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Civilian Personnel

Local-National Employee Labor-Management Relations in Germany

For the Commander:

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Summary. This regulation establishes policy and procedures—

- For implementing portions of the Supplementary Agreement to the North Atlantic Treaty Organization Status of Forces Agreement that pertain to labor-management relations in Germany.
- To ensure that all works councils participate in management actions that concern local national (LN) employees in Germany.

Applicability. This regulation applies to LN personnel—

- Employed by the U.S. Forces in Germany under the provisions of the *Tarifvertrag vom 16. Dezember 1966 für die Arbeitnehmer bei den Stationierungstreitkräften im Gebiet der Bundesrepublik Deutschland (TV AL II)* (Collective Tariff Agreement), except for personnel employed by the United States Air Forces in Europe and its tenant activities. For the purpose of this regulation, “U.S. Forces” includes all activities serviced by the United States Army Civilian Human Resources Agency, Europe Region, and the Army and Air Force Exchange Service, Europe.
- Paid from appropriated or nonappropriated funds.
- In civilian-support organizations in Germany.

Supplementation. Organizations will not supplement this regulation without USAREUR G1 (AEAGA-CL) approval.

Forms. AE and higher level forms are available through the Army in Europe Publishing System (AEPUBS).

Records Management. Records created as a result of processes prescribed by this regulation must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information Management System website at <https://www.arims.army.mil>.

Suggested Improvements. The proponent of this regulation is the USAREUR G1 (AEAGA-CL, DSN 375-2522). Users may suggest improvements to this regulation by sending DA Form 2028 to the USAREUR G1 (AEAGA-CL), Unit 29331, APO AE 09266-9331.

Distribution. C (AEPUBS).

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SECTION I GENERAL

1. PURPOSE

This regulation establishes policy and procedures—

- a. For implementing the provisions of the following:

(1) *Bundespersönlichkeitsgesetz (BPersVG)* (Federal Personnel Representation Law) as modified by the Protocol of Signature, Article 56, paragraph 9, Supplementary Agreement to the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA).

(2) *Sozialgesetzbuch IX (SGB IX), Rehabilitation und Teilhabe behinderter Menschen* (Social Security Code IX, Rehabilitation and Integration of Handicapped Persons).

(3) *Wahlordnung zum Bundespersönlichkeitsgesetz (BPersVWO)* (Election Regulation to Federal Personnel Representation Law).

(4) *Wahlordnung Schwerbehindertenvertretungen (SchwbVWO)* (Election Regulation – Severely Handicapped Employee Representative Groups).

- b. To ensure that the Head Works Council (HWC), USAREUR, participates in management actions that concern local national (LN) employees in Germany.

2. REFERENCES

Appendix A lists references.

3. EXPLANATION OF ABBREVIATIONS AND TERMS

The glossary defines abbreviations and terms.

4. AUTHORITY

- a. Under authority of the *BPersVG*, unless defined otherwise by a special agency determination from HQ USAREUR/7A, the following U.S. Forces activities are defined as “works council agency” (hereinafter called *agency*) and may establish local works councils (LWCs):

(1) All U.S. Army garrisons with their respective installations. This does not apply to Germersheim, which is an independent LWC agency reporting to IMCOM-Europe.

(2) All civilian support group (CSG) activities. This does not apply to the 8530th CSG which is part of the Seventh United States Army Joint Multinational Training Command (JMTC) works council agency in Hohenfels.

(3) Army and Air Force Exchange Service, Europe (AAFES-Eur), organizations at any given location.

(4) Other appropriated- and nonappropriated-fund organizations of the U.S. Forces with at least five LN employees at any given location and organizations serviced by the United States Army Civilian Human Resources Agency, Europe Region (CHRA-E).

(5) Annexes and branch offices with more than five LN employees and located “at a great distance from their parent agencies” (more than 30 kilometers). Employees of the annex or branch office must decide using appropriate election proceedings.

(6) Headquarters staff offices of the organizations listed in subparagraph c below.

(7) HQ USAREUR/7A staff offices.

b. Regardless of the number of employees, all activities of the Defense Commissary Agency (DECA), the Department of Defense Dependents Schools (DODDS), and other activities of the U.S. Forces serviced by CHRA-E with less than five LN employees will be included in the respective collocated garrison agency. Activities of the same command or intermediate authority in a given location will be consolidated into one agency if together they have at least five LN employees. This does not apply to the activities of DODDS Kaiserslautern District that are serviced by the Civilian Personnel Advisory Center (CPAC) Kaiserslautern. DODDS Kaiserslautern District is an independent LWC agency directly reporting to the highest service authority.

c. The following U.S. Forces headquarters are considered “intermediate command authorities” and may elect district works councils (DWCs):

(1) Headquarters, 21st Theater Sustainment Command.

(2) Headquarters, United States Army Europe Regional Medical Command.

(3) Headquarters, 5th Signal Command.

(4) Headquarters, AAFES-Eur.

(5) Headquarters, IMCOM-Europe.

(6) Headquarters, JMTC.

d. Deviations from the agency determinations in subparagraphs a through c above are not authorized.

e. The highest service authority within the meaning of the *BPersVG* for units and agencies of the U.S. Army and AAFES Eur in Germany is HQ USAREUR and 7th Army.

5. POLICY

Commanders, agency chiefs, and other managers will—

- a. Carry out the requirements for labor relations in Germany according to the spirit and purpose of the *BPersVG* (as modified by the NATO SOFA) and *SGB IX*.
- b. Continuously strive for partnership, cooperation, and mutual confidence between management, works councils, and severely handicapped employee (SHE) representative groups to ensure problems are solved promptly at the lowest possible levels. Works councils and SHE representative groups will strive to ensure that the interest of LN employees and the mission of individual agencies are considered.
- c. Consider works council and SHE representative group proposals regarding the proper course of action.
- d. Respect the rights of works councils and SHE representative groups at all levels (for example, local agency, intermediate command authority, and highest service authority).
- e. Take no action that would prevent works councils and SHE representative groups from performing their proper functions.
- f. Refrain from interfering in the elections of works councils and SHE representative groups at all levels.
- g. Report promptly to the USAREUR G1 (AEAGA-CL) by telephone (DSN 375-2522) any incident that appears to be a serious violation of the works council or SHE representative group-election procedure. This applies also to situations that may result in elections being challenged by employees or a trade union.
- h. Refrain from placing SHEs or persons of equal status at a disadvantage because of their handicap. This applies particularly to occupational development, task assignments, and termination decisions. Different treatment is permissible only if duties to be performed require mental or physical ability that the SHE may not have due to his or her handicap. In case of dispute, the SHE or person of equal status must establish evidence of discrimination because of the handicap. The employer must prove that material reasons unrelated to the handicap justify different treatment and that specific physical function (that is, physical or mental health) is an essential and decisive requirement for the job.
- i. Involve the responsible SHE representative groups in matters that concern a SHE or person of equal status, or pertain to SHEs or persons of equal status as a group; take preventive measures according to *SGB IX*, Section 84, paragraph 2; and obtain the necessary concurrence of the employees. Preventive measures in terms of *SGB IX*, Section 84, paragraph 2, are not limited to SHEs or persons of equal status but all employees.

6. RESPONSIBILITIES

- a. The CG, USAREUR/7A, as the head of the highest service authority in Germany (or the person formally designated by the CG, USAREUR/7A, to act in this capacity) is the final decision-making authority on all matters within the scope of the HWC, the head SHE representative, the works council, and the SHE representative of the employees of the staff offices of HQ USAREUR/7A; except for works council matters referred to the conciliatory committee for absolutely binding decisions under the unrestricted codetermination procedure. The CG, USAREUR/7A, or the formally designated representative will—

(1) Establish, in agreement with the German trade unions concerned, the dates for general elections of LWCs, joint works councils (JWCs), DWCs, and the HWC.

(2) Appoint a head election committee if—

(a) No HWC exists.

(b) An HWC exists but fails to appoint an election committee (not later than 6 weeks before the established election date) and three or more employees are entitled to vote, or an authorized trade union submitted a corresponding request.

(c) The election committee appointed by the HWC fails to initiate elections without delay (at the latest 6 weeks before the established election date) and three or more employees entitled to vote or an authorized trade union requested a new election committee.

(3) Negotiate and conclude shop agreements with the HWC on matters that—

(a) Exceed the authority or responsibility of local agency chiefs or chiefs of intermediate command authorities.

(b) Apply to several intermediate command authorities or to several local agencies that belong to different intermediate command authorities.

(4) Carry out agency chief functions in relationship to the LWC and local SHE representative representing HQ USAREUR/7A staff offices.

(5) Provide logistic support (para 9) to the HWC; the head youth and apprentice-representative group, USAREUR; the head SHE-representative group, USAREUR; the LWC and local SHE-representative group of HQ USAREUR/7A staff offices; and the committees for the election of the works councils ((2)above).

b. The head of each intermediate command authority will—

(1) Appoint a district-election committee for the election of the DWC under the conditions and principles of (2) above.

(2) Negotiate and conclude shop agreements with the DWC under the conditions and principles of (3) above.

(3) Provide logistic support (para 9) to the DWC, the district SHE-representative group, the district youth and apprentice-representative group, and the district election committee established at the level of the intermediate command authority.

(4) Be responsible for the orientation and training of subordinate local agency chiefs and other managerial personnel who are required to deal with works councils and SHE-representative groups. These personnel must be familiar with the provisions of the *BPersVG*, the *BPersVWO*, the *SGB IX*, and the *SchwVWO*.

(5) Carry out the functions of the agency chief in relation to the LWC established at the intermediate command level and representing the employees of the headquarters.

(6) Send the USAREUR G1 (AEAGA-CL) detailed, written background information and justifications for matters submitted by the DWC to the USAREUR G1 (AEAGA-CL) for decision under the cooperation or codetermination procedure. All documents and correspondence pertaining to a case must be submitted in both English and German.

c. The local agency chief will—

(1) Appoint an election committee to conduct the election of the LWC and, if necessary, appoint an election committee to conduct the election of the JWC under the conditions and principles of a(2) above.

(2) Appoint a local election committee to elect the DWC or the HWC, even if no LWC exists, provided the district- or head-election committees request the action.

(3) Furnish the chief of the intermediate command authority or USAREUR G1 (AEAGA-CL) detailed, written background information and justifications for all matters that are submitted by the LWC to the chief of the intermediate command authority or to the USAREUR G1 (AEAGA-CL) for decision under the cooperation or codetermination procedure. All documents and correspondence pertaining to a case must be submitted in both English and German.

(4) Be directly responsible for the orientation and training of managers in the agency who will be dealing with employee representations if the agency is not subordinate to an intermediate command authority. Local agency chiefs will ensure that their managers are familiar with the *BPersVG*, the *BPersVWO*, the *SGB IX*, and the *SchwVWO*.

(5) Provide logistic support (para 9) to the LWC, the JWC, the SHE-representative group, the joint SHE-representative group, and the election committees established at the local agency level.

(6) Ensure SHEs and employees of equal status are supervised and employed according to their skills and knowledge, and that they receive priority consideration for in-house training for career advancement.

d. The CPAC chiefs, AAFES-Eur officers responsible for providing civilian personnel administration advice, and LN labor advisers assigned to intermediate command level authorities will—

(1) Provide assistance and advice to serviced commanders or chiefs of intermediate command authorities, local agency chiefs, and other managerial personnel for the orderly implementation of legal provisions under the *BPersVG* and the *SGB IX*. They will also ensure managers comply with requirements in an effective and timely manner.

(2) Assist and advise chiefs of intermediate command authorities, agency chiefs, and other managers in resolving works council relations issues, and issues that require the involvement of the SHE- representative groups.

(3) Assist chiefs of intermediate command authorities in the orientation and training of local agency chiefs and other managers required to deal with employee representations on the provisions of the *BPersVG*, the *BPersVWO*, the *SGB IX*, the *SchwVWO*, and this regulation.

(4) Prepare and send (through appropriate German authorities) labor-court actions requested by managers on works council and SHE-representative group matters, and help intermediate command level chiefs and local agency chiefs respond to labor-court actions initiated by employee representation or a trade union.

(5) Participate as technical advisors in joint meetings of the local agency chiefs or their representatives with works councils.

SECTION II BASIC REQUIREMENTS FOR WORKS-COUNCIL OPERATIONS

7. PARTICIPATION OF WORKS COUNCILS IN MANAGEMENT ACTIONS

The *BPersVG* regulates works-council rights to participate in management actions. These rights are as follows:

a The Right To Be Informed. This right applies when the works council must be provided information to carry out its functions (*BPersVG*, Sec 68) or information necessary in connection with proposed management actions that are subject to the codetermination, cooperation, or hearing procedures (*BPersVG*, Secs 75, 76, 78, and 79). This right also applies when decisions are above the highest service authority. Information must be provided in a timely manner to the works council. Basic information provided to the LWC include the agency's tables of distribution and allowances (TDAs) for LN employees of the respective agency and a copy of the "faces-to-spaces" list and other tables providing information regarding the LN manning of the agency. Information must be provided to the works council in connection with proposed management actions, and include all information available to management and related to the proposed action unless the information is classified for security reasons.

b. The Right To Be Heard. This right applies when—

- (1) The works council makes proposals or represents employees in grievances.
- (2) An employee is to be removed for cause with extraordinary notice.
- (3) Manpower requirements are submitted to higher headquarters.
- (4) Plans are made to provide for changes of the LN personnel or position structure.
- (5) New work systems or workflows are considered.

(6) Construction projects and modifications or extensions facilities that house or that are scheduled to house LN workplaces are planned.

c. The Right To Deliberate. This right applies to the joint monthly meetings when the respective agency chief must discuss matters affecting LN employees in his or her area of responsibility with the works council at his or her level. Part of the deliberation process is to listen and consider the arguments brought forward by the works council (*BPersVG*, Sec 66, para 1).

d. The Right To Attend Examinations. This applies when the agency chief conducts examinations for LN employees in connection with their professional advancement. The agency chief will inform the council in advance to enable the works council to appoint one of its members to participate in the examination in an advisory capacity (*BPersVG*, Sec 80).

e. The Right To Be Consulted and Attend Meetings in Connection With Occupational Safety and Accident Prevention. The agency chief must consult with the works council on all matters concerning occupational safety and accident prevention, inform the works council of respective requirements for the agency, and allow the members appointed by the works council to participate in meetings with safety representatives and committees (*BPersVG*, Sec 81).

f. The Right To Cooperate in Management Actions and Decisions Concerning the Actions Specified in Section 75, paragraph 1, numbers 1 and 2; Section 75, paragraph 3, number 13; Section 76, paragraph 2, numbers 5 and 7; Section 78, paragraph 1; and Section 79, *BPersVG*. These actions may be initiated only by management according to the procedure established in *BPersVG*, Section 72.

g. The Right To Codetermine in Management Actions and Decisions Concerning the Actions Specified in Section 75, paragraph 1, numbers 3 through 7; Section 75, paragraph 2, numbers 1 and 2; Section 75, paragraph 3, numbers 1 through 17 (except 13); and Section 76, paragraph 2, numbers 6, 8, and 9, *BPersVG*. These actions will be initiated by management or the works council using the codetermination procedure established in *BPersVG*, Section 69.

8. LEGAL STATUS OF WORKS-COUNCIL MEMBERS

a. While membership in a works council does not merit special compensation, a works-council member may not suffer any loss in pay as a result of his or her membership. Works-council members will be entitled to reimbursement for necessary expenditures incurred for works-council activities. For performance of necessary works council functions outside of regular duty hours, works-council members are entitled to compensatory time off.

b. Works-council members will be excused from work to attend legitimate works-council functions. Time-off periods requested by a works-council member for that purpose will be denied only for essential operational reasons (for example, when the employee's absence would cause a serious disruption of the work processes, jeopardize completion of important tasks in due time, or endanger production results or Government property). Denial is permissible only when such adverse effects cannot be avoided by temporarily replacing the employee or by other appropriate measures. For more detailed explanation, see appendix B.

c. Based on the number of LNs employed by the agency, laws provide for the full-time release of one or more works-council members from regular duties for the exclusive performance of works-council functions (*BPersVG*, Sec 46, para 4). Works council members who must be released full-time on this basis will be elected by the respective works council (*BPersVG*, Sec 46, para 4). Such mandatory full-time releases will be granted for the entire term of office of the respective works councils. Other full-time releases of works-council members for fixed periods may also be granted. The fixed periods of full-time release must be established in advance. Full-time release periods should be limited to times of increased works-council activities. Depending on circumstances, full-time releases may be for several hours or days per week or for a certain period of time. Full-time release from duty on this basis should be duly considered and approved if requested and based on a specific, bona fide proposal by the works council within the limitations established by *BPersVG*, Section 46. The works council and the agency chief should negotiate agreements on time off for fixed periods. Such agreements should be in writing and remain valid for the duration of the accepted period unless renegotiated before the expiration of that period.

d. Full-time releases of members of JWCs and intermediate level works councils (works councils at higher command levels) are not subject to the quota in *BPersVG*, Section 46, paragraph 4. For JWCs and intermediate level works councils, one full-time release should be considered if approximately 1,000 employees are represented, and two full-time releases if approximately 2,000 employees are represented. Chiefs of agencies with full-time released works- council members, members of youth and apprentice representatives, or SHE-representative groups may consider establishing additional, identical positions for the performance of duties of the employee fully released for works council, youth and apprentice representative, or SHE-representative group functions.

9. LOGISTIC SUPPORT FOR EMPLOYEE-REPRESENTATIVE GROUPS

a. Material and personnel costs arising from the activities of works councils, SHE representative groups, youth- and apprentice-representative groups, as well as election committees for the election of these employee representations must be borne as specified below, to the extent necessary for proper performance of council functions, as well as functions provided for in *SGB IX*:

(1) Material costs to be borne by the agency when employee representation is established include the following:

(a) Furnishing adequate and suitable space for normal conduct of business, meetings of the respective employee representation, and office hours.

(b) Providing necessary office furniture, equipment, and supplies (for example, personal computer with printer), utilities, communication devices, and other necessities (for example, official Government transportation, if available and required). To communicate with internal activities and external agencies in Germany, the works council will be provided with a private telephone (or given the opportunity to privately use a telephone), a fax machine, a scanner, and the opportunity to use the Internet as well as an e-mail account.

(c) Supplying technical literature necessary to conduct works-council business (for example, a copy of the current version of the *BPersVG* with legal comments, copies of required labor laws inclusive of laws on occupational health and safety, a monthly periodical on the provisions of the *BPersVG*, copies of applicable tariff agreements, regulations, and directives).

(d) Providing part-time or full-time clerical assistance as warranted by local conditions. Unless otherwise expressly agreed between agency chief and works council, the following minimum-manpower standards will apply in this regard:

1. USAREUR HWC: Two full-time secretary-translator positions (which equate to two manpower authorizations).

2. DWCs with at least one full-time released member: One full-time secretary-translator position (1 manpower authorization).

3. LWCs with two or more full-time released members: One full-time secretary-translator position (1 manpower authorization).

4. LWCs with at least one full-time released member: One part-time secretary-translator position (0.5 manpower authorization).

(e) Providing adequate bulletin boards for posting works-council information for employees at convenient and accessible places as required by the size of the agency.

(2) Personal costs to be borne by an employee-representation-member's employing organization include the following:

(a) Pay for required time off by employee-representation group members to perform legitimate, employee-representation functions. Pay in this case will comprise the regular earnings (including supplements and allowances, if appropriate) an employee-representation member would have received for his or her established workhours had he or she not been released.

(b) Provide travel expense compensation for travel on official works-council business or business provided for in the *SGB IX*.

(3). Justifiable lawyer's fees for consultation of a lawyer by the employee-representation group (for example, costs of legal advice).

b. The agency will bear the costs resulting from legal disputes instituted under the provisions of *BPersVG*, Section 83. If a court action is filed by the works council, payment of costs by the agency will be due regardless of whether or not the council is supported in court, if, under existing circumstances, the council could reasonably assume the court action to be justified. Costs will not be borne if the court action was initiated arbitrarily.

10. WORKS COUNCIL ATTENDANCE AT TRAINING AND EDUCATIONAL COURSES

a. According to *BPersVG*, Section 46, paragraph 6, all levels of works councils are entitled to have one or more of their members released from duty with continued pay and travel orders for attendance at training and educational courses contributing directly to the performance of the council's work. The training costs will also be borne.

b. In addition, *BPersVG*, Section 46, paragraph 7, entitles individual works-council members to time off with continued pay for attendance at training courses or seminars for social and political education for a total of 3 weeks during their regular term of office. Employees who for the first time assume the office of a works council member and have not been members of the youth representation before are entitled to 4 weeks in accordance with sentence 1. This is in addition to the entitlement to attend training courses under *BPersVG*, Section 46, paragraph 6. Travel expenses for attendance at these courses will be paid. Costs for training and per diem will not be reimbursed. The requirements of *BPersVG*, Section 46, paragraph 7, are met if the course is recognized as a suitable course by the *Bundeszentrale für politische Bildung* (Federal Agency for Civic Education). The entitlements pursuant to *BPersVG*, Section 46, paragraph 7, exist in addition to the entitlement to attend training and educational courses pursuant to *BPersVG*, Section 46, paragraph 6.

11. TRAVEL BY WORKS-COUNCIL MEMBERS

a. According to *BPersVG*, Section 44, paragraph 1, agencies at all levels are legally required to pay the necessary travel costs of works-council members performing official council business.

b. Works-council members will be issued DD Form 1610 and AE Form 690-69A if required for necessary travel of works council members. Payment of travel allowance and reimbursement of incidental expenses will be governed by the *Tarifvertrag vom 16. Dezember 1966 für die Arbeitnehmer bei den Stationierungstreitkräften im Gebiet der Bundesrepublik Deutschland (TV AL II)* (Collective Tariff Agreement II), appendix R.

c. The employing organization will pay costs related to necessary travel of works-council members and issue the required travel orders. Intermediate-command authorities may centralize fund control and issuance of travel orders for their works-council members at the command level.

d. To allow timely issuance of travel orders and to expedite determination of travel mode, the works-council chair (or appropriate works-council member) must notify the respective agency chief or the designated management representative of the purpose and itinerary before the required travel. Written notification (for example, an invitation from the chair or acting chair) is required for attendance at a JWC, DWC, or HWC meeting.

e. Except when travel is required to attend a works-council meeting, each works council will decide by formal vote on the necessity of travel by a member for official council business. Travel by a works-council member is not subject to approval by management, but the respective agency chief has the right to verify the existence of legal requirements for travel payment or reimbursement. For this reason, the works council must examine carefully the necessity of proposed travel.

f. Provisions in subparagraphs b and c above also apply to members of election committees, youth and apprentice representatives, and SHE-representative groups. Provisions in subparagraphs b through e above apply to members of works councils for attending training and educational courses according to the provisions of *BPersVG*, Section 46, para 6 (para 10a).

12. EXPENSE ALLOWANCE FOR FULL-TIME AND PART-TIME RELEASED WORKS-COUNCIL MEMBERS

a. *BPersVG*, Section 46, paragraph 5, provides for payment of a monthly expense allowance to works-council members released full-time from their regular duties to exclusively perform council functions. This allowance is €26 per month as established by the *Verordnung über die Höhe der Aufwandsentschädigung für vom Dienst freigestellte Personalvertretungsmitglieder* (German Ordinance on Expense Allowance for Works Council Members Who Are Released From Duty) of 18 July 1974. Works-council members released only part-time but at least 50 percent of the time from their regular duties will receive half of the allowance.

b. Agency chiefs will approve full-time or part-time release of works-council members under the criteria established in *BPersVG*, Section 46, paragraphs 3 and 4, by concluding a time-off agreement between the respective agency chief and the works council established at the agency level, or by furnishing a written approval of the release. Under the criteria established in *BPersVG*, Section 46, paragraph 4, the works council will inform the respective agency chief of the full-time release. When the conditions for the full-time release of a works-council member cease to exist (for example, when the number of employees represented decisively drops below 300 or when there is a change in the works-council member to be released), the resulting implications will be negotiated between the agency chief and the works council.

c. The *Aufsichts- und Dienstleistungsdirektion, Lohnstelle ausländische Streitkräfte (ADD-LaS)* (Controlling and Services Directorate, Foreign Forces Payroll Office) will pay the expense allowance with the council member's monthly earnings as follows:

(1) The organization employing the full- or part-time released council member will submit AE Form 690-70F to CHRA-E requesting payment of the proper allowance amount (€26 or €13) as of the effective date of the release. In the case of a release under *BPersVG*, Section 46, paragraph 3, a copy of the time-off agreement between the works council and the agency chief or the agency chief's approval will be attached to the request. In the case of a release under *BPersVG*, Section 46, paragraph 4, a copy of the respective works council's notification will be attached to the request.

(2) On receipt of the request, CHRA-E will prepare AE Form 690-70E and enter “Expense Allowance (*Aufwandsentschädigung*)” under nature of action. The amount of the allowance (€26 or €13) must be entered in block 15f and explained by entering “The employee is functioning as a full-time (or part-time) released works council member; payment of expense allowance is authorized by *BPersVG*, Section 46, paragraph 5” under the remarks section.

(3) Authority for payment of the allowance will be for an indefinite period of time. The management representative who approved the release, however, will be responsible for ensuring the allowance is promptly canceled on discontinuation of full- or part-time release. In this case, the employing organization will submit AE Form 690-70F to the CHRA-E indicating the effective date and reason for canceling the allowance. CHRA-E will process AE Form 690-70E by entering under nature of action “Cancellation of Expense Allowance (*Entzug der Aufwandsentschädigung*)” and state in part V the reason for cancellation.

d. Eligible works-council members of AAFES-Eur will be paid the applicable expense allowance according to the above criteria under established AAFES-Eur pay procedures. These procedures also apply to the cancellation of the allowance.

13. PROTECTION OF MEMBERS OF EMPLOYEE-REPRESENTATIVE GROUPS

Pursuant to the provisions of *BPersVG*, Section 47, the *Kündigungsschutzgesetz (KSchG)* (Law on Protection From Termination of Employment), Section 15, members of works councils at all levels enjoy special protection from loss of employment.

a. Termination by Ordinary Notice.

(1) During the term of office of the works council and up to 1 year after the office expires, works-council members may not be terminated by—

(a) Ordinary notice (*ordentliche Kündigung*).

(b) Ordinary notice of termination for change of employment conditions (*ordentliche Änderungskündigung*).

(2) The same protection ((1) above) applies to alternate members who temporarily substituted for absent regular members up to 1 year after the date of their last substitution. This protection is not applicable when the individual member’s termination of office is based on a labor-court verdict.

(3) The protection in (1) and (2) above does not apply to complete agency closures or in connection with the complete closure of divisions of the agency (*Betriebsabteilungen*) if, for operational reasons (*betriebliche Gründe*), the employment of the protected member cannot be continued in another division of the agency; if necessary, another employee must be terminated to free a suitable position for the protected member. In these situations, all efforts will be made to place these employees in accordance with the provisions of AE Regulation 690-84. If these efforts fail, termination by ordinary notice is authorized. Without exception, however, the effective dates of their notices must coincide with the actual effective date of the deactivation of the agency (or the division of the agency).

b. Extraordinary Notices of Termination of Employment for Cause.

(1) During the periods in subparagraph a above, employees who have special protection pursuant to Section 15, *KSchG*, may be separated only by an extraordinary notice for cause pursuant to the *Bürgerliches Gesetzbuch (BGB)* (German Civil Code), Section 626.

(2) According to *BPersVG*, Section 47, extraordinary termination notices for employees in (a) and (b) below are subject to concurrence of the works council. If the concerned employees simultaneously hold offices or run for office in more than one of the bodies at the local, intermediate, or highest level, the concurrence of all concerned works councils must be obtained. The respective periods of time during which *BPersVG*, Section 47, applies to these employees are also indicated in (a) and (b) below.

(a) Regular members of the LWC, JWC, DWC, or HWC, and the youth and apprentice representation bodies while they are in office.

(b) Alternate members of the representation bodies in (a) above while they actually substitute for an absent regular member.

(3) If concurrence is not received from the respective works council within 3 workdays, it must be requested from the appropriate German labor court. Concurrence from the works council and, if necessary, in case of non concurrence by the works council, from the appropriate German labor court must be requested within the 2-week limit established by *BGB*, Section 626. This is a general and legally binding prerequisite for the validity of an extraordinary notice. The requirement of *BPersVG*, Section 79, paragraph 3, that the works council must be heard before an extraordinary notice of termination may be issued does not apply when concurrence from the works councils must be requested under *BPersVG*, Section 47. Employees listed in (a) or (b) above may be terminated only by extraordinary notice of termination for cause according to Section 626, *BGB*, on approval by the works council or, in case of refusal of approval by the works council, on labor-court approval in place of the works-council approval. In the case of *BPersVG*, Section 47, the works council's nonresponse is not considered as approval but as refusal of approval.

14. SECURITY RESTRICTIONS

Agency chiefs at all levels are not required to submit any classified material or information collected, based on classified material to the members of the works councils, to the special committee established under *BPersVG*, Section 93, or to the conciliatory committee provided for in *BPersVG*, Section 71. If required, works-council members may be granted access to secure areas to perform their duties, but they will not, however, be authorized to enter sensitive sites or areas restricted for security reasons unless they are cleared for entry in connection with their job. The same is true for representatives of trade unions that are represented in the agency.

15. COURT ACTIONS

a. *BPersVG*, Section 83, paragraph 1, specifies the matters that are subject to German court jurisdiction. Besides the cases referred to in *BPersVG*, Sections 9, 25, 28, and 47, paragraph 1, these matters include the following:

(1) Employee eligibility to vote and to be elected.

(2) Challenge of works-council election.

(3) Exclusion of individual council members or dissolution of a works council.

(4) Works-council competence and conduct of business; validity of decisions of a conciliatory committee.

(5) Validity of shop agreements.

b. On request of an agency chief, an intermediate command authority chief, or the USAREUR G1 (AEAGA-CL), the *ADD-LaS* will initiate action for labor-court decisions in any of the matters covered by *BPersVG*, Section 83. Under the provisions of this section, special-court proceedings (*Beschlussverfahren*) apply in which the labor court will resolve differences of opinion that have arisen out of the interpretation of the *BPersVG*. The request should be prepared with the assistance of the servicing CPAC or AAFES-Eur Human Resources Office (HRO) and include available facts and a detailed justification. Before making the request, it must be ensured that other means of settling the dispute have been exhausted and that the merits and substantiation of the case indicate a reasonable chance for a favorable court decision.

c. The *Strafgesetzbuch (StGB)* (German Criminal Code), Sections 203 (Breach of Private Secrecy) and 353b (Breach of Official Secrecy), states that any person who violates the obligation to preserve confidentiality on private or official factual matters known by virtue of council office or participation in council functions will be liable to punishment. On request of the agency chief, the intermediate command authority chief, or the CG, USAREUR/7A, the appropriate authority in Germany will apply for the institution of criminal prosecution when a breach of the obligation to preserve confidentiality occurs. Except for the cases covered by the *BPersVG*, Section 68, paragraph 2, third sentence, and Section 93, the obligation to preserve confidentiality is not applicable to works-council members in relation to the rest of the works-council members or persons who fulfill functions under the *BPersVG*. Moreover, the obligation to preserve confidentiality is not applicable to the superior agency, the DWC established at the superior agency, and the HWC. This also applies to the invocation of the conciliatory committee.

d. In connection with the application of *BPersVG*, Section 83, and *StGB*, Sections 203 and 353b, the Protocol of Signature, paragraphs 9 and 10 to Article 56, paragraph 9, Supplementary Agreement to the NATO SOFA, must be considered. The U.S. Forces have requested that Germany act in the name of the Forces in special-court proceedings (*Beschlussverfahren*) for labor-court decisions under *BPersVG*, Section 83, as well as in criminal proceedings pursuant to *StGB*, Sections 203 and 353b. By virtue of this general request, Germany has agreed to represent the U.S. Forces as participant (for example, petitioner or respondent) in all cases. Individual requests for representation are not required.

e. Each proposal that provides for the initiation of court proceedings under subparagraphs a through d above must be coordinated with the USAREUR G1 (AEAGA-CL) before court proceedings are initiated.

SECTION III

POLICY AND IMPLEMENTING INSTRUCTIONS FOR THE EMPLOYMENT OF SEVERELY HANDICAPPED PERSONS AND PERSONS OF EQUAL STATUS

16. CATEGORIES OF PERSONNEL AND EMPLOYEE RESPONSIBILITIES

a. The following personnel belong to the “person category” under special protection of the *SGB IX*:

(1) Personnel with a handicap degree of at least 50 (SHE).

(2) Personnel of equal status with a handicap degree of less than 50 but at least 30 who have an equality-of-status rating from the employment agency based on *SGB IX*, Section 2, paragraph 3 (persons of equal status). An equality-of-status rating may be temporary.

b. SHEs and employees of equal status—

(1) Will furnish a copy of the *Schwerbehindertenausweis* (severely handicapped pass) or a copy of the official *Gleichstellungsbescheid* (certificate of recognition for equal status) to receive the appropriate benefits and special-employment considerations.

(2) Are responsible for reporting changes in their SHE or person-of-equal-status conditions to the employing organizations as soon as the administrative decisions associated with the condition become legally effective.

17. SPECIAL CONSIDERATIONS DURING EMPLOYMENT OF SEVERELY HANDICAPPED EMPLOYEES AND EMPLOYEES OF EQUAL STATUS

a. SHEs and employees of equal status are as responsible for fulfilling their duties as other employees. They are entitled to a position that will allow them to use and develop their skills and knowledge as fully as possible.

b. Appropriate vocational help must be provided when needed to SHEs and employees of equal status who have been newly appointed or have assumed new duties. Commensurate with the handicap, a longer period of on-the-job training may be granted. The SHE or employee of equal status may request that the supervisor, the employer representative, the SHE representative, and, if necessary due to the gravity of the handicap (for example, blindness, partial paralysis), the *Integrationsamt* (integration office) or the special integration service, jointly verify which personal and material work aids are required in the individual case. SHEs and employees of equal status will be oriented carefully to their new workplace and duties.

c. The SHE or employee of equal status may contact the supervisor directly or with assistance from the SHE representative group to discuss his or her professional development or integration.

d. Work conditions must be created for SHEs and employees of equal status that meet the special requirements of their handicap. Agency chiefs and supervisors will ensure workareas, installations, machinery, equipment, and operational procedures are arranged and maintained so that SHEs and employees of equal status may find continuous employment in an accident-free environment. Workareas must be equipped with appropriate workaids. However, there is no entitlement to such aids and appliances if it cannot reasonably be expected of the employer to provide it or if it would result in excessive expenditures.

e. SHEs and employees of equal status are not exempt from overtime or excess workhours but may be excused if they so desire. Stand-by or on-call duty may also result in overtime work. Within the meaning of this provision, overtime is defined as workhours that exceed the regularly scheduled workweek according to the tariff agreements (article 9 of the *TV AL II*, and the respective special tariff agreements).

18. RESPONSIBLE PERSONNEL AND OFFICES

Managers and representatives of the employing organization, SHE representative groups, works councils, the offices responsible for implementing *SGB IX* (Federal Employment Agency, *Integrationsamt*, special integration service), and offices providing rehabilitation must work together closely and in mutual confidence to provide social assistance to SHEs and employees of equal status.

19. EMPLOYER'S REPRESENTATIVES

a. According to *SGB IX*, Section 98, each agency employing SHEs or employees of equal status must appoint one or more representatives as the responsible agents who will ensure that the employer fulfills the obligations prescribed in *SGB IX* and complies with the laws, regulations, and tariff agreements that benefit SHEs and employees of equal status. If possible, the employer representative should be severely handicapped. Employees of CHRA-E or of HRO employees of AAFES-Eur may be appointed as employer representatives only in exceptional cases and with the approval of CHRA-E.

b. The appointment must be made in writing by the organization chief and sent to the servicing CPAC, AAFES-Eur HRO, or personnel office; the SHE-representative group; works council; responsible employment agency; and *Integrationsamt*. The employer representative is authorized to cooperate directly with these offices.

c. To avoid frequent changes to the personnel serving in the employer-representative positions and maintain consistency, the term of appointment should be indefinite.

d. Before the appointment or dismissal of an employer representative, the SHE-representative group must be heard. The organization chief must make a dismissal in writing.

20. SEVERELY HANDICAPPED EMPLOYEE-REPRESENTATIVE GROUPS

a. In organizations that permanently employ at least five SHEs and employees of equal status, the SHEs and employees of equal status will elect a representative and no less than one deputy for a 4-year term of office to represent their interests. In addition, joint, district, and head SHE representatives will be elected according to *SGB IX*, Section 97. Organizations may also combine to elect SHE representatives as needed. Elections will be held in accordance with section IV.

b. After the election, the names of the SHE representatives and their deputies must be reported to the employment agency and *Integrationsamt* responsible at the location of the employing organization by the responsible CPAC, AAFES-Eur HRO, or personnel office.

c. SHE-representative groups will help integrate SHEs and employees of equal status into the organization, represent their interests within the organization, and serve as advisers. SHE representatives must—

(1) Comply with applicable laws, legal ordinances, statutory provisions, tariff agreements, shop agreements, administrative instructions that benefit SHEs and employees of equal status, and integration agreements; and ensure the employer's obligations are met according to *SGB IX*, Section 81.

(2) Request measures benefitting SHEs and employees of equal status at the appropriate offices if needed.

(3) Receive proposals and grievances from SHEs and employees of equal status and negotiate solutions with the chief or designated representative of the organization.

d. The SHE representative will be informed comprehensively, without delay, and be heard on any matter that may concern a SHE or an employee of equal status; or SHEs and employees of equal status as a group by the agency chief or the agency representative before a decision is made (Sec 95(2), *SGB IX*). The SHE representative must be informed of any decision made. The implementation of a decision without including the SHE representatives will be suspended, and the issue will be readdressed with the SHE representatives within 7 days after the suspension.

e. SHE representative groups will receive complete information, including personal information. A SHE or employee of equal status may refuse release of personal information to a SHE representative unless the release of that information is required by law. Information provided to SHE representatives is subject to the security restrictions in paragraph 14 above.

f. If difficulties arise that endanger the continuing employment of an employee, the responsible works council—in connection with SHE and employees of equal status, the responsible SHE representative and the *Integrationsamt*—must be involved in accordance with *SGB IX*, Section 84, paragraph 1. The SHE-representative group and the works council must be informed of any employee who, within a 1-year period, has been incapacitated for work for more than 6 weeks, either continuously or with interruptions. The employer's representative, with the assistance of the responsible timekeeper, is responsible for recording and forwarding the information on the employee's sick leave.

g. The local SHE-representative group may conduct an assembly of all SHEs and employees of equal status at least once each calendar year. Assemblies must be conducted in accordance with the pertinent provisions of the *BPersVG*. This also applies to assemblies of local SHE representatives conducted by the district SHE representatives, and assemblies of district SHE representatives and local SHE representatives of agencies directly reporting to the highest service authority conducted by the head SHE representative. During these assemblies, the chief of the agency or the employer representative must deliver a report according to *SGB IX*, Section 83, paragraph 3.

h. Local, joint, district, and head SHE-representative groups will be regularly informed of the number (additions and losses) of SHEs and employees of equal status they represent.

i. Local, joint, district, and head SHE-representative groups may attend all meetings of the works council and its committees as advisers regardless of whether or not questions about SHEs and employees of equal status are on the agenda. SHE-representative groups must be informed of and invited to the meetings, and the scheduled agenda must be provided in a timely manner by the responsible works council. The SHE representative is entitled to speak at personnel assemblies of agencies for which the representative is responsible. This is also true in cases where SHE representatives are not members of the agency.

j. On request by the SHE-representative group, the chair of the works council must convene a meeting when a matter concerning an individual SHE or employee of equal status or SHEs and employees of equal status as a group is to be discussed. The matter must be listed on the agenda for the meeting.

k. On request by the SHE representative, a decision by the works council that may harm important interests of a SHE or employee of equal status or SHEs and employees of equal status as a group will be suspended for 1 week from the time the decision is rendered. The same will be true if management failed to involve the SHE representative.

l. Comments by the responsible SHE representatives must be obtained in matters that concern SHEs and employees of equal status and require participation of the responsible works council. The works council must consider the comments when it makes decisions about SHEs or employees of equal status. The SHE representatives must be granted the same amount of time for handling an action that the works council is entitled to according to the provisions of the *BPersVG*. The request for a hearing of the responsible SHE representatives must be submitted at least 2 workdays before initiating participation procedures with the responsible works council. Requests must be in writing. Exceptions to this are authorized only if timely submission is not possible due to compelling operational procedures or other circumstances beyond the control of the organization initiating the action.

m. In matters that concern SHEs and employees of equal status, the SHE representatives are authorized to consult directly with the *Integrationsamt*, the employment agency, the social insurance carriers, and the offices responsible for providing rehabilitation services.

n. SHE representatives perform their duties in an honorary capacity without payment. They may not be hindered in the performance of duty, discriminated against, or given preferential treatment because of their office or in their professional development. Their legal status in relation to the organizational chief is the same as the works-council members, to include protection from termination (*KSchG*, Sec 15; *SGB IX*, Sec 96(3)). Deputies of SHE representatives are granted the same status as the SHE representatives while performing SHE-representative duties.

o. SHE representatives and their deputies will be released from their regular duties without a loss in pay whenever and to the extent required to perform SHE-representative duties. The same applies to training and educational courses that are relevant to SHE-representative duties, and training courses offered by the *Integrationsamt*. Compensatory time-off with pay for the performance of duties according to *SGB IX* will be provided to SHE representatives if they must perform these duties beyond regular workhours. Full-time release of members of SHE-representative groups is appropriate only in extraordinary situations and requires the approval of USAREUR G1 (AEAGA-CL).

p. Travel of SHE representatives associated with the performance of their duties according to *SGB IX* does not need to be directed or approved. Paragraph 11 will apply.

q. Costs arising from the activities of the local, joint, district, and head SHE representatives will be borne by the employing organization of the respective representatives. The employing organization will provide the SHE representatives with the support necessary to fulfill their duties (for example, typing, general office work). The employer will provide office space and supplies to the works council for its meetings, office hours, and the conduct of routine business. This office space and supplies will also be made available to the SHE representatives for the same purpose to the extent that no office space or supplies have been provided.

21. WORKS-COUNCIL DUTIES PURSUANT TO SGB IX

Works councils will ensure—

- a. The chiefs of the organization fulfill their obligations according to *SGB IX*, and support the elections of SHE representatives.
- b. In coordination with SHE representatives, that SHEs and employees of equal status are—
 - (1) Successfully integrated into the workplace.
 - (2) Appropriately supported in their careers.
 - (3) Employed in the organization commensurate with their skills and knowledge.

SECTION IV

ELECTION OF WORKS COUNCILS AND OTHER LOCAL NATIONAL EMPLOYEE-REPRESENTATIVE GROUPS

22. RESPONSIBILITIES FOR CONDUCTING ELECTIONS

- a. The USAREUR G1 (AEAGA-CL) will prepare lists of employees for each works-council agency. These lists will be provided to responsible election committees to help them prepare lists of voters.
- b. Agency chiefs, intermediate command authority chiefs, and the highest service authority will—
 - (1) Provide personnel information and logistic support to election committees as needed. This information and support will be used to prepare and conduct elections of LN employee representatives.
 - (2) Ensure that interference with elections is avoided except to investigate election-related incidents that appear to be a serious violation of election procedures.
- c. CPAC directors, the office or officials responsible for providing civilian personnel administration advice for AAFES-Eur, and labor advisers assigned to intermediate command authorities will—
 - (1) When required, provide assistance and advice to the individual bodies of LN employee representatives.
 - (2) Help agency chiefs and managers carry out their responsibilities in connection with the individual election processes.

23. LN EMPLOYEE-REPRESENTATIVE GROUPS

a. Works Councils.

- (1) **LWC (*Örtliche Betriebsvertretung*)**. A body of LN employees who legally function as employee representation of LN employees of a particular local agency.
- (2) **JWC (*Gesamtbetriebsvertretung*)**. A body of LN employees who legally function as employee representatives of LN employees of a particular local agency in which more than one LWC has been elected. A JWC must be established at the local agency level for the duration of the works-council term of office that follows the election when—

(a) The branch offices or parts of an agency are at a great geographic distance from the agency (as a rule, more than 30 kilometers).

(b) The individual branch offices or parts of the agency employ at least five LN employees entitled to vote, of whom three must be entitled to run for election.

(c) The employees of one of the branch offices decide by secret ballot before the election that their organization constitutes an independent agency and elect an autonomous works council at their branch office.

(3) DWC (*Bezirksbetriebsvertretung*). A body of LN employee representatives at the level of the intermediate command authority. This body legally serves as employee representation of all LN employees employed by the organizations that come under the jurisdiction of the intermediate command authority in Germany.

(4) HWC (*Hauptbetriebsvertretung*). A body of LN employees legally functioning at the level of the highest service authority as employee representation of all LN employees.

b. Youth and Apprentice Representatives (*Jugend- und Auszubildendenvertretung*). Bodies of youth and apprentice representatives are elected at the local, joint, district, and USAREUR levels. They represent the interests of employees below age 18 (youth employees) and of employees who are undergoing formal vocational training (apprenticeship programs) and have not reached 25 years of age. Youth- and apprentice- representative groups will be established (and elected) in agencies having a works council and employing at least five employees under age 18 or apprentices under age 25.

c. SHE Representatives (*Schwerbehindertenvertretung*). SHE representatives will be elected at the local, joint, district, and USAREUR levels if the agency at the respective level employs at least five SHEs or employees of equal status. If less than five SHEs or employees of equal status are employed by a given agency, they will automatically be represented by the SHE-representative group of the next higher authority in their respective works council agency's chain of command.

d. Temporary Employee Representatives (*Vertretung der nicht ständig Beschäftigten*). Groups of temporary employee representatives may be established (and elected) at local agencies only when—

(1) The agency employs more than 20 temporary LN employees for less than 6 months.

(2) A works council exists at the agency.

24. BASIC REQUIREMENTS FOR ELECTION OF WORKS COUNCILS

a. Election committees at each level (LWC, JWC, DWC, and HWC) will organize and conduct the election of works councils according to the provisions of the *BPersVWO*. Election committees will consist of three employees of the particular agency, intermediate command authority, or highest service authority who are eligible to vote in works-council elections. Three alternate members will be appointed to replace regular members during their absence. If necessary, the election committee may appoint employees as election helpers to assist in the voting process and to count the votes.

b. The current works council will appoint the members and alternate members of the election committee. In special situations, the respective agency chief, chief of an intermediate command authority, or head of the highest service authority will appoint the members and alternate members of the election committee. If a works council has been dissolved by court action because of gross neglect of legal rights or gross violation of legal obligations, the German labor court will appoint the members and alternate members of the election committee.

c. Members of the current works council or candidates for the new council may also be appointed to the election committee.

d. If both salaried employees and wage earners are employed in an agency, within the intermediate command authority, or within the highest service authority, each group must be represented on the election committee unless there is no representative in one of the groups who wants to run for office.

e. One representative of each trade union in a particular agency or within the intermediate command authority is authorized to participate in an advisory capacity in meetings of the respective election committee.

f. Members of the election committee may not be terminated by ordinary notice during the election process and for 6 months after the date election results are announced. They may be terminated by extraordinary notice in accordance with the rules applicable to works-council members (para 13).

g. The functions of the election committee are regulated in the *BPersVWO*. These functions include—

(1) Establishing the list of voters and announcing that the list has been displayed for on-site inspection.

(2) Determining the number of council members to be elected and seats between the two groups of employees (salaried employees and wage earners).

(3) Preparing and posting the election writ (the official announcement of the election).

(4) Processing and posting the slates of candidates. Employees of agencies entitled to vote and trade unions represented in the agency may submit slates.

(5) Preparing and conducting elections.

(6) Determining and posting the election results.

(7) Convening and chairing the constitutional meeting of newly elected works-council members until an election supervisor is elected from among the works-council members.

25. WORKS COUNCIL TERM OF OFFICE AND ELECTION DATE

a. The works council term of office will be 4 years. It may not be extended. The term of office will end on 31 May of the year in which the general elections are held. Individual council members may be reelected for an indefinite number of terms. They may also be members of the LWC, JWC, DWC, and HWC at the same time.

b. Regular general elections of works councils at all levels will be held every 4 years between 1 March and 31 May. The next general elections will be held in 2010. Works-council reelections will be held at other times if any of the following applies:

(1) Twenty-four months have passed from the day of election and the number of regularly employed LN employees has increased or dropped by 50 percent or by at least 50 employees.

(2) The total number of works-council members has dropped by more than 25 percent of the prescribed number, even though all alternate members have joined the works council.

(3) The works council has decided to resign from office.

(4) The works council has been disestablished by court decision.

(5) A works council does not exist at the level of the local agency or intermediate command authority.

(6) Former agencies have been merged or separated as a result of organizational measures.

c. In the situations in b(1) through (3) above, the current works council will continue to function until a new works council has been elected. In situation b(4) above, the office of the works council is terminated when the court decision becomes legally effective. The election committee appointed by the court will continue the functions of the works council.

d. If the election of a works council was not held during the regular election period, the next election of that council will be held during the next period for regular elections unless the works council has been in office for less than 1 year at the beginning of the period for regular works-council elections. In this case, the next election of that council will be held during the next succeeding period for regular works-council elections.

e. When a new works council is elected before the preceding council term has expired, the new council term will begin the day after the old works council term of office ends.

f. When a works council is elected in an agency without a works council, or if a works council is newly elected after the former council's term of office has expired, the term of office of that council will begin on the day after the election.

g. For any period between the expiration of the old works council term of office and the election of a new council, the council function will be suspended (*betriebsvertretungslose Zeit*) until the new council assumes office. The functions may be neither continued by the old council nor assumed by an election committee.

26. ESTABLISHMENT AND COMPOSITION OF WORKS COUNCILS

a. LWCs will be established in all agencies that regularly employ at least five persons who are entitled to vote, of whom three are eligible for office. In exceptional situations, a JWC may be established at an agency.

b. LWCs and JWCs will be elected by the employees of the agency. Employee voting is voluntary. The agency will be without a works council if—

(1) Management efforts to establish an election committee fail.

(2) The election committee cannot conduct an election due to the nonavailability of a sufficient number of candidates for the election.

(3) All employees who have been elected as regular works-council members and all alternate members on the slates for election refuse to assume their council office.

c. DWCs will be established at the intermediate-level authorities. The DWCs will be elected by the LN employees who are under the responsibility of the particular intermediate-level authority.

d. The HWC will be established at the level of the highest service authority of the U.S. Army in Germany. The HWC will be elected by all LN employees of the U.S. Forces in Germany who are administered by CHRA-E or employed by organizations of AAFES-Eur.

e. The number of LN employees in local agencies, in agencies of an intermediate-command authority or in Germany will determine the number of members on the LWCs, DWCs, and the HWC as shown in table 1. The maximum number of council members is 31.

Table 1 Number of Works-Council Members Based on Number of Employees	
Number of LN Employees Entitled to Vote	Number of Council Members
5 to 20	1
21 to 50	3
51 to 150	5
151 to 300	7
301 to 600	9
601 to 1,000	11
1,001 to 2,000	13
2,001 to 3,000	15
3,001 to 4,000	17
4,001 to 5,000	19
5,001 to 7,000	21
7,001 to 9,000	23
9,001 to 11,000	25
11,001 to 13,000	27
13,001 to 15,000	29
15,001 or more	31

f. The composition of works councils will be as follows:

(1) When both salaried employees and wage earners are employed in local agencies, agencies of intermediate-command authorities, or in the HWC area of representation and the council is entitled to have three or more members, both employee groups must be represented proportionately on the local agencies' councils, the DWCs, and on the HWC unless one of the employee groups does not propose a candidate.

(2) The classification of an employee into a group will be governed by the applicable salary or wage schedule of the *TV AL II*, except for tariff H (employees in accommodation, catering, and service

facilities), tariff P (firefighting, plant security, and guard personnel), and tariff T (employees in the retail industry) employees. Classification of tariff H, tariff P, and tariff T employees into applicable groups is governed by whether they perform clerical, administrative, or general office type duties (white collar employees); or whether they predominantly perform manual work (blue collar employees).

(3) Proportional representation by sex and job category among council members is not mandatory. Trade unions and employees should consider this representation, however, in nominating candidates and composing slates for the election.

27. EXECUTIVE COMMITTEE AND CHAIR OF THE WORKS COUNCIL

a. Except for works councils composed of one person, newly elected members of individual works councils must elect, within 6 workdays for a LWC and JWC and 12 workdays for a DWC and the HWC, the following at the constitutional meeting:

(1) The executive committee of the works council. This is mandatory when a works council has three or more members.

(2) The chairperson of the works council.

(3) The deputy chair of the works council.

b. The executive committee normally will consist of two members, one for each employee group represented on the council. The chair and deputy chair will be elected from among these two members of the executive committee. A works council with 11 or more members will elect two additional executive committee members, regardless of which employee group the two additional committee members belong.

c. The executive committee will be responsible for the daily business of the works council (for example, obtaining information required by the works council, preparing material for council meetings and decisions, holding council office hours). The chair functions include—

(1) Carrying out decisions of the works council.

(2) Acting as the spokesperson.

(3) Receiving statements from management for the works council.

(4) Convening and supervising works-council meetings.

(5) Convening of a meeting at the request of the agency chief.

(6) Establishing the agenda for the works-council meeting.

(7) Admitting agenda items at the request of the agency chief.

28. MANAGEMENT RESPONSIBILITIES

a. Establishing Election Dates. The representative of the head of the highest service authority, in consultation with the concerned German trade unions, will establish the dates for regular general elections of all works councils.

b. Appointing Election Committees. Works-council elections at every level must be organized and conducted by an election committee composed of three employees and appointed by the current governing works council. The chief of an agency, the chief of an intermediate-level command authority, or the representative of the highest service authority will initiate action for the appointment of the election committee as follows:

(1) The chief of an agency will call for the assembly of LN personnel to select the election committee if requested to do so by at least three employees entitled to vote or a trade union represented in the agency and if any of the following applies:

(a) The current works council fails to appoint an election committee 6 weeks before expiration of its term of office.

(b) The election committee fails to initiate the election immediately on its election and appointment.

(c) The works council has not appointed an election committee for election of a new works council within 2 weeks after the election should have started because of one of the reasons below:

1. The number of LN employees who are regularly employed has increased or decreased by 50 percent or by at least 50 employees after 24 months after the day of election of the works council.

2. The number of members of a works council has decreased by more than 25 percent even though all alternate members have assumed office.

3. The works council has resigned from office by majority vote.

(d) No request of employees entitled to vote or a trade union is required for convening a personnel assembly in the following cases:

1. The agency qualifies for a works council but no works council has been established.

2. An agency is newly established and meets the prerequisites for the election of a works council.

3. An agency meets the prerequisites to have a works council for the first time.

4. Either the election of a works council or the election of one of the two employee groups in a works council has been declared void by court action.

(2) At the request of at least three employees entitled to vote or a trade union represented in the agency, the agency chief will appoint an election committee if any of the following occurs:

(a) A personnel assembly does not materialize although it had been called.

(b) The personnel assembly does not elect an election committee.

(c) A local works council does not exist in the agency and the election committee of a DWC or the HWC has requested the establishment of a local election committee to elect a DWC or the HWC.

(3) An intermediate-level command authority chief will appoint the election committee for the election of a DWC, and the designated representative of the highest service authority will appoint the election committee to elect the HWC if—

(a) The conditions described in (1)(a), (b), (c), or (d) above apply for a DWC or the HWC.

(b) A DWC is to be established for the first time at a newly designated intermediate-level command authority.

c. Personnel Assembly.

(1) Personnel assemblies called by the chief of the agency for election of an election committee will be held during workhours except when prevented by operational requirements. The chief of the agency will—

(a) Provide an adequate room on the premises of the installation for this purpose. If an adequate room is not available at the installation, a room must be provided at a convenient place outside the installation. Room rental, if necessary, will be paid by the agency.

(b) Release employees from work without loss in pay to participate in personnel assemblies held during workhours. Appropriate compensatory time off will be granted for participation in personnel assemblies after workhours.

(2) Participation in the personnel assembly will be limited to—

(a) LN agency employees.

(b) The agency chief.

(c) Other management officials, if necessary.

(d) A JWC member.

(e) A next higher level council (DWC or HWC) member.

(f) One representative of each trade union represented in the agency.

(g) The responsible SHE-representative group.

(3) The personnel assembly will elect an assembly chair. All LN employees of the agency at the assembly will be authorized to vote.

29. PERSONNEL INFORMATION FOR THE ELECTION COMMITTEE

a. AAFES-Eur, the USAREUR G1 (AEAGA-C) (for works-council agencies serviced by CHRA-E), and, if needed, local agency management will provide the LWC election committees the information needed to prepare a list of voters and review the determinations of the election committees with respect to the size and composition of the works councils. This information will include the following:

(1) The agency designation.

(2) The first and last names of each LN agency employee, date of birth, date of entry to duty, mailing address, name of employing unit, and duty location of each LN employee if there is more than one duty location.

(3) The eligibility of each LN employee of the agency to vote and to be elected.

(4) The group classification of each LN employee of the agency (salaried employee or wage earner).

(5) The names of employees ineligible for election.

b. Information for U.S. Army garrison election committees will include information on collocated organizations of DECA, DODDS, collocated parts of organizations determined by the designated representative of the highest service authority to be part of the garrison works-council agency, and other collocated units or parts of units with fewer than five LN employees; unless these units have been consolidated into separate works-council agencies by the highest service authority with other units of the same intermediate-command authority.

c. Information provided to election committees will be kept current until the day of the election. Maintenance of information for all but election committees of AAFES-Eur will be the responsibility of the servicing CPAC in coordination with CHRA-E. In AAFES-Eur, heads of LWC agencies will maintain the information.

d. The designated representative of the highest service authority and the chiefs of the intermediate-level command authorities will provide the election committees of the HWC and the DWCs with information needed to prepare for the election of the HWC and DWCs. Information will include data as agreed between management and election committees.

e. Positions designated as LN positions on the TDA or equivalent staffing documents that are encumbered by U.S. citizens employed under U.S. employment conditions at the time of the works council election will be considered when determining the size and composition of works councils.

30. LOGISTIC SUPPORT FOR THE ELECTION COMMITTEE

a. The agency or intermediate-level command authority, and the highest service authority concerned will bear any costs connected with the elections of the LWC, JWC, DWC, and HWC. These election costs will be limited to the amount necessary to properly conduct the election. Legitimate expenditures include the following:

(1) Costs for personnel assemblies, services, and supplies for the election committees.

(2) Salaries and wages for the time during which employees are absent from work for voting, attending personnel assemblies or functioning as members or alternate members of an election committee, or as election helpers.

(3) Necessary travel expenses of election-committee members and alternate members. Employing organizations will pay expenses also for members and alternate members of the JWC, DWC, and HWC election committees.

(4) Training costs for election-committee members at all levels.

b. Chiefs of agencies, chiefs of intermediate-command authorities, and the representative of the highest service authority must provide the election committee the following supplies and services:

(1) Adequate office space and appropriate office furnishings, including telephones with access to the telephone network of Germany for election communication purposes.

(2) Equipment and supplies (for example, personal computers, printers, calculators, stationery, copies of the *BPersVG* and *BPersVWO* with commentaries by legal experts).

(3) Clerical support if justified by employee strength.

(4) Adequate space on bulletin boards or extra bulletin boards for posting election notices.

(5) Printing or reproduction services for election notices and Army post office services for dispatching election mail.

(6) Ballots in uniform size and color. When the election of the LWC, JWC, DWC, and HWC are conducted simultaneously, ballots will be a different color for each voting. White ballots will be reserved for LWC elections. One ballot is required for each voting employee.

(7) Envelopes for ballots.

(8) Ballot boxes that can be locked.

(9) Envelopes in standard paper size (DIN C5 and DIN C6) for transmittal of election material, German postage stamps for absentee voters and mailing of election results by registered mail service for the HWC, DWC, and JWC, and for special expedited German-postal delivery if necessary to meet legal deadlines.

(10) Rental of a German post-office box if justified by employee strength.

(11) Voting rooms equipped to ensure voting secrecy.

31. EMPLOYEE ELIGIBILITY TO VOTE AND BE ELECTED

a. LN employees entitled to vote are those who—

(1) Are at least 18 years old on the day of election.

(2) Have not lost the right to vote on public matters.

(3) Have not been on leave without pay for more than 6 months on the day of election.

b. LN employees eligible for election to a works council if, on the day of election, they—

(1) Have been working within the area of responsibility of the highest service authority for at least 6 months.

(2) Have been working with the U.S. Forces for at least 1 year.

(3) Hold civic rights.

(4) Work at least 18 hours per week.

c. If an agency or intermediate-level command authority has existed for less than 1 year, the prerequisites of b(1) above do not apply for eligibility for election.

d. The following personnel are not eligible for election to the LWC or JWC of their agency:

(1) LN chiefs of local agencies.

(2) LNs officially designated to represent local agency chiefs in discussions with LWCs and JWCs.

(3) Personnel authorized to decide independently on personnel actions (for example, appointments, promotions, details).

e. Personnel listed in d(1) through (3) above are eligible, however, for election to the DWCs and the HWC. They are also entitled to vote for works councils at all levels.

f. U.S. Family members and other U.S. citizens in LN positions who were hired under U.S. employment conditions are not entitled to vote and are not eligible for election to a works council.

32. NONINTERFERENCE WITH WORKS-COUNCIL ELECTIONS

Any actions by management, employees, election committees, or trade unions that would influence the proper election of a works council or influence election results are prohibited. Examples of prohibited actions include the following:

a. Refusing to provide necessary services, supplies, space, information, or time off for organizing and conducting elections.

b. Pressuring voters to vote for or against certain candidates or to abstain from voting.

c. Terminating or transferring an employee to prevent his or her election to or functioning on an election committee.

d. Threatening or promising an employee to influence him or her to vote, to abstain from voting, or to decline or accept nomination as a candidate.

e. Preparing incorrect lists of voters, handling slates improperly, or failing to perform duties in a timely manner.

f. Preventing employees from voting.

33. CHALLENGE OF WORKS-COUNCIL ELECTIONS

a. The agency chief or commander, with the assistance of the servicing CPAC, will investigate any election-related incident that appears to be a serious violation of election provisions. Election committees will be requested to correct improper preparations for works-council elections (for example, acceptance of slates with ineligible candidates). Rejection by election committees of legitimate requests for correction will be the basis for immediate initiation of a request for a preliminary injunction by a local labor court. This investigation will avoid a later challenge of the election that could lead to an expensive (and possibly unnecessary) repetition of the election.

b. The election of a works council may be challenged only—

(1) Within 12 workdays after the day of announcement of the election results.

(2) If essential and mandatory election provisions of the *BPersVG* or of the *BPersVWO* have been violated.

(3) If violations have not been corrected and could have influenced the election results.

c. The following are examples of violations that may lead to a successful election challenge:

(1) Voting by employees who are not entitled to vote or the exclusion from voting of employees who are entitled to vote.

(2) Incorrect appointment or composition of the election committee.

(3) Admittance of improper slates.

(4) Faulty counting of ballots.

(5) Erroneous computation of the number of council seats.

(6) Conduct of joint elections without prior voting for this mode of election.

(7) Noncompliance with the announced voting hours.

d. The following may take court action to challenge an election:

(1) Three or more employees who are entitled to vote.

(2) The chief of a local agency (for a LWC election), the chief of an intermediate-level command authority (for a DWC election), and the designated representative of the highest service authority for the election of the HWC.

(3) A trade union represented in the agency or command.

e. To challenge an election, an agency chief, the chief of an intermediate-level command authority, or the designated representative of the highest service authority (the Assistant Deputy Chief of Staff, G1 (Civilian Personnel)), through the responsible CPAC or AAFES-Eur HRO, must request the *ADD-LaS* to initiate court action. Challenge requests will be made in accordance with subparagraph b above. The local labor court will have jurisdiction. Challenge requests will be made only after it has been determined that the violation can be substantiated, has seriously affected the election results, and has not been corrected.

34. ELECTION OF SEVERELY HANDICAPPED EMPLOYEE REPRESENTATIVES

a. SHE representatives and deputy SHE representatives will be elected by secret vote at each of the three USAREUR command levels. A local SHE-representative group and, if a JWC exists, a joint SHE-representative group will be elected at each agency that regularly employs five or more LN SHEs or employees of equal status. A district SHE-representative group will be elected at each intermediate-level command authority where a DWC exists. A head SHE-representative group will be elected at the level of the highest service authority. Each SHE-representative group's term of office will be 4 years.

(1) Regular elections for local, joint, district, and head SHE-representative groups will be conducted every 4 years during the periods 1 October through 30 November at the local level; 1 December through 31 January at joint or district level; and 1 February through 31 March at the level of the highest service authority. The next election cycle will begin 2010 or 2011. Elections may be held at other times if—

(a) The term of office of a SHE-representative group ends prematurely (for example, due to resignation from office of the SHE representative) and no alternate member is available for his or her replacement.

(b) The election of a SHE-representative group has been effectively challenged.

(c) The agency qualifies for a SHE-representative group but no SHE-representative group has been elected.

(2) In agencies with less than 50 SHEs and employees of equal status, the election of the SHE-representative group will be conducted directly in an assembly of the SHEs and employees of equal status rather than by an election committee.

(3) In agencies with more than 49 SHEs and employees of equal status, an election committee will organize and conduct the election of the SHE-representative group as prescribed in the *SchwVVO*. The current SHE representative group will appoint the election committee. It will consist of three employees of the agency of whom one will be the chair. There may be three alternate members for the election committee to replace members during their absence. If there is no SHE representative group, the election committee will be elected by an assembly of the SHEs and employees of equal status of the agency. The assembly may be convened by three SHEs or employees of equal status of the agency, the works council of the agency, or the responsible *Integrationsamt*.

(4) If no assembly is held or if the assembly fails to elect an election committee, the chief of the agency, on request of three SHEs or employees of equal status of the agency or of the agency LWC or JWC, must appoint an election committee.

b. All SHEs and employees of equal status of the agency are entitled to elect the SHE-representative group of the agency. The joint-level SHE-representative group will be elected by the SHE representatives of the respective agencies. The district-level SHE-representative group will be elected by the SHE representatives of the agencies of the respective intermediate-level command authority, and the SHE representative of the agency headquarters staff offices of the intermediate-level command authority. The head SHE-representative group will be elected by the district SHE representatives and the local SHE representatives of the agency headquarters staff offices of the highest service authority. If there are less than 10 district SHE-representative groups, the local SHE-representative groups are entitled to vote for the head SHE-representative group.

c. Regularly employed LN employees of the agency or the intermediate-command authority who are 18 years old on the day of election and who have worked for 6 months in the agency or the intermediate-command authority (if the agency or intermediate command authority has existed for at least 1 year) are eligible for election as SHE representatives and deputy SHE representatives. Employees who are not eligible for election to an LWC or JWC are also not eligible for election as local or joint SHE representatives or deputy SHE representatives.

d. The provisions for the election of a works council regarding election proceedings, noninterference with the election, and logistic support for the election committee are equally applicable to elections of SHE-representative groups.

e. The provisions for protection from termination of employment applicable to members of election committees and candidates for election of works councils also apply to the members of election committees and candidates for election of SHE-representative groups.

35. ELECTION OF YOUTH AND APPRENTICE REPRESENTATIVES

a. According to the *BPersVG*, Sections 57 through 60 and 64, boards of local, joint, district, and head youth and apprentice representatives will be established at local agencies, intermediate-level command authorities, and at the level of the highest-service authority of the U.S. Army in Germany provided that a works council exists at the respective agency. The works council is responsible for appointment of an election committee for youth and apprentice representatives.

b. Local and joint boards of youth and apprentice representatives may be elected at each local agency employing at least five LN employees who are under 18 (youths) or who are under 25 years old and undergoing vocational training (apprentices). When this requirement is met at a particular local agency, district youth and apprentice representatives may be elected at the respective intermediate-level command authority as well as the head youth and apprentice representatives at USAREUR.

c. The number of youths and apprentices in an agency or command will determine the number of youth and apprentice representatives (table 2).

Table 2 Number of Youth and Apprentice Representatives Based on the Number of Employed Youths and Apprentices	
Number of Youths and Apprentices	Number of Youth and Apprentice Representatives
15 to 20	1
21 to 50	3
51 to 200	5
201 to 300	7
301 to 1,000	11
1,001 or more	15

d. The term of office of youth and apprentice representatives will be 2 years. It will end on 31 May of the year in which the general elections of youth and apprentice representatives are held. Regular elections also will be held every 2 years between 1 March and 31 May. The next elections will be held in 2010 and subsequently every second year.

e. LN employees who are not yet 18 (youths) or 25 (apprentices) years old on the day of election and have not been on leave without pay for more than 6 months are entitled to vote for boards of youth and apprentice representatives.

f. LN employees are eligible for election as youth and apprentice representatives when, on the day of election, they—

(1) Have not attained 26 years of age.

(2) Have been employed for 6 months within the area of responsibility of the highest service authority.

(3) Regularly work at least 18 hours per week.

g. The provisions for the election of works councils will apply to the election of youth and apprentice representatives.

36. ELECTION OF TEMPORARY-EMPLOYEE REPRESENTATIVES

a. Representatives of temporary employees will be elected only if—

(1) Local agencies employ more than 20 temporary LN employees who were hired for less than 6 months.

(2) A works council exists at the agency.

b. The works council is responsible for appointing an election committee to elect temporary-employee representatives.

c. Table 3 shows how the number of temporary employees in a particular local agency will determine the number of representatives of temporary employees.

d. The term of office of the representatives of temporary employees will expire when—

- (1) The employment of those they represent is ended.
- (2) The number of temporary employees drops below 20.
- (3) The term of office of the works council established at the agency ends.

e. Temporary employees of a particular agency who meet the basic requirements for voting and eligibility for a works council (except length of employment) are entitled to vote and eligible for election as temporary-employee representatives.

f. The provisions for the election of works councils apply to the election of temporary-employee representatives.

Table 3 Number of Temporary-Employee Representatives Based on Number of Temporary Employees	
Number of Temporary Employees	Temporary-Employee Representatives
21 to 50	1
51 to 100	2
101 or more	3

37. UNION MATERIAL

a. Union representatives may distribute and post union literature (including election-campaign material and union-membership applications) on U.S. Forces installations when—

- (1) The material does not include misleading information or comments detrimental to the U.S. Army or employee-management relations.
- (2) These activities have been cleared with the installation commander.

b. Union material may be distributed at the personnel assembly or during lunchtime and official breaks.

c. When requested, the chief of the agency will provide appropriate space for posting union literature. Access of union representatives to U.S. Forces installations will be subject to the same security regulations that apply to persons other than employees.

SECTION V

FUNCTIONS OF THE HEAD WORKS COUNCIL AT THE LEVEL OF THE HIGHEST SERVICE AUTHORITY

38. PURPOSE

This section establishes policy and procedures and assigns responsibilities to ensure that the heads of the staff offices of the headquarters of highest service authority (HQ USAREUR/7A) comply with the legal right of the HWC to participate in management actions of the highest service authority that concern LN employees in Germany.

39. RESPONSIBILITIES

a. The Assistant Deputy Chief of Staff, G1 (Civilian Personnel), HQ USAREUR/7A—

(1) Is the official representative of the U.S. Army in Europe in relations between the highest service authority of the U.S. Army in Germany and the HWC within the meaning of paragraph 3 of the Protocol of Signature, article 56, paragraph 9, to the Supplementary Agreement to the NATO SOFA.

(2) Will coordinate management actions under the responsibility of the highest service authority with the HWC in accordance with legal requirements.

b. Heads of HQ USAREUR/7A staff offices will—

(1) Promote cooperation and mutual confidence between their staff offices and the HWC.

(2) Be responsive to the Assistant Deputy Chief of Staff, G1 (Civilian Personnel), in relations between the Army and the HWC.

(3) Work with the Civilian Personnel Directorate (CPD), Office of the Deputy Chief of Staff, G1, HQ USAREUR/7A, action officers to ensure that the legal rights of the HWC are respected.

40. FUNCTIONS OF THE HEAD WORKS COUNCIL

a. The HWC has been established under the provisions of the *BPersVG*. It is a body of 31 LN employees elected by secret ballot to represent the LN workforce in Germany as legal-employee representation to the highest service authority of the U.S. Army in Germany. This LN workforce includes all LN employees serviced by CHRA-E or employed by AAFES-Eur.

b. The *BPersVG* stipulates the rights and responsibilities of the HWC to participate in USAREUR actions (including policy actions) that affect LN employees. The Assistant Deputy Chief of Staff, G1 (Civilian Personnel), must inform the HWC promptly and comprehensively of planned management actions. The HWC must be involved in management actions under the formal cooperation or codetermination procedures in *BPersVG*, Sections 69 and 72, before HQ USAREUR/7A makes a final decision.

c. The extent of HWC participation in planned management actions may be restricted when HWC participation is incompatible with military interests of USAREUR particularly worthy of protection. Classified documents will not be submitted to the HWC. The Assistant Deputy Chief of Staff, G1 (Civilian Personnel), must immediately inform the HWC when a decision is made to restrict HWC participation because of incompatibility with the military mission.

41. ACTIONS SUBJECT TO PARTICIPATION OF THE HEAD WORKS COUNCIL

a. The *BPersVG*, Sections 75 through 81, lists actions subject to works council participation. The majority of actions start at the local-agency level (for example, agencies at the local garrison level). Some actions start at the level of the intermediate-command authority (for example, 5th Signal Command, 21st Theater Sustainment Command). Local and intermediate command (district) works councils participate in these actions. At the HQ USAREUR/7A level, the right of the HWC to participate in management actions primarily pertains to the following actions that are subject to cooperation pursuant to Section 78 of the *BPersVG*:

(1) Plans for the following organizational changes that are based on actions of the highest service authority (that is, measures proposed by one or more staff office of HQ USAREUR/7A) or on directives of continental United States authorities above the level of HQ USAREUR/7A:

- (a) Deactivations of agencies or significant parts thereof.
- (b) Reductions in strength with significant effect on manpower strength.
- (c) Relocation or merger of agencies.

(2) Preparation of administrative instructions (for example, circulars, command policy memorandums, messages, regulations, training outlines, and changes to these publications) that establish or change AE guidelines, instructions, policy, or procedures concerning LN employees.

b. When the action starts at the local-management level it can be disapproved by the works councils at the local-agency and intermediate-command authority levels and submitted to the level of the highest service authority for decision. In connection with actions that are subject to the cooperation procedure, following negotiations with the HWC, the highest service authority renders a decision in its capacity as final appellate authority. If the highest service authority and the HWC cannot reach an agreement on an action that is subject to the codetermination procedure, the conciliatory committee will render a final decision at the request of either party.

c. When decisions are made at levels above the highest service authority and when HQ USAREUR/7A is directed to execute decisions that implement management actions, the HWC will be promptly informed before implementation in accordance with sentence 4 of paragraph 1 of the Protocol of Signature, Article 56, paragraph 9, to the Supplementary Agreement to the NATO SOFA. Subsequently, appropriate participation procedures will be processed with the HWC, which must be completed before the respective management action can be implemented. When an agency below the level of the highest service authority is directed to execute the decision, the participation procedures will be processed with the works council at that level.

42. PROCEDURES FOR PROCESSING ORGANIZATIONAL CHANGES WITH THE HEAD WORKS COUNCIL

a. Heads of HQ USAREUR/7A staff offices will inform the Assistant Deputy Chief of Staff, G1 (Civilian Personnel), before taking management actions that will affect LN employees or vacant LN positions. This includes actions that are planned for military reasons, even when the actions are classified. The Assistant Deputy Chief of Staff, G1 (Civilian Personnel), will decide if an action is subject to HWC participation. When heads of HQ USAREUR/7A staff offices send information that

affects LN employees of subordinate organizations, they will also send two printed copies to the Assistant Deputy Chief of Staff, G1 (Civilian Personnel), for transmittal to the HWC. To ensure the HWC receives this information as soon as possible, proponents will send copies of these documents to the Assistant Deputy Chief of Staff, G1 (Civilian Personnel), by e-mail immediately after the respective organization head has approved the action. Any public statements, press release, or similar announcement concerning such actions must be coordinated with the Assistant Deputy Chief of Staff, G1 (Civilian Personnel), and HWC notification requirements must be included in public affairs plans.

b. The Assistant Deputy Chief of Staff, G1 (Civilian Personnel), will promptly inform the HWC of planned organizational changes and their effects on LN employees. The Assistant Deputy Chief of Staff, G1 (Civilian Personnel), will discuss these actions with the HWC under the formal cooperation procedure at monthly HWC meetings. The Assistant Deputy Chief of Staff, G1 (Civilian Personnel), will honor and strive to accommodate proponents' desires concerning the timing of actions. The head of the HQ USAREUR/7A staff office concerned will promptly provide information about the proposed action to the Assistant Deputy Chief of Staff, G1 (Civilian Personnel), and assist in the cooperation procedure as necessary. After discussion of the action with the HWC, the Assistant Deputy Chief of Staff, G1 (Civilian Personnel), (on behalf of the CG, USAREUR/7A), will make the final decision in coordination with the head of the HQ USAREUR/7A staff office concerned.

43. PROCEDURES FOR PROCESSING PROPOSED ADMINISTRATIVE INSTRUCTIONS WITH THE HEAD WORKS COUNCIL

a. Heads of HQ USAREUR/7A staff offices will send (by e-mail) a coordinated, edited draft of their proposed administrative instructions (for example, regulation, policy memorandum) and a German translation to CPD. Drafts must show the date of their preparation or a version number. As an exception, if electronic transmission is not possible, proponents will provide two printed copies of the proposed documents with a German translation to CPD. Draft AE publications (AE Reg 25-35) must have been edited by the Document Management Office (DMO), IMCOM-Europe, before being submitted to CPD for HWC review. The DMO will also review translations of edited AE publications before they are submitted to CPD, for submission to the HWC.

b. CPD will provide drafts of proposed administrative instructions to the HWC for information, review, and discussion under cooperation or codetermination procedures. The Assistant Deputy Chief of Staff, G1 (Civilian Personnel), will—

(1) Ensure a dialogue is established between the HWC and the proponent office on questions concerning proposed publications.

(2) Assist during discussions with the HWC by providing advice on the application of the NATO SOFA and the *BPersVG*.

(3) Provide advice to the staff office concerned when the cooperation or codetermination procedures are completed.

c. Draft publications may be released for publication only after completion of cooperation or codetermination procedures. The basic intent of draft publications will not be changed after cooperation or codetermination procedures are completed. Because German is the official language used in court, the German-language version of all publications requiring HWC consent will be binding for LN employees in litigations in Germany. The Assistant Deputy Chief of Staff, G1 (Civilian Personnel), will ensure that the English versions of such publications convey the exact content of the German version.

d. When a publication is published only on paper, heads of proponent staff offices will provide CPD 5 copies of the final publication and 35 copies of the German version, if published, for transmittal to the HWC.

44. CONTACTING THE HEAD WORKS COUNCIL

The Assistant Deputy Chief of Staff, G1 (Civilian Personnel), is the officially designated representative of the CG, USAREUR/7A, to the HWC and, as such, exclusively authorized to present the official “employer” position to the HWC and commit the “employer” to the HWC. Direct contact with the HWC is discouraged. HQ USAREUR/7A staff offices desiring to contact the HWC must first coordinate the contact with CPD. Questions about HWC participation rights will be directed to CPD.

SECTION VI

FUNCTIONS OF THE LOCAL WORKS COUNCIL HQ USAREUR/7A STAFF OFFICES OF THE HIGHEST SERVICE-LEVEL AUTHORITY

45. PURPOSE

This section establishes policy and procedures and assigns responsibilities to ensure that the heads of the staff offices of HQ USAREUR/7A comply with the legal right of the LWC HQ USAREUR/7A staff offices to participate in management actions that concern LN employees of the staff sections of the highest service authority.

46. RESPONSIBILITIES

a. The Deputy Chief of Staff, G8, USAREUR—

(1) Is the management representative of the local agency HQ USAREUR/7A staff offices at the headquarters of the highest service authority, as designated by the CG, USAREUR/7A, based on paragraph 3 of the Protocol of Signature to Article 56, paragraph 9, of the Supplementary Agreement to SOFA.

(2) Will coordinate management actions under the responsibility of the highest service authority or individual staff offices and exclusively concern LN employees of the works council agency (HQ USAREUR/7A) with the LWC HQ USAREUR/7A staff offices in accordance with legal requirements.

b. Heads of HQ USAREUR/7A staff offices will—

(1) Promote cooperation and mutual confidence between their staff offices and the LWC HQ USAREUR/7A staff offices.

(2) Be responsive to the Deputy Chief of Staff, G8, USAREUR, in relations between HQ USAREUR/7A staff offices and the LWC HQ USAREUR/7A staff offices.

(3) Work with CPAC Heidelberg action officers who act on behalf of the Deputy Chief of Staff, G8, USAREUR, to ensure that the legal rights of the LWC HQ USAREUR/7A staff offices are respected. Questions concerning the participation rights of the LWC HQ USAREUR/7A staff offices will principally be directed by the CPAC Heidelberg.

c. The CG, USAREUR/7A, is simultaneously the head of the highest service authority (USAREUR/7A) and chief of the local agency HQ USAREUR/7A staff offices at the headquarters of the highest service authority. Accordingly, there is no normal channel for the LWC HQ USAREUR/7A staff offices to a next higher authority to appeal management decisions on actions that are subject to cooperation or codetermination pursuant to Sections 69 and 72, *BPersVG*. Therefore, decisions of the Deputy Chief of Staff, G8, USAREUR, under the cooperation procedure—if applicable, after discussion with the works council—are final. In connection with actions subject to the codetermination procedure, if no agreement can be reached between the Deputy Chief of Staff, G8, USAREUR, and the LWC HQ USAREUR/7A staff offices, the conciliatory committee will render a final decision at the request of either party.

d. In connection with measures of the highest service authority that are subject to works council participation and apply to all LN employees within the area of responsibility of the highest service authority or parts thereof (including all LN employees of the HQ USAREUR/7A staff offices or parts thereof), the HWC rather than the LWC HQ USAREUR/7A staff offices must be involved under the cooperation procedures.

APPENDIX A REFERENCES

SECTION I PUBLICATIONS

Arbeitszeitgesetz (Working Time Act)

Bundespersonalvertretungsgesetz (Federal Personnel Representation Law)

Bürgerliches Gesetzbuch (German Civil Code)

Kündigungsschutzgesetz (Law on Protection From Termination of Employment)

Sozialgesetzbuch IX, Rehabilitation und Teilhabe behinderter Menschen (Social Security Code IX, Rehabilitation and Integration of Handicapped Persons)

Strafgesetzbuch (German Criminal Code)

Tarifvertrag vom 16. Dezember 1966 für die Arbeitnehmer bei den Stationierungstreitkräften im Gebiet der Bundesrepublik Deutschland (Collective Tariff Agreement II)

Verordnung über die Höhe der Aufwandsentschädigung für vom Dienst freigestellte Personalvertretungsmitglieder (German Ordinance on Expense Allowance for Works Council Members Who Are Released From Duty)

Wahlordnung zum Bundespersonalvertretungsgesetz (Election Ordinance Under the Federal Personnel Representation Law)

Wahlordnung Schwerbehindertenvertretungen (Election Ordinance for the Representative Body for Severely Handicapped Employees)

AR 25-400-2, The Army Records Information Management System (ARIMS)

AE Regulation 25-35, Preparing Army in Europe Publications

AE Regulation 690-70, Recruitment and Staffing for Local National Employees in Germany

AE Regulation 690-84, Reduction in Force—Local National Employees in Germany

SECTION II FORMS

DD Form 1610, Request and Authorization for TDY Travel of DOD Personnel

DA Form 2028, Recommended Changes to Publications and Blank Forms

AE Form 690-69A, Supplemental Travel Order/*Zusatz zur Dienstreiseanordnung*

AE Form 690-70E, Notification of Employment Status/*Mitteilung über den Stand des Arbeitsverhältnisses*

AE Form 690-70F, Request for Personnel Action - Non-U.S. (Germany)

APPENDIX B

EXCUSED ABSENCE OF NON-FULLTIME RELEASED MEMBERS OF THE WORKS COUNCIL TO ATTEND OR PERFORM COUNCIL FUNCTIONS

B-1. GENERAL

Bundespersönalvertretungsgesetz (BPersVG) (Federal Representation Law), Section 46, paragraph 2, stipulates that the loss of working time that is necessary for the proper performance of works council functions will not result in a reduction of salaries and wages. Guidance below provides information on prevailing case law established by German courts on this legal provision.

B-2. POLICY

The members of the works council have been elected to an office controlled by law. As such, they must have the time to duly exercise their official functions. Although the activities performed by the works council are not duties owed by virtue of the employment contract, as a rule they have priority over the regular duties of the member since they are considered necessary for the accomplishment of the appropriate and proper duties of the works council.

a. The loss of workhours will not result in a loss of pay if the loss is required (that is, objectively necessary for the proper performance of works council functions). In individual cases, the question of objective necessity may be an issue. However, the determining factor is whether or not the works council member, based on a mature evaluation of the facts and circumstances, can reasonably consider the loss of working time to be just and proper.

b. By virtue of the above legal provision, the release from duty to perform works council functions is granted in general. That means that even a works council member who is not released from duty full-time for the exclusive performance of works council duties may discontinue his or her regular duties on a particular occasion to perform a works council function. He or she does not need the supervisor's approval but is compelled to make the decision to do so according to his or her best judgment. For example, it would be impossible for a works council member to receive an employee grievance if he or she had to request concurrence from the agency chief to discontinue his regular duties for this purpose. The same holds true for leaving the worksite; no concurrence of the agency chief is needed. On the other hand, visiting individual employees at their worksites or inspections of worksites authorized only in agreement with the agency chief.

c. The functions of the works council normally occur at the agency. Some of these functions are meetings such as the monthly meeting with the agency chief, office hours, receipt of grievances, all advance work (that is, study of documents) to exercise the right of cooperation and codetermination, and consultation with employees. However, functions of the works council may also occur outside of the agency (that is, activities at outlying parts of the agency, negotiations with the intermediate-command-level works council, attendance at labor court hearings with the works council being party to the litigation). All functions that are not explicitly assigned by the *BPersVG* or cannot be directly derived from it are not part of the functions to be duly performed by the works council. Such matters include, representation of employees in court, attendance at court hearings in which the works council is not a party to the litigation, and attendance at functions that the works council member attends for his or her own personal benefit.

d. The works-council member does not have to file a formal request for release from contractual duties to perform a legitimate works-council function. He or she must simply inform the supervisor that the performance of a works-council function requires his or her temporary release and the time required for performing the function. There is no requirement to describe the type of the works-council function requiring the temporary release (*Bundesarbeitsgericht* (Federal Labor Court) decision of 15 March 1995, case file number 7 AZR 643/94). The works-council member is by no means required to disclose the name of the employee visited or to release details on the problems or issues to be discussed. The notice of departure for the performance of a works-council function by which the works-council member has to advise the supervisor of the location and the estimated duration of the works-council function serves the purpose of assisting the employer in facilitating work scheduling and bridging the time gap caused by the employee's work stoppage. In consideration of the legal obligation for trustful cooperation, the notice shall be given by the works council member as soon as possible.

e. If, at the time of the notice of departure, the supervisor, in consideration of his or her legal obligation for trustful cooperation with the works council in accordance with Section 2(1), *BPersVG*, states a compelling organizational requirement for the works-council member to be indispensable at his or her worksite for the duration of proposed works-council duties and a postponement of works-council duties becomes necessary, the following procedures will be followed:

(1) The works-council member, in consideration of his or her legal obligation for trustful cooperation with the agency in accordance with Section 2(1), *BPersVG*, is now obligated to review whether the proposed performance of works-council duties must be postponed in view of the stated compelling organizational requirement. This question will not be reviewed from his or her own perspective but from the perspective of a reasonable third party by weighing the interests of the organization against the interests of the works council and the workforce.

(2) If, following the review and despite the conflicting compelling organizational requirement, the works-council member considers the proposed works-council duties to be urgent enough to take precedence over conflicting organizational requirements, the works-council member must provide the supervisor with some written remarks on the proposed works-council duties.

(3) If the supervisor and the works-council member cannot reach an agreement and if the supervisor, following a thorough and responsible weighing of interests, makes the final decision that the works-council member cannot leave his or her worksite at the requested time, he or she will notify the works-council member accordingly by providing a comprehensive justification for such a decision based on the underlying facts.

(4) If the works council member leaves his or her worksite to perform works-council duties, the supervisor, if he or she does not acknowledge the compelling necessity of the duties to be performed compared to the conflicting-organizational requirements, may consider suitable sanctions (that is, admonishment or withholding of pay for the lost workhours). If the works-council member considers the actions of the employer to be unjustified, he or she may provide a justification for the necessity of the performed works-council duties. The possibility of a judicial review of the dispute remains unaffected.

(5) The works-council member may also resort to a review (that is, complaint to the agency chief, the chief of the agency's higher military headquarters, or the labor court) whether the reasons provided by the supervisor justify postponing the performance of works-council duties to a later time. If the reasons provided by the supervisor are not justified, his or her behavior is considered an illegal hindrance of the works-council member in performing his duties and authority in accordance with Section 8, *BPersVG*. Unlawful action can result in sanctions for both the works-council member and the supervisor.

f. For works council duties that regularly take place at the same time and of which the agency is aware (that is, meetings of the LWC, DWC, or HWC), a notice of departure, as a rule, is not required because the meetings will be scheduled in advance and the agency has been informed that the employees who are members of these councils will not be available on the days of the meeting; agencies will have taken the necessary steps. Release from duty for members of an LWC, a DWC, or the HWC to participate in meetings of the respective council may be denied only if it is indispensable in an individual case in an official emergency. Further restrictions could result in an unlawful hindrance of works councils in accordance with Section 8, *BPersVG*.

g. Worktime lost due to the performance of works-council duties must be necessary. The function that causes the loss of worktime may not involve the handling of a matter that does not require negotiations (*nicht verhandlungsbedürftig*) or that is fictitious. Negotiations may not be extended beyond the time actually needed. The agency may retroactively review the necessity of the lost worktime. In cases of disagreement, neither the agency chief nor the works council unilateral decisions are binding since the labor court will have to render a final and binding decision.

h. Abuse of the entitlement to be released from duty for the performance of works-council functions is not only a violation of the respective works-council member's employment contract, which can be used as a basis for disciplinary action, but a gross dereliction of duty in the meaning Section 28, paragraph 1, of the *BPersVG*, which can serve as a basis for a management-initiated court action for the exclusion of one or more members from the works council or the dissolution of the entire works council.

GLOSSARY

SECTION I ABBREVIATIONS

AAFES-Eur	Army and Air Force Exchange Service, Europe
ADD-LaS	<i>Aufsichts- und Dienstleistungsdirektion, Lohnstelle ausländische Streitkräfte</i> (Controlling and Service Directorate, Foreign Forces Payroll Office)
AE	Army in Europe
BGB	<i>Bürgerliches Gesetzbuch</i> (German Civil Code)
BPersVG	<i>Bundespersönlichkeitsvertretungsgesetz</i> (Federal Personnel Representation Law)
BPersVWO	<i>Wahlordnung zum Bundespersönlichkeitsvertretungsgesetz</i> (Election Regulation to the Federal Personnel Representation Law)
CG, USAREUR/7A	Commanding General, United States Army Europe and Seventh Army
CHRA-E	United States Army Civilian Human Resource Agency, Europe Region
CPAC	civilian personnel advisory center
CPD	Civilian Personnel Directorate, Office of the G1, Headquarters, United States Army Europe and Seventh Army
CSG	civilian support group
DECA	Defense Commissary Agency
DMO	Document Management Office, Administrative Services Branch, Human Resources Division, United States Army Installation Management Command, Europe Region
DODDS	Department of Defense Dependents Schools
DWC	district works council
HQDA	Headquarters, Department of the Army
HQ USAREUR/7A	Headquarters, United States Army Europe and Seventh Army
HRO	human resources office
HWC	Head Works Council, USAREUR
IMCOM-Europe	United States Army Installation Management Command, Europe Region
JMTC	Seventh United States Army Joint Multinational Training Command
JWC	joint works council
KSchG	<i>Kündigungsschutzgesetz</i> (Law on Protection from Termination of Employment)
LN	local national
LWC	local works council
LWOP	leave without pay
NATO	North Atlantic Treaty Organization
SchwAV	<i>Schwerbehinderten-Ausgleichsabgabeverordnung</i> (Severely Handicapped Equalization of Burdens Ordinance)
SchwVWO	<i>Wahlordnung Schwerbehindertenvvertretung</i> (Election Regulation – Severely Handicapped Employee Representative Groups)
SGB IX	<i>Sozialgesetzbuch IX, Rehabilitation und Teilhabe behinderter Menschen</i> (Social Security Code IX, Rehabilitation and Integration of Handicapped Persons)
SHE	severely handicapped employee
SOFA	Status of Forces Agreement
StGB	<i>Strafgesetzbuch</i> (German Criminal Code)
TDA	tables of distribution and allowances
TDY	temporary duty

<i>TV AL II</i>	<i>Tarifvertrag vom 16. Dezember 1966 für die Arbeitnehmer bei den Stationierungsstreitkräften im Gebiet der Bundesrepublik Deutschland (Collective Tariff Agreement II)</i>
U.S.	United States
USAREUR	United States Army Europe

SECTION II TERMS

agency

An organization composed of local national employees or positions designated for employment of local national employees, that has been defined as “works council agency” by the highest service authority and in which the employees are authorized to elect a works council.

agency chief

The person in charge of an agency who has formal, unrestricted authority and jurisdiction in all personnel administration and management matters (*Personalhoheit*) that concern the LN workforce of the agency.

conciliatory committee

A board established on an ad hoc basis at the level of the highest service authority (HQ USAREUR/7A) to act on codetermination issues on which no agreement could be reached between the respective representative of the CG, USAREUR/7A, and the Head Works Council (HWC) or Local Works Council (LWC) HQ USAREUR/7A staff offices. The board consists of two members (one appointed by the respective representative of the CG, USAREUR/7A, and one appointed by the HWC or the LWC, HQ USAREUR/7A staff offices) and an impartial chair to be agreed on by both parties. If no agreement can be reached, the chair will be appointed by the Secretary General of NATO, unless the parties jointly request the President of Federal Administrative Court or the Secretary General of the Western European Union to make the appointment.

election committee

LN employees elected by a personnel assembly (only in local agencies), elected by the current works council, or appointed by the agency chief to prepare and conduct the election of the works council. Regardless of the size of the agency and the number of council members to be elected, the election committee will consist of three members, one of whom will be appointed as chairman. In addition, three alternate members will be elected or appointed to replace regular members during their absence. Each employee group (for example, salaried employees and wage earners) must be represented in the election committee.

election writ

The official announcement of the works council election.

highest service authority

The authority at the level of which a head works council must be established. HQ USAREUR/7A is the highest service authority for all LN employees who are employed by organizations of the U.S. Forces serviced by the United States Army Civilian Human Resources Agency, Europe Region, or the Army and Air Force Exchange Service, Europe, in Germany. As highest service authority, the CG, USAREUR/7A, exercises final authority over matters that are subject to works council cooperation and codetermination inasmuch as the conciliatory committee does not render a final decision in matters subject to works council codetermination.

intermediate command authority

An organization defined by the highest service authority to be the authority immediately below the level of the highest service authority with subordinate works council agencies at the same or different geographical locations, that is authorized to elect a district works council.

local national employees

Individuals employed according to the labor law of Germany as modified by the provisions of the Supplementary Agreement to the NATO Status of Forces Agreement, Article 56.

management representative

The official designated under German labor laws (as modified by the Supplementary Agreement to the NATO Status of Forces Supplementary Agreement, Article 56) to represent the CG, USAREUR/7A, the commander or director of an intermediate authority, or the chief of a local agency in dealings with the works council and the severely handicapped employee representative at the respective level on behalf of management. The management representative must hold a responsible position in the overall management of the organization at the respective level and must be authorized to negotiate with the works council and the severely handicapped employee representative to the same extent as the chief of the respective agency. At the local agency level, the commander or the individual in charge of the agency will be the management representative. In exceptional situations (for example, size or complexity of the agency), the deputy commander or the deputy of the individual in charge may be designated as management representative. The CG, USAREUR/7A, and the commander or director of an intermediate authority may assume the function of the management representative personally or share this function with a designated representative. The designation must be in writing (in both English and German) and provided to the works council concerned. In this regulation, management representative may be substituted for references to the chief of an agency, to the commander or director of an intermediate authority, or to the CG, USAREUR/7A, or designated representative.

personnel assembly

A meeting of all LN employees of a local agency convened by the chair of the local works council. If an assembly of all employees cannot be held because of the geographic dispersion of the local agency or operational reasons, partial assemblies of employees available at one time or at one location may be convened. Chairs of joint works councils, district works councils, and the Head Works Council, may not convene assemblies of the employees they represent.

shop agreement

A written document setting forth generally binding conditions of employment agreed on between the CG, USAREUR/7A, the chief of an intermediate authority or an agency chief and the local, joint, district, or highest service authority works council. Employment conditions that may be regulated by a shop agreement are those conditions subject to the codetermination procedure to the extent that they are not regulated by law or tariff agreement. Chiefs of intermediate authorities and local agency chiefs will not conclude shop agreements on matters regulated by AE policy, regulation, or shop agreement negotiated with the Head Works Council.

Tarifvertrag vom 16. Dezember 1966 für die Arbeitnehmer bei den Stationierungs-streitkräften im Gebiet der Bundesrepublik Deutschland (TV AL II) (Collective Tariff Agreement II)

A tariff agreement providing minimum employment conditions for local national employees of the Sending States Forces in Germany.

works council

A collective term denoting local works councils, joint works councils, district works councils, and the Head Works Council, USAREUR. Works councils are bodies of employees elected by secret ballot to legally function as representatives of a particular local activity's or command's local national employees.

works council right to propose action

The right of works councils at all levels to ask the chief of the agency to take management actions that are subject to full codetermination. These requests must be in writing and addressed to the chief of the agency. If the chief of the agency does not consent to the works council's request, the codetermination procedure must be followed. If no agreement on the matter can be reached between the CG, USAREUR/7A, and the Head Works Council, a conciliatory committee will render a final and binding decision. If the works council's request concerns a matter that is not subject to full codetermination, the CG, USAREUR/7A, will render the final decision.