dependent of an active duty military member, he is not required to obtain a work and residency permit, but is required to pay taxes. After working only three months the individual quits and is unemployed in Germany for the next few months then applies for technical expert status. Is he OR? And if so, how can he be OR as a dependent? He has always had status.

It depends on a review of all the facts. Employment on the economy is but one factor that is considered in making an OR determination. Other factors to be considered would include any receipt of social benefits (such as unemployment compensation) and any other factor that would show that the main focus of vital interests has shifted to Germany.

Regarding the second question, having status as a dependent is not inconsistent with

being OR. A German spouse, for example, qualifies as a dependent but he/she is ordinarily resident for German tax purposes.

[Back to Top](#)

Denials and Reconsiderations

(54) Can the Germans reverse prior approvals unilaterally?

The Exchange of Notes established a bilateral process. Thus, reversal of German concurrence on an individual status accreditation means bilateral agreement no longer exists. In the few instances that the German authorities reversed an approval based on newly discovered information or misrepresented facts, DOCPER evaluated the rationale and, when it disagreed, did not concur and requested reconsideration. Since the early 2000's, there have been no approvals unilaterally reversed.

(55) Does DOCPER have a mechanism in place with the German authorities to appeal individual status accreditation determinations? Have there been any such appeals?

Yes, however, the correct term is "request for reconsideration" rather than appeal as the same body that made the initial decision also makes the subsequent decision. Whenever an "objection" is made by a German state to an application requesting status accreditation (TESA/ASSA/TCSA), DOCPER automatically reviews the application in light of the stated reasons for denial. If, after this review, DOCPER believes that status was erroneously denied, DOCPER will request "reconsideration" by the German authorities. If further information is required to support the request for reconsideration, the COR will be contacted and requested to provide additional information. Once the reconsideration package is complete, DOCPER forwards it to the German authorities within a prescribed amount of time (4 weeks). Requests for reconsideration are relatively uncommon.

(56) If a request for reconsideration is denied, is there a next step? Do the Germans have the last word if DOCPER and the German authorities are unable to achieve bilateral resolution?

In the face of objections by the German side, the US Forces may accept the determination or, in an appropriate case, may submit the case to the Consultative Commission. This commission, provided for in the Exchange of Notes regarding the application of Articles 72/73 of the NATO SOFA SA, is co-chaired by the German Foreign Office and the US Embassy, but also includes as members the individual German states (Laender) and the US Forces. Its purpose is to mutually resolve issues of concern and to review implementation of the Exchange of Notes. In cases where the US Forces and the German Laender disagree, either party may request the

Consultative Commission to seek a consensus resolution of the dispute, and issue a written recommendation to the parties. Please note that the Consultative Commission cannot overturn -- and will not deal with -- Laender denial of status for positions or individuals, which are considered tax matters fully within the competence of the Laender.

(57) If an applicant for TESA disagrees with a Land denial of accreditation, what is to stop the applicant from appealing directly to the Land, or hiring a German attorney to discuss that issue with the Land directly?

Nothing stops contractor employees from contacting DOCPER or the appropriate Land directly, if they disagree with DOCPER or Land decisions. But by agreement with the Laender, no information is to be provided by the Laender directly to contractor employees. Instead, all inquiries will be re-directed by the Laender back to DOCPER.

In addition, some individuals who are denied TESA/TCSA retain the services of an attorney to argue that determination. DOCPER is occasionally contacted by such attorneys requesting reconsideration on behalf of the client. In these instances, DOCPER determines whether or not the information provided by the attorney warrants a request for reconsideration. If deemed appropriate, DOCPER generally will forward the information to the appropriate Land.

Difficulty arises when attorneys (generally German attorneys) bypass DOCPER, or are not satisfied with DOCPER's response, and contact the Land directly. Any decision that the Land would make to reverse an earlier decision denying accreditation after negotiations with the German attorney and his client is a decision generated outside the bilateral context of the Exchange of Notes and is thus inconsistent with the intent of the two nations in agreeing to the Exchange of Notes.

In general, when contacted by an attorney, the Land will advise the attorney and his client, the contractor employee, that the bilateral process requires that any requests for reconsideration of status be sent by written request to DOCPER. DOCPER, in turn, will review the request and forward it to the appropriate Land office, either indicating concurrence or, if the additional information does not provide grounds for a reversal of the Land decision, send it to the appropriate Land without endorsement by DOCPER. Thus, any decision to reverse a previous determination remains within the bilateral context of the agreements.

[Back to Top](#)

ID Card/CAC Questions

(58) How long does TESA/ASSA/TCSA accreditation remain valid?

For contracted employees, status accreditation is always directly tied to an approved position under an approved contract. Therefore TESA/ASSA/TCSA accreditation remains valid for as long as the approved individual remains in the same position under the same contract. If the approved individual moves to a new contract, or even to a new position under the same contract, they must re-apply for accreditation. A contracted employee's status is immediately terminated if the contract under which they were approved becomes invalid for any reason.

(59) How does DOCPER determine for how long a CAC/ID card should be issued? And under what circumstances may an accredited contractor receive an Emergency Essential/Geneva Convention CAC?

For the purposes of the CAC/ID card issuance to contracted employees, the maximum length of the card will be 3 years, per MILPER MESSAGE NUMBER 05-058, issued 2 Mar 2005. The relevant section of the message follows: "6. EFFECTIVE IMMEDIATELY, CAC EXPIRATION DATES FOR ALL DOD CONTRACTOR PERSONNEL WILL REFLECT THE CONTRACT VEHICLE END-DATE OR THREE YEARS FROM THE DATE OF ISSUE, WHICHEVER IS EARLIER. DD FORM 1172-2 INSTRUCTIONS STIPULATING THAT CARD EXPIRATION DATES FOR CONTRACTOR PERSONNEL WILL NORMALLY BE THE END OF THE CURRENT FISCAL YEAR OR ONE YEAR (DATE OF ANNUAL CONTRACT RENEWAL OPTION) HAS BEEN RESCINDED. "

Accordingly, DOCPER will no longer limit issuance of ID cards/CACs through the current period of performance (POP), but issue them through the length of the contract vehicle or 3 years, whichever is shorter. This policy makes it even more important for CORs and contract program managers to ensure that terminated employees turn in their ID cards/CACs and that CORs inform DOCPER of those terminations. DOCPER reserves the right to issue CAC/ID cards for less than 3 years as deemed necessary by DOCPER, but such instances are to be a rare exception.

The requirement to submit notifications of exercise of an option year (or, in the interim, a Letter of Intent (LOI) to exercise an option) is still required.

Other ID card/CAC issues identified in MILPERS Message 05-058, 2 Mar 2005:
--DOD contractor personnel deploying to military contingency operations (e.g., OEF/OIF) for less than 365 days do not require -- and are not authorized -- a CIV-GC (for Geneva Convention cards) or a PRIV card in order to obtain in-theater benefits and privileges.

--CIV-GC are limited to "Emergency Essential" contractor personnel, as identified in the Statement of Work (SOW) for the contract (para 7). The message cites (Ref G) DOD Instruction 3020.37, Subject: Continuation of Essential DOD Contractor Services during Crises, which provides in para 6 that DOD components "identify services designated as mission essential in the contract statement of work (SOW)."

--The Contracting Officer (or COR) is responsible for collecting ID cards of terminated contractor personnel and turning them in to the nearest CAC issuance facility. (para 12)

(60) If an individual was approved as a TE but returns to the states to perform the same work (on the same contract and delivery order for the position in Germany), can the person keep their ID card if they return TDY to Germany? Under these circumstances, retaining TESA accreditation seems wise and reasonable. Additionally, if the person were to return to Germany permanently, we wouldn't have to go through the TESA accreditation process all over again.

No, the individual must re-apply for TESA. When the individual applied for and was approved for TESA, the permanent duty station was Germany. Accepting a job in the states negates entitlement to ILS privileges in Germany. DOCPER is required to notify the German authorities of terminations and position changes. Demonstrating this separation from Germany is also important when evaluating circumstances for ordinarily resident determinations. If the individual returns to Germany for a permanent position, a new TESA application is required.

If the person travels to Germany and the TDY is not expected to exceed 90 days in a calendar year, both the TESA/ASSA TDY and fax-back processes are viable options. For a former TE, obtaining TESA TDY approval should not be difficult. ID cards for individuals on TESA TDY are required to be turned in at the end of the TDY period.

(61) We have an individual who will be working in Germany for more than 90 days per year, but their permanent residence is in the states. May an individual be approved as a TE if they are not residing in Germany year round?

Generally, no. Full status can be provided to an individual only if that individual is able to provide a residence address within Germany. For short-term contracted work in Germany, TESA/ASSA-TDY is the preferred method of providing a legal basis for such work. The FaxBack process is also an available alternative. Since both TESA/ASSA-TDY and FaxBack are both limited to 90 days per year, short-term work in Germany exceeding 90 days per year can be problematic. The key consideration is that full status cannot be provided unless an individual applicant has provided a residence address within Germany.

(62) We have an employee who is an accredited Technical Expert, who is also a reservist. He just got activated for Operation Iraqi Freedom (OIF) for 365 days. He's not connected to a Germany-based reserve unit, but to one back in the U.S.

While he's deployed, can his family keep their ID cards, and still get ILS? How about DoDDS?

The short answer is that the dependents get to keep the ID cards -- and ILS support. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides certain rights and benefits to which the activated reservist is entitled (e.g., return rights to his job, etc.) The question arose in 2004 whether USERRA's protections might conflict with the intent of Article 2, paragraph 2(b) of the Supplementary Agreement to the NATO SOFA. Article 2, paragraph 2(b), states that "should a member of a force or of a civilian component die or leave the Federal territory on transfer, the dependents of such member ... shall be considered to be ... dependents ... for a period of ninety days after such death or transfer....." In other words, if mobilization constituted a "transfer" out of Germany, ILS would end in 90 days.

This provision does NOT apply to a mobilized reservist. HQ USAREUR asked and got confirmation in Jun 04 from the Bavarian State Chancery and the German Foreign Office that a mobilized reservist: "has not been transferred but merely temporarily deployed This constitutes a qualitative difference, which does not justify the application of Art. 2 paragraph 2 letter b NATO SOFA SA because a deployment regularly involves ties to the previous duty station."

The company of the activated contractor employee should, through the COR, provide to DOCPER a letter acknowledging that the company has put the contractor employee on Mandatory Mobilization Leave, and that he has a job when he returns. In order to avoid questions related to continuation of dependents in DoDDS schools, it may also be advisable for the company to explicitly state that any payments to DoDDS for schooling will be continued while the contractor employee/reservist is deployed.

(63) We have a TE who is also a reservist being called up. We need to replace him while he's on active duty. How do we do that?

Contractor employees who are also Army and Air Force reservists may be called to active duty. In such situations, when the reservist intends to return to the TE/TC/AS position and a temporary replacement is needed, the COR should notify DOCPER of the (1) name/position of the reservist, (2) the likely amount of time the replacement will be needed, and thus how long TE/TC/AS status is needed (usually the amount of time the reservist will be called up, plus 30 days for transition), and (3) the name of the replacement, if known. DOCPER will notify the German authorities of the need, indicating that the U.S. government and the company desire to temporarily backfill the position until the incumbent returns. The incumbent would retain his ID card and privileged status. The German authorities would thus be apprised that any replacements are temporary while the reservists are on active duty.

(64) When issuing an 1172-2, DOCPER populates block 6 (pay grade) with either GSE-12 for the majority of contractors, or GSE-13 for supervisors. Our organization believes that our contractors are equivalent to GS-14s based on all relative factors of pay, position, and level of responsibility. We feel that our contractors should be considered equivalent to GS-14s when deployed and should, therefore, receive field grade equivalent billeting and other logistics support. How does DOCPER determine the GSE grade identified in block 6 on the 1172-2?

The issue of the GSE grade is controlled by DA message R 041007Z MAR 02 to ALARACT, subject: COMMON ACCESS CARD (CAC) IMPLEMENTATION UPDATE, paragraph 11.d., specifying GSE levels. Only one GSE-13 is allowed per contract and that individual is expected to have supervisory responsibilities. All other approved contractors under a given contract will be identified as GSE-12.

[Back to Top](#)

SOFA Stamps, Individual Logistics Support (ILS), and Privileges

(65) What are SOFA letters (NATO SOFA stamps) and who is responsible to authorize them for contracted employees and their dependents?

Contractor personnel in Germany who are accredited by DOCPER as technical experts, analytical support personnel, or as troop care providers under Articles 72 or 73 of the Supplementary Agreement to the NATO SOFA are considered members of the civilian component and therefore enjoy status under NATO SOFA. Article III of the NATO SOFA requires members of the civilian component and their family members to "be so described in their passport[s]." This is accomplished by the issuance of an AE Form 600-77C, Status of Forces Agreement (SOFA) Identification (also known as a SOFA letter, sometimes also incorrectly referred to as a SOFA stamp), that is inserted into their regular-fee (tourist) passport. At the request of an individual contractor employee, a SOFA stamp can be placed in the passport instead. Please note, however, that some countries may not allow entry to US citizens who have passports with the SOFA stamp. Thus, a contractor employee or family member with a stamp instead of the letter will be unable to enter such countries. USAREUR Regulation 600-77 provides further details.

As of 12 November 2008, DOCPER is responsible for authorizing Status of Forces Agreement (SOFA) Identification (SOFA letters or SOFA stamps) for contracted employees and their dependents. DOCPER will automatically generate an AE Form 600-77A at the same time the DD Form 1172-2 is generated, which will include the sponsor and any conventional dependents (spouse and children under age 21) reported in the individual's application for status accreditation. In the case of Members of Household or unconventional dependents, the contracted employee must request a

supplementary AE Form 600-77A through the DOCPER Contractor Online Processing System (DCOPS). In some cases, supporting documentation will be required before DOCPER will be able to make an eligibility determination for Members of Household or for unconventional dependents.

(66) Can a contracted employee receive status under NATO SOFA (and the associated privileges) in any way other than through DOCPER?

There are three (3) articles of the Supplementary Agreement to the NATO SOFA that deal with vendors and/or contracted employees:

a. Article 71 provides that certain non-German, non-commercial "organizations" exclusively serving the Force may be accredited under that article. Under this status, those organizations enjoy special benefits (e.g., exemption from the German regulations governing the conduct of trade and business activities (Handel und Gewerbe); authority to make VAT-free purchases [but only through an official procurement agency of the Force]). Two (2) of those organizations are specifically mentioned in the Protocol of Signature Re Article 71, SA, namely, The American Red Cross and the University of Maryland. Others may be accredited by an exchange of notes verbales (as was done with various other educational institutions, the USO, the United Seamen's Service, spouses clubs, "Military Communities Youth Ministries (MCYM)" and "Overseas Christian Servicemen's Centers (OCSC)" [and their respective "youth divisions" such as "Club Beyond" and "Malachi Ministries"]. Qualified employees of these organizations are treated as "members of the civilian component". DOCPER has no charter to deal with any of these organizations. Entitlements for employees of those organizations are covered by Chapters 7 and 9 of revised AE Reg 600-700.

b. Article 72 provides that certain non-German, commercial "enterprises" exclusively serving the Force may be accredited under that article. Those enterprises (qua enterprises) enjoy special benefits (e.g., the exemptions accorded to a Force by the NATO SOFA and the SA from customs, taxes, import and export restrictions, foreign exchange control to the extent necessary for the fulfillment of their purpose; exemptions from German regulations governing the conduct of trade and business activities (Handel und Gewerbe); and other benefits as may be determined in the exchange of notes). Two (2) of those enterprises are specifically mentioned in the Protocol of Signature Re Article 72, namely, American Express Co., Inc. and Chase Manhattan Bank (Heidelberg). [These "banking facilities" are no longer under contract to DoD.] Other enterprises may be accredited by an exchange of notes verbales (as was done with Community Bank and various Federal credit unions). Until March 1998, the only "enterprises" which were granted status under Article 72, SA were military banking facilities and credit unions. The exchange of the note verbale of 27 March 1998 (authorizing status for "troop care providers") was the first time that an enterprise other than a bank or a credit union was granted status under Article 72. All other attempts to get Article 72 status were rejected by the Foreign Office. In June 2001 an exchange of notes authorized enterprises providing "analytical support services" to request status.

Qualified employees of Article 72 enterprises are treated as "members of the civilian component". DOCPER has a charter to deal only with Analytical Support Personnel and Troop Care Providers under Article 72, not banks or credit unions.

c. Article 73 gives status only to qualified employees of DoD contractors. The contractor (qua contractor) has no status. DOCPER, of course, has a charter to deal with Article 73 employees.

There are other contractors not falling under the SOFA who get logistical support. Examples: DoD contractors exclusively serving the Bundeswehr in relation to Foreign Military Sales (FMS) arrangements. DOCPER, however, has no charter to deal with FMS contractors in Germany.

Further information on ID cards and ILS should be addressed to Military Human Resources at IMCOM – E, the proponent for the governing regulation, AE Reg 600-700. This answer does not address situations in which installation contracting officers in the United States verify eligibility of contracted employees for ID cards (under a joint regulation -- Air Force Instruction 36-3026 and AR 600-8-14.) DoD contracted employees who receive Identification and Privilege Cards from stateside facilities ARE NOT entitled to ILS in Germany unless and until ILS has been approved pursuant to the procedures established in AE Reg 600-700.

(67) Does each country have its own SOFA agreement with respect to technical experts? Where can I find information?

As a starting point, there is only one Status of Forces Agreement (SOFA) for the 28 countries that are signatories to the NATO Status of Forces Agreement. In Germany, the NATO SOFA has been supplemented by an additional international agreement, called the Supplementary Agreement, signed by the Germany and 6 "sending states" (US, UK, Canada, France, Belgium and the Netherlands). The Supplementary Agreement further defines the rights and responsibilities of the sending and the receiving states. In Italy, the U.S. and Italy have signed the bilateral "Shell Agreement" of 1995, which serves to define the rights and responsibilities of the sending and the receiving states (the U.S. and Italy). Outside of NATO, the United States has entered into "stationing agreements" with the host country anywhere US Forces are stationed.

The process in place in Germany since March 1998 for granting accreditation to certain DoD contractor personnel (Technical Experts, Troop Care Support and Analytical Support) is further governed by an implementing agreement (the Exchange of Notes of 27 Mar 1998) between Germany and the U.S. The Exchange of Notes provides detailed information on how the Host Nation (Germany) and one sending state (the U.S.) will implement the provisions of the Supplementary Agreement that pertain to contractor personnel.

DOCPER cannot definitely advise you as to how other receiving states treat contractor

employees/technical experts. It is recommended that you address a general inquiry to the DoD office responsible for civilian personnel matters, and ask them to refer your inquiry to the various commands that have responsibility for civilian personnel in the countries of interest.

(68) Can DoD contractors with Exceptional Family Member Program (EFMP) children get into DoDDs schools and/or access military medical facilities?

For questions regarding access to military medical facilities, please contact the Europe Regional Medical Center EFMP Family Travel Office via email at ermc.efmp@amedd.army.mil in order to determine whether appropriate care and facilities are located in the area to which they are being assigned. A medical screening will need to be completed IAW DoDI 1315.19 and submitted for review.

Additional information is available at <http://www.eu.dodea.edu/enrollment/screening.php>. For more information, please visit the "OCONUS Directory of Services" on the DoDEA website.

(69) Are contracted employees entitled to housing referral services through the local Housing Services Office (HSO)?

IAW AE Regulation 600-700, Chapter 7, DOD contractor personnel in the categories of TE, TC or AS (defined in paragraphs 7-4, 7-5 and 7-6, respectively) are entitled to housing referral services through the local HSO. Other contracted employees may receive limited services such as reviewing a proposed lease agreement, but this is done at the discretion of the HSO and is not to be viewed as an entitlement.

(69) Is the Geneva Conventions card sufficient to provide ILS in Germany?

No. Contractors may be provided with a Geneva Conventions Card (DD Form 489) or similar Identification Card to ensure proper treatment (i.e., protected as POWs) if captured by a force that is a Geneva/Hague Convention signatory. Such a card does not, however, entitle the contractor to ILS within Germany. In Germany, the Exchange of Notes requires that ILS will only be granted to contracted employees that have been accredited through the bilateral process implemented by DOCPER; therefore a Geneva Conventions Card issued outside of Germany cannot authorize ILS for a contracted employee in Germany.

[Back to Top](#)

Termination and Enforcement

(70) Does DOCPER track the revocation of ID cards and the issuance of work permits?

DOCPER does not directly track the revocation of ID cards and logistical support for those denied TESA. DOCPER is not an enforcement agency.

DOCPER does, however, coordinate closely with law enforcement and other organizations whose missions concern appropriate ID card issuance. For example, DOCPER regularly provides information to the USAREUR Provost Marshal Office (PMO), which serves as the US European Executive Agent for customs and tax issues, as deemed necessary.

There are two specific situations under which DOCPER will report loss of status to the PMO in order that appropriate action might be taken.

(1) Resignations and terminations: Those privileged contractor employees who resign, whose contract terminates, or who are terminated from the contract also lose TE/AS/TC status. AE Regulation 715-9 requires CORs to provide "Termination" memos, and to collect the CAC/ID cards when the contractor employee loses status. The PMO is immediately notified if the COR cannot collect the CAC/ID cards held by the contractor employee and/or any family member of the contractor employee. (See termination memo on Forms page). Even if all CAC/ID cards are turned in and accounted for, DOCPER will routinely notify the PMO regarding all terminations over 90 days old, if the contractor employee has not been approved on another contract that confers privileged status. This information will inform the PMO of the resignation/termination, and allow the PMO to confirm that the former contractor employee no longer has the privileges and benefits accorded with SOFA status.

(2) Contractor employee applying for a new position: If the contractor employee is approved for a new position, and DOCPER does not receive a termination memorandum from the previous COR, the contractor employee will show up in the DOCPER database as being "approved" twice. DOCPER is responsible to contact the previous COR in order to request a termination memo. If, after 60 days, a termination memo has not been received from the previous COR, ***DCOPS will automatically suspend access to the contract pending resolution of this outstanding requirement.*** DOCPER will also notify the new (prospective) COR to determine if the contractor employee has accepted the new position. If the individual has not accepted the new position, DOCPER will request from the prospective COR an "Employment Declined" memo (see Forms page). If the new COR indicates that the contractor employee has taken the position, DOCPER will consider the individual to have been terminated under the previous position. If ever a previous COR indicates the CAC/ID card was not collected, and privileges under the new approval would expire before the privileges under the old CAC/ID card, DOCPER will notify the PMO that the contractor

employee may be holding a CAC/ID card that extends privileged status beyond what is currently approved.

DOCPER has neither responsibility for nor will it track requests for/receipt of work permits.

(71) If someone falsifies an application or illegally possesses an ID card, what authority does DOCPER have to act?

DOCPER's role is to implement the Exchange of Notes. DOCPER is neither an investigative nor an enforcement agency. If, however, claims of this nature (i.e., fraud) are brought to the attention of DOCPER, DOCPER will attempt to confirm whether the information is accurate, and if apparent fraud has occurred, turn the information over to the appropriate authority for action. DOCPER cooperates fully with the Provost Marshal's Office, with Customs Officials, and with other enforcement officials in their efforts to curtail abuse.

(72) When contractors finish employment, must SOFA cards also be turned in?

Yes. Both the CAC and the SOFA cards must also be turned in. The contractor employee should make and keep a copy of the CAC and SOFA cards in case he needs to provide information to Host Nation authorities regarding his purpose in the Host Nation. If there is an issue, have German authorities should call IMCOM-E, Mr. Bill Paquin at DSN 379-6516, commercial 06202 80 6516.

In Italy, both the CAC and the "Permesso di SOGGIORNO per Stranieri" must be collected by the COR when the contractor terminates employment/status.

(73) How long can I stay in Germany once I lose my SOFA status?

Without a residency permit, you can stay in Germany for up to 90 days as a tourist. But you will have no logistical support during those 90 days.

(74) How long can I travel in Germany as a tourist without becoming "ordinarily resident" for TESA purposes?

The general rule is that you can travel as a tourist in Germany up to 90 days in a 6-month period. But you must be aware of the "fine print" attached to the general rule.

First, the 6-month period is not divided up by calendar months (Jan-Jun, Jul-Dec), but starts with the day of entry into a Schengen country. There are 26 Schengen countries, roughly congruent with the EU nations, less the United Kingdom and plus Switzerland.

According to the web site of the German Foreign Office (GFO): "Once you have used the full 90 days per half year you have to wait at least three months (calculated from the day on which you left Germany or another Schengen State at your last time) before travelling to Germany or another Schengen state again."

As a US citizen (i.e., holder of a US passport), you may visit all Schengen countries for a total of 90 days in a 180 day (6-month) period without a visa. As the GFO notes, the period of six months starts on the day of entry into the Schengen area. Unless you applied for and were granted a longer time of stay in Germany (or other Schengen country you were visiting), you would have had to stay for 90 days in a country outside of the member states of the Schengen agreement before re-entering a Schengen country."

(75) When a contracted employee leaves a contract on his own accord, or is terminated for cause, or determined to be “ordinarily resident”, are he authorized to retain their valid ID card for a period of time in order to be able to out-process?

AE Regulation 715-9, paragraph 4.d.(5) clearly directs that the COR is responsible for collection and turn-in of ID cards after termination. Generally, DOCPER recommends to the COR that all out-processing be completed and ID cards collected within 15 days of termination or finding or “ordinarily resident.” The 15-day time-frame should provide a reasonable length of time for administrative out-processing. Based on the specific circumstances of each case, the COR may exercise discretion to require that the ID cards be collected at any time between the date of termination and the end of the 15-day period.

(76) When a contract is to expire and there is no follow-on effort planned, can the accredited contractors under the expiring contract be granted an ID card that would be valid beyond the expiration date of the contract in order to facilitate out-processing?

No. Status for contracted employees is always associated with an approved position under an approved and active contract. Without a valid contract in place, neither the COR nor DOCPER is able to generate paperwork for the ID card facility as the contract expiration date is part of the required information. An ID card cannot be issued beyond the expiration date and no exemptions are possible.

[Back to Top](#)

Temporary Duty

TDY: Proper Procedures

(77) What is TESA/ASSA-TDY?

TESA/ASSA-TDY is the name given to a procedure developed by the DoD Contractor Personnel Office (DOCPER) and the German Laender for contractor personnel performing work qualifying under Articles 72 & 73 of NATO SOFA SA in Germany for 90 days or less during a calendar year. Under the TESA/ASSA-TDY procedure, contractors are granted status under NATO SOFA and are therefore eligible for logistical support and applicable tax exemptions. TESA TDY can be used only for employees filling approved positions on approved contracts, i.e., another individual contractor employee must have already been accredited as a TE under the same contract and same job description.

(78) Why is TESA/ASSA-TDY not available for contracted employees working in approved positions under Troop Care provider contracts?

TESA/ASSA-TDY was originally only available for TE positions approved under Article 73 of NATO SOFA SA. On 9 October 2001, Laender officials notified DOCPER in writing that they concurred with DOCPER's proposal to extend TESA-TDY to AS personnel. Both TE and AS work support "the force", and thus the extension of TESA-TDY to AS workers is consistent with the original purpose of TESA-TDY. Troop Care providers, however, serve "members of the force, members of the civilian component and dependents of both" (not just members of the force), and thus TESA/ASSA-TDY procedures have not been extended to TC contracted employees.

(79) May a non-US citizen ("green card" holder) perform work in Germany (up to 90 days) under the "fax-back" procedure?

Yes, in some cases. The fax-back procedure is available for use by citizens of countries under the NATO SOFA SA, excluding Germany. For citizens outside the scope of the NATO SOFA SA, their individual cases have to be discussed with the Bundesagentur für Arbeit - Regionaldirektion Baden-Wuerttemberg. DOCPER does not have a common procedure for citizens in this latter category.

(80) Is there any way for an individual to use the fax-back process for a second 90 day period during a single year?

It is possible; but certain restrictions make it both unappealing and difficult. First, the

duties of the individual must be significantly different during the second period. Second, and more importantly, the individual must apply for a residency permit. More information is available on the DOCPER website under Overview-Guidance>Guidance>Temporary Duty (TDY)>German "Fax-Back" Process.

(81) Is there any way to provide NATO SOFA status to a contracted employee if the individual's primary duty station is in the states but he or she travels to Germany for more than 90 days per year?

Contracted employees who travel to and perform work in Germany frequently (i.e., more than 90 days per year) should apply for full TESA/ASSA. This, of course, requires a successful phase I contract notification and a phase II individual application. DOCPER has submitted such applications on an exception basis and the German authorities have not objected.

(82) Your website says the "fax-back" process is not available for Troop Care providers. Why not?

The specific exemptions under the "fax-back" process generally do not fit Troop Care providers, with the exception of Information Technology (IT) professionals working on systems related to the provision of Troop Care services. There are following specific exemptions based on the Employment Ordinance (Beschäftigungsverordnung - BeschV) and agreement with the responsible office in Stuttgart (Bundesagentur für Arbeit - Regionaldirektion Baden-Wuerttemberg (RD BW)):

(1)Exemption for "senior employees of the contractor who have the authority to legally bind the company in matters concerning which the company executive is visiting company employees in Germany" or "senior employees who have the power of procurement" etc. (Section 4 Employment Ordinance). This could apply, of course, to executives of Troop Care contracting firms.

(2)Exemption for contractor employees "engaged in the setting up, repair or maintenance of facilities or equipment/machinery", "engaged in the installation of computer applications" or "engaged in the updating of software in computer programs" etc. (Section 11 Employment Ordinance). This provision may be applicable to Information Technology (IT) professionals working on systems related to the provision of Troop Care services.

(3)Exemption for miscellaneous work not otherwise covered. Such work could include, for example, training or instruction programs, execution of simulation training, scenarios or tactical-military training exercises and role-playing exercises in the area of tactical and strategic communication systems and equipment. It is the opinion of lawyers within the USAREUR Office of the Judge Advocate that this provision is generally not applicable to Troop Care providers. In some cases, however, the RD BW in Stuttgart

has allowed the use of the fax-back process for services of Troop Care providers as well.

(83) Are contracted employees in Germany under a "fax-back" agreement prohibited from applying for TESA/ASSA status?

The intended use of the "fax-back" provision is to allow work in Germany up to 90 days for contractor employees who are either not targeted for permanent positions, or who will return to the United States prior to submitting a TESA/ASSA application and remain there until the results are known. Based on mission requirements, however, the COR may request via e-mail a waiver to allow a contractor employee to apply for TESA/ASSA status while using "fax-back."

Requiring the COR to request permission for a contractor employee to apply for TESA/ASSA status while using "fax-back" is rooted in the early abuse of "fax-back" provision. Shortly after the "fax-back" process was implemented, it became clear that many companies were using the "fax-back" process as a way to work around the time delays inherent in the status accreditation process. This is not what the "fax-back" process was intended to do, but a large number of companies used it in that way. As a result, the German authorities were inundated with "fax-back" applications and the process was in danger of a complete collapse. Therefore in December 1999, DOCPER informed CORs by e-mail that the "fax-back" procedure cannot be used for individuals awaiting TESA/ASSA determinations. In other words, "fax-back" cannot generally be used as a means to bring individuals over to Germany to commence work while awaiting TESA/ASSA results.

(84) Where can I find information regarding the "fax-back" process such as the maximum allowable time in Germany under the "fax-back" procedure, instructions on implementing the procedure, and how it works?

Detailed information on the "fax-back" process is available on the DOCPER website at http://www.eur.army.mil/g1/content/CPD/docper/docper_germanyLinks.html?tab=5&temporaryDuty. DOCPER is not directly involved in the "fax-back" process, but we provide information as a courtesy for those who are interested.

(85) Is it correct that an individual can be TDY in Germany for a total of 6 months and not be subject to German taxes, as long as each TDY period is less than 3 months?

Even though an individual in Germany (TDY or otherwise) for 6 months or less may not be subject to German taxes due to the double taxation agreement, the Bundesagentur für Arbeit - Regionaldirektion Baden-Wuerttemberg (RD BW) in Stuttgart has stated clearly that a second period of 90 days under the "fax-back" process may only be

granted when the duties to be performed are significantly different from what was approved under the first "fax-back." Furthermore, a residency approval is required if a second period of 90 days occurs. (See the "fax-back" information on the DOCPER website.) An individual could potentially spend 90 days under a "fax-back" and another 90 days under TESA/ASSA-TDY. DOCPER does not, however, recommend that individuals come to Germany pretending to be tourists while actually performing work.

(86) Can the 90-day TESA/ASSA-TDY period be broken into smaller segments (i.e., 3 weeks in January, 3 weeks in May, and 5 weeks in September/October)?

Yes. A separate approval and a new CAC would be required for each instance.

(87) What types of work qualify for a "fax-back"?

Detailed information can be found in the "fax-back" guidelines on the DOCPER web site, but, in general, the RD BW approves temporary work in Germany for periods not to exceed 90 days in a calendar year for:

** Senior employees of the contractor who have the authority to legally bind the company in matters concerning which the company executive is visiting company employees in Germany, such as senior employees who have the power of procurement, etc.

** Employees engaged in the setting up, repair or maintenance of facilities or equipment/machinery, engaged in the installation of computer applications or engaged in the updating of software in computer programs.

** Work in the area of training or instruction programs or the updating of software in computer programs, execution of simulation training, scenarios or tactical/military training exercises and role-playing exercises in the area of tactical and strategic communication systems and equipment.

Please note that a "fax-back" does not confer status under NATO SOFA and therefore contractors with "fax-back" approval are NOT eligible for logistical support.

(88) Are camp counselors eligible for the "fax-back" process?

No. This type of work is not related to work under Article 72 or 73 of the NATO SOFA SA. As it is more closely related to Instructors of Performing Arts, the responsible office for such work permit/exemptions is located in Bonn: Zentrale Auslands- und Fachvermittlung (ZAV), Tel.: 0228/713-0, Mail: ZAV@arbeitsagentur.de .

(89) Regarding the “fax-back” process, in some cases individuals submit a new request, but they are denied because the paper trail indicated they had used their 90 days when, in fact, they had not actually been in Germany at all. Is there any way to cancel or modify a "fax-back" approval if the tasking or circumstances change?

The fax-back process is not administered by DOCPER, and thus we cannot provide a definitive answer. In our discussions with the Bundesagentur für Arbeit - Regionaldirektion Baden-Wuerttemberg (RD BW), they advise that the "fax-back" returned from the RD BW can be noted (in German) with corrections to the time in country, e.g., "change of duties, will only work from (date) to (date)", or "please cancel request". [German terms: "Auftragsänderung, werde nur vom (Datum) bis (Datum) arbeiten", or "Antrag wird zurückgenommen"]. You may also contact the RD BW directly regarding specific cases. In those cases where the paperwork is approved but the individual never works in Germany, you should immediately notify the RD BW about the cancellation of the request. When submitting a subsequent request for a “fax-back”, it is important to note when the individual has been in Germany previously.

(90) If in a calendar year, a person is in Germany for 90 days under the fax-back process, returns to the states, then returns to Germany as a bona-fide tourist for another 90 days, does that person require a residency permit on the 91st day even though the visits were for different purposes?

Yes, the person needs a residency permit before entering the country on the 91st day. It does not matter whether the person has been here as a tourist or working under "fax-back" during the first 90 days period. Even a tourist would need a residence permit if staying longer than 3 months in a 6-month period, starting with the first day of entry into Germany.

(91) Prior to traveling to Germany, what do contractors who are attending meetings or vendors who are soliciting business need to do? Is the "fax-back" process appropriate in these cases?

Contractor personnel who plan to travel to Germany to attend meetings or solicit government business are not considered to be performing "work" as contemplated by paragraph 7 of the "Sozialgesetzbuch" (Social Law Book) Number IV. Therefore, the German Work Permit Ordinance (GWPO) does not apply and these contractor personnel need not obtain an exemption from the GWPO through the "fax-back" procedure.

[Back to Top](#)

TDY: Improper Procedures

(92) Is individual logistical support (ILS or base privileges) available through a clause in a contract: e.g., a clause stating that contracted employees may be authorized with the prior approval of the overseas component commander?

No. International agreements take precedence over contract clauses; therefore this type of contract clause is not valid in countries, such as Germany, where ILS is restricted by international agreement. In Germany, the Exchange of Notes requires that ILS will only be granted to contracted employees that have been accredited through the bilateral process implemented by DOCPER.

(93) Can contracted employees receive individual logistical support (ILS) in Germany through Area Clearance Letters, Invitational Travel Orders, Letters of Accreditation, or other similar documents signed by a Contracting Officer or a Commanding Officer?

No. International agreements take precedence over Area Clearance Letters, Invitational Travel Orders, Letters of Accreditation, or other similar documents regardless of who has signed them; therefore such documents are not valid in countries, such as Germany or Italy, where ILS is restricted by international agreement. In Germany, the Exchange of Notes requires that ILS will only be granted to contracted employees that have been accredited through the bilateral process implemented by DOCPER.

(94) Can contracted employees receive individual logistical support (ILS) by obtaining Theater Clearances (which specify that ILS is authorized) from the overseas command cognizant of the unit where the work will be performed?

Theater Clearance is required before DoD personnel may visit US installations in Germany, but Theater Clearance is not required for contracted employees. In the case of contracted employees, either status accreditation or a FaxBack agreement may serve as the equivalent of Theater Clearance. It is important to note that a FaxBack agreement does not confer status under NATO SOFA and therefore a contracted employee in Germany under a FaxBack agreement may not receive ILS. In Germany, the Exchange of Notes requires that ILS will only be granted to contracted employees that have been accredited through the bilateral process implemented by DOCPER; therefore a Theater Clearance cannot authorize ILS for a contracted employee.

(95) Can identification and privilege cards for contracted employees that will be working in Germany be issued by an ID card facility in the states?

No. For a contracted employee an identification and privilege card confers status under

NATO SOFA. Since stateside ID card facilities are not authorized to grant NATO SOFA status within Germany to contracted employees, they have been instructed not to issue cards that would incorrectly confer such status.

(96) Can contractors be issued identification and privilege cards in Germany if just passing through to another destination such as Macedonia, Bosnia, Iraq, or Afghanistan?

No. Identification and privilege cards may only be issued to DoD contractors in Germany if the individual has been accredited through the bilateral process managed by DOCPER. All of the ID card facilities in Germany are instructed to not issue an identification and privilege card unless the contractor has an 1172-2 signed by a member of the DOCPER staff. Contractors in route to Iraq or Afghanistan from the U.S. should generally be processed through the CONUS Replacement Center. Contractors who require an identification and privilege card for installation access downrange, but who are not in route from the U.S., may receive an identification only CAC in Germany. They can then receive an identification and privilege card once they have arrived at their destination downrange.

(97) Are some forms of individual logistical support (ILS) available to non-Technical Expert, non-Analytical Support or non-Troop Care contractors in Germany?

As a general rule, no. The subject of ILS for contractor personnel is governed by Army in Europe Regulation 600-700. The regulation states that ILS is authorized only for technical experts under Article 73, SA, and employees of enterprises or organizations granted status under Articles 71 and 72, SA, including Analytical Support and Troop Care providers under Article 72, SA. There is no authority for limited ILS.

There are two exceptions: (1) Purchase of food from base facilities, food courts, or vending machines is allowed if consumed on the premises. (2) Use of certain facilities or conveniences that have no tax or customs ramifications and would not require an amendment to Army in Europe Regulation 600-700 (subject to the approval of the local military community commander, and assuming space is available and access to the installation is permitted):

- Attendance at religious services at military chapels.
- Access to chaplains for counseling.
- Use of the housing referral office to find rental property.
- Participation in intramural sports.

(98) Are Invitational Travel Orders (ITO) valid in Germany for contracted employees?

No. Changes to the Joint Travel Regulation effective 1 Oct 99 preclude the issuance of ITO to contractor employees (para C6004). These individuals are to be provided a "Contractor Letter of Identification" instead. It must be noted that Letters of Identification, Letters of Authorization, travel orders, Synchronized Deployment Operational Tracker (SPOT) orders, etc., are not able to authorize the exercise of privileges by contracted employees within Germany. Privileges such as access to the PX/BX, access to the commissary, and the use of AAFES gas stations are associated with NATO SOFA status. NATO SOFA status is not automatic for contracted employees and can only be granted through the bilateral process managed by DOCPER.

[Back to Top](#)

Article X, “Yellow Cards” and the “6-Year Rule”

(99) What happened to Article X?

During 2005, two Article X cases were presented before the highest German tax court.

- In both cases the findings were considered favorable to the US Forces.
- In both cases there was clear direction given that any single “ordinarily resident” (OR) factor was insufficient for taxation under Article X
- In both cases it was made clear that demonstrable, documentable intent to return to the States was sufficient to preclude taxation under Article X

The number of Article X approvals has decreased over time, as a result of the decisions of the highest German tax court. From an average of 35/year from 2004-2006, Article X decisions dropped to 6 in 2007, and none (of which we are aware) in 2008 and the out years.

The decisions of highest German tax court emphasized the intent of the contractor employee to return to US. It would appear from the wording of the decisions that intent should be expressed:

- In a year-to-year fashion, i.e., continually re-enforced
- In writing, e.g., Intent should be expressed in written form, such as a lease provision for a lease you have on your home in the U.S., and in a lease you have with a German landlord.

(100) What are “Yellow Card” approvals, and what do they mean?

A “Yellow-Card” or “Last Chance” approval is a decision made by the German authorities that the individual may receive NATO SOFA status this last time, with the understanding that they will likely be denied on a subsequent application. The usage of the term “Yellow Card” is analogous to its usage in soccer (football), indicating that the next penalty or foul will result in expulsion from the game.

A “Yellow-Card” approval reflects the opinion of the German officials that the applicant’s “main focus of vital interest is in Germany”, but that the applicant will be allowed to retain NATO SOFA status through the current contract.

The typical language used by the German side generally includes the following:

“The decision to not consider him ordinarily resident in the meaning of Art. 73 sentence 2d NATO SOFA SA in conjunction with subparagraph 2f cc) and gg) of the Note Verbale re Art. 73 NATO SOFA SA was made in favor of the applicant and his family after putting aside considerable doubts.”

“Please inform (name) that he cannot rely on another positive decision should he submit another application based on the situation above.”

A “Yellow-Card” approval allows an individual sufficient time to either make a graceful exit or to transition to full German residency. It constitutes advance notice that a denial would be the likely result of any FUTURE applications.

DOCPER does not seek to rebut a “Yellow Card” approval, since it is, after all, an approval. The alternative is a denial as “ordinarily resident.”

The German authorities will use “time alone” as a factor for a “Yellow Card” approval. Unbroken time in Germany in excess of 20 years, even when the time prior to obtaining NATO SOFA status as a contractor was spent in the military or as a DoD civilian employee, will generally result in a “Yellow Card” approval.

In general, the “Yellow Card” generally means that the applicant cannot rely on another positive decision under the same circumstances. But the “prima facie” evidence that the applicant’s “main focus of vital interest is in Germany” may be rebutted on a subsequent application that provides additional evidence that Germany is not – or no longer -- the main focus of social and societal relations.

DOCPER believes the “yellow card” approval represents a reasonable and compassionate response to cases in which the circumstances of a previously-approved contractor employee point toward a shift in the person’s main focus of vital interests to Germany.

If an applicant who has previously received a “Yellow Card” re-applies for NATO SOFA status as a contractor, the applicant should be prepared to demonstrate to DOCPER and the German authorities why he should not be determined to be “ordinarily resident.”

(101) Will a “Yellow Card” lead to taxation?

No definitive answer can be supplied regarding receipt of a “Yellow Card” and the possibility of taxation of the individual by the German tax authorities. In general, however, those receiving a “Yellow Card” should assume that the German tax authorities will attempt to tax the individual if he again applies for NATO SOFA status after receipt of a “Yellow Card.”

It is useful to keep in mind the following:

- The authorities of the German states responsible for the status accreditation process (hereinafter, “accrediting authorities”) are not acting as tax or fiscal authorities (hereinafter, “tax authorities”), but exclusively work the special process under the Notes Verbales implementing Articles 72 and 73 of the NATO SOFA SA. In this capacity, they are under the control of the highest authorities of the Land (state chancellery or ministry).
- The German tax authorities are bound by the decision of the accrediting authorities for Articles 72 and 73 of the NATO SOFA SA, and thus must respect those decisions. The tax authorities are, however, within their rights to review the issue of a potential tax liability of the applicants under Article X (1) NATO SOFA, which determination is different from the determination made under Articles 72 and 73 of the NATO SOFA SA.
- The test for imposing taxes under Article X NATO SOFA is a showing that the individual is NOT in Germany to “solely” to support the Force. The test for establishing that an individual is “ordinarily resident” (and not eligible for NATO SOFA status) is much stricter: it must be determined by a review of the totality of circumstances that the individual “has shifted the main focus of vital interests” to Germany. Thus, the reviews for the accreditation process and the taxation process occur independently.
- Regardless of whether or not a “Yellow Card” has been issued, the accrediting authorities may inform the tax authorities of circumstances that support the existence of tax liability of the applicant in Germany. In the special case of “Yellow Cards”, it must be assumed that the accrediting authorities will always provide information to the tax authorities.
- In “Yellow Card” cases, information will be provided to the tax authorities -- at the latest -- when a new application is submitted after “Yellow Card” issuance. If there is no additional information other than the data from the TESA application the general assumption will be that German tax liability is likely, but will only start with the date of issuance of the first “Yellow Card.”
- The decisive factors are always the circumstances of the individual case. The tax authorities will then review, within their own authority, if and as of when there is a tax liability in Germany.

(102) My COR has told me that I must re-apply for TESA/ASSA because of the “6 year rule.” What does this mean?

In 2011, the German authorities expressed concern about the number of TESA/ASSA/TCSA applicants who retained valid NATO SOFA status, but whose most recent application was from more than 5 years ago. Their concern was that much can change in a person’s circumstances during 5 years. After some discussion, DOCPER agreed that it would be appropriate to have applicants re-apply, but only after 6 years, under the assumption that most contracts will not extend beyond 5 years of performance unless the effort is bridged. Using a 6 year rule instead of a 5 year rule also lessens the number of individuals that will be required to re-apply. It was further determined by DOCPER that individuals should not be required to re-apply if there is less than 6 months remaining on the contract under which they work.

Re-application is understood to entail only the submission of an updated 715-9C, as generated in DCOPS. At anytime that DOCPER recognizes that an individual has retained TESA/ASSA/TCSA status under the same contract and position for more than 6 years without re-application, and if the associated contract will expire more than 6 months later, DOCPER will contact the COR for the contract and request that the individual submit a revised and updated AE Form 715-9C. The applicant’s record will be made available to them in DCOPS and they will be requested to correct and update the information associated with their application. A new 715-9C will then need to be generated, printed, signed, scanned, and uploaded prior to re-submission.

It is expected that this limited re-application process will not result in a finding that a person is ordinarily resident. If a review of the individual’s circumstances causes the German authorities to believe that the focus of an individual’s vital interests have shifted to the Federal Republic of Germany, then the applicant will be notified that they cannot expect to be approved the next time they submit a full application for TESA/ASSA/TCSA. An applicant in such circumstances would be considered to have been “yellow-card approved”.

[Back to Top](#)

Contractor Verification System (CVS)

(103) How does a Trusted Agent (TA) vet Foreign National (FN) contractors so they can receive a CAC through CVS?

A: The answer to that question requires a multi-part response:

1. Does the FN meet one of the basic contractor requirements for CAC eligibility?

- (a) Requires access to multiple DoD facilities on a recurring basis for a period of 6 months or more (or access to multiple non-DoD Federal facilities on behalf of the Department).
- (b) Requires both access to a DoD facility and access to DoD networks on site or remotely.
- (c) Requires remote access to DoD networks that use only the CAC logon for user authentication.

2. Does the FN contractor meet common-sense trustworthiness standards, otherwise known as credentialing standards?

[From OPM Memorandum, 31 Jul 2008, subject: "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12"]

A CAC will not be issued to a person if they fail to meet what OPM refers to as the Basic and/or Supplemental Credentialing standards:

Basic credentialing standards

- (a) The individual is known to be or reasonably suspected of being a terrorist⁴;
- (b) The employer is unable to verify the individual's claimed identity;
- (c) There is a reasonable basis to believe the individual:
 - (1) has submitted fraudulent information concerning his or her identity;
 - (2) will attempt to gain unauthorized access to classified documents, information protected by the Privacy Act, information that is proprietary in nature, or other sensitive or protected information;
 - (3) will use an identity credential outside the workplace unlawfully or inappropriately; or
 - (4) will use Federally-controlled information systems unlawfully, make unauthorized modifications to such systems, corrupt or destroy such systems, or engage in inappropriate uses of such systems.

Supplemental credentialing standards

- (d) A department or agency may consider denying or revoking a CAC to an individual based on one of these supplemental credentialing standards if an "unacceptable risk" to the life, safety, or health of employees, contractors, or the Government's physical assets or information systems, if there is a reasonable basis to believe the individual should not be issued a CAC based on:
 - (1) previous misconduct or negligence in employment;
 - (2) criminal or dishonest conduct;
 - (3) material, intentional false statement, deception, or fraud in connection with Federal or contract employment;
 - (4) the nature or duration of the individual's alcohol abuse, illegal use of narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation;
 - (5) statutory or regulatory bar prevents the individual's contract employment;

(6) the individual's knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force.

3. Has the FN contractor passed the necessary background investigation?

The FN Contractor should be screened as follows:

- (a) Background investigation consistent with a NACI or one of the equivalent investigations as listed in Attachment 3, Table 1, DTM-08-003, December 1, 2008;
- (b) Fingerprint check against the FBI criminal history database;
- (c) Check against FBI Investigations Files (name check search);
- (d) Name check against the Terrorist Screening Database.

[For more complete discussion, see excerpt from OPM Memorandum, 31 Jul 2008, subject: "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12", below.]

For FN contractors in Germany:

The LNSP or FNSP (Local National Screening Program, or Foreign National Screening Program) is equivalent to a National Agency Check, Local Agency Check and Credit Check (NACLIC), which is listed among the equivalent investigation codes in Attachment 3, Table 1, DTM-08-003, December 1, 2008, and in the CVS application form as a NACI equivalent.

A completed FNSP is conducted pursuant to the SÜG (the Sicherheitsüberprüfungsgesetz, German Federal Security Investigation Law) by the Bundesamt fuer Verfassungsschutz (there is no equivalent office in the US environment; the closest is a combination of FBI and DIA) and is - in its current form - equivalent to the National Agency Check, Local Agency Check and Credit Check (NACLIC) conducted by the US OPM Office of Investigation. The completed FNSP contains a complete criminal records check (the Police Good Conduct Certificate), a credit/financial check, and a check of all places of residence within the last 5 years (the reason for 5 years is the periodic reinvestigation requirement in the German Public Sector employment).

For FN contractors in Other Countries: Contact your TASM (for Site ID#760739, armand.c.lepage.civ@mail.mil)

From OPM Memorandum, 31 Jul 2008, subject: "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12":

Departments and agencies must initiate and ensure the completion of a background investigation before applying the credentialing standards. However, the type of background investigation may vary based on standing reciprocity treaties concerning identity assurance and information exchange that exist

between the United States and its Allies or agency agreements with the host country. In most cases OPM will not be able to conduct a NACI, unless the non-U.S. national is or has been residing in the United States.

The background investigation must be consistent with a NACI to the extent possible and include a fingerprint check against the FBI criminal history database, an FBI Investigations Files (name check search), and a name check against the Terrorist Screening Database. Agencies may also choose to include additional checks as appropriate. As in the United States, for those non-U.S. nationals where a NACI or equivalent cannot be performed, an alternative facility access identity credential may be issued at the discretion of the Department of State Chief of Mission Authority, Department of Defense Installation Commander, and/or other agency official as appropriate based on a risk determination. Whether at a U.S.-based or foreign location, reciprocity between agencies is not mandatory in the case of alternative identity credentials issued to non-U.S. nationals. Agencies may choose to honor such credentials from other agencies, but that is at their discretion.

[Back to Top](#)