

Strasbourg, 27 December 2012

CDDH(2012)016 Final

**STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)**

---

**Questionnaire on the implementation of Committee of Ministers'  
Recommendation CM/Rec(2010)4 on human rights  
of members of the armed forces**

**Questionnaire sur la mise en œuvre de la Recommandation du  
Comité des Ministres CM/Rec(2010)4  
sur les droits de l'homme des membres des forces armées**

**COMPILATION OF MEMBER STATES ANSWERS  
COMPILATION DES RÉPONSES DES ÉTATS MEMBRES**

---

**76<sup>th</sup> meeting**

**Tuesday 27 November (9:30 a.m.) – Friday 30 November 2012  
(closing : 1 p.m.)**

**Council of Europe  
AGORA building  
*Room G02***

TABLE OF CONTENTS/TABLE DES MATIÈRES
--------------------------------------

ANDORRA .....	3
ARMENIA .....	4
AUSTRIA .....	17
BELGIQUE .....	25
BOSNIA AND HERZEGOVINA .....	38
CROATIA .....	46
CZECH REPUBLIC .....	59
DENMARK .....	67
ESTONIA .....	76
FINLAND .....	85
FRANCE .....	93
GERMANY .....	106
GEORGIA .....	119
GREECE .....	127
HUNGARY .....	135
ICELAND .....	144
IRELAND .....	145
ITALY .....	155
LIECHTENSTEIN .....	163
LITHUANIA .....	164
LUXEMBOURG .....	175
REPUBLIC OF MOLDOVA .....	184
NETHERLANDS .....	193
NORWAY .....	203
POLAND .....	213
PORTUGAL .....	220
ROMANIA .....	229
SAINT-MARIN .....	238
SERBIA .....	248
SLOVAK REPUBLIC .....	256
SLOVENIA .....	266
SPAIN .....	275
SWEDEN .....	284
SUISSE .....	292
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" .....	302
UKRAINE .....	311
SAINT-SIÈGE .....	320
OSCE Office for Democratic Institutions .....	321

## **ANDORRA**

Principality of Andorra has never had armed forces. For this reason, although we have been throughout the questionnaire, we have realized that there is no possible answer to any of the indicated questions.

**ARMENIA****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which?

Yes ☒ No ☐

Since the implementation of Recommendation falls under the competences of the Ministry of Defence of the Republic of Armenia, its different departments, in accordance with their functions, implement duties related to implementation of the requirements of the Recommendation.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

The Recommendation, which content is akin to the content of the educational material, advisory opinions and recommendations of other international organizations, the legislation of the Republic of Armenia in the fields of military service and defence, and which is taken into consideration in the process of developing the object (scope) of military law, contributes to the increase of awareness of the members of the armed forces.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples.

Yes ☒ No ☐

The Ministry of Defence of the Republic of Armenia periodically undertakes measures aimed at the development of mechanisms of human rights protection in the armed forces. The issues raised in the Recommendation are contained in the Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, which has been produced jointly by ODIHR and the Geneva Centre for the Democratic Control of the Armed Forces. The mentioned Handbook has been translated into Armenian with the assistance of the OSCE Office in Yerevan. Based on that Handbook, seminars on human rights have been conducted in different units of Armenian armed forces. Additionally, the educational programs of the armed forces and military educational institutions, which currently are in the phase of elaboration, will take the Recommendation into consideration.

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

No obstacle has been encountered.

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which?

Yes ☒ No ☐

Every unit and authority, in the framework of its competences, implement dissemination and explanation of the Recommendation.

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples.

Yes ☒ No ☐

See the answer to question 1.3.

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

No obstacle has been encountered.

II.4 To which authorities has the Recommendation been distributed?

The Recommendation has been discussed and analyzed by the corresponding departments of the Ministry of Defence, which competences relate to the protection of human rights in armed forces, including but not being limited to the departments of Defence policy, Human Resources and Military Education and Legal Affairs, the Military Policy, the Investigation Service, the Department of works carried out with armed forces personnel, Military educational institutions, etc.

II.5 Has the Recommendation been distributed to members of the armed forces?

Yes ☒ No ☐

The Recommendation has not been directly distributed to members of the armed forces.

Based on the Recommendation, guiding rules, educational programs have been elaborated, by which members of the armed forces get acquainted with the content of the document. The Recommendation is discussed and analyzed by the departments, which competences relate to the protection of human rights in armed forces, e.g.: departments of Defence policy, Human Resources and Military Education and Legal Affairs, the Military Policy, the Investigation Service, etc.

II.6 Has the Recommendation been translated ?

Yes ☒ No ☐

The Defence Ministry has translated it for working purposes, not officially

II.7 If not, is this foreseen?

Yes ☒ No ☐

II.8 How would you assess the visibility of the Recommendation?

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces?

Yes ☒ No ☐

According to the provisions of the Criminal Procedure and Criminal Codes of the Republic of Armenia, in case of suspicious deaths or alleged violations of the right to life a criminal case shall be instituted and examination shall be carried out, including pre-criminal proceedings and judicial examination. Additionally, the Law of the Republic of Armenia on Disciplinary Rules of the armed forces of the Republic of Armenia states that in the case of suspicious deaths or alleged violations of the right to life of a member of the armed forces service examination shall be implemented.

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation?

Yes ☒ No ☐

The law of the Republic of Armenia on Disciplinary Rules of the armed forces of the Republic of Armenia entitles the members of the armed forces to report superior commanders on the illegal and unlawful activities of other members of the armed forces. The law also prescribes liability for commanders, who have hindered reporting or have carried out other illegal action or inaction. The decree Number 154 of the Defence Minister of the Republic of Armenia, dated 21.02.2012, regulates the ensuring of protection of members of the armed forces, who are victims or witnesses in instituted criminal cases.

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

See answers to questions A.1 and A.2.

B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment?

Yes ☐

No ☒

In compliance with the requirements of the Constitution of the Republic of Armenia, the Criminal Procedure Code prescribes criminal liability and the law of the Republic of Armenia on Disciplinary Rules of the armed forces of the Republic of Armenia stipulates disciplinary liability for torture or other inhuman or degrading treatment or punishment, other unlawful treatment towards members of the armed forces, as well as for subjecting them to unfounded punishment

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts?

Yes ☐

No ☒

All the members of the armed forces are equal before the law

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred?

Yes ☒

No ☐

See the answer to question A.2.

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation?

Yes ☒

No ☐

See the answer to question B1

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

Information on legal framework is provided in the answer to question B.1.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military

Yes ☒

No ☐

service, and which are the differences in nature and duration of such service?

According to the laws of the Republic of Armenia on Military Serving and on Conscription, males of 18-27 years old shall be subject to compulsory military service for a duration of 24 months. The Law of the Republic of Armenia on Alternative Service provides that any citizen of the Republic of Armenia may join alternative service, where undergoing military service in military subdivision, as well as carrying, keeping, maintaining and using weapons are contrary to his religious beliefs and convictions. The types of alternative service are:  
 (a) alternative military service — military service not related to combat duty and to carrying, keeping, maintaining and using of weapons in Armed Forces of the Republic of Armenia (duration of 36 months),  
 b) alternative labour service — labour service performed outside the Armed Forces of the Republic of Armenia (duration of 42 months).

#### D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

The relations connected with military discipline are regulated by the law of the Republic of Armenia on Disciplinary rules of the armed forces of the Republic of Armenia.

#### E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

The provisions of the Constitution, the Criminal Procedure Code and the Criminal Code on deprivation of liberty extend to the members of the armed forces.

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☒ No ☐

The provisions of the Constitution, the Criminal Procedure Code and the Criminal Code related to deprivation of liberty of persons under the age of 18 extend to the members of the armed forces under the age of 18 (see subchapter T).

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?

According to the Constitution, the Criminal Procedure Code, the Criminal Code and the Judicial Code everyone has right to personal freedom and immunity, a person may be deprived of freedom only in the cases and in the order prescribed by law. Yes ☒ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? Yes ☐ No ☒

If so, please specify.

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

Yes ☒ No ☐

According to the Constitution of the Republic of Armenia all people are equal before the law.

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions.

Yes ☐ No ☒

There are no such limitations, all people are equal before the law.

F.3 Does your country have military courts?

Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command?

Yes ☐ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation?

Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment?

Yes ☒ No ☐

The law on Conscription states the bases, which fulfilment allows the citizens conscripted for military service to have the right to be posted no farther than 150km from their home place. The citizens serving in the armed forces on contractual basis (Professional members of the armed forces) may not be posted outside the administrative zone of their residence for disciplinary punishment purposes. The professional members of the armed forces may move with their families near the place, where they have been posted.

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts?

Yes ☒ No ☐

The members of the armed forces of the Republic of Armenia serving abroad are free to maintain personal contacts. Additionally, the legislation of the Republic of Armenia permits their families to accompany them abroad.

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad?

Yes ☒ No ☐



By decree N 778 of the Government of Armenia, dated 27 November, 2000, adequate compensation is provided for transportation expenses, including, freighting and other expenses incurred by the families of the members of the armed forces serving abroad.

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

The right of parental leave, childcare benefits and of access to nursery schools and adequate children's health and educational systems provided by the legislation of the Republic of Armenia extend to members of the armed forces, as stated by the law of the Republic of Armenia on military serving.

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

#### H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☐ No ☒

The members of the armed forces are free to have religious belief. In accordance with the Constitution of the Republic of Armenia, everyone shall have the right to freedom of thought, conscience and religion. This right includes freedom to change the religion or belief and freedom to, either alone or in community with others manifest the religion or belief, through preaching, church ceremonies and other religious rites. The only requirement on member of the armed forces is not to join a religious organization, nor establish a religious association. The Constitution provides that the exercise of this right may be restricted only by law in the interests of the public security. The law on military serving prescribes that the members of the armed forces, *inter alia* may not join a religious association (political parties neither) and they may not use their official position to advance the interests of those organizations.

H.2 Do conscripts have the rights to be granted conscientious objector status?

While professional members of the armed forces are free to withdraw from the armed forces by their request, conscripts may reject compulsory military service and opt for alternative military service before starting their service.

Yes ☐ No ☒

H.2.1 If so, is an alternative service of a civilian nature available

Yes ☒ No ☐

The alternative military service is only available to conscripts, who apply

for it. Information on alternative service is provided in the answer to the question C.1.

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions?

Yes ☐

No ☒

Sanctions are imposed to citizens, who, out of religious belief, reject both compulsory military service and alternative service. Based on the decision of the European Court of Human Rights in the case Bayatyan v. Armenia, Courts of the Republic of Armenia, subjects are held criminally liable when they have refused from not only military service, but also alternative one. This practice will be formalized soon, as amendments to the Criminal Code and to the law on Alternative Service are being drafted and they are planned to come into force in 2013.

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Yes ☒

No ☐

Professional members of the armed forces may leave the armed forces by their own free will, including for religious belief purposes. The law of the Republic of Armenia on military serving provides that they may refuse from military service by presenting a petition.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights?

Yes ☐

No ☒

See the answer to question H.2.

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces?

Yes ☐

No ☒

According to the requirements of the Constitution of the Republic of Armenia everyone has the right to freedom of expression. It is forbidden to constrain a person to refuse from his opinion or to change it. Everyone has the right to freedom of speech, including freedom of searching, receiving, imparting information and ideas by any means of information, regardless of state frontiers. Moreover, everyone shall have the right to freely express his/her opinion. No one shall

be forced to recede or change his/her opinion. Therefore, this general provisions extend to members of the armed forces, for whom no restriction is provided.

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

At the present moment, reasonably restrictions of freedom of speech relate to state or service secrets or confidential information. But, there is a common understanding that the given domain needs to be regulated more in detail and specific framework shall be set, as so requires the nature of the service.

*J – Right to access to relevant information*

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting there from are provided to potential recruits? Yes ☒ No ☐

Information on enlistment for professional military service is provided in the website of the Ministry of Defence of the Republic of Armenia, as well as by other means of mass communication.

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

According to the Constitution and the law on Freedom of Information everyone shall have the right to freedom of expression including freedom to search for, receive and impart information and ideas by any means of information regardless of the state frontiers. Moreover, the law on personal data prescribes that any person has the right to have access to his/her personal data.

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☒ No ☐

The law on personal data prescribes that the data subject's request to submit information may be rejected in the cases prescribed by law.

*K – Freedom of peaceful assembly and association*

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Further to the requirements of the Constitution of the Republic of Armenia, the rights to form parties and trade unions and join them may be restricted in a manner prescribed by law for the employees in the armed forces, police, national security, prosecutor's office, as well as judges and members of the Constitutional Court. The law on military serving states that members of the armed forces may not join any political party, religious or trade union, form political parties.

Yes ☐ No ☒

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, Yes ☐ No ☒

please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

See answer to question K.1.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples.

Yes ☒ No ☐

The Electoral Code of the Republic of Armenia states that the members of the armed forces have the right to vote. Members of the armed forces are not entitled to become a deputy of the National Assembly, occupy an elected or other post in state or self-governance bodies. The Elections Code of the Republic of Armenia states that the member of the armed forces has not the right to apply for National Assembly deputy candidacy if he continues holding the status of member of the armed forces.

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

The legislation of the Republic of Armenia does not stipulate any limitation.

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service?

Yes ☒ No ☐

The legislation of the Republic of Armenia does not provide any restriction of the right to property during military service or after it.

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad?

The law of the Republic of Armenia on social security of members of the armed forces and members of their families and decree N 778 of the Government of the Republic of Armenia prescribe that accommodation shall be granted to members of the armed forces and to members of their families during their service. Additionally, Government may even grant title to immovable property to members of the armed forces. Moreover, if the member of the armed forces leases an apartment located in the place of service, including abroad, the amount of payment for the lease is compensated by the state.

Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men?

Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension?

Yes ☒ No ☐

The law on social security of members of the armed forces and their family members states that the

members of the armed forces retired from military service in compliance with the law receive a leave compensation equivalent to the duration of their service, as well as military pension, in case of fulfillment of necessary record (working years).

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

The legislation of the Republic of Armenia does not stipulate discrimination on pay between males and females.

Q – Right to dignity, health protection and security at work

Q1. Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Q2. Is medical care provided during and as a result of military operations free of charge for the service persons?

Yes ☒ No ☐

The law of the Republic of Armenia on social security of members of the armed forces and their family members provides that in case of having problems related to health, both in peaceful conditions and during military actions, the member of the armed forces is entitled to free and high quality medical care and service.

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service?

Yes ☒ No ☐

The law of the Republic of Armenia on social security of members of the armed forces and their family members states that in case of an injury resulting from the exercise of military duties, or in case of death, the latter's family members receive state insurance compensation. Additionally, the families of members of the armed forces, who have deceased, receive compensation of funeral expenses and financial means for the restoration of cemetery.

Q.4. Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

R- Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

By decree of the Government of Armenia special standards were defined, which fulfillment ensures that nutrition is of appropriate quality and provides required calories.

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Yes ☒ No ☐  
Where appropriate, please provide examples of good practices.

The process of ensuring rights and freedoms for members of the armed forces is implemented by excluding any type of discrimination in conformity with the Constitution of the Republic of Armenia, other laws and legal acts, which relate to the domain of military service.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

The legislation of the Republic of Armenia does not stipulate such limitations.

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

The legislation of the Republic of Armenia does not stipulate such restriction.

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☒ No ☐

According to the law on military serving, the citizens of 16-18 years old may apply to be admitted in military educational institutions, take part in the admission proceedings and in case of getting the required grades, they will become students of those institutions, which grants the status of member of the armed forces.

Yes ☒ No ☐

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians?

According to the law on military serving, the citizens of 16-18 years old, who have been admitted to military educational institutions, shall sign a contract on serving in the armed forces with the consent of their parents or tutors, who also shall sign the contract.

Yes ☒ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons?

See the answer to question Q.1.

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☒

The students of military educational establishments are not involved in hostilities.

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

The process of education of members of the armed forces, includes ideological-educational and social-public preparation, in which framework the Handbook on human rights and fundamental freedoms of the armed forces personnel prepared with the assistance of the OSCE Office in Yerevan, and the Handbook on international humanitarian law are used to teach about human rights and the basics of their legislative protection.

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

#### V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

See answer to question Q1. The articles 359 and 360 of the Criminal Code prescribe criminal liability for such cases, when the mentioned actions have originated grave consequences. Particularly, punishment relates to up to two years of stay at disciplinary isolators or up to ten years of deprivation of liberty. If those actions have not originated grave consequences, then disciplinary liability is applied.

## **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

The scope of the Recommendation is wide and comprehensive. Therefore, the level of implementation in different directions may differ. When evaluating implementation, various aspects should be taken into account, such as states' security situation, legal systems, structure of armed forces. Compliance with the Recommendation in some cases requires major changes, while in others minor patterns of practice should change. An effective manner of complying is integration of the requirements in domestic legislation. Additionally, making information available is one of the key factors of effective implementation. Particularly, members of the armed forces shall be informed about the legislation in a simplified manner via handbooks, booklets and other educational material distributed to them. Furthermore, conducting activities aimed at raising level of awareness of the members of the armed forces, such as seminars, workshops; help to make the recommendations less abstract and more palpable for them.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

The progress achieved in different directions may differ considering that required changes require time, since they imply not only formal amendments (e.g: legislative), but also changing patterns of practice. The continuous monitoring of Recommendations' implementation by the Council of Europe is necessary. By this, not only evaluation of results is meant, but also granting the possibility to consult, and exchange experience on implementation. Therefore, the possibility of holding consultations with expertise groups, would help to better pave the way towards implementation.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

--



**AUSTRIA****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☒ No ☐

Ministry of Defence

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☒

Nearly all of the recommendations did not need any implementation in Austria, as they are already part of Austrian Legal System in force for a long time.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☒

See comment under 1.2. above

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

None – see comment under 1.2 above.

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☒ No ☐

The Human Rights Coordinator of the Ministry of Defence

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☒ No ☐

The Human Rights Coordinator of the Ministry of Defence informed the general staff and its subordinated commands about the Recommendation and distributed about 100 copies to the relevant players within the armed forces.

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

None.

II.4 To which authorities has the Recommendation been distributed?

Within the Ministry of Defence and the Armed Forces.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☒ No ☐

II.6 Has the Recommendation been translated? Yes ☐ No ☒

II.7 If not, is this foreseen? Yes ☐ No ☒

II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

Suspicious deaths or alleged violations of the right to life of a member of the armed forces are investigated by the (civil) prosecutors and the (civil) police  
Soldiers are obliged to report any incidents which potentially include a criminal charge.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ No ☒

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

B.1 Orders and supervision of officers; possibility of (regular and irregular) complaints; parliamentary armed forces commission, which can investigate on its own will and independently; as well as all (civil) instruments and criminal prosecution.

B.2 Due to the comprehensive measures of protection there is no need for a special protection of conscripts.

B.3 and B.4 see replies for A.1 and A.2 above.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☒ No ☐

Alternative service is possible. The duration of the alternative service is 8 months (compared to 6 months military service) and the service must be rendered in organisations not belonging to the armed forces, such as red cross, hospitals, etc.

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Heeresdisziplinargesetz 2002 (HDG 2002), BGBl. I, nr. 167

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☒ No ☐

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☒ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☒ No ☐

F.3 Does your country have military courts? Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is “yes”, are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, Yes ☐ No ☒

and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☒ No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☐ No ☒

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children’s health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section “G” of the Appendix to the Recommendation.

--

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Possibility to hold praying times; possibility to receive food according to their religion
--------------------------------------------------------------------------------------------

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☒ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by Yes ☐ No ☒

an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Not foreseen within the Austrian system. Professional members of the armed forces can leave the armed forces by notice of termination of their contract. There are no measures in preparation to change this system.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

Soldiers are "citizens in uniform" and are granted the same civil rights as all civilians. The only restrictions exempt from their obligation of discretion (as for all civil servants) and their obligation not to damage the reputation of the armed forces as a whole.

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No ☐

#### K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

No restrictions – see above soldiers are "citizens in uniform" and are granted the same civil rights as all civilians.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☒ No ☐

No restrictions – see above soldiers are “citizens in uniform” and are granted the same civil rights as all civilians.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member’s candidacy or term of office? If so, please provide examples.

Yes ☐ No ☒

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service?

Yes ☒ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad?

Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men?

Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension?

Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Sexual harassment is not only prosecuted by criminal law, but also by disciplinary proceedings.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☒ No ☐

Only limitation is a test of their fitness,; however they have separate goals from men they have to fulfil.

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

#### T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☒ No ☐

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☒ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☒

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☒

#### U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

Human Rights training is part of the legal training of all officers in the Austrian Armed forces. Legal trainings are held by legal experts of the Austrian Armed forces.

U.1.1. If the reply to question U.1 is "YES":

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☐ No ☒

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is "NO", please explain why and whether any measure is in preparation.

#### V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Discrimination, harassment and bullying must be prosecuted with disciplinary proceedings, and every soldier can file a complaint regarding disciplinary offences with the disciplinary commission. Furthermore every soldier can file an extraordinary complaint with the parliamentary complaints commission for Austrian Armed forces.

### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.



**BELGIQUE****Section I – Étude d'impact**

I.1 Une autorité a-t-elle été désignée comme responsable de la mise en œuvre de la Recommandation ? Si oui, laquelle ? Oui ☒ Non ☐

**La direction générale Appui Juridique et Médiation du ministère de la Défense**

I.2 Comment évalueriez-vous l'impact de la Recommandation sur les droits de l'homme des membres des forces armées dans votre pays ? Merci de motiver votre réponse.

Pleinement satisfaisant ☐ Adéquat ☒ Insuffisant ☐ Inexistant ☐

**Le respect des droits de l'homme des membres des forces armées cités dans la recommandation est déjà garanti par la législation et la réglementation nationales.**

I.3 Des mesures spécifiques pour la promotion et la protection des droits de l'homme des membres des forces armées ont-elles été adoptées suite à et en application de l'adoption de la Recommandation ? Si oui, merci de donner quelques exemples. Oui ☐ Non ☒

- **Dans le sein de la Défense il y avait déjà plusieurs instances pour garantir la protection et la promotion des droits de l'homme des forces armées. Par exemple : La Direction générale Appui juridique et Médiation (DGJM) comprend un service de gestion des plaintes. Les membres du personnel de la Défense et les civils peuvent le contacter pour signaler un sujet de mécontentement ou demander une information.**
- **Les conseillers en prévention du département d'état-major Well Being pour les aspects psychosociaux au travail.**

I.4 Si des obstacles ont été rencontrés lors de la mise en œuvre de la Recommandation, de quels obstacles s'agit-il ?

**Section II – Diffusion de la Recommandation**

II.1 Une autorité a-t-elle été désignée comme responsable de la diffusion de la Recommandation ? Si oui, laquelle ? Oui ☐ Non ☒

II.2 Des événements spécifiques ont-ils été organisés en vue de la diffusion de la Recommandation ? Si oui, merci de donner quelques exemples. Oui ☐ Non ☒

II.3 Si des obstacles ont été rencontrés lors de la diffusion de la Recommandation, de quels obstacles s'agit-il ?

II.4 Après de quelles autorités la recommandation a-t-elle été distribuée ?

II.5 La Recommandation a-t-elle été distribuée aux membres des forces armées ? Oui ☐ Non ☒

II.6 La Recommandation a-t-elle été traduite ? Oui ☐ Non ☐

II.7 Si non, est-il prévu de la traduire ? **Pas en néerlandais** Oui ☐ Non ☒

II.8 Comment évalueriez-vous la visibilité de la Recommandation ?  
Pleinement satisfaisante ☐ Adéquate ☒ Insuffisante ☐ Inexistante ☐

### Section III – Mise en œuvre des dispositions spécifiques

#### A – Droit à la vie:

A.1 Des mesures ont-elles été mises en place pour garantir une enquête indépendante et effective dans tous les cas de mort suspecte ou de violation alléguée du droit à la vie d'un membre des forces armées ? Oui ☒ Non ☐

A.2 Des mesures ont-elles été mises en place pour encourager le signalement d'actes attentatoires au droit à la vie des membres des forces armées et protéger les personnes qui signalent l'existence de tels actes contre toutes représailles? Oui ☒ Non ☐

A.3 Merci de bien vouloir donner des informations sur le cadre légal de ces mesures et des exemples de mesures en place. Si vous avez répondu « Non » à une ou plusieurs des questions ci-dessus, merci de bien vouloir expliquer pourquoi de telles mesures ne sont pas en place et d'indiquer si des mesures sont en cours de préparation.

#### **Infractions commises sur le territoire du Royaume :**

**Pour ce qui est des infractions commises sur le territoire du Royaume, c'est le procureur du Roi de l'Arrondissement judiciaire du lieu où l'infraction a été commise qui est l'autorité judiciaire compétente en matière de poursuite.**

#### **Infractions commises à l'étranger (en dehors du territoire du Royaume)**

**Pour ce qui est des infractions commises à l'étranger (en DEHORS du territoire du Royaume), c'est le procureur fédéral qui est l'autorité judiciaire compétente en matière de poursuite.**

**A la clôture de l'enquête de corps, le dossier est transmis soit au procureur du Roi ou au procureur fédéral, soit à l'autorité militaire chargée du droit de punir disciplinairement.**

#### **(1) Transmission au procureur du Roi ou au procureur fédéral :**

- (a) si l'enquête a révélé des éléments d'infraction pénale;**
- (b) si elle laisse subsister des doutes sur la nature pénale ou disciplinaire des faits;**
- (c) si elle doit être complétée par l'audition de personnes civiles ou de militaires appartenant à d'autres corps ou à des armées étrangères.**

#### **(2) Transmission à l'autorité militaire investie du droit de punir**

**Le dossier est transmis par le chef de corps à l'autorité militaire investie du droit de punir lorsque les faits relèvent uniquement de la discipline militaire.**

#### B – Torture et autres mauvais traitements

B.1 Des mesures ont-elles été mises en place pour protéger les membres des forces armées de tortures ou d'autres peines ou traitements inhumains ou dégradants ? Oui ☒ Non ☐

Oui ☒ Non ☐

B.2 Des mesures spécifiques ont-elles été mises en place pour les catégories plus vulnérables, telles que par exemple les appelés ?

B.3 Des mesures ont-elles été mises en place pour garantir une enquête indépendante et effective dans toutes les allégations d'actes de torture ou d'autres mauvais traitements, ou lorsque les autorités soupçonnent que c'est le cas, sur la base d'éléments raisonnables? Oui ☒ Non ☐

B.4 Des mesures ont-elles été mises en place pour encourager le signalement d'actes de torture ou d'autres mauvais traitements et protéger les personnes qui signalent l'existence de tels actes contre toutes représailles ? Oui ☒ Non ☐

B.5 Merci de bien vouloir donner des informations sur le cadre légal de ces mesures et des exemples de mesures en place. Si vous avez répondu « Non » à une ou plusieurs des questions ci-dessus, merci de bien vouloir expliquer pourquoi de telles mesures ne sont pas en place et d'indiquer si des mesures sont en cours de préparation.

#### **Références légales**

**Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail.**

**- Arrêté royal du 17 mai 2007 relatif à la prévention de la charge psychosociale occasionnée par le travail dont la violence, le harcèlement moral ou sexuel au travail.**

**- Arrêté royal du 21 décembre 2001 déterminant la structure générale du Ministère de la Défense et fixant les attributions de certaines autorités.**

#### **Exemples de mesures en place :**

**Le Service d'Information et le Service du Gestionnaire des Plaintes de la Défense aide pour l'introduction d'une plainte auprès de l'autorité ou de l'administration militaire, assiste lors de la recherche d'une solution quand quelqu'un est confronté à de la violence, du harcèlement ou à un comportement inapproprié sur le lieu de travail ou si quelqu'un se trouve dans une situation conflictuelle avec des collègues.**

**Après ces étapes c'est possible d'introduire un recours auprès du conseiller en prévention du département d'état-major *Weil Being* (ACOS WB), pour les aspects psychosociaux au travail. Celui-ci peut entamer une procédure formelle dans le *cadre* de la violence, du harcèlement ou d'une attitude sexuelle malvenue sur le lieu de travail.**

#### **C – Travaux forcés ou obligatoires**

C.1 Le service militaire est-il obligatoire ? Si oui, peut-on effectuer un autre service à la place du service militaire obligatoire et quelles sont les différences en nature et durée de cette autre forme de service ? Oui ☐ Non ☒

#### **D – Discipline militaire**

D.1 Existe-t-il un cadre légal défini organisant le système de discipline militaire conformément aux paragraphes 19-21 de l'Annexe à la Recommandation ? Si oui, merci de bien vouloir indiquer une référence au cadre légal pertinent. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☒ Non ☐

- **LOI DU 14 JANVIER 1975 PORTANT LE RE-GLEMENT DE DISCIPLINE DES FORCES ARMEES**
- **ARRETE ROYAL DU 19 JUIN 1980 (1) RELATIF A LA PROCEDURE DISCIPLINAIRE MILITAIRE**
- **ARRETE ROYAL DU 30 DECEMBRE 1959 RELATIF A LA DISCIPLINE MILITAIRE**

#### **E - Droit à la liberté et à la sûreté**

E.1 Existe-t-il une procédure prévue par la loi qui traite de la privation Oui ☒ Non ☐

de liberté des membres des forces armées ?

E.2 La détention de membres des forces armées âgés de moins de 18 ans est-elle permise ? Oui ☒ Non ☐

E.2.1 Si oui, les conditions de détention satisfont-elles aux exigences établies au paragraphe 23 de l'annexe à la Recommandation ? Oui ☒ Non ☐

E.2.2 Si la réponse à la question E.2.1 est « Non », merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

E.3 Des limites ou restrictions aux garanties énoncées aux paragraphes 24 à 27 de l'Annexe à la Recommandation sont-elles possibles ? Si oui, merci de spécifier lesquelles. Oui ☐ Non ☒

#### F- Droit à un procès équitable

F.1 Dans le cadre des procédures qui sont considérées comme pénales au sens de la Convention européenne des droits de l'homme, les membres des forces armées bénéficient-ils de droits et garanties procéduraux dans la même mesure que dans toute procédure pénale contre des personnes civiles, conformément aux paragraphes 28, 30 et 31 de l'Annexe à la Recommandation ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☒ Non ☐

F.2 Existe-t-il un cadre légal défini régissant les restrictions ou exclusions du droit d'accès à un tribunal qui puisse examiner les contestations des membres des forces armées sur leurs droits et obligations de caractère civil ? Si oui, merci de donner quelques exemples de ces restrictions ou exclusions. Oui ☐ Non ☒

F.3 Existent-ils des tribunaux militaires? Oui ☐ Non ☒

**Les juridictions militaires ont été supprimées en temps de paix (Loi du 10 avril 2003 réglant la suppression des juridictions militaires en temps de paix ainsi que leur maintien en temps de guerre). Des juridictions militaires et une procédure pénale spécifique ne sont prévues qu'en temps de guerre.**

F.3.1 Si oui, sont-ils séparés de la chaîne de commandement ?

F.3.2 Si la réponse à la question F.3 est « OUI », y a-t-il une différence entre l'organisation et le fonctionnement des juridictions militaires, en comparaison avec les tribunaux civils, en ce qui concerne en particulier les garanties procédurales établies aux paragraphes 33 et 34 de l'Annexe à la Recommandation? Oui ☐ Non ☐

#### G – Droit au respect de la vie privée et familiale, du domicile et de la correspondance

G.1 Des mesures ont-elles été mises en place pour garantir que les appelés soient affectés près de leurs proches et de leur domicile et que le déploiement de membres professionnels loin de leurs proches et de leur domicile ne soit pas utilisé comme peine disciplinaire ? Oui ☐ Non ☒

Oui ☒ Non ☐

G.2 Des mesures ont-elles été mises en place pour permettre aux membres des forces armées affectés à l'étranger de maintenir des contacts privés?

G.3 Des programmes d'assistance ont-ils été mis en place pour les personnes accompagnant les membres des forces armées affectés à l'étranger ?

Oui ☒ Non ☐

G.4 Les membres des forces armées peuvent-ils bénéficier d'un congé parental, d'allocations appropriées pour enfant à charge, d'un accès à des écoles maternelles et d'un système adéquat de santé et d'enseignement pour les enfants ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☒ Non ☐

G.5 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées au respect de la vie privée et familiale, du domicile et de la correspondance, conformément à la Section « G » de l'Annexe à la Recommandation.

#### H – Liberté de pensée, de conscience et de religion

H.1 Des mesures ont-elles été mises en place pour permettre aux membres des forces armées de s'acquitter, dans la mesure du possible, de leurs obligations religieuses ? Si oui, merci d'indiquer quelques exemples. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☐ Non ☒

H.2 Les appelés ont-ils la possibilité d'obtenir le statut d'objecteur de conscience ?

Oui ☐ Non ☒

H.2.1 Si oui, un service alternatif de nature civile est-il possible ?

Oui ☐ Non ☒

H.2.2 Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Les lois sur la milice et celles sur l'objection de conscience ont été suspendues (pas abrogées) par la loi du 31 décembre 1992. La probabilité d'une remise en application de ces législations est toutefois théorique.

H.3 Les objecteurs de conscience sont-ils exposés à des sanctions, mesures disciplinaires ou poursuites pénales ?

Oui ☐ Non ☐

H.4 Des membres professionnels des forces armées peuvent-ils quitter les forces armées pour raisons de conscience ? Si oui, merci d'indiquer dans quelles conditions et quelle est la procédure, et notamment si de telles demandes peuvent être réexaminées par un organe indépendant et impartial. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☐ Non ☒

La Belgique dispose d'une législation relative à l'objection de conscience, qui, quoique suspendue depuis 1994, n'est pas abrogée. Cette législation vise le service militaire obligatoire (les miliciens, conscrits, appelés) et non les militaires de carrière ou de réserve des Forces armées. Ceux-ci peuvent mettre fin à leur service/engagement selon les règles statutaires « ordinaires » ; il n'y a

donc pas pour eux de dispositions spécifiques permettant un départ de l'Armée fondé sur des motifs d'objection de conscience. La législation en matière d'objection de conscience (lois coordonnées du 20 février 1980, dont l'origine est la loi du 3 juin 1964, ensuite modifiée) trouve sa justification en parallèle avec les lois sur la milice (lois coordonnées du 30 avril 1962).

C'est dire que la législation sur l'objection de conscience ne concerne que les miliciens (conscrits, appelés), c'est-à-dire le service militaire obligatoire. Sur ce point, notre pays est en conformité avec les recommandations du Comité des Ministres (n° R/87/8) et de l'Assemblée parlementaire (n° 1518/2001) du Conseil de l'Europe

Les statuts des différentes catégories de personnel militaire de carrière (personnel d'active, personnel de la réserve et personnes en engagement volontaire militaire) ne contiennent pas de dispositions spécifiques qui permettraient à ces militaires de quitter l'Armée, en cours de carrière, pour des raisons tenant à l'objection de conscience (totale ou partielle). Les intéressés peuvent toutefois mettre fin à leur engagement/service, mais uniquement selon les règles et conditions de « droit commun » régissant le départ de l'Armée (notamment : loi du 16 mars 2000 relative à la démission de certains militaires et à la résiliation de l'engagement ou du rengagement de certains candidats militaires, à la fixation de la période de rendement et à la récupération par l'Etat d'une partie des frais consentis par l'Etat pour la formation et d'une partie des traitements perçus pendant la formation; loi du 27 mars 2003 relative au recrutement des militaires ; loi du 28 février 2007 fixant le statut des militaires du cadre actif des Forces armées ; loi du 10 janvier 2010 instituant l'engagement volontaire militaire).

La loi du 14 janvier 1975 portant le règlement de discipline des Forces armées dispose, en son article 11, § 2, que les militaires doivent exécuter fidèlement les ordres qui leur sont donnés par leurs supérieurs dans l'intérêt du service. Toutefois, un ordre ne peut être exécuté si cette exécution peut entraîner manifestement la perpétration d'un crime ou d'un délit. Telle disposition pourrait être invoquée par un militaire, objecteur de conscience, face à un ordre manifestement illégal qui lui serait donné.

H.5 Des mesures ont-elles été mises en place pour garantir que les appelés et les membres des forces armées soient informés respectivement, du droit à l'obtention du statut d'objecteur de conscience Oui ☐ Non ☒ et de celui de quitter les forces armées pour raisons de conscience, ainsi que des procédures disponibles pour les exercer ?

H.6 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées à la liberté de pensée, de conscience et de religion, conformément à la Section « H » de l'Annexe à la Recommandation.

**La Défense Belge offre une assistance religieuse et morale aux membres de son personnel. Les aumôniers relèvent, dans le cadre de leur mission, de l'autorité ecclésiastique et sont tenus au secret professionnel. Ils sont au service de toutes les personnes qui le souhaitent, dans le respect de leurs convictions religieuses ou philosophiques: aumônerie protestante, Centre d'Action Laïque, Culte Israélite et Service de l'Aumônerie Catholique**

#### I – Liberté d'expression

I.1 Existe-t-il un cadre légal défini régissant les formalités, conditions et restrictions au droit à la liberté d'expression pour les membres des forces armées ? Oui ☒ Non ☐

I.2 Si oui, merci de le présenter brièvement, en donnant en particulier quelques exemples des éventuelles restrictions au droit à la liberté d'expression.

**(1) Restrictions permanentes**

(a) Lors de l'exercice de leurs droits, les militaires sont tenus :

- d'être respectueux du chef de l'État, des pouvoirs constitutionnels et des institutions de l'État;
- d'éviter de compromettre l'honneur ou la dignité de leur état et de leur fonction;
- d'être loyal et respectueux vis-à-vis de leurs supérieurs;
- de veiller à la sauvegarde des intérêts moraux et matériels de l'État.

(b) En outre, il est interdit aux militaires :

- même après cessation de leurs fonctions, de révéler à des personnes non autorisées à les connaître, des informations dont ils avaient eu connaissance et qui auraient un caractère secret ou confidentiel en raison de leur nature ou des prescriptions militaires, mais cela ne peut en aucune manière constituer une entrave à la défense de tous les droits individuels;

- de se livrer à des activités politiques au sein du Département de la Défense
- de faire grève sous toutes ses formes;
- de manifester des opinions qui empêchent le bon fonctionnement de l'État en général et du service en particulier, entre autres :

- \* en minant la discipline militaire et en portant atteinte à l'autorité des chefs hiérarchiques;

- \* en ébranlant la confiance de la Nation dans les Forces armées;

- \* en mettant en péril la neutralité politique des Forces armées en tant qu'institution;

- \* en nuisant à la sécurité de la Nation, en portant atteinte à l'ordre public ou en mettant en péril la prévention de faits dommageables;

- \* en violant le secret médical;

- \* en violant les droits et libertés des citoyens, en particulier le droit au respect de la vie privée.

- Les limitations qui sont applicables à tous les citoyens en général ou à tous les représentants de l'autorité sont également applicables aux militaires. Ainsi, sont notamment interdites :

- la diffusion d'informations contraires aux bonnes mœurs, profanatrices, obscènes, racistes ou diffamatoires,

- la diffusion d'informations en violation des droits de copie et de reproduction (copyright) ou de licence.

**(2) Temps de guerre**

En temps de guerre, le militaire est soumis aux dispositions de l'arrêté-loi du 11 octobre 1916 relatif à l'état de guerre et l'état de siège. Certaines de ces dispositions limitent la liberté d'expression.

Ainsi, l'article 8 de l'arrêté-loi prévoit des limitations à la liberté d'expression:

(a) Il est interdit de publier des journaux, brochures, écrits, dessins, images, ou de répandre de quelque manière que ce soit, dans les lieux ou réunions publics, des informations et renseignements de nature à favoriser l'ennemi ou à exercer une influence fâcheuse sur l'esprit des armées et des populations.

(b) Le Gouvernement est autorisé à prendre les mesures nécessaires pour empêcher l'introduction, la circulation, la mise en vente et la distribution des journaux, brochures, écrits, dessins ou images de nature à favoriser l'ennemi ou à exercer une influence fâcheuse sur l'esprit des armées et des populations.

**(3) Engagement opérationnel et assistance**

Lors des missions d'engagement opérationnel et d'assistance, le militaire a un devoir de réserve accru et délèguera la communication externe dans son intégralité - en ce inclus les contacts éventuels avec les médias - à un responsable de la communication officielle désigné. Il s'abstiendra d'émettre des jugements de valeur sur les opérations en cours, les armées partenaires et les choix politiques concernant ces opérations.

*J – Droit à l'accès aux informations pertinentes*

J.1 Des mesures ont-elles été mises en place pour garantir que des informations complètes et détaillées sur le recrutement dans les forces armées et les engagements découlant de l'enrôlement soient fournies aux recrutes potentielles ? Oui **x** Non ☐

J.2 Les membres et anciens membres des forces armées ont-ils accès à leurs données personnelles, y compris leurs dossiers médicaux et autres informations sur leur exposition à des situations potentiellement dangereuses à leur santé ? Oui **x** Non ☐

J.3 Si oui, existe-t-il des restrictions à ce droit à l'accès à l'information? Merci de donner quelques exemples, le cas échéant. Oui **x** Non ☐

La loi de 11 Avr 94, relative à la publicité de l'administration vise à rendre l'administration plus accessible, plus transparente, aux yeux des citoyens. Elle contribue, par conséquent, à améliorer son image et à permettre au citoyen de participer aux débats en connaissance de cause. En tant qu'autorité publique, la Défense est tenue d'appliquer cette loi. L'administration se voit imposer une obligation générale d'assurer d'initiative la diffusion d'informations au profit des citoyens (publicité active). Toute personne se voit reconnaître un droit général à l'information qui lui permet de prendre connaissance, sur place, de tout document administratif, d'obtenir des explications à son sujet et d'en recevoir communication sous forme de copie (publicité passive).

Dans certains cas énumérés par la loi, l'administration peut toutefois s'opposer à leur publication. Parmi les motifs d'exception que prévoit la loi, certains sont obligatoires, d'autres sont facultatifs. Contrairement aux motifs facultatifs, les motifs obligatoires s'imposent à l'administration, sans possibilité pour elle d'y déroger.

**(1) Les motifs d'exception obligatoires**

La demande de consultation, d'explication ou de communication sous forme de copie d'un document administratif devra être rejetée si il est constaté que l'intérêt de la publicité ne l'emporte pas sur :

- a. la sécurité de la population (ex : données stratégiques pour la protection de la population);
- b. les libertés et les droits fondamentaux des administrés (ex : protection des droits d'auteur portant sur un document) ;
- c. les relations internationales fédérales de la Belgique (ex : documents contenant des négociations secrètes avec d'autres Etats) ;
- d. l'ordre public, la sûreté ou la défense nationale (ex : documents à caractère stratégique) ;
- e. la recherche ou la poursuite de faits punissables (ex : documents dont dispose un juge d'instruction et qui font l'objet de son enquête) ;
- f. un intérêt économique ou financier fédéral, la monnaie ou le crédit public (ex : documents d'évaluation de prix dans les marchés publics) ;
- g. le caractère par nature confidentiel des informations d'entreprise ou de fabrication communiquées à l'autorité (ex : les secrets de fabrication) ;
- h. le secret de l'identité de la personne qui a communiqué le document ou l'information à l'autorité administrative à titre confidentiel pour dénoncer un fait punissable ou supposé tel (ex : protection de l'identité d'une personne qui a communiqué des faits de nature répréhensible à son supérieur hiérarchique).

L'administration devra également rejeter la demande qui lui est adressée si la publication du document administratif porte atteinte :



- a. à la vie privée, sauf si la personne concernée a préalablement donné son accord par écrit à la consultation ou à la communication sous forme de copie ;
- b. à une obligation de secret instaurée par la loi (ex : le secret médical) ;
- c. au secret des délibérations du Gouvernement fédéral et des autorités responsables relevant du pouvoir exécutif fédéral ou auxquelles une autorité fédérale est associée.

## (2) Les motifs d'exception facultatifs

Le Département pourra rejeter une demande de consultation, d'explication ou de communication sous forme de copie d'un document administratif dans la mesure où la demande :

- a. concerne un document administratif inachevé ou incomplet dont la divulgation peut être source de méprise ;
- B. concerne un avis ou une opinion (et non des faits) communiqués librement (sans obligation juridique en ce sens) et à titre confidentiel à l'autorité ;
- C. est manifestement abusive (parce que, par exemple, elle requiert de tels efforts de la part de l'administration que son activité journalière s'en trouverait perturbée) ;
- D. est formulée de façon manifestement trop vague (trop imprécise, la demande ne permettrait pas de saisir sur quel document elle porte exactement).

### K – Droit à la liberté de réunion pacifique et à la liberté d'association avec d'autres

- K.1 Les membres des forces armées ont-ils le droit d'adhérer à des associations ou syndicats militaires établis conformément à la loi ? Si oui, merci de bien vouloir indiquer les éventuelles conditions et restrictions à ce droit. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures pour réviser ou lever les restrictions ou interdictions existantes sont en préparation.
- Oui ☒ Non ☐

**LOI DU 11 JUILLET 1978 (1) ORGANISANT LES RELATIONS ENTRE LES AUTORITES PUBLIQUES ET LES SYN-DICATS DU PERSONNEL MILITAIRE)**

- K.2 Les membres des forces armées peuvent-ils adhérer à des partis politiques ? Si oui, merci de bien vouloir indiquer les éventuelles conditions et restrictions à ce droit. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures pour réviser ou lever les restrictions ou interdictions existantes sont en préparation.
- Oui ☒ Non ☐

- **Il est interdit aux militaires de se livrer à des activités politiques au sein des Forces armées.**
- **Les militaires peuvent s'affilier au parti politique de leur choix et y exercer les droits afférents à leur qualité de membre. Ils peuvent y remplir les fonctions d'expert, de conseiller ou de membre d'un centre d'étude. Toute autre participation active ou publique à la vie politique à un autre titre leur est interdite, même en dehors des périodes pendant lesquelles des prestations au sein des Forces armées sont fournies.**

### L – Droit de vote et de se présenter aux suffrages

- L.1 Existe-t-il des restrictions aux droits électoraux des membres des forces armées et à l'appartenance dans les forces armées d'un membre se présentant à des élections ou pendant la durée de son mandat ? Si oui, merci de donner quelques exemples.
- Oui ☒ Non ☐

- **Sans préjudice de l'application des incompatibilités prévues dans des lois particulières, les militaires du cadre actif peuvent se porter candidat aux mandats provinciaux et communaux belges suivants et les exercer : président du conseil provincial; membre de la députation permanente; bourgmestre; échevin; président d'un conseil de l'aide sociale; président d'un organe territorial intercommunal; toute autre fonction exécutive dans un organe lié à la province ou à la commune; membre d'un conseil provincial; membre d'un conseil**

	<b>communal; membre d'un conseil de l'aide sociale; membre d'un organe territorial intercommunal.</b>
-	<b>Sans préjudice de l'application d'autres lois qui régissent l'exercice d'activités et de mandats politiques, les militaires du cadre de réserve sont toutefois autorisés à exercer des activités et des mandats politiques pour autant que le service le permette et qu'ils aient lieu en dehors des périodes de prestations au sein des Forces armées.</b>
-	<b>Les militaires doivent s'abstenir de toute activité politique durant les heures de service. Ils doivent toujours s'abstenir dans le cadre de leur activité politique de porter la tenue militaire et de faire état de leur qualité militaire. Ils peuvent néanmoins mentionner leur profession, comme reprise au registre national des personnes physiques).</b>

M- Droit de se marier

M.1 Les membres des forces armées ont-ils le droit de se marier et de conclure des partenariats civils conformément aux droits dont jouissent les civils ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☒ Non ☐

N – Droit à la protection de ses biens

N.1 Des mesures ont-elles été mises en place pour garantir que les biens appartenant aux membres des forces armées, y compris les appelés, et consignés lors de leur enrôlement, soient rendus à l'issue de leur service militaire ?

Oui ☒ Non ☐

O – Logement

O.1 Des mesures ont-elles été mises en place pour garantir un logement de niveau suffisant pour les membres des forces armées et leurs familles, à la fois sur le territoire national et à l'étranger ?

Oui ☒ Non ☐

O.2 Si le logement se situe dans une caserne, des dortoirs séparés pour femmes et hommes sont-ils prévus ?

Oui ☒ Non ☐

P – Rémunération et pension

P.1 Les membres professionnels des forces armées ont-ils droit à une rémunération leur permettant d'avoir un niveau de vie décent et une pension de retraite suffisante ?

Oui ☒ Non ☐

P.2 Des mesures ont-elles été mises en place pour garantir aux hommes et aux femmes membres des forces armées une rémunération égale pour un même travail ou un travail de valeur égale ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☒ Non ☐

Q – Droit à la dignité, à la protection sociale et à la sécurité au travail

Q.1 Des mesures spécifiques ont-elles été mises en place pour protéger la dignité au travail des membres des forces armées, particulièrement en matière de prévention du harcèlement sexuel ? Si oui, merci d'indiquer le cadre légal pertinent et de donner quelques exemples. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☒ Non ☐

**Exemples de mesures en place :**

**Le Service d'Information et le Service du Gestionnaire des Plaintes de la Défense aide pour**

**l'introduction d'une plainte auprès de l'autorité ou de l'administration militaire, assiste lors de la recherche d'une solution quand quelqu'un est confronté à de la violence, du harcèlement ou à un comportement inapproprié sur le lieu de travail ou si quelqu'un se trouve dans une situation conflictuelle avec des collègues.**

**Après ces étapes c'est possible d'introduire un recours auprès du conseiller en prévention du département d'état-major *Weil Being* (ACOS WB), pour les aspects psychosociaux au travail. Celui-ci peut entamer une procédure formelle dans le *cadre* de la violence, du harcèlement ou d'une attitude sexuelle malvenue sur le lieu de travail.**

Q.2 Les soins médicaux fournis au cours d'opérations militaires et en raison d'opérations militaires sont-ils gratuits pour les personnes ayant servi?

Oui ☒ Non ☐

Q.3 Existe-t-il un régime de réparation ou d'indemnités pour les membres des forces armées quittant les forces armées pour raison de blessure suite à leurs fonctions ou en cas de décès au cours de leur service?

Oui ☒ Non ☐

Q.4 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées à la dignité, à la protection sociale et à la sécurité au travail, conformément à la Section « Q » de l'Annexe à la Recommandation.

#### R – Alimentation

R.1 Des mesures ont-elles été mises en place pour garantir le droit des membres des forces armées à une alimentation décente et suffisante, en conformité avec la section « R » de l'Annexe à la Recommandation ? Le cas échéant, merci de donner quelques exemples de bonnes pratiques.

Oui ☒ Non ☐

#### S – Non-discrimination

S.1 Des mesures ont-elles été mises en place pour garantir que les membres des forces armées puissent jouir de leurs droits et libertés sans aucune discrimination, en conformité avec la Section « S » de l'Annexe à la Recommandation ? Le cas échéant, merci de donner quelques exemples de bonnes pratiques.

Oui ☒ Non ☐

**Quiconque constate sur le lieu de travail des faits qui indiquent de la discrimination ou du racisme ou pense être victime de pratiques discriminatoires ou racistes peut s'adresser à une personne de confiance de son unité ou au Service de Gestion de Plaintes (SGP). SGP fait partie de la Direction Générale appui Juridique et Médiation (DGJM) de la Défense.**

**Il est constitué d'une équipe de spécialistes chargés du suivi et du traitement de vos interventions et d'une équipe de médiateurs spécialisés en gestion de conflits interpersonnels en milieu professionnel. Dans le cadre de ses missions il instruit chaque plainte issue d'une ou plusieurs personnes du Département, civile ou militaire et relative au fonctionnement des services du Département. Dans le domaine de la violence, du harcèlement moral et sexuel, il écoute les plaignants dans le cadre de la procédure informelle, donne des conseils, offre accueil, assistance et le soutien requis. Les personnes de confiance de SGP peuvent aider à trouver une solution informelle à un problème et/ou initier le dialogue avec l'hierarchie.**

**Document interne: Politique Générale "Politique en matière de violence, de harcèlement moral et de harcèlement sexuel au travail ».**

S.2 Existe-t-il des restrictions à l'accès des femmes dans les forces armées, ou à des types particuliers d'activités professionnelles au sein des forces armées ? Si oui, merci de donner quelques exemples. Oui ☐ Non ☒

S.3 L'orientation sexuelle constitue-t-elle un motif pour empêcher l'accès aux forces armées, ou pour renvoyer un membre des forces armées? Oui ☐ Non ☒

T – Personnes âgées de moins de 18 ans recrutées dans les forces armées

T.1 Votre législation permet-elle le recrutement volontaire de personnes de moins de 18 ans dans les forces armées? Oui ☒ Non ☐

T.2 Si oui, y a-t-il des mesures en place pour assurer la pleine information des devoirs qui s'attachent au service militaire et le consentement éclairé de ces personnes et de leurs parents ou gardiens légaux ? Oui ☒ Non ☐

T.3 Des mesures spéciales ont-elles été mises en place pour protéger le bien-être physique et psychologique de ces personnes ? Oui ☒ Non ☐

T.4 Ces personnes peuvent-elles participer directement aux hostilités ? Oui ☐ Non ☒

U – Formation

U.1 Des activités de formation visant à acquérir une meilleure connaissance des droits de l'homme par les membres des forces armées sont-elles prévues? Si oui, merci d'indiquer par qui sont-elles menées. Oui ☐ Non ☒

U.1.1. Si la réponse à la question U.1 est « Oui »:

U.1.1.1 Le droit international des droits de l'homme fait-il partie du programme de formation ? Oui ☐ Non ☐

U.1.1.2 Les droits de l'homme des membres des forces armées font-ils partie du programme de formation ? Oui ☐ Non ☒

U.1.1.3 La prévention des mauvais traitements et de la discrimination fait-elle partie du programme de formation ? Oui ☐ Non ☐

U.1.1.4 Le droit international humanitaire, y compris les devoirs mentionnés au paragraphe 84 de l'Annexe à la Recommandation, fait-il partie du programme de formation? Oui ☐ Non ☐

U.1.2 Si la réponse à la question U.1 est « Non », merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

V – Allégations de violations des droits de l'homme

V.1 Des mesures ont-elles été mise en place pour garantir aux membres des forces armées le droit de présenter des allégations de violations des droits de l'homme, en particulier en matière de discrimination, harcèlement ou violence, devant un mécanisme indépendant ? Si oui, merci d'indiquer de quelle autorité/mécanisme s'agit-il et quelle est la procédure. Si non, merci de bien vouloir en Oui ☒ Non ☐

expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

**Cf. supra**

#### **Section IV - Suivi**

IV.1 Quelles mesures recommanderiez-vous pour garantir le respect des principes énoncés dans la Recommandation et dans son Annexe dans les législations et les pratiques nationales?

**La création d'un Ombudsman national.**

IV.2 Le Conseil de l'Europe devrait-il continuer à examiner périodiquement la mise en œuvre de cette Recommandation ? Si oui, cet examen devrait-il, à l'avenir, se concentrer sur des problèmes spécifiques, et le cas échéant sur lesquels ?

**Oui, en tenant compte avec des spécificités de chaque pays membres.**

IV.3 Existe-t-il des questions sur lesquelles la Recommandation et son Annexe devraient être modifiés ou complétés ? Si oui, merci d'indiquer lesquelles.

**BOSNIA AND HERZEGOVINA**

*Even though there is no reply to the question C1. (Is military service compulsory?), I inform you that military service in BiH is not compulsory. According to the article 79. Of the Law on Defense of Bosnia and Herzegovina, compulsory military service has been abolished in Bosnia and Herzegovina since 1 January 2006. The individuals join the professional Army voluntary, so conscientious objects are irrelevant.*

*With regard to the question V.1 (V. allegations of human rights violation) I would also like to inform you more on the role of The Parliamentary Military Commissioner which is an independent commissioner of the BiH Parliamentary Assembly with competencies to strengthen the rule of law, protect human rights and freedoms of military personnel and cadets in the Armed Forces of Bosnia and Herzegovina and the BiH Ministry of Defense, as stipulated in the BiH Constitution and attached international agreements. The institution of the Parliamentary Military Commissioner of BiH is set out by the Law on the Parliamentary Military Commissioner of Bosnia and Herzegovina (Official Gazette of BiH, No. 51/09) which was adopted on 7 July 2009.*

*This established a new institution in the field of the protection of human rights and freedoms, specialized exclusively for the protection of human rights and freedoms of military personnel and cadets in the BiH Armed Forces and BiH Ministry of Defense.*

**Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☐

NO DATAS

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.  
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☒

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☒

UNKNOWN

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☒

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

II.4 To which authorities has the Recommendation been distributed?

UNKNOWN

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

II.6 Has the Recommendation been translated? Yes ☐ No ☒

II.7 If not, is this foreseen? Yes ☐ No ☒

II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

INSTRUCTION ON THE GENERAL INSPECTORATE OF THE MINISTRY OF DEFENSE OF BiH.  
REGULATION ON MILITARY DISCIPLINE AND DISCIPLINARY PROCEDURE

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ No ☒

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of Yes ☒ No ☐

torture or other ill-treatment and to protect those reporting such acts against retaliation?

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

*CRIMINAL LAW OF THE ENTITY*

*THE LAW ON THE CRIMINAL PROCEDURE OF BiH*

*C – Forced or compulsory labour*

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service?

Yes ☐ No ☐

*D – Military Discipline*

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

*LAW ON SERVICE IN THE ARMED FORCES OF BiH*

*THE REGULATIONS ON MILITARY DISCIPLINE AND DISCIPLINARY PROCEDURE*

*E- Right to liberty and security*

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces?

Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18?

Yes ☐ No ☐

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?

Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

*IN ARMED FORCES OF BiH THERE IS NO MEMBER YOUNGER THAN 18 YEARS*

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify.

Yes ☐ No ☒

*F- Right to a fair trial*

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

Yes ☒ No ☐

/



F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions.

Yes ☐No ☒

F.3 Does your country have military courts?

Yes ☐No ☒

F.3.1 If so, are they separate from the chain of command?

Yes ☐No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation?

Yes ☐No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment?

Yes ☐No ☒

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts?

Yes ☒No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad?

Yes ☒No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation.

Yes ☒No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒No ☐

*IN THE BARRACKS OF THE BiH ARMED FORCES IS PROVIDED A PLACE FOR CONDUCTING RELIGIOUS LIFE*

H.2 Do conscripts have the rights to be granted conscientious objector status?

Yes ☐No ☒

H.2.1 If so, is an alternative service of a civilian nature available?

Yes ☐No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

/
---

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions?

Yes ☐

No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Yes ☐

No ☐

/
---

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights?

Yes ☒

No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

--

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces?

Yes ☒

No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

*LAW ON SERVICE IN ARMED FORCES OF BiH*

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits?

Yes ☒

No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health?

Yes ☒

No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any.

Yes ☐

No ☒

--

#### K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or

Yes ☐

No ☒

prohibitions is in preparation.

**THERE IS NO POSSIBILITY FOR THE ESTABLISHMENT OF MILITARY ASSOCIATIONS FOR ACTIVE STRUCTURE OF AF BiH**

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☐ No ☐

**RESTRICTIONS IN THE LAW ON SERVICE IN AF BiH, ARTICLE 48**

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples.

Yes ☐ No ☒

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service?

Yes ☒ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad?

Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men?

Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension?

Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation.

Yes ☐ No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☐ No ☐

**THERE ARE NO MEASURES EXCEPT OF THE EXISTING LEGAL FRAMEWORK (LAWS AND REGULATIONS)**

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

/

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

*THE REGULATION ON NUTRITION CRITERIA IN AF BiH*

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☐

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

#### T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☒

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

PARLIAMENTARY MILITARY ATTACHÉ

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**CROATIA****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☐

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☐

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☐

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☐

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

II.4 To which authorities has the Recommendation been distributed?

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☐

II.6 Has the Recommendation been translated? Yes ☐ No ☐

II.7 If not, is this foreseen? Yes ☐ No ☐

II.8 How would you assess the visibility of the Recommendation? Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

Before taking measures to provide independent and effective investigation and to encourage reporting criminal offences, constitutional provisions should be stated and which form the basis for law enforcement. The Constitution of the Republic of Croatia, in Chapter III - Protection of Human Rights and Fundamental Freedoms states the constitutional principles for their protection.

Article 14 of the Constitution of the Republic of Croatia states: "All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other conviction, national or social origin, property, birth, education, social status or other characteristics. All persons shall be equal before the law".

Article 18 of the Constitution of the Republic of Croatia states: "The right to appeal against individual legal decisions made in first-instance proceedings by courts or other authorized bodies shall be guaranteed. By way of exception, the right to appeal may be denied in cases specified by law if other legal protections are ensured."

Article 19 of the Constitution of the Republic of Croatia states: "Individual decisions of governmental agencies, the civil service and bodies vested with public authority shall be grounded in law. Judicial review of individual decisions made by governmental agencies and other bodies vested with public authority shall be guaranteed."

Article 26 of the Constitution of the Republic of Croatia states: "All citizens of the Republic of Croatia and aliens shall be equal before the courts, governmental agencies and other bodies vested with public authority."

Article 28 of the Constitution of the Republic of Croatia states: "Everyone is presumed innocent and may not be held guilty of a criminal offence until such guilt is proven by a binding court judgment."

Article 81 of the Constitution of the Republic of Croatia stipulates: "...The Croatian Parliament shall exercise civilian oversight of the armed forces and security services of the Republic of Croatia", whereas Article 93 of the Constitution of the Republic of Croatia regulates the function of the Ombudsperson: "...The Ombudsperson shall be a commissioner of the Croatian Parliament responsible for the promotion and protection of human rights and freedoms enshrined in the Constitution, laws and international legal instruments on human rights and freedoms ratified by the Republic of Croatia. Everyone may lodge a complaint to the Ombudsperson if he/she deems that his/her constitutional or legal rights have been threatened or violated as a result of any illegal or irregular act by governmental bodies and the civil service, local and regional self-governmental bodies and bodies vested with public authority. The Croatian Parliament shall elect the Ombudsperson for a term of eight years. The Ombudsperson shall be autonomous and independent in his/her work. Conditions for the election and dismissal of the Ombudsperson and his/her deputies, their authority, and the method of their work shall be regulated by law. By law, the Ombudsperson may also be vested with certain powers with regard to legal and natural persons in order to protect the fundamental constitutional rights.

The Ombudsperson and other commissioners of the Croatian Parliament responsible for the

promotion and protection of human rights and fundamental freedoms shall enjoy the same immunity as deputies in the Croatian Parliament..."

Since the Republic of Croatia does not have separate military criminal legislation or military courts, criminal proceedings against the members of the Croatian Armed Forces are conducted before the regular civilian courts. Criminal prosecution and the application of sanctions for criminal offences shall be imposed by the Ministry of the Interior, the State Attorney and courts noting that, based on Article 128 of the Defence Act (The Official Gazette of the Republic of Croatia No. 33/2002, 58/2002 and 76/2007), military and police affairs are conducted by the Military Police "... in accordance with military regulations with which criminal and offence proceedings are regulated." Main laws of the criminal legislation are Criminal Code (The Official Gazette, No.125/2011 - new) and Criminal Procedure Act (The Official Gazette No. 152/2008, 76/2009, 80/2011 and 121/2011).

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ No ☒

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

B.1 Act on Service in the Armed Forces of the Republic of Croatia (OG 33/02), Article 29, Paragraph 2

B.3 Directive for Acting in Incident Situations and Prevention Program

B.4 Book of Regulations Regarding the Service in Armed Forces of the Republic of Croatia, Article 32

B-2 Conscripts are treated same way as Active Duty Personnel

Pertinent to the measures of the protection of the members of armed forces from torturing and other kinds of abuse, together with the aforementioned, it should be noted that the Constitution of the Republic of Croatia contains Article 23 which is stated in the part that regulates personal and political freedoms and rights and it stipulates: "No one may be subjected to any form of abuse or to medical or scientific experimentation without his or her consent. Forced and compulsory labour shall be forbidden."

It should also be taken into consideration that the Act on Service in the Armed Forces of the Republic of Croatia (The Official Gazette of the Republic of Croatia, Nos 33/2002, 58/2002, 175/2003, 136/2004, 76/2007, 88/2009 and 124/2009), regulates procedures before a Military Disciplinary Court for violation of military discipline which may comprise the abovementioned procedures. Disciplinary procedure is conducted parallel to criminal proceeding if an offence has characteristics of both criminal offence and disciplinary breach which will be discussed in detail in D- Military Discipline.

As regards special measures for the protection of endangered categories such as recruits we point out that Article 39a of the Act on Amendments to the Defence Act (The Official Gazette No. 76/2007)



stipulates that: "Croatian Parliament may pass the decision not to call up conscripts. The Government may, with the prior approval of the Supreme Commander, propose to Croatian Parliament to pass the decision on not calling up conscripts. The proposal referred to in paragraph 2 of this Article shall be drawn up by the Ministry of Defence, with the involvement of the General Staff, on the basis of defence requirements and interests of the Republic of Croatia.

Following the passage of the decision not to call up conscripts, the conscripts who desire so may by the end of the calendar year in which they turn 30 enlist for voluntary service in accordance with the regulation concerning the voluntary military service. Women may also enlist for voluntary military service and are then subject to conscription. The regulation concerning the voluntary military service shall be issued by the Minister of Defence."

Based on the abovementioned provision Croatian Parliament brought up Decision on non calling up conscripts for compulsory military service which is applicable from 1 January 2008.

Pursuant to Article 39b of the cited the Act on Amendments to the Defence Act: "In case of imminent threat or the state of war the decision not to call up conscripts shall not be applicable..."

### C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service?

Yes ☐

No ☒

Reiterating Article 23 paragraph 2 of the Constitution of the Republic of Croatia in the part that stipulates personal and political freedoms and rights states: "...Forced and compulsory labour shall be forbidden" and together with the abovementioned, we wish to add that Article 38 of the Defence Act regulates the conscientious objection in the following way: "Conscientious objection is allowed to those who for religious or moral reasons are not willing to take military duties in the Armed Forces" (hereinafter: civilian service subjects). Requests for civilian service are to be submitted by recruits or reserve component members upon their registration with conscript register. Civilian service is to be regulated by a separate law..."

### D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation.

Yes ☒

No ☐

Chapter V of the Act on Service in the Armed Forces of the Republic of Croatia regulates liabilities of the members of armed forces.

Pursuant to Article 52 of the cited Act: "For criminal offences, members of the Armed Forces are subject to the provisions of the Criminal Code and other legal acts. Criminal liability does not preclude disciplinary liability if the offence prosecuted in the criminal case also constitutes a violation of military discipline. Disciplinary proceedings are conducted irrespective of the progress of criminal proceedings."

Pursuant to Article 54 of the cited Act: "For misdemeanours, members of the Armed Forces are subject to the provisions of the general laws and regulations on misdemeanours. Misdemeanour liability does not preclude disciplinary liability if an act that is subject of misdemeanour trial is also violating military discipline. Disciplinary proceeding is conducted regardless of the misdemeanour proceeding."

Pursuant to Articles 55-85 of the cited Act disciplinary liability is regulated in detail and includes the following: general provisions on disciplinary liability, its definition and types of military discipline violations, enumeration of disciplinary breaches and disciplinary offences, persons liable for violation of military discipline, disciplinary sanctions, statute of limitations to institute and run disciplinary

proceedings, statute of limitations for the execution of disciplinary sanctions, instructions and guidelines for the work of the Military Disciplinary Courts and monitoring of the work of the Military Disciplinary Courts.

Article 55 of the cited Act regulates the term of military discipline in the following way: "Military discipline means the precise, complete and timely execution of tasks and assignments in the Armed Forces, in accordance with this Act, the ordinance referred to in Article 30 paragraph 1, subparagraph 1 hereof, other rules and regulations, the individual acts and commands of superiors, and adherence to the principles of conduct in and out of military service.

A member of the Armed Forces cannot be held disciplinary liable for an act that was not defined as a violation of military discipline before the act was committed, nor can a disciplinary sanction be imposed on him/her that was not, by a regulation, provided as a disciplinary measure or a disciplinary punishment before the act was committed."

#### E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces?

Yes ☐ No ☒

E.2 Is it lawful to detain members of armed forces under the age of 18?

Yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?

Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

The Constitution of the Republic of Croatia, within provisions on personal and political freedoms and rights, in Article 22 stipulates: "Human liberty and personality shall be inviolable. No one shall be deprived of liberty, nor may such liberty be restricted, except when specified by law, upon which a court shall decide."

Just one exception can be found in Article 17 of the Constitution of the Republic of Croatia: "Individual constitutionally-guaranteed freedoms and rights may be curtailed during a state of war or any clear and present danger to the independence and unity of the Republic of Croatia or in the event of any natural disaster. Such curtailment shall be decided upon by the Croatian Parliament by a two-thirds majority of all representatives or, if the Croatian Parliament is unable to convene, by the President of the Republic. The extent of such restrictions must be adequate to the nature of the threat, and may not result in the inequality of citizens with respect to race, colour, gender, language, religion, national or social origin. Even in cases of clear and present danger to the existence of the state, no restrictions may be imposed upon the provisions of this Constitution stipulating the right to life, prohibition of torture, cruel or unusual treatment or punishment, and concerning the legal definitions of criminal offences and punishment, and the freedom of thought, conscience and religion."

In relation to the issue of having members of the Armed Forces younger than 18 years of age we point out to the Decision of the Croatian Parliament on non calling up conscripts for military service which is applicable from 1 January 2008, as well as to provisions of Articles 30-37 of the Defence Act on conscript's military service where it has not been foreseen to call up minors.

Pursuant to Article 30 of the Defence Act, recruitment commences in the calendar year when the recruits (only men) reach 18, and lasts until commencing the military service or civilian serving, or transfer to reserve component or termination of military service in compliance with the provisions of the Defence Act.

Pursuant to Article 31 of the Defence Act " ...During the service the recruits are subject to:

1. registration with conscript register (in Defence Affairs Office represented by civilian MOD bodies),

2. medical and other examinations and psychological testing conducted at civilian health institutions(authorized health institutions) for assessment of the health aptitude,  
3. recruitment, the competent recruiting boards assess the aptitude of recruits for military service based on the findings and results of prior medical and psychological examinations and determine service, i.e., branch for military servicing  
4. commencing the compulsory military or civilian serving  
5. responding to the general or individual summons and other duties set forth in this Act"  
Based on information from the Ministry of the Interior, the Defence Affairs Office registers conscripts in the year in which the conscripts turn 18. The Defence Affairs Department calls up conscripts to register by general and individual call up to come in person at the time and place stated in the call-up. The person should bring the ID card or other document from where the identification and the age of the person could be seen.  
Moreover, the provision of Article 19 of the Act on Participation of Members of the Armed Forces of the Republic of Croatia, Police, Civil Defence and Civil Servants in Peace Operations and other Activities Abroad (The Official Gazette No. 33/2002 and 92/2010) "...Conscripts of the Armed Forces of the Republic of Croatia cannot be sent to peacekeeping operations and other activities abroad."  
In accordance with the abovementioned, military service starts when the recruit turns 18, not before that, and, regularly - recruitment commences in the calendar year of the recruits' reaching 19 when he becomes the conscript. The final age for the recruit to be drafted for military service is the end of the calendar year in which he/she turns turn 30. There are no legal provisions in the Republic of Croatia that give authorizations for lowering of age of recruits in exceptional cases (e.g. in the state of emergency).

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible?  
 If so, please specify.

Yes ☐No ☒

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

Yes ☒No ☐

We have to reiterate that the Republic of Croatia does not have separate criminal justice nor military courts, therefore criminal proceedings against members of the Croatian Armed Forces are conducted before civilian courts. Criminal prosecution and application of sanctions for criminal offences are in the jurisdiction of the Ministry of the Interior, State Attorney and courts, with the remark that, pursuant to Article 128 of Defence Act The Official Gazette of the Republic of Croatia, No 33/2002, 58/2002 and 76/2007), military and police affairs are conducted by Military Police "...in accordance with military regulations, that is, regulations applied in criminal and offence proceedings". Basic laws of criminal legislation are the Criminal Law Act The Official Gazette No. 125/2011-new) and the Criminal Procedure Act The Official Gazette No. 152/2008, 76/2009, 80/2011 and 121/2011).  
Principle of equality before the law and non-discrimination is constitutional right stipulated in Chapter III (Protection of Human Rights and Fundamental Freedoms) of the Constitution of the Republic of Croatia, Article 14: "All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other conviction, national or social origin, property, birth, education, social status or other characteristics. All persons shall be equal before the law."  
The abovementioned is comprised by provisions of Articles 24-31 of the Constitution of the Republic of Croatia:

**Article 24**

No one may be arrested or detained without a written court order grounded in law. Such an order has to be read and presented to the person placed under arrest at the moment of said arrest.

The police authorities may arrest a person without a warrant when there is reasonable suspicion that such person has perpetrated a grave criminal offence as defined by law. Such person shall be promptly informed, in understandable terms, of the reasons for arrest and of his/her rights as stipulated by law.

Any person arrested or detained shall have the right to appeal before a court, which must forthwith decide on the legality of the arrest.

**Article 25**

Any arrested and convicted person shall be accorded humane treatment, and the dignity of such individual shall be respected.

Whosoever is detained and indicted of a criminal offence shall have the right to be brought before a court within the minimum time specified by law and to be acquitted or convicted within the statutory term.

A detainee may be released on bail to defend him/herself.

Whosoever is illegally deprived of liberty or convicted shall, in compliance with law, be entitled to indemnification and a public apology.

**Article 26**

All citizens of the Republic of Croatia and aliens shall be equal before the courts, governmental agencies and other bodies vested with public authority.

**Article 27**

The legal profession, as an autonomous and independent service, shall provide everyone with legal aid in compliance with law.

**Article 28**

Everyone is presumed innocent and may not be held guilty of a criminal offence until such guilt is proven by a binding court judgment.

**Article 29**

Everyone shall be entitled have his or her rights and obligations, or suspicion or accusation of a criminal offence decided upon fairly before a legally established, independent and impartial court within a reasonable period.

In the case of suspicion or accusation of a criminal offence, the suspected, accused or indicted person shall be entitled:

– to be informed in detail and in a language he/she understands, within the shortest possible term, of the nature and grounds for the charges against him/her and the evidence incriminating him/her,

– to have adequate time and opportunity to prepare his/her defence,

– to defence counsel and unrestricted communication therewith, and to be informed of this right,

– to mount his/her own defence independently or with the assistance of a defence counsel of his/her own choice, and if he/she lacks the resources to engage such counsel, to have free counsel provided under the conditions specified by law,

– to be present at his/her trial insofar as he/she is at the disposal of the court,

– to interrogate or to arrange for interrogation of witnesses for the prosecution and to demand the attendance and questioning of defence witnesses under the same conditions which apply to witnesses for the prosecution,

– to assistance by an interpreter free of charge insofar as he/she does not understand the language used in the court.

An admission of guilt may not be coerced from a suspected, accused or indicted individual.

Evidence obtained illegally may not be admitted in court proceedings.

Criminal proceedings may only be initiated before the court at the request of an authorized

prosecutor.

**Article 30**

The sentence for a severe and particularly ignominious criminal offence may, in compliance with law, have as a consequence the loss of acquired rights or a ban on exercising, for a set period, certain rights pertaining to the conduct of specific affairs, if this is required to safeguard the legal order.

**Article 31**

No one may be punished for an act which, prior to its commission, was not defined as a punishable offence by domestic or international law, nor may such individual be sentenced to a penalty which was not then defined by law. If a less severe penalty is determined by law after the commission of said act, such penalty shall be imposed.

No one may be re-tried nor penalized in criminal prosecution for an act for which such individual has already been acquitted or sentenced by a binding court judgment in accordance with law.

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions.

Yes ☐ No x ☒

No such limitations or exceptions.

F.3 Does your country have military courts?

Yes ☐ No x ☒

F.3.1 If so, are they separate from the chain of command?

Yes ☐ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation?

Yes ☐ No ☐

**G – Right to respect for private and family life, home and correspondence**

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment?

Yes ☐ No x ☒

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts?

Yes x ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad?

Yes x ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation.

Yes x ☒ No ☐

As regards parental leave, child care, etc., it should be noted that the provisions of the Act on Service in the Armed Forces of the Republic of Croatia regulate service in the Armed Forces of the Republic of Croatia, ranks and the assigning of ranks, promotions and other status-related matters, and the rights and obligations of the members of the Armed Forces.

This includes working hours, vacation and leaves, relocation, sending for education, medical treatment or sick leave, salaries and other material rights, and professional training. If certain issues are not regulated by this Act they are covered by general regulations of the Republic of Croatia, therefore, in the same way as for the persons that are not members of the Armed Forces.

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Military chapels are established in every facility in CAF, and military chaplain is available to the soldiers of all confessions.

H.2 Do conscripts have the rights to be granted conscientious objector status?

Yes ☒ No ☐

H.2.1 If so, is an alternative service of a civilian nature available?

Yes ☒ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

We remind of the previously described term: conscientious objection based on Article 38 of the Defence Act, and underline the provision of Article 92 of the same Act: "...„Members of the Armed Forces shall in all situations while deployed in combat or non-combat operations abide by the principles of International Humanitarian Law on human treating the enemy soldiers and other inherent regulations in compliance with the Constitution, international agreements and the law." "Members of the Armed Forces are allowed to refuse orders compelling them to act contrary to the provisions of the Constitution and international law of war." "Members of the armed forces shall have equal rights and responsibilities regardless of their national origin, religion or sex."

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions?

Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Yes ☐ No ☒

Military service is not compulsory, therefore an active member of the Armed Forces can quit his service anytime in accordance with the signed contract.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights?

Yes ☐ No ☒

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

This right is regulated by the Constitution of the Republic of Croatia.

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes x ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

Act on Service in the Armed Forces of the Republic of Croatia , Article 11 (I.1)

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes x ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes x ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No x ☒

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No x ☒

Act on Service in the Armed Forces of the Republic of Croatia , Article 11:

Active servicemen are not permitted to organise trade unions. Civil servants and employees may be organised in trade unions in accordance with general work-related legislation.

Active servicemen are not permitted to go on strike.

Civil servants and employees are not permitted to go on strike:

- in a state of war or in a state of immediate threat to the Republic of Croatia,
- when directly linked with the measures of readiness of civilian and military defence,
- when directly linked to the combat readiness of the Armed Forces,
- which threatens the vital functions of the Armed Forces.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No x ☒

Act on Service in the Armed Forces of the Republic of Croatia , Article 11

We emphasize that the service in the Armed Forces (of military servicemen, civil servants and employees) is defined by general regulations of the Republic of Croatia, similarly as for persons who are not members of the Armed Forces unless it is otherwise regulated by separate defence laws, we state the provision of Article 129 of the Defence Act: "Civil servants and employees of the Armed Forces are forbidden to engage in political activity in military and MOD facilities; they shall not establish parties, or hold political gatherings and demonstrations.

Members of the Armed Forces are forbidden to participate in political gatherings and demonstrations and to make public statements on the situation in the Ministry of Defence or on internal relations therein, without the authorisation of the Minister of Defence or a person authorised by him/her. "

*There are special provisions of Article 11 of the Act on Service in the Armed Forces of the Republic of Croatia: "The rights guaranteed by this Act are exercised by all members of the Armed Forces under equal terms. Members of the Armed Forces serving in military establishments and units are forbidden to engage in political activity: they shall not establish parties, or hold political gatherings and demonstrations. Members of the Armed Forces are forbidden to participate in political gatherings and demonstrations, and to make public statements on the situation in the Armed Forces, or on internal relations therein, without the authorisation of the Minister of Defence or a person authorised by him/her."*

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes x ☒ No ☐

*Act on Service in the Armed Forces of the Republic of Croatia, Article 11: Active servicemen are not permitted to hold membership of political parties. Active servicemen, civil servants and employees are not permitted to run for representational civilian bodies, representational bodies of local and county (regional) self-government, or for the Croatian Parliament.*

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes x ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes x ☒ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes x ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes x ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes x ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes x ☒ No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of Yes x ☒ No ☐



sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation.

Act on Service in the Armed Forces of the Republic of Croatia, Article 29

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

Committee for Gender Equality – established on the level of MOD

Health protection – Health Law – primary and secondary insurance for all MOD/CAF members

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

Meal regulation document.

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

There is a provision of the Defence Act that states: "The Ministry of Defence establishes:

...3. Personnel Council – advisory body for personnel policy.

Within Personnel Council there is a Board for gender equality with the purpose of equal treatment and status and equal opportunities for members of both genders."

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

#### T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

#### U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

#### V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

#### On the state level:

- Civil courts
- Committee for Gender Equality – established on the level of MOD
- Ombudsman

### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**CZECH REPUBLIC****Section I – Impact assessment**

- I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☒ No ☐

*The Main Inspector for Protection of Human Rights of the Ministry of Defence.*

- I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

*Almost all of the recommendations had already been implemented in the legal order in the past.*

- I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☒

- I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

*None*

**Section II – Dissemination of the Recommendation**

- II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☒ No ☐

*Yes, the Main Inspector for Protection of Human Rights.*

- II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☒ No ☐

*Introduction to all members of the armed forces by the way of the General Staff and commanders of them, publication on the Army's Intranet.*

- II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

*None*

- II.4 To which authorities has the Recommendation been distributed?

*By the way of the Chief of the General Staff to all military formations, to military schools.*

- II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☒ No ☐

- II.6 Has the Recommendation been translated? Yes ☐ No ☒

- II.7 If not, is this foreseen? Yes ☒ No ☐

- II.8 How would you assess the visibility of the Recommendation? Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

**Section III – Implementation of specific provisions****A - Right to life**

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

*Laws and internal regulations; control mechanisms, treatment of complaints, direct access to the Main Inspector for Protection of Human Rights (possibility to send complaints directly to him, possibility to use telephone and mail contact).*

**B – Torture and other forms of ill-treatment**

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ No ☒

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

*Ad B.2.: obligatory military service was abolished*

**C – Forced or compulsory labour**

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☐ No ☒

*There is only conscription in case of war or state of war emergency. In this case, the alternative of conscientious objection is possible.*

**D – Military Discipline**

D.1 Is there a clear legal framework in place governing military Yes ☒ No ☐

discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation.

*Act no. 221/1999, on Professional Soldiers, §§ 50 – 57.*

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒  
*There are no members of armed forces under the age of 18.*

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?  
*In fact, military prisons have been in practice abolished though, theoretically, there could be a disciplinary punishment of deprivation of liberty imposed (this punishment is not imposed in practice).* Yes ☒ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

*There are no special military courts.*

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces’ civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☒ No ☐

*There no real specificities in this area.*

F.3 Does your country have military courts? Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is “yes”, are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment?

Yes ☐No ☒

*We have no conscripts, only professional soldiers.*

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts?

Yes ☒No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad?

Yes ☐No ☒

*Individually – there are no accompanying persons usually.*

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation.

Yes ☒No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒No ☐

*They have the same possibilities as other citizens, and possibility to use the army chaplain service. An army chaplain participates in each foreign mission and is available to soldiers.*

H.2 Do conscripts have the rights to be granted conscientious objector status?

Yes ☒No ☐

*The armed forces are not established on the basis of conscription.*

H.2.1 If so, is an alternative service of a civilian nature available?

Yes ☒No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions?

Yes ☐No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Yes ☒No ☐

*It is an administrative procedure with the possibility of judicial review.*

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for

Yes ☒No ☐

reasons of conscience and of the procedures available to exercise these rights?

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section “H” of the Appendix to the Recommendation.

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces?

Yes ☐ No ☒

*There are no particular restrictions to the right to freedom of expression.*

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits?

Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health?

Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any.

Yes ☐ No ☒

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☐ No ☒

*There is a general prohibition for the members of armed forces to join political parties or movements and trade unions. Soldiers can associate in professional associations agreed by the Ministry of Defence.  
Some of these restrictions will probably be reviewed.*

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☐ No ☒

*Act no. 221/1999, on Professional Soldiers. A change is not considered*

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples.

Yes ☐ No ☒

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☐ No ☒

*We have only professional soldiers and we are not authorised to take their properties.*

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*Act no. 221/1999, on Professional Soldiers, § 2, Act no. 198/2008 on equal treatment and legal protection against discrimination. System of control and complaints.*

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section “Q” of the Appendix to the Recommendation.



R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes ☒ No ☐

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes ☒ No ☐

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples.

Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge?

Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18?

Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians?

Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons?

Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities?

Yes ☐ No ☐

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out.

Yes ☒ No ☐

*Military Academy (training, preparation for the mission), University of Defense, Military secondary school, lifelong learning (various courses).*

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme ?

Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme?

Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme?

Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme?

Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

*The (general) ombudsman, (civil) courts.*

*Many complaints are dealt with by the main Inspector for Protection of Human Rights of the Ministry of Defence.*

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

*A new conception of protection of human rights is under preparation.*

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

*We leave this aspect open.*

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

*We leave this aspect open.*

**DENMARK****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☒

The Danish Government is responsible for the implementation of recommendations from international organisations such as the European Council.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Human rights are a very important part of the constitution and legislation in general in Denmark, and the rights and protection deriving from these were already enjoyed by the citizens of Denmark, including the members of the armed forces, at the time of the recommendation. Therefore the recommendation has not had any specific impact on the human rights of members in the armed forces.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☒

See answer under I.2

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

See answer under I.2

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☒

See answer under I.2

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

See answer under I.2

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

See answer under I.2

II.4 To which authorities has the Recommendation been distributed?

As described under I.2, the Recommendation is already fulfilled in Denmark since it is part of Danish legislation. Therefore it has not been necessary to distribute the Recommendation to any authorities.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

- II.6 Has the Recommendation been translated ? Yes ☐ No ☒
- II.7 If not, is this foreseen? Yes ☐ No ☒
- II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

Suspicious deaths or alleged violations of the right to life of a member of the armed forces are to be reported to the independent Danish Military Prosecution Service.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☒ No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

Suspected crimes are to be reported to the independent Danish Military Prosecution Service and dealt with in accordance with the Military Penal Code.

Degrading acts of a less severe nature might be dealt with by military commanders in accordance with the Military Disciplinary Act.

A superior who deliberately does not interfere against a subordinate's offending treatment of the subordinate or peers of such subordinate may be liable to punishment or a disciplinary sanction.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes **X** No ☐

Alternative service is possible. The nature of the replacement service is of different kinds but all of them of a non military nature. The duration is the same as the compulsory military service.

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

Severe infractions against the Military Penal Code are dealt with by the Military Prosecution Service.

Less severe breach of discipline may be dealt with by the military commanders in accordance with the Military Disciplinary Act.

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes **X** No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes **X** No ☐

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes **X** No ☐

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No **X**

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes **X** No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please Yes ☐ No **X**

provide examples of such limitations or exclusions.

F.3 Does your country have military courts? Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is “yes”, are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☒ No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children’s health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Denmark has an extensive tax funded public sector that offers a wide range of services to all citizens, including members of the armed forces. Childcare, nursery schools and adequate children’s health and education system are dealt with in relevant parts of the public sector.

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section “G” of the Appendix to the Recommendation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Examples: Besides stating the freedom to practise one’s religion in the Personnel Policy, the Armed Forces also have conducted an Administration Policy focusing on how members of the armed forces in the best possible way can express and live by their religion.

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☒ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No **X**

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

Professional member of the armed forces are free to leave the armed forces at any time and for any reason.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes **X** No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☐ No **X**

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

Freedom of expression is a constitutional right also enjoyed by members of the armed forces. The right is limited by the duty of confidentiality imposed upon public employees.

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes **X** No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes **X** No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No **X**

#### K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and Yes **X** No ☐

whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Freedom of association is a constitutional right that anyone, including members of the Armed Forces, can enjoy.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☒ No ☐

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples.

Yes ☐ No ☒

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service?

Yes ☐ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad?

Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men?

Yes ☐ No ☒

If the circumstances allow it, the armed forces strive to maintain separate barracks for women and men.

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension?

Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and

Yes ☒ No ☐



provide examples. If not, please explain why and whether any measure is in preparation.

The Military Penal Code and Military Disciplinary Act inter alia prohibit discrimination, harassment and persecution of members of the armed forces.

Provisions in other legislation, including the Act on Equal Treatment and the Act on Prohibition against Discrimination on the Labor market on the protection of the dignity at work, apply to members of the armed forces as well.

The subject is also dealt with in the armed forces personnel policy. Furthermore the armed forces have an organization of personal advisers, who offer voluntary counselling to members of the armed forces regarding harassment.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

In addition to the ordinary compensation and indemnification according to the law on industrial injury insurance and the accord on group life assurance, the soldiers deployed to international operations are covered by the Armed Forces' special indemnity and compensation arrangement. This arrangement has been established as it can be very costly for the individual soldier to sign an insurance when deploying to a war zone. The main purpose of the arrangement is to secure the soldier or his/her family in the event of death/injury during deployment. The insurance sum will be paid independently of ordinary industrial injury insurances and any other private insurance.

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Yes ☒ No ☐  
Where appropriate, please provide examples of good practices.

The Armed Forces are obliged to comply with the Non-discrimination Act.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

Training aimed at increasing the knowledge of human rights in general is an integrated part of the training in the public school. The training is also an integrated part of the non-commissioned officers and officers training. Furthermore, before deploying in theatre, members of the armed forces are trained in handling human rights in warzones.

U.1.1. If the reply to question U.1 is "YES":

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☐ No ☒

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is "NO", please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Allegations of human rights violations that constitute a military crime may be reported to the Military Prosecution Service.

Less severe acts may be a violation of the Military Disciplinary Act and may be reported to the competent military disciplinary chief.

Apart from the above mentioned, the Armed Forces has an organization of voluntary counselors among the employees, who can support employees that have been victimized by offensive behavior in the form of mobbing or harassment or employees accused of offending others.

#### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

In Denmark the principles set out in the recommendation are already complied with in national legislation.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Countries which do not already provide the same level of protection as the recommendation could be subjected to further examination of the implementation. Future examination may focus on the issues, where this questionnaire indicates problems in relation to implementation.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**ESTONIA****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No \*

Protection of human rights and fundamental freedoms are implemented by the Estonian Ministry of Defence (MOD), Headquarters of the Estonian Defence Forces in close cooperation with the Legal Chancellor office.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate \* Insufficient ☐ Absent

According to the constitution human rights and fundamental freedoms have to be guaranteed and all of the specific recommendations are incorporated into Estonian legislation concerning military service. Therefore it is difficult to assess the specific impact of the recommendation but rather it is an estimate of overall implementation of fundamental freedoms and human rights in the Estonian Defence Forces.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes No \*

Through a close and continuous dialogue with the Legal Chancellor office the rights of conscripts and members of defence forces and overall working conditions in the defence forces have been improved.

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Certain obstacles derive from practical and financial difficulties in order to improve the working conditions and standard of living for the members of the defence forces. However Estonian MOD is fully committed to improving the areas where we face challenges.

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No \*

It is the obligation of the Estonian MOD and the Headquarters of the Defence Forces to protect and guarantee fundamental freedoms as they are stated in the Estonian constitution and in international agreements ratified by the Republic of Estonia.

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No \*

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

II.4 To which authorities has the Recommendation been distributed?

--

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No \*

II.6 Has the Recommendation been translated? Yes ☐ No \*

II.7 If not, is this foreseen? Yes \* No ☐

II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ Adequate \* Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

The Military Police, State Police and State’s Prosecutor office have the obligation to investigate alleged violations. There is no military judicial system and the Prosecutor’s Office leads the investigation and not the Military Police. The same legal framework is applied to the military as to the civilians.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes \* No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes \* No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes \* No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes \* No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

Same information as provided for the previous question is relevant to B.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service?

Yes \* No ☐

Alternative service is regulated by the Estonian constitution and the Defence Forces Service Act. A person who refuses to serve in the Defence Forces for religious or moral reasons has a duty to perform alternative service pursuant to the procedure prescribed by the Defence Forces Service Act. Duration of the alternative service may be from 8 to 12 months and its nature is civilian. According to the Defence Forces Services Act the alternative service can not be activities that require carrying a gun.

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation.

Yes \* No ☐

Military discipline is regulated by Defence Forces Disciplinary Act. Starting from April 1<sup>st</sup> 2013 it will be regulated by the new Defence Forces Service Act.

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces?

Yes \* No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18?

Yes ☐ No \*

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?

Yes No

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify.

Yes ☐ No \*

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

Yes \* No ☐

As there are no military courts in Estonia criminal charges against military personnel are filed by

State prosecutor and it is regulated by the Criminal Procedure Act. Although certain part of the investigation may be done by the Military Police the State Prosecutor Office is leading the investigation. Therefore there are no differences in procedural rights and safeguards.

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☐

Question is not clear. If it is meant whether a member of the defence forces will be able to enforce its civil rights and obligations outside its military service then the answer is "yes".

F.3 Does your country have military courts? Yes ☐ No \*

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes \* No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes \* No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes \* No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes \* No ☐

If possible conscripts are posted closer to family and home. Private contacts can be maintained through regular communication means while a member is on a military mission outside of Estonia. Estonia does not have permanent military bases outside its territory. Postings to the military headquarters and participation in military operations are voluntary.

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

1. A conscript shall be released from compulsory military service in connection with the person being a parent or guardian of a child or other person maintaining a child within the meaning of the Family Law Act, who maintains at least two children or alone at least one child.
2. Fathers have the right to receive up to ten working days of paternity leave during the two months before the estimated birth date given by a doctor or midwife and during the two months after the birth of the child.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes \* No ☐

All major religions and denominations in Estonia are included in the cooperation and can be contacted where necessary.

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes \* No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes \* No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☐ No ☐

Answer to H.4 depends on what is exactly meant. Professional members of the defence forces are under contract and under certain conditions service contract can be terminated. However member of the defence forces can not refuse to comply with a lawful order.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes \* No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

Persons liable to service in defence forces receive a call for service and with it also information concerning his rights and obligations. A person can also turn to Estonian MOD or to the Defence Resources Agency for further information.

### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes \* No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

For example conscripts are not allowed to distribute political views. The same applies also to members of defence forces who are not allowed to distribute their political view while on duty. Nor can they belong to a political party. This restriction of course does not prohibit exchange of opinions but however refers to a more active distribution views.



J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes \* No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes \* No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No ☒

Person who is liable to serve in the defence forces receives detailed information concerning its rights and obligation and about practicalities.

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes \* No ☐

Members of the defence forces can not participate in the activities of other organisation that are carrying weapons except Estonian Defence League and sports and hunting clubs. They can work for a non-profit organisation if it is not a political party.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No \*

Service in the defence forces has to be non-political in order to provide most effective defence of the Republic of Estonia. Defence matters should be above political issues. As explained a member of the defence forces can not distribute his/her political views.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☒ No ☐

Member of the armed forces may not stand as a candidate for election to the Riigikogu (national parliament) or European Parliament or candidate for the President of the Republic.

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes \* No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes \* No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes \* No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes \* No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes \* No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes \* No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes \* No ☐

A right to file a complaint in case a person feels he/she has been sexually harassed. Regulated by general legal framework.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes \* No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes \* No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section “Q” of the Appendix to the Recommendation.

1. Members of the Defence Forces are guaranteed medical examinations and regular health examinations, vaccinations and other medical care to the extent which is deemed equal to general medical care at the expense of the state.
2. In the case of medical indications, members of the Defence Forces who have participated in international military operations are guaranteed medical rehabilitation
3. The duration of the annual leave of a regular member of the Defence Forces is thirty-five calendar days

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes \* No ☐

1. During active service, conscripts are ensured catering without charge.

2. During field exercises, international military operations, on board of aircraft of the air force and in service on navy vessels, regular members of the Defence Forces are granted catering without charge.

S – Non-discrimination

- S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? Yes \* No ☐

Where appropriate, please provide examples of good practices.

- S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No \*

Women do not have an obligation serve in the military however they can voluntarily do it. There are no limitations on military positions.

- S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No \*

T – Persons under the age of 18 enlisted in the armed forces

- T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No \*

- T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

- T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

- T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

U – Training

- U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes \* No ☐

Conscripts and members of the defence forces receive training on humanitarian law according to their position.

U.1.1. If the reply to question U.1 is “YES”:

- U.1.1.1 Is international human rights law part of the training programme? Yes ☐ No \*

- U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes \* No ☐

- U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes \* No ☐

- U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes \* No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

Yes \* No ☐

Such allegations can be brought to the attention of Military Police, Defence Forces ombudsman Estonian MOD, State Prosecutor Office, Legal Chancellor. Oral or written complaint is necessary and it can be sent via internet.

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

As most of the principles set out in the Recommendation and in its Appendix are also stated in Estonian Constitution and relevant national legislation, we see the correct implementation of these principles as a dialogue between relevant stakeholders such as the Ombudsman office in Estonia and the Ministry of Defence. Therefore it is difficult to point out any additional specific measure for the implementation of the Recommendation.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Taking into account the previous answer we are of the opinion that an important role is played by an adequate periodical examination of implementation of the Recommendation which should however take account of practical implications of the review.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**FINLAND****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☒ No ☐

Ministry for Foreign Affairs of Finland; assisted by the Ministry of Defence of Finland.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☒ Adequate ☐ Insufficient ☐ Absent ☐

Fully satisfactory already before the Recommendation.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☒ No ☐

Ongoing process.

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

None.

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☒

All the relevant authorities responsible for promoting HRs.

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

-

II.4 To which authorities has the Recommendation been distributed?

Ministry of Foreign Affairs has distributed the recommendation to all the relevant authorities, including Ministry of Defence and Defence Forces.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

II.6 Has the Recommendation been translated? Yes ☐ No ☒

II.7 If not, is this foreseen? Yes ☒ No ☐

II.8 How would you assess the visibility of the Recommendation?

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

Investigation of such incidents follows the legal procedure.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☒ No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

Investigation of such incidents follows the legal procedure. Separate programmes to reduce “anti-bullying”.

#### C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☒ No ☐

Non-military service = alternative of civilian nature. 362 days.

Conscription Act (1438/2007) 37 §: Military service: 180 or 270 or 362 days .

Section 37 – *Determining the term of military service*

The term of military service is:

- 1) 180 days for training in the rank and file,
- 2) 270 days for training for demanding duties that require special and professional skills,

3) 362 days for officers, non-commissioned officers and conscripts trained for especially demanding duties.

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

General law on the issue and specific regulations.

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

Not under 18.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☒ No ☐

F.3 Does your country have military courts? Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is “yes”, are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Yes ☐ No ☐

Paragraphs 33 and 34 of the Appendix to the Recommendation?

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☒ No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

The respective existing legislation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Specific rules and procedures to protect religious rights.

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☒ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

On notification basis.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these Yes ☒ No ☐



rights?

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

Conscripts are interviewed at the beginning of the service (needs for their religious holidays and leaves etc).

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes x ☐ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

Photography at military command area, restricted area; based on legislation.

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes x ☐ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes x ☐ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ x No ☐

Restrictions by security clearance.

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes x ☐ No ☐

Soldier must be objective. Please see also the Constitution of Finland Section 13.2. Also Act on Defence Forces (551/2007) Section 45.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No x ☐

Penal Code 45:19. Conscripts are allowed to join political parties.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes x ☐ No ☐

Penal Code 45:19

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes x ☐ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes x ☐ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Ye x ☐ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes x ☐ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Ye x ☐ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes x ☐ No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes x ☐ No ☐

Special procedures.
---------------------

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes x ☐ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes x ☐ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section “Q” of the Appendix to the Recommendation.

Specific legislation.
-----------------------

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes ☒ No ☐

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes ☐ No ☐

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples.

Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge?

Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18?

Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians?

Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons?

Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities?

Yes ☐ No ☒

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out.

Yes ☒ No ☐

U.1.1. If the reply to question U.1 is "YES":

U.1.1.1 Is international human rights law part of the training programme?

Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme?

Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme?

Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme?

Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

Yes x ☐ No ☐

E.g. ombudsman

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

Adaption of special national measures and regulations.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

-

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

In general terms, the focus should be more on the existing provisions on human rights.

Please, see also the contentually wide non-discrimination provision of the Conscription Act Section 56 – *Prohibition on discrimination*:

In implementing military service based on this Act, no person may be discriminated against because of his or her age, origin, language, religion, political or other opinions, health, handicap, gender, sexual orientation, or other personal reason, unless acceptable grounds may be established.

and also the Constitution of Finland (731/1999) Section 6.2:

*Section 6 – Equality*

No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

**FRANCE****Section I – Étude d'impact**

I.1 Une autorité a-t-elle été désignée comme responsable de la mise en œuvre de la Recommandation ? Si oui, laquelle ? Oui ☐ Non ☒

La mise en œuvre de la recommandation relève de :

- la chaîne de commandement en ce qui concerne le respect au quotidien des droits et devoirs des militaires,
- la direction des affaires juridiques et la direction des ressources humaines en ce qui concerne les aspects normatifs.

I.2 Comment évalueriez-vous l'impact de la Recommandation sur les droits de l'homme des membres des forces armées dans votre pays ? Merci de motiver votre réponse.

Pleinement satisfaisant ☐ Adéquat ☐ Insuffisant ☐ Inexistant ☐

L'ensemble des mesures préconisées dans la recommandation sont couvertes par des pratiques, des législations nationales ou des réglementations spécifiques.

I.3 Des mesures spécifiques pour la promotion et la protection des droits de l'homme des membres des forces armées ont-elles été adoptées suite à et en application de l'adoption de la Recommandation ? Si oui, merci de donner quelques exemples. Oui ☐ Non ☒

La mise en œuvre de la recommandation dans les forces armées françaises n'a pas nécessité l'édiction de dispositions nouvelles, l'état du droit répondant d'ores et déjà aux exigences de la recommandation. En revanche une large diffusion a été assurée à la recommandation afin de sensibiliser l'ensemble des personnels.

I.4 Si des obstacles ont été rencontrés lors de la mise en œuvre de la Recommandation, de quels obstacles s'agit-il ?

/

**Section II – Diffusion de la Recommandation**

II.1 Une autorité a-t-elle été désignée comme responsable de la diffusion de la Recommandation ? Si oui, laquelle ? Oui ☐ Non ☒

Voir question I.1

II.2 Des événements spécifiques ont-ils été organisés en vue de la diffusion de la Recommandation ? Si oui, merci de donner quelques exemples. Oui ☒ Non ☐

II.3 Si des obstacles ont été rencontrés lors de la diffusion de la Recommandation, de quels obstacles s'agit-il ?

/

II.4 Après de quelles autorités la recommandation a-t-elle été distribuée ?

La recommandation a été diffusée à la chaîne de commandement, la direction des affaires juridiques et la direction des ressources humaines.

II.5 La Recommandation a-t-elle été distribuée aux membres des forces armées ? Oui ☐ ~~Non~~ ☐

II.6 La Recommandation a-t-elle été traduite ? Oui ☐ ~~Non~~ ☐

II.7 Si non, est-il prévu de la traduire ? Oui ☐ Non ☐

II.8 Comment évalueriez-vous la visibilité de la Recommandation ?  
 Pleinement satisfaisante ☐ ~~Adéquate~~ ☐ ~~Insuffisante~~ ☐ ~~Inexistante~~ ☐

### Section III – Mise en œuvre des dispositions spécifiques

#### A – Droit à la vie:

A.1 Des mesures ont-elles été mises en place pour garantir une enquête indépendante et effective dans tous les cas de mort suspecte ou de violation alléguée du droit à la vie d'un membre des forces armées ? Oui ☐ ~~Non~~ ☐

A.2 Des mesures ont-elles été mises en place pour encourager le signalement d'actes attentatoires au droit à la vie des membres des forces armées et protéger les personnes qui signalent l'existence de tels actes contre toutes représailles? Oui ☐ ~~Non~~ ☐

A.3 Merci de bien vouloir donner des informations sur le cadre légal de ces mesures et des exemples de mesures en place. Si vous avez répondu « Non » à une ou plusieurs des questions ci-dessus, merci de bien vouloir expliquer pourquoi de telles mesures ne sont pas en place et d'indiquer si des mesures sont en cours de préparation.

Le droit à la vie des membres des forces armées est constitutionnellement protégé. En cas d'atteinte à ce droit, une enquête indépendante et impartiale est conduite par l'autorité judiciaire, constitutionnellement séparée du pouvoir réglementaire.

L'enquête en matière de mort suspecte d'un membre des forces armées français donne lieu à:

- L'enquête de commandement décidée par l'autorité militaire afin de recueillir toutes les informations permettant d'éclairer la hiérarchie militaire sur les causes du décès (dysfonctionnement de la chaîne de commandement, mauvaise compréhension des ordres, mauvais usage des matériels...). Cette enquête destinée à l'autorité militaire peut être transmise aux autorités judiciaires sous réserve des conditions éventuelles de déclassification de certains éléments.
- L'enquête technique décidée par l'autorité militaire afin de déterminer les possibles défaillances des matériels susceptibles d'avoir causé la mort. Cette enquête destinée à l'autorité militaire peut être transmise aux autorités judiciaires sous réserve des conditions éventuelles de déclassification de certains éléments.
- L'enquête judiciaire diligentée par le parquet compétent. Les magistrats chargés d'instruire les dossiers spécialisés en matière militaire sont des magistrats civils du corps judiciaire. Par ailleurs, les dispositions de l'article 74 du code pénal relatives à l'enquête judiciaire en cas de mort ou de blessures graves dont la cause est inconnue ou suspecte s'appliquent.

En outre, l'article 40 du code de procédure pénale fait obligation de dénoncer les crimes et les délits qui sont connus par les autorités constituées, les officiers publics et les fonctionnaires dans l'exercice de leurs fonctions. Cet article s'applique aux militaires.

Par ailleurs, selon les dispositions de l'article 698-1 du CPP, c'est le procureur de la République, territorialement compétent, qui apprécie la suite à donner aux faits portés à sa connaissance

notamment par la dénonciation du ministre chargé de la défense ou de l'autorité militaire habilitée par lui.

B – Torture et autres mauvais traitements

B.1 Des mesures ont-elles été mises en place pour protéger les membres des forces armées de tortures ou d'autres peines ou traitements inhumains ou dégradants ? Oui ☐ ~~Non~~ ☐

B.2 Des mesures spécifiques ont-elles été mises en place pour les catégories plus vulnérables, telles que par exemple les appelés ? Oui ☐ ~~Non~~ ☐  
mais il n'y a plus d'appelés.

B.3 Des mesures ont-elles été mises en place pour garantir une enquête indépendante et effective dans toutes les allégations d'actes de torture ou d'autres mauvais traitements, ou lorsque les autorités soupçonnent que c'est le cas, sur la base d'éléments raisonnables ? Oui ☐ ~~Non~~ ☐

B.4 Des mesures ont-elles été mises en place pour encourager le signalement d'actes de torture ou d'autres mauvais traitements et protéger les personnes qui signalent l'existence de tels actes contre toutes représailles ? Oui ☐ ~~Non~~ ☐

B.5 Merci de bien vouloir donner des informations sur le cadre légal de ces mesures et des exemples de mesures en place. Si vous avez répondu « Non » à une ou plusieurs des questions ci-dessus, merci de bien vouloir expliquer pourquoi de telles mesures ne sont pas en place et d'indiquer si des mesures sont en cours de préparation.

Les militaires sont des citoyens comme les autres et relèvent du droit pénal. Ainsi, le code pénal réprimant sévèrement les actes de torture et de barbarie (art. 222-1), la mise en place de mesures spécifiques pour les forces ne s'avère pas nécessaire.

Si leurs actes constituent des infractions de violences aux personnes commises durant l'exécution du service, les autorités militaires doivent les dénoncer à l'autorité judiciaire. Les comportements infractionnels comme les bizutages, les voies de faits et les brimades sont ainsi dénoncés par l'autorité militaire dès qu'elle en a connaissance au procureur de la République territorialement compétent. La justice traite les dossiers des militaires au sein des juridictions spécialisées en matière militaire et tient compte des avis des autorités militaires.

En outre, ces faits peuvent aussi constituer des infractions militaires comme des infractions contre la discipline, des voies de fait ou outrages envers des supérieurs, des violences ou insultes à sentinelle.

C – Travaux forcés ou obligatoires

C.1 Le service militaire est-il obligatoire ? Si oui, peut-on effectuer un autre service à la place du service militaire obligatoire et quelles sont les différences en nature et durée de cette autre forme de service ? ~~Oui~~ ☐ Non ☐

Le service militaire n'a plus cours en France il est suspendu depuis une loi de 1997 (article L. 114-1 de la loi N°97-1019 du 28 octobre 1997 portant réforme du service national et article L. 312-12 du code de l'éducation).

La formation de tous les jeunes aux enjeux de la défense et de la citoyenneté repose depuis la loi de 1997 suspendant le service national, sur un parcours citoyen. Il comporte trois étapes obligatoires au cours desquelles interviennent successivement l'Education nationale, les mairies et la défense. Les trois étapes sont : l'enseignement obligatoire (principes et organisation de la Défense nationale et

européenne), le recensement, la journée défense et citoyenneté. Cet enseignement a pour objet de renforcer le lien Armées/Nation tout en sensibilisant la jeunesse à son devoir de défense.

#### D – Discipline militaire

D.1 Existe-t-il un cadre légal défini organisant le système de discipline militaire conformément aux paragraphes 19-21 de l'Annexe à la Recommandation ? Si oui, merci de bien vouloir indiquer une référence au cadre légal pertinent. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☐ Non ☒

Le système disciplinaire français est défini par les articles du code de la défense (articles L 4137-1 à L 4137-5 et R4137-9 à R 4137-142) et décliné par des instructions.

#### E - Droit à la liberté et à la sûreté

E.1 Existe-t-il une procédure prévue par la loi qui traite de la privation de liberté des membres des forces armées ? Oui ☐ Non ☒

E.2 La détention de membres des forces armées âgés de moins de 18 ans est-elle permise ? Oui ☐ Non ☒

E.2.1 Si oui, les conditions de détention satisfont-elles aux exigences établies au paragraphe 23 de l'annexe à la Recommandation ? Oui ☐ Non ☒

E.2.2 Si la réponse à la question E.2.1 est « Non », merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

La privation de liberté peut être de deux ordres : disciplinaire ou judiciaire.

La privation de liberté peut faire suite à une procédure disciplinaire. La période maximale de privation de liberté, en une fois, ne peut dépasser 60 jours (Article L. 311-13 CJM). Toutefois, la pratique administrative en amoindrit la rigueur en recommandant de limiter la sanction à 40 jours et, si le cumul de plusieurs sanctions dépasse les 40 jours, de suspendre l'exécution de la mesure pendant 8 jours à l'issue des 40 premiers jours.

La privation de liberté disciplinaire est régie par les articles L. 4137-2 du code de la défense (tours de consignes et les jours d'arrêt).

La privation de liberté judiciaire s'effectue dans le cadre strict fixé par le code de procédure pénale et sous le contrôle d'un magistrat judiciaire indépendant.

Les jours d'arrêts prononcés dans le cadre disciplinaire s'imputent sur la détention éventuellement ordonnée par le juge judiciaire.

Les membres des forces armées âgés de moins de 18 ans bénéficient de l'ensemble des protections afférentes au système judiciaire français. Selon l'Ordonnance de 1945, ils relèvent notamment de juridictions spécialisées pour les mineurs.

E.3 Des limites ou restrictions aux garanties énoncées aux paragraphes 24 à 27 de l'Annexe à la Recommandation sont-elles possibles ? Si oui, merci de spécifier lesquelles. Oui ☒ Non ☐

/

#### F- Droit à un procès équitable

F.1 Dans le cadre des procédures qui sont considérées comme Oui ☐ Non ☒



pénales au sens de la Convention européenne des droits de l'homme, les membres des forces armées bénéficient-ils de droits et garanties procéduraux dans la même mesure que dans toute procédure pénale contre des personnes civiles, conformément aux paragraphes 28, 30 et 31 de l'Annexe à la Recommandation ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Les militaires bénéficient des mêmes droits et garanties procéduraux que les personnes civiles (voir supra). Depuis la suppression du tribunal aux armées de Paris en 2011, les affaires pénales militaires relatives aux faits commis par les militaires hors du territoire national en temps de paix sont traitées par la chambre spécialisée en matière militaire du Tribunal de grande instance de Paris. Les faits commis durant l'exécution du service sur le territoire national par les militaires en temps de paix relèvent des juridictions spécialisées en matière militaire.

Les garanties procédurales de droit commun sont applicables.

Par ailleurs, l'Etat français assure la protection de ses militaires en OPEX en déployant plusieurs outils juridiques. Il négocie des accords de force (SOFA), il assure une protection juridique, il assiste ses militaires devant les juridictions pénales internationales et dispense un conseil adapté dans le cadre des OPEX (le LEGAD ou legal advisor).

F.2 Existe-t-il un cadre légal défini régissant les restrictions ou exclusions du droit d'accès à un tribunal qui puisse examiner les contestations des membres des forces armées sur leurs droits et obligations de caractère civil ? Si oui, merci de donner quelques exemples de ces restrictions ou exclusions.

Oui ☒ Non ☐

/

F.3 Existent-ils des tribunaux militaires?

Oui ☒ Non ☐

F.3.1 Si oui, sont-ils séparés de la chaîne de commandement ?

Oui ☐ Non ☐

F.3.2 Si la réponse à la question F.3 est « OUI », y a-t-il une différence entre l'organisation et le fonctionnement des juridictions militaires, en comparaison avec les tribunaux civils, en ce qui concerne en particulier les garanties procédurales établies aux paragraphes 33 et 34 de l'Annexe à la Recommandation?

Oui ☐ Non ☐

#### G – Droit au respect de la vie privée et familiale, du domicile et de la correspondance

G.1 Des mesures ont-elles été mises en place pour garantir que les appelés soient affectés près de leurs proches et de leur domicile et que le déploiement de membres professionnels loin de leurs proches et de leur domicile ne soit pas utilisé comme peine disciplinaire ?

Oui ☐ Non ☐

Cette question est sans objet car il n'y a plus d'appelés.

G.2 Des mesures ont-elles été mises en place pour permettre aux membres des forces armées affectés à l'étranger de maintenir des contacts privés?

Oui ☐ Non ☒

G.3 Des programmes d'assistance ont-ils été mis en place pour les

Oui ☐ Non ☒

personnes accompagnant les membres des forces armées affectés à l'étranger ?

G.4 Les membres des forces armées peuvent-ils bénéficier d'un congé parental, d'allocations appropriées pour enfant à charge, d'un accès à des écoles maternelles et d'un système adéquat de santé et d'enseignement pour les enfants ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☐ Non ☒

Les militaires bénéficient, comme les fonctionnaires civils, des différents types de congés liés à la famille, à savoir :

- Les congés de maternité, de paternité et d'adoption (position d'activité conformément à l'article L. 4138-2 du code de la défense) ;
- Les congés de présence parentale (position d'activité) ;
- Le congé parental (position de non-activité conformément à l'article L. 4138-11 du code de la défense).

Concernant l'accès aux soins, ils bénéficient prioritairement de l'accès à l'un des neuf hôpitaux d'instruction des Armées et des prestations de l'action sociale aux armées prévues par le décret n° 2007-51 du 11 janvier 2007.

S'agissant du système éducatif, les enfants de militaires bénéficient d'un contingentement spécifique au sein des six lycées de la défense (Aix, Autun, La Flèche, Grenoble, Brest, Saint-Cyr) : en effet, 70% des places dans les classes de l'enseignement secondaire leur sont réservés. Il est à noter que la mise en place du plan d'égalité des chances qui s'est concrétisée par l'accueil de boursiers sans lien avec la Défense n'a pas modifié cette proportion.

G.5 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées au respect de la vie privée et familiale, du domicile et de la correspondance, conformément à la Section « G » de l'Annexe à la Recommandation.

Sauf enquête dans le cadre d'une procédure pénale, les investigations afférentes à la « sécurité nationale » sur le personnel des forces armées ne portent pas sur des aspects privés relevant de l'intimité.

En opérations, les contacts du militaire avec sa famille sont encouragés par le biais de subventions diverses (distributions de cartes de téléphone, accès à internet, etc.).

#### H – Liberté de pensée, de conscience et de religion

H.1 Des mesures ont-elles été mises en place pour permettre aux membres des forces armées de s'acquitter, dans la mesure du possible, de leurs obligations religieuses ? Si oui, merci d'indiquer quelques exemples. Oui ☐ Non ☒  
Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Afin de leur permettre de s'acquitter de leurs obligations religieuses, les militaires bénéficient, sous réserve de compatibilité avec leurs obligations de service, de jours de congés supplémentaires lors des principales fêtes religieuses. Ceux-ci sont définis par une circulaire du 2 décembre 2010.

Par ailleurs, le statut général du militaire autorise l'exercice du culte sur les emprises militaires et les bâtiments de la marine nationale.

La présence d'aumôniers militaires sur le territoire national comme en opérations contribue à permettre aux militaires qui le désirent d'acquitter leurs obligations religieuses.

Enfin, des facilités alimentaires sont offertes aux militaires en matière d'alimentation (repas sans

porc notamment).

H.2 Les appelés ont-ils la possibilité d'obtenir le statut d'objecteur de conscience ? Oui ☐ Non ☐

H.2.1 Si oui, un service alternatif de nature civile est-il possible ? Oui ☐ Non ☐

H.2.2 Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Les questions H2, H2.1, H2.2 et H3 sont sans objet car il n'y a plus de service militaire obligatoire depuis sa suspension par la loi n° 97-1019 du 28 octobre 1997. En conséquence, il n'y a plus d'application du statut d'objecteur de conscience.

H.3 Les objecteurs de conscience sont-ils exposés à des sanctions, mesures disciplinaires ou poursuites pénales ? Oui ☐ Non ☐

H.4 Des membres professionnels des forces armées peuvent-ils quitter les forces armées pour raisons de conscience ? Si oui, merci d'indiquer dans quelles conditions et quelle est la procédure, et notamment si de telles demandes peuvent être réexaminées par un organe indépendant et impartial. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☐ Non ☐

Il n'y a plus d'application du statut d'objecteur de conscience depuis 1997. Pour autant, revenant sur des dispositions législatives applicables de 1971 à 1983 uniquement, le Conseil constitutionnel a jugé, dans sa décision 2011/181 QPC du 13 octobre 2011, que les personnes ayant accompli leur service national en tant qu'objecteur de conscience pendant cette période pouvaient demander que ce temps de service soit pris en compte pour leur retraite d'agent de la fonction publique, au même titre que le service national actif.

Les membres des forces armées peuvent demander l'autorisation de quitter l'institution. Les membres professionnels peuvent ainsi demander la résiliation de leur contrat pour des motifs exceptionnels (Code de la Défense article L4139-13). La raison de conscience, si elle est fermement justifiée, peut être un de ces motifs.

Celle-ci peut leur être accordée, sous réserve de respecter le lien au service déterminé, d'une part, en fonction de leur statut (de carrière ou sous contrat) et, d'autre part, en fonction des formations suivies au cours de leur service et financées par le ministère de la défense.

En cas de refus, le code de la défense (article R.4125-1) précise que le militaire peut faire un recours devant la commission des recours militaires. En cas d'un nouveau refus, le militaire peut faire un recours contentieux devant une juridiction civile.

H.5 Des mesures ont-elles été mises en place pour garantir que les appelés et les membres des forces armées soient informés respectivement, du droit à l'obtention du statut d'objecteur de conscience et de celui de quitter les forces armées pour raisons de conscience, ainsi que des procédures disponibles pour les exercer ? Cette question est sans objet (voir question H.2.2) Oui ☐ Non ☐

H.6 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées à la liberté de pensée, de conscience et de religion, conformément à la Section « H » de l'Annexe à la Recommandation.

Cf. réponse H1.

#### I – Liberté d'expression

I.1 Existe-t-il un cadre légal défini régissant les formalités, conditions et restrictions au droit à la liberté d'expression pour les membres des forces armées ? Oui ☐ Non ☒

I.2 Si oui, merci de le présenter brièvement, en donnant en particulier quelques exemples des éventuelles restrictions au droit à la liberté d'expression.

La liberté d'expression est reconnue aux militaires. Cependant, comme l'a reconnu la Cour européenne des droits de l'Homme, dans son arrêt Engel du 8 juin 1976 rendu en assemblée plénière, « *le fonctionnement efficace d'une armée ne se conçoit guère sans des règles juridiques destinées à les empêcher de saper la discipline militaire* ».

Ainsi, le statut général des militaires (SGM), aujourd'hui codifié dans le code de la défense (partie 4 : "le personnel militaire"), prévoit des restrictions à la liberté d'expression. Ces dispositions, de nature législative, répondent au nécessaire équilibre qui doit être entretenu entre les libertés fondamentales reconnues à tout citoyen et les exigences de discipline, de cohésion et de neutralité des armées qui conditionnent l'efficacité de leurs missions, et par conséquent, le maintien de la sécurité nationale.

En conséquence, si les opinions ou croyances, notamment philosophiques, religieuses ou politiques sont libres, elles ne peuvent cependant être exprimées qu'en dehors du service, et avec la réserve exigée par l'état militaire (article L. 4121-2 alinéa 1<sup>er</sup> du Code de la défense).

En outre, indépendamment des dispositions du code pénal relatives à la violation du secret de la défense nationale et du secret professionnel, les militaires doivent faire preuve de discrétion pour tous les faits, informations ou documents dont ils ont connaissance dans l'exercice ou à l'occasion de l'exercice de leurs fonctions (article L. 4121-2 alinéa 2 du Code de la défense).

#### J – Droit à l'accès aux informations pertinentes

J.1 Des mesures ont-elles été mises en place pour garantir que des informations complètes et détaillées sur le recrutement dans les forces armées et les engagements découlant de l'enrôlement soient fournies aux recrues potentielles ? Oui ☐ Non ☒

J.2 Les membres et anciens membres des forces armées ont-ils accès à leurs données personnelles, y compris leurs dossiers médicaux et autres informations sur leur exposition à des situations potentiellement dangereuses à leur santé ? Oui ☐ Non ☒

J.3 Si oui, existe-t-il des restrictions à ce droit à l'accès à l'information? Merci de donner quelques exemples, le cas échéant. Oui ☒ Non ☐

/

#### K – Droit à la liberté de réunion pacifique et à la liberté d'association avec d'autres

K.1 Les membres des forces armées ont-ils le droit d'adhérer à des associations ou syndicats militaires établis conformément à la loi ? Si oui, merci de bien vouloir indiquer les éventuelles conditions et restrictions à Oui ☒ Non ☐

ce droit. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures pour réviser ou lever les restrictions ou interdictions existantes sont en préparation.

Le statut général des militaires reconnaît aux militaires la liberté d'adhérer aux associations de leur choix sans qu'il soit possible de s'y opposer, à l'exception des associations et groupements politiques ou professionnels. Ces deux restrictions sont en effet indispensables, autant à la neutralité des armées qu'à leur cohésion.

Toutefois, le fait que les militaires ne puissent se réunir en associations spécifiques ayant pour objet la défense d'intérêts professionnels ne saurait signifier que leurs aspirations individuelles et collectives sont ignorées. En effet, celles-ci peuvent être exprimées au moyen de dispositifs d'écoute et de concertation appropriés.

L'article L. 4121-4 du code de la défense précise ainsi qu'il est fait obligation au chef, à tous les échelons, de veiller aux intérêts de ses subordonnés et de rendre compte, par voie hiérarchique, de tout problème à caractère général qui serait porté à sa connaissance. De plus, l'institution militaire française est dotée de plusieurs instances de concertation et de dialogue interne. Enfin, chaque militaire peut saisir l'autorité supérieure de propositions visant à améliorer les conditions d'exécution du service, la vie en communauté, ainsi que de questions relatives à sa situation personnelle. Ces dispositifs conjugués ont vocation à concourir à la prise en compte permanente des aspirations du personnel et à l'amélioration constante de sa condition.

K.2 Les membres des forces armées peuvent-ils adhérer à des partis politiques ? Si oui, merci de bien vouloir indiquer les éventuelles conditions et restrictions à ce droit. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures pour réviser ou lever les restrictions ou interdictions existantes sont en préparation.

Oui ☒

Non ☐

Voir réponse à la question K1

#### L – Droit de vote et de se présenter aux suffrages

L.1 Existe-t-il des restrictions aux droits électoraux des membres des forces armées et à l'appartenance dans les forces armées d'un membre se présentant à des élections ou pendant la durée de son mandat ? Si oui, merci de donner quelques exemples.

Oui ☒

Non ☐

L'article L. 4121-3 alinéa 2 du Code de la défense prévoit : « *Sous réserve des inéligibilités prévues par la loi, les militaires peuvent être candidats à toute fonction publique élective* ». Ces cas d'inéligibilités, communs à tous les agents publics en situation d'autorité, reposent sur des critères géographiques et non sur une interdiction de principe. Les militaires élus sont placés en position de détachement.

#### M- Droit de se marier

M.1 Les membres des forces armées ont-ils le droit de se marier et de conclure des partenariats civils conformément aux droits dont jouissent les civils ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☐

Non ☒

/

#### N – Droit à la protection de ses biens

N.1 Des mesures ont-elles été mises en place pour garantir que les biens appartenant aux membres des forces armées, y compris les appelés, et consignés lors de leur enrôlement, soient rendus à l'issue de leur

Oui ☐

Non ☒

service militaire ?

O – Logement

O.1 Des mesures ont-elles été mises en place pour garantir un logement de niveau suffisant pour les membres des forces armées et leurs familles, à la fois sur le territoire national et à l'étranger ? Oui ☐ Non ☒

O.2 Si le logement se situe dans une caserne, des dortoirs séparés pour femmes et hommes sont-ils prévus ? Oui ☐ Non ☒

P – Rémunération et pension

P.1 Les membres professionnels des forces armées ont-ils droit à une rémunération leur permettant d'avoir un niveau de vie décent et une pension de retraite suffisante ? Oui ☐ Non ☒

P.2 Des mesures ont-elles été mises en place pour garantir aux hommes et aux femmes membres des forces armées une rémunération égale pour un même travail ou un travail de valeur égale? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☐ Non ☒

/

Q – Droit à la dignité, à la protection sociale et à la sécurité au travail

Q.1 Des mesures spécifiques ont-elles été mises en place pour protéger la dignité au travail des membres des forces armées, particulièrement en matière de prévention du harcèlement sexuel ? Si oui, merci d'indiquer le cadre légal pertinent et de donner quelques exemples. Oui ☐ Non ☒  
Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

En plus du cadre légal de droit commun défini par le code pénal (incriminations de l'agression sexuelle, article L. 222-22 ; du viol, article L. 222-23 ; ou encore du harcèlement sexuel, article L. 222-33-2), le code de justice militaire (CJM) instaure des mesures spécifiques en vue de protéger la dignité au travail des membres des forces armées.

Il s'agit d'un droit pénal spécial, construit autour de deux délits : les voies de fait sur un subordonné (article L. 323-19 du CJM) et l'outrage à subordonné (article L. 323-20 du CJM).

Q.2 Les soins médicaux fournis au cours d'opérations militaires et en raison d'opérations militaires sont-ils gratuits pour les personnes ayant servi? Oui ☐ Non ☒

Q.3 Existe-t-il un régime de réparation ou d'indemnités pour les membres des forces armées quittant les forces armées pour raison de blessure suite à leurs fonctions ou en cas de décès au cours de leur service? Oui ☐ Non ☒

Q.4 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées à la dignité, à la protection sociale et à la sécurité au travail, conformément à la Section « Q » de l'Annexe à la Recommandation.

La France prévoit un droit à pension de retraite sans condition de durée de services aux militaires qui sont radiés des cadres ou des contrôles pour infirmités. Si le taux d'infirmité est supérieur à 60 %, le militaire bénéficie d'une retraite correspondant à au moins 50 % de sa solde.

Si la blessure résulte d'un attentat ou d'une lutte dans l'exercice des fonctions ou d'un acte de dévouement, le montant précité, augmenté de la pension d'invalidité, atteint 80 % de la solde.

En tout état de cause, en plus de sa pension, le militaire bénéficie d'une pension militaire d'invalidité venant réparer les préjudices liés à la blessure.

Il bénéficie aussi d'une allocation du fonds de prévoyance militaire, dispositif obligatoire d'assurance des militaires, qui peut atteindre quatre ans d'une solde de référence variant selon qu'il est officier ou non officier.

Il dispose également d'un droit à la reconversion et à des prestations d'aide à la recherche d'emploi auxquelles s'ajoutent des allocations chômage.

Il dispose également de formations dispensées par l'office national des anciens combattants, le cas échéant, de soins gratuits, en particulier à l'institution nationale des invalides, et des appareillages nécessités par ses blessures.

L'administration réserve en outre aux militaires blessés des emplois dans les services de l'État ou des collectivités locales (« emplois réservés »)

Enfin, le militaire exposé à des produits cancérogènes bénéficie d'une surveillance post-professionnelle préventive.

#### R – Alimentation

R.1 Des mesures ont-elles été mises en place pour garantir le droit des membres des forces armées à une alimentation décente et suffisante, en conformité avec la section « R » de l'Annexe à la Recommandation ? Le cas échéant, merci de donner quelques exemples de bonnes pratiques. Oui ☐ Non ☒

La gestion de l'alimentation des forces armées est effectuée de manière déconcentrée, chaque armée ayant sa propre réglementation prenant en compte les spécificités (par exemple, l'instruction sur l'administration et la comptabilité des vivres dans les unités du 4 décembre 1946 pour la marine établit des recommandations par métier en matière diététique).

Les repas sont pleinement adaptés à l'ensemble des activités physiques (le service médical est associé à la composition des menus), et peuvent être modulés en fonction des convictions religieuses.

Par ailleurs, les militaires sont consultés régulièrement de manière formelle pour donner un avis sur l'alimentation.

#### S – Non-discrimination

S.1 Des mesures ont-elles été mises en place pour garantir que les membres des forces armées puissent jouir de leurs droits et libertés sans aucune discrimination, en conformité avec la Section « S » de l'Annexe à la Recommandation ? Le cas échéant, merci de donner quelques exemples de bonnes pratiques. Oui ☐ Non ☒

En la matière, les membres des forces armées sont protégés des discriminations au même titre que tout autre citoyen français par la législation en vigueur.

S.2 Existe-t-il des restrictions à l'accès des femmes dans les forces armées, ou à des types particuliers d'activités professionnelles au sein des forces armées ? Si oui, merci de donner quelques exemples. Oui ☐ Non ☒

Au sein des forces armées françaises, le principe est celui d'un égal accès des femmes et des hommes à tous les emplois.

L'accès aux femmes est restreint uniquement pour certains emplois dans les forces armées principalement pour des raisons d'inadaptations de l'espace de travail. C'est le cas des emplois à bord des sous-marins (exiguïté des locaux et impossibilité d'aménagement), des emplois de sous-officiers relevant des branches et des unités de la subdivision d'arme de la gendarmerie mobile à l'exception de la Garde républicaine, du GSIGN et de la Musique de la Gendarmerie mobile. On trouve aussi une exception pour les emplois opérationnels de la Légion étrangère.

S.3 L'orientation sexuelle constitue-t-elle un motif pour empêcher l'accès aux forces armées, ou pour renvoyer un membre des forces armées? Oui ☒ Non ☐

T – Personnes âgées de moins de 18 ans recrutées dans les forces armées

T.1 Votre législation permet-elle le recrutement volontaire de personnes de moins de 18 ans dans les forces armées? Oui ☐ Non ☒

T.2 Si oui, y a-t-il des mesures en place pour assurer la pleine information des devoirs qui s'attachent au service militaire et le consentement éclairé de ces personnes et de leurs parents ou gardiens légaux ? Oui ☐ Non ☒

T.3 Des mesures spéciales ont-elles été mises en place pour protéger le bien-être physique et psychologique de ces personnes ? Oui ☐ Non ☒

T.4 Ces personnes peuvent-elles participer directement aux hostilités ? Oui ☒ Non ☐

U – Formation

U.1 Des activités de formation visant à acquérir une meilleure connaissance des droits de l'homme par les membres des forces armées sont-elles prévues? Si oui, merci d'indiquer par qui sont-elles menées. Oui ☐ Non ☒

Lors de la formation initiale du personnel des forces armées, des cours de « droit des conflits armés » et d'information sur les droits de l'homme et du citoyen sont donnés par des instructeurs.

U.1.1. Si la réponse à la question U.1 est « Oui »:

U.1.1.1 Le droit international des droits de l'homme fait-il partie du programme de formation ? Oui ☐ Non ☒

U.1.1.2 Les droits de l'homme des membres des forces armées font-ils partie du programme de formation ? Oui ☐ Non ☒

U.1.1.3 La prévention des mauvais traitements et de la discrimination fait-elle partie du programme de formation ? Oui ☐ Non ☒

U.1.1.4 Le droit international humanitaire, y compris les devoirs mentionnés au paragraphe 84 de l'Annexe à la Recommandation, fait-il partie du programme de formation? Oui ☐ Non ☒



U.1.2 Si la réponse à la question U.1 est « *Non* », merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

/

#### V – Allégations de violations des droits de l'homme

V.1 Des mesures ont-elles été mise en place pour garantir aux membres des forces armées le droit de présenter des allégations de violations des droits de l'homme, en particulier en matière de discrimination, harcèlement ou violence, devant un mécanisme indépendant ? Si oui, merci d'indiquer de quelle autorité/mécanisme s'agit-il et quelle est la procédure. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☐ Non ☒

Le personnel des forces armées est tout à fait en droit de présenter un recours devant une juridiction civile.

Par ailleurs, le « Défenseur des droits », institué par la loi constitutionnelle n° 2008-724 du 23 juillet 2008, peut être saisi par toute personne physique ou morale des réclamations entrant dans son champ de compétence, telles que la défense des droits et libertés dans le cadre des relations avec les administrations de l'Etat.

#### **Section IV - Suivi**

IV.1 Quelles mesures recommanderiez-vous pour garantir le respect des principes énoncés dans la Recommandation et dans son Annexe dans les législations et les pratiques nationales?

Les principes énoncés dans la Recommandation sont couverts par la législation et la réglementation françaises en vigueur.

IV.2 Le Conseil de l'Europe devrait-il continuer à examiner périodiquement la mise en œuvre de cette Recommandation ? Si oui, cet examen devrait-il, à l'avenir, se concentrer sur des problèmes spécifiques, et le cas échéant sur lesquels ?

/

IV.3 Existe-t-il des questions sur lesquelles la Recommandation et son Annexe devraient être modifiés ou complétés ? Si oui, merci d'indiquer lesquelles.

/

**GERMANY****Section I – Impact assessment**

*The content of CM/Rec(2010)4 was back in 2010 already comprehensively implemented in the Bundeswehr (German Armed Forces) through the concept of Innere Führung (leadership development and civic education), especially via the rights and obligations of soldiers in its existing form, and ample legislative disciplinary and complaints provisions that guarantee the soldiers' constitutional as well as their human rights. This system is complemented respectively with a close parliamentary control through the Defence Committee and the Parliamentary Commissioner for the Armed Forces of the German Bundestag (German Federal Parliament).*

*As a result, the above assessment of the effective implementation of the recommendation is positively reflected in the answers and examples provided for under Section III of this questionnaire.*

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☐

The Federal Ministry of Justice and the Federal Ministry of Defence have, after analysing the Recommendation, come to the conclusion that no specific measures of implementation are called for.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

As the measures recommended are already in place, it is not possible to assess the impact.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☒ (see I.1)

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

**Section II – Dissemination of the Recommendation**

See answer to Section I.

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☒ (see I.1)

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒ (see I.1)

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

II.4 To which authorities has the Recommendation been distributed?

After having been received by the Federal Ministry of Justice, the Recommendation was distributed to the Federal Ministry of Defence, which is the highest military authority and oversees the organisation and administration of the Armed Forces.

II.5 Has the Recommendation been distributed to members of the armed forces?

Yes ☐

No ☒  
(see I.1)

II.6 Has the Recommendation been translated ?

Yes ☐

No ☒

II.7 If not, is this foreseen?

Yes ☒

No ☐

II.8 How would you assess the visibility of the Recommendation?

Fully satisfactory ☐

Adequate ☒

Insufficient ☐

Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces?

Yes ☒

No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation?

Yes ☒

No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

The entire German criminal law and the law of criminal procedure apply to German military personnel. There are therefore no differences between them and other German citizens.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment?

Yes ☒

No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts?

Yes ☐

No ☒

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred?

Yes ☒

No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation?

Yes ☒

No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

The entire German criminal law and the law of criminal procedure apply to German military personnel. There are therefore no differences between them and other German citizens. In addition, specific regulations regarding facts constituting an offence are in place to protect subordinates from harassment by superiors; physical and mental ill-treatment of a subordinate by a superior, for example, constitute abuse (Section 30) and degrading treatment (Section 31) under the Military Penal Code, to which the military personnel of the Bundeswehr are subject. The superior who encourages or, in violation of his/her duties, tolerates ill-treatment or degrading treatment of a subordinate will also be punished.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☐ No ☒

Draft to compulsory military service is currently suspended.

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

The punishment of culpable breaches of duty (disciplinary offences), committed by military personnel of the Bundeswehr, by disciplinary measures is regulated both in terms of proceedings and possible disciplinary measures by statutory provisions contained in the Military Disciplinary Code. This also contains "procedural safeguards" as set forth in paras. 19-21 of the Appendix on, among other things, processing disciplinary matters in a timely manner (Section 17, Military Disciplinary Code), on informing the accused soldier about the investigations as soon as possible, on informing him/her on the breaches of duty of which he/she is accused and on the fact that he/she is free to speak on the case (Simple Disciplinary Measures, Section 22, and Judicial Disciplinary Measures, Section 58).

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☒ No ☐

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☒ No ☐

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention Yes ☒ No ☐

on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☒

F.3 Does your country have military courts? Yes ☒ No ☐

F.3.1 If so, are they separate from the chain of command? Yes ☒ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☒

With regard to the existence of "military courts", a distinction must be made between punishment of criminal offences committed by military personnel and punishment of disciplinary offences.

The German military legal system does not have any military courts or military criminal courts. If military personnel – either on or off duty – commit criminal offences, civilian public prosecution offices institute proceedings on the basis of the civilian Code of Criminal Procedure and bring a charge before the responsible civilian criminal courts. The only exception to this is laid down in Article 96 paragraph (2) of the Basic Law which provides that military criminal courts may be established during a state of defence or for military personnel serving abroad or on board warships. So far, however, the Federal Republic of Germany has not made use of this authorisation.

A distinction must be made between military disciplinary law, to which all military personnel of the Bundeswehr are subject, and civilian criminal law. For disciplinary offences, which involve breaches of the military duties specified in the Legal Status of Military Personnel Act, the military personnel in question may receive either simple or judicial disciplinary punishment, depending on the severity of the disciplinary offence. The relevant disciplinary procedures and measures are laid down in the Military Disciplinary Code.

Responsibility for the imposition of simple disciplinary punishment lies with the corresponding military personnel's disciplinary superior; which, as a rule, is the company commander.

Simple disciplinary measures include:

- reprimand,
- severe reprimand,
- disciplinary fine (to a maximum amount of one month's pay),
- confinement to quarters (with a maximum duration of three weeks),
- disciplinary arrest (with a maximum duration of three weeks and requiring prior judicial order).

Judicial disciplinary measures against military personnel who have breached their official duties in a particularly severe manner are imposed by judgment of the Bundeswehr Disciplinary and Complaints Courts in the area of responsibility of the Federal Ministry of Defence (FMoD):

Judicial disciplinary measures include:

- reduction of emoluments,
- debarment from promotion,
- reduction in pay grade,
- demotion,
- disciplinary discharge.

Again, Bundeswehr Disciplinary and Complaints Courts are not “purely military courts”, but are composed of a civilian judge and two military personnel serving as honorary judges. Appeal against the judgments of the Bundeswehr Disciplinary and Complaints Courts is admissible. Decisions are made on these by the Military Affairs Divisions of the Federal Administrative Court, with a bench of three civilian judges and two military personnel serving as honorary judges.

Instituting authorities are responsible for the institution of judicial disciplinary proceedings. These are commanders at division level and above. In order to conduct these proceedings, they draw on the support of the Disciplinary Attorneys for the Armed Forces that are assigned to them.

These attorneys are civilian lawyers qualified to hold judicial office and serving as legal advisers to commanders in their primary function.

In performing their tasks, the Disciplinary Attorneys for the Armed Forces are not subject to the administrative and functional supervision of the military instituting authorities, but to that of the Disciplinary Judge Advocate General for the Bundeswehr at the Federal Administrative Court. The Disciplinary Judge Advocate General and his full-time staff are also civilian lawyers qualified to hold judicial office.

The “procedural safeguards” of paras. 33 and 34 of the Appendix are guaranteed.

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes X, see C.1 No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes X No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes X No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children’s health and educational systems? If not, please explain why and whether any measure is in preparation. Yes X No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section “G” of the Appendix to the Recommendation.

General Handout 1/500 "manual on the compatibility of family life and military service", telecommuting, work at home, part-time employment, parent-child office, company kindergarten (military hospitals and universities of the German Federal Armed Forces).

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

In the Bundeswehr, freedom of faith, conscience and creed is ensured for all religious groups and belief communities. All military personnel have a statutory right to pastoral care and the undisturbed practice of religion.

The provisions of Article 4 of the Basic Law ("the freedom of faith, conscience and creed") are thus also implemented in Section 36 of the Legal Status of Military Personnel Act.

The undisturbed practice of religion is guaranteed accordingly, as far as this is possible. Furthermore, military superiors are requested to be open-minded about the religious needs of military personnel and to carefully see to it that, within the framework of duty and free time, the soldiers are given adequate opportunity to practise their religion undisturbed. The subject area of "observing religious rules" is a part of "intercultural competence" for which there is special training.

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ see C.1. No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☒ see C.1. No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Each soldier can request to be accepted as a conscientious objector. He has to present the request, the arguments, a curriculum vitae and a police certificate. The decision lies with the Federal Office of Family Affairs and Civil Society Functions, which is under the responsibility of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

Leadership in the Bundeswehr is based on the system of values set forth in the Basic Law. The Basic Law demands unrestricted regard for human dignity, human rights, the principles of equality, justice, responsibility and tolerance.

Article 4 of the Basic Law ("freedom of faith, conscience and creed") states that: (1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable. (2) The undisturbed practice of religion shall be guaranteed. (3) No person shall be compelled against his

conscience to render military service involving the use of arms.

Article 4 is implemented in the Legal Status of Military Personnel Act by Section 6 ("Civic Rights of the Soldier"), Section 12 ("Comradeship"), Section 15 ("Political Activities") and Section 36 ("Religious Support").

### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

The legal status of military personnel in the Federal Republic of Germany has its roots in the basic constitutional decision according to which such personnel are to constitute "citizens in uniform" who in principle retain all basic rights in full just like each and every German citizen and whose rights may be restricted only within the framework prescribed by the constitution.

The legal status of military personnel is also the subject of Section 6 of the Legal Status of Military Personnel Act (Civic Rights of Members of the Armed Forces) according to which "a member of the armed forces enjoys the same civic rights as any other citizen. Where the requirements of military service so dictate, his rights are restricted by his statutory duties."

In addition, Sections 8, 10 subsection 6, Section 15 subsections 1 and 2 as well as Section 17 subsection 2 of the Legal Status of Military Personnel Act provide a differentiated framework which describes restrictions on freedom of expression rooted in the soldiers' obligations as a serviceman.

### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No ☒

### K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

Article 9, para. 1 of the Basic Law guarantees military personnel the freedom to establish, join or actively participate in private-law associations. Above and beyond the restrictions imposed on participation in associations as defined in article 9, para. 2 of the Basic Law, military personnel must comply with their service duties.

The right guaranteed in article 9, para. 3 of the Basic Law to form, join or actively participate in trade unions or professional associations for the purpose of safeguarding and promoting the economic, social and cultural interests of any profession, as well as to not join or to leave such an organisation, is a right to which military personnel are also entitled. This applies equally to the right to association with a view to pursuing the purposes defined in article 9, para. 3 of the



Basic Law by way of specifically active participation in an association, a right which in its essence is also protected by article 9, para. 3 of the Basic Law.

The constitutionally guaranteed essence of the right to association has its restrictions in the "functional capability of the Bundeswehr" which is similarly protected by the constitution and which, as the outcome of careful consideration of the constitutional issues at stake, has a restrictive effect on the basic right insofar as the right of military personnel to strike is excluded by the constitution. Accordingly, strikes, similar industrial action and their preparation are prohibited for military personnel. Participation in or support of such measures constitutes for members of the armed forces a violation of Section 7 of the Legal Status of Military Personnel Act, namely the fundamental duty of servicemembers to serve their country faithfully.

It is only in respect of this particular restriction of the right to association that military personnel are subject to a restriction of the basic right to freedom of association above and beyond that which applies to all other citizens.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

According to Section 8 of the Legal Status of Military Personnel Act, the members of armed forces must acknowledge the free democratic basic order of the Federal Republic of Germany. According to Section 15 of the Legal Status of Military Personnel Act, the members of armed forces must exercise political restraint while on duty. The right to free expression in conversation with fellow soldiers remains unaffected.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☐ No ☒

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☐ No ☐

No property is retained.

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☒ No ☐

Apart from those soldiers that are committed to live in barracks, there is no specific program with respect to the accommodation of servicemembers and their families in official accommodations of the Bundeswehr. However, there are financial and other supporting measures in place in order to help members of the Bundeswehr and their families to find adequate accommodations on the market. Furthermore, there is an initiative to accommodate commuters in buildings that will become

vacant due to the realignment of the Bundeswehr. In missions abroad, accommodation for all servicemembers is ensured in field camps.

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

The legal framework is provided by the Basic Law, the Legal Status of Military Personnel Act, the Military Penal Code, the Act on Equal Opportunities for Female and Male Military Personnel of the Bundeswehr, the Act on the Equal Treatment of Female and Male Military Personnel as well as by the concept of Innere Führung (leadership development and civic education). There are, for example, "Guidelines for Superiors – Dealing with Sexuality".

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

Article 1 of the Basic Law stipulates that it is the duty of all state authority to respect and protect human dignity. This protection objective applies to all status groups (military personnel, civil servants and employees) of the Bundeswehr.

The Basic Law, the Occupational Safety and Health Act, the Legal Status of Military Personnel Act, the Military Pensions Act, the Act on the Continued Employment of Personnel Injured on Operations, the Military Penal Code, the Act on Equal Opportunities for Female and Male Military Personnel of the Bundeswehr, the Act on the Equal Treatment of Female and Male Military Personnel as well as the concept of Innere Führung (leadership development and civic education) provide a sufficient framework for guaranteeing and protecting the individual rights (e.g. the inviolability of human dignity, protection of health) of personnel.

The employer's duties under labour protection law and the duties and rights of personnel are regulated in principle in the Occupational Safety and Health Act, and also for civil servants in the Civil Service Benefits Act and for civilian personnel in the Seventh Book of the Code of Social Law. Accordingly, the employer is obliged to take the necessary measures of occupational safety and health, taking into consideration circumstances which affect the safety and health of all members of the Bundeswehr at work.

During their term of service, military personnel of the Bundeswehr are entitled to free medical care. This includes all measures necessary for protecting, maintaining, promoting and restoring physical and mental health as well as social well-being and operational readiness in accordance with current scientific and technological standards.

The guiding principle for the quality of medical care during deployments abroad is to guarantee a treatment outcome that, in terms of quality, corresponds to medical standards in Germany.

This can be illustrated using benefits and pensions as an example.

In the case of a reduction of 25 percent or more in earning capacity, military personnel with a service-related disability receive a monthly tax-free basic pension. The level of this pension is based on earning capacity and is graded, from EUR 127 a month for a 25-percent capacity reduction up to EUR 666 a month for a 100-percent reduction.

If, as the result of particularly dangerous duty, on operations involving particular threats to life or as part of a deployment-related accident on special operations abroad, a member of the Bundeswehr sustains an injury that permanently reduces his or her earning capacity by at least 50 percent, he or she will receive a tax-free lump-sum compensation of EUR 150,000.

If the health impairment resulting from the service-related disability is so severe that performance of military service is no longer possible, the disabled military personnel will additionally receive an increased pension and also, if requested from the civilian regional pensions offices, disablement benefits under the applicable provisions of the Federal War Victims Pensions Act.

For widows, widowers and orphans of deceased military personnel, the Military Pensions Act contains regulations for the surviving dependants' pension.

But in many cases, personnel injured on operations do not want to retire completely or receive a pension for the rest of their lives. This was taken into account by the Act on the Continued Employment of Personnel Injured on Operations, which entered into force on 18 December 2007. The outstanding aspect of this Act is the legal entitlement to retention for persons whose earning capacity has been reduced by at least 30 percent as a result of a deployment-related accident. Being protected by an entitlement to retention and thus being offered a career perspective has, in addition to the financial coverage, a significant psychological effect on the injured persons and on their dependants.

The Act on the Continued Employment of Personnel Injured on Operations essentially provides the following: Following a deployment-related accident, a protection period shall be allowed for the necessary restoration of health and any necessary vocational qualification in order to ensure later permanent vocational activity. For the purpose of obtaining vocational qualifications, those persons affected shall, if required, be granted benefits in the form of vocational training programmes or follow-on training. What must be taken into account when selecting specific programmes are aspects such as the interests, aptitude and proficiency of the person concerned, but also the conditions prevailing in the labour market.

During this protection period, persons injured on operations must not be retired or dismissed on grounds of unfitness for service without their consent (general dismissal ban). If, as a result of health impairment due to a deployment-related accident, benefits also become necessary for a vocational

qualification in order to carry out previous professional duty, to be retained in accordance with the Act on the Continued Employment of Personnel Injured on Operations, or to be otherwise integrated into working life, the protection period is limited to five years. With regard to age, the protection period is valid until the end of the 65<sup>th</sup> year.

Military personnel, whose service status would terminate during the protection period due to expiry of the term of service, transfer to special service status by law unless they object in writing. Under this status, they are legally treated as temporary-career volunteers, especially with regard to pay.

In order to ensure that the protection period does not adversely affect the military careers of injured military personnel, the Act provides that they be taken into consideration for personnel selection decisions. Consequently, they are, for example, also eligible for promotion during this period.

From balancing the principle of achievement concerning eligibility for public office that is enshrined in the constitution of the Federal Republic of Germany, on the one hand, against the welfare state principle of social justice and the “willingness to sacrifice” oneself for the general good, on the other hand, derives the military personnel’s legal entitlement to retention if they have suffered an accident while deployed in a non-permanent service status and their earning capacity as a result of this accident is reduced by at least 30 percent at the end of the protection period. This means that with reduced demands on fitness for duty and subject to the necessary qualification for a certain career, these military personnel injured on operations – after successfully completing a preceding six-month probationary period – are legally entitled to be employed, irrespective of personnel requirements,

- as regulars,
- as permanent civil servants or
- as employees on a permanent contract

in the area of responsibility of the Federal Ministry of Defence.

Military personnel who suffered an accident while deployed in a non-permanent service status and whose health impairment caused by this accident was not identified until after expiry of this status are, under certain conditions, entitled to re-employment in a special service status after completion of the regular term of service.

Such re-employment in a special service status aims at the restoration of health and any necessary vocational qualification in accordance with the Act on the Continued Employment of Personnel Injured on Operations or any other integration into working life.

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? Yes ☒ No ☐  
Where appropriate, please provide examples of good practices.

Article 1 of the Basic Law stipulates that it is the duty of all state authority to respect and protect human dignity.

The Basic Law, the Legal Status of Military Personnel Act, the Military Penal Code, the Act on the Equal Treatment of Female and Male Military Personnel, the Act on Equal Opportunities for Female

and Male Military Personnel of the Bundeswehr as well as the concept of Innere Führung (leadership development and civic education) provide a sufficient framework for guaranteeing and protecting the individual rights of personnel.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☒ No ☐

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☒ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☒ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☒

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

All Military Personnel of all ranks receive comprehensive training related the knowledge of human rights. The training is usually being conducted by military leaders or by legal advisors.

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain Yes ☒ No ☐

why and whether any measure is in preparation.

Various options have been established for members of the Bundeswehr to report irregularities: Direct (virtually informal) petitions submitted to the Parliamentary Commissioner for the Armed Forces or to the Petitions Committee of the German Bundestag, formal complaints (in accordance with the Military Complaints Regulations) and official reports (in accordance with the Legal Status of Military Personnel Act) submitted to superiors as well as reports to police (the right of everyone outside the Bundeswehr).

In particular, the role of the Parliamentary Commissioner for the Armed Forces of the German Bundestag should be emphasised here:

The Parliamentary Commissioner for the Armed Forces is elected by the Members of the Bundestag in a secret ballot for a five-year term of office. The Commissioner is neither a Member of the Bundestag nor a civil servant – he occupies a special position. The Commissioner works “to safeguard basic rights and to assist the Bundestag in exercising parliamentary oversight” over the armed forces, a task enshrined in the Basic Law (the German constitution). He or she investigates incidents within the Bundeswehr which give rise to the suspicion that, for example, human dignity, freedom of opinion or the legal protection of military personnel have been unlawfully restricted. The Commissioner’s attention can be drawn to special incidents which lead to investigations during visits to military units and through press reports, information from Members of the Bundestag or petitions from military personnel.

In addition to this, the Federal Anti-Discrimination Agency (FADA) was set up in 2006 when the General Equal Treatment Act entered into force. The FADA provides information about claims and possibilities of taking legal action, provides referrals to counselling by other agencies and, in cases where Commissioners of the Federal Government or of the German Bundestag are responsible, passes on requests from petitioners, after having obtained their consent, to those Commissioners.

## Section IV - Follow-up

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

With respect to the Bundeswehr, the principles set out in this recommendation and in its appendix are already amply complied with in national legislation and practice.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

In line with Germany’s over all support for the adherence to human rights, the continued periodical examining of the recommendation’s implementation is welcomed. It is suggested to keep the current format for this process.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

In regard to the Bundeswehr, the recommendation and its appendix cover the necessary conditions in order to guarantee a comprehensive protection of the soldiers’ constitutional and human rights.

**GEORGIA****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☒

Currently, the Government is considering the creation of mechanism for the full and rapid implementation of the Committee of Ministers' Recommendations.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.  
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☒

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☒

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☒

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

II.4 To which authorities has the Recommendation been distributed?

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

II.6 Has the Recommendation been translated? Yes ☐ No ☒

II.7 If not, is this foreseen? Yes ☐ No ☒

II.8 How would you assess the visibility of the Recommendation?

Fully satisfactory ☐ Adequate ☐ Insufficient ☒ Absent ☐**Section III – Implementation of specific provisions****A - Right to life**

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

According to the article 7 of the Law on Military Police as it stands at the material time, the latter organ is responsible for conducting the investigation in relation to the crimes envisaged under the Criminal Code of Georgia, including the offences directed against the right to life of the members of armed forces. However, we would like to outline that the legislative amendment has been drafted legislative amendment; according to the draft the investigation of crimes directed against, life, inhuman and degrading treatment will be investigated by impartial organ.

In addition, the members of the armed forces are fully entitled by law to file the complaint and report the acts inconsistent with the legislations.

**B – Torture and other forms of ill-treatment**

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☒ No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

As any other individual, the members of the armed forces are protected against the torture or other forms of inhuman and degrading treatment or punishment. The legal basis of the prohibition constitutes to be the article 1441 of the Criminal Code of Georgia. Similarly, the members of the armed forces are encouraged to report the facts inconsistent with Georgian legislation.



C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☒ No ☐

Military Service is compulsory for the male citizens of Georgia from the age of 18. However, according to the article 4 of the Law on the Alternative Service, the individuals for whom the military service is contrary to their religious beliefs are entitled to undergo the alternative civil service, namely, community service. The duration of the service would be the same.

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Military discipline is governed by the Military Discipline Charter adopted by the Presidents Decree of 10 February 2006.

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

E.2. The military service is not compulsory for individuals under the age of 18.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

The members of the armed forces enjoy procedural rights and safeguards to the same extent as civilians in the criminal proceedings

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☒

F.3 Does your country have military courts? Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☒ No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☒ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☐ No ☒

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☐ No ☒

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No ☒

#### K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☒

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☐No ☒

According to the article 5 of the Law on the Status of the Members of the Armed forces the members of the armed forces are prohibited to join the political parties.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples.

Yes ☒No ☐

The members of the armed forces enjoy the right to vote, however they are not entitled to run for the office. Similarly according to the article 5 of the Law on the Status of the Members of the Armed Forces, they are prohibited to join the political parties.

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation.

Yes ☒No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service?

Yes ☒No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad?

Yes ☒No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men?

Yes ☐No ☒

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension?

Yes ☒No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation.

Yes ☒No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and

Yes ☒No ☐

provide examples. If not, please explain why and whether any measure is in preparation.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☒ No ☐

Under the legislation only male citizens are required to undergo military service, however in case women wish to join the armed forces there is no legal barrier for them to do so.

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

#### T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

In order to increase the knowledge of the members of the armed forces regarding the human rights standards, the international human rights classes are offered by the Military Academy.

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

The members of the armed forces are entitled to bring allegation or report the human rights violations to the Military Police, following to which the formal investigation is commenced with respect to the complaint in question.

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**GREECE****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☒ No ☐

The Departments of Human Resources of the Hellenic Ministry of National Defence, General Staff of National Defence, and the General Staffs of Army, Navy, and Air Force.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

The impact of the recommendation on the human rights of members of the Hellenic Armed Forces has been adequate, since its provisions had already been addressed in the past, through appropriate legislation.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☒ No ☐

Some examples are the amendment of the legislation concerning the posting and transfer system of professional members of the armed forces, and the parental leave for those members of the armed forces who are parents of young children.

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Following the answer to the question I.2, it does not apply.

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☒ No ☐

See the answer to question I.1.

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

Following the answer to questions II.1 and II.2, it does not apply.

II.4 To which authorities has the Recommendation been distributed?

To the General Staffs of the Armed Forces.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

II.6 Has the Recommendation been translated? Yes ☒ No ☐

II.7 If not, is this foreseen? Yes ☐ No ☐

II.8 How would you assess the visibility of the Recommendation? Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

**Section III – Implementation of specific provisions****A - Right to life**

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

The competent authority orders directly the conduct of an administrative inquiry, and investigation/interrogations are conducted, mandated by the competent prosecutor, with the assistance of police and forensic services. Such incidents may be reported by any person who are aware thereof and are seriously punished by the Military Penal Code. Moreover, service orders provide for the related necessary actions. Legal provisions set up an appeals system to review and ensure the impartiality of the decision, upon petition or complaint.

**B – Torture and other forms of ill-treatment**

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☒ No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

No instances of torture or inhuman behaviour by any member of the Hellenic Armed Forces have been reported. However, the report of such acts is formalized in specific legal provisions of the current military regulations. Therefore, the investigation of the complaint is conducted both by the courts of military justice and the respective disciplinary authorities.

**C – Forced or compulsory labour**

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☒ No ☐



According to the provisions of the Greek Constitution and the relevant law of conscription, military service is compulsory. Those who have reasons of conscience (religious or ideological) may exact an alternative service in the public sector (hospitals, posts, financial services), which lasts for six months more, than the compulsory armed service.

#### D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Disciplinary obligations and offenses, the right to make complaints and recourses, as well as jurisdiction and responsibility for disciplinary prosecution, are provided for in the disciplinary Regulations of the Hellenic Armed Forces. There are disciplinary committees, dealing with such cases, both in first and second degree, following the lodging of an appeal.

#### E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☐ No ☒

E.2 Is it lawful to detain members of armed forces under the age of 18? yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

It does not apply, since military service of conscripts, who are younger than 18 is not legal.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

#### F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☒

F.3 Does your country have military courts? Yes ☒ No ☐

F.3.1 If so, are they separate from the chain of command? Yes ☒ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences Yes ☐

in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation?

No ☒

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment?

Yes ☒No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts?

Yes ☒No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad?

Yes ☒No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation.

Yes ☒No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒No ☐

H.2 Do conscripts have the rights to be granted conscientious objector status?

Yes ☒No ☐

H.2.1 If so, is an alternative service of a civilian nature available?

Yes ☒No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions?

Yes ☐No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Yes ☐No ☐

So far, no members of the Hellenic Armed Forces have claimed to be conscientious objectors. There is not a legal framework regulating such cases.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights?

Yes ☒No ☐

Only for conscripts.

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

The web pages of the General staffs provide details on the legislation and the procedures available for alternative service. An independent committee examines the petitions for alternative service. Members of the Hellenic Armed Forces are allowed to participate to religious events in accordance with their declared beliefs and they are facilitated to that end.

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces?

Yes ☒No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

Freedom of expression, oral or written, of the views of the members of the Hellenic Armed Forces' personnel is guaranteed. Restrictions only apply to references in the media, concerning (sensitive) national defense-related information (i.e. the organization and function of the armed forces). The expression of personal and scientific views is not restricted.

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits?

Yes ☒No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health?

Yes ☒No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any.

Yes ☐No ☒

The restriction to the right of access to information concerns only documents that are characterized as confidential for national security reasons.

#### K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

No ☒Yes ☐

The establishment of trade unions by members of the military personnel is not allowed, according to the Constitution of Greece. However, such members may participate in non-profit, scientific

associations or organizations after written permission of their service.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☐ No ☒

Restrictions arise from the Constitution of Greece.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples.

Yes ☒ No ☐

There are no restrictions or bans to the right of vote for the members of the Hellenic Armed Forces. As far as the right to stand for election is concerned, the Hellenic Armed Forces' personnel have to resign or be ex officio discharged from the armed forces.

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service?

Yes ☒ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad?

Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men?

Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension?

Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Q – Right to dignity, health protection and security at work

.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

Military hospitals and pharmacies are established in many towns across the country where medical care is provided to the personnel of the armed forces, conscripts, retired military personnel and the members of their families.

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Yes ☒ No ☐

Where appropriate, please provide examples of good practices.

Within the premises of every General Staff, every large unit or at the Prefectural premises, there are military messes (with cafeterias – restaurants) for the military personnel and their dependents.

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Yes ☒ No ☐

Where appropriate, please provide examples of good practices.

Gender Equality Offices in the MoD and the General Staffs have been established since 2004.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

The criteria for entering the Armed Forces Academies (officers and non-commissioned officers) are the same and professional privates are employed in accordance with their skills, irrespectively of gender. Both men and women serve in all positions and have equal opportunities for official promotion and training. Positions that women do not serve are Submarines, Fast patrol boats.

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

#### T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and Yes ☐ No ☐

psychological welfare of these persons?

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

The respective training is achieved through courses of International Law and Human Rights Law and relevant seminars, which are taught by specialized professors and specially-trained personnel on the related issues.

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Members of the Hellenic Armed Forces are allowed to report, even anonymously, to the Leadership, who has to forward the allegations to the pertinent prosecutor, while they control in a disciplinary way any wrong-doer proved guilty of committing such actions.

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**HUNGARY****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ **No x**

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☐ Insufficient ☐ **ABSENT X**

**National law on members of armed forces was in compliance with both the Recommendation and relevant EU law before the admission of the Recommendation.**

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ **NO X**

**Act XCV of 2001 on the status of professional and contracted military personnel of the Hungarian Defence Forces [Status Act of 2001] (2001. évi XCV. törvény a Magyar Honvédség hivatásos és szerződéses állományú katonáinak jogállásáról) is in compliance with the Recommendation therefore there was no need for specific measures. (The previous Status Act of 1996, Act XLIII. of 1996 on the status of professional personnel of armed authorities (1996. évi XLIII. törvény a fegyveres szervek hivatásos állományú tagjainak szolgálati viszonyáról) was also in compliance with the Recommendation.)**

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

**None**

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ **No x**

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ **No x**

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

**None**

II.4 To which authorities has the Recommendation been distributed?

**None**

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ **No x**

II.6 Has the Recommendation been translated? Yes ☐ **No x**

II.7 If not, is this foreseen? Yes ☐ **No x**

II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ **Adequate x** Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? **Yes x** No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? **Yes x** No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

**Penal Code (Act IV of 1978) Chapter XX, Code of Criminal Procedure (Act XIX of 1998) Chapter XXII, Joint Ministerial Decree 19 of 2003 of the Ministry of Defence-Ministry of Justice on the investigation by the military commander.**

**Suspected crimes are investigated without specific limitations. Military misdemeanours are investigated by the commander, military offences and non-military misdemeanours committed by members of the armed forces are investigated in special military penal procedure before military councils of civil courts Judgements are delivered by the military councils**

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? **Yes x** No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ **No X**

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? **Yes x** No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? **Yes X** No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

**The Status Act sets out those rights of the members of the armed forces that can be limited and the extent of the limitation. Only Act of parliament may contain any limitation .**



C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service?

Yes ☐**No** ☒

**Military service is voluntary since 2004, except in state of emergency as defined in Act CXIII of 2011 on the home defence, the Hungarian Defence Forces, and the measures to implement in special legal orders [Defence Act] (2011. évi CXIII. törvény a honvédelemről és a Magyar Honvédségről, valamint a különleges jogrendben bevezethető intézkedésekről). At the time when military service was compulsory, there was a system of alternative civil service. Since 2004, and under the 2011 Defence Act, one new element is the “unarmed service”, which can be permitted only upon request and by a formal official decision. The condition is the conscientious objection to be armed and to the use of force.**

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation.

**Yes** ☒No ☐

**Chapter XII. of the Status Act of 2001**

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces?

**Yes** ☒No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18?

Yes ☐**No** ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?

Yes ☐No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

**Questions under E.2 are not relevant, because persons under 18 can not become members of armed forces (Status Act of 2001, Section. 41.)**

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify.

Yes ☐**No** ☒F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

**Yes** ☒No ☐

F.2 Is there a clear legal framework setting out limitations or

Yes ☐No ☐

exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions.

**Service-related complaints in connection with civil rights specified in the Status Act are decided in the command chain, action against that decision can be brought before courts. There are no other limitations of access to a tribunal.**

F.3 Does your country have military courts? **Yes x** No ☐

**There are no distinct military courts, but there are military councils embedded in the civil court system. Military courts are composed of military judges. There are also a military prosecution system embedded in the civil prosecutor office. Code of Criminal Procedure (Act XIX of 1998) Chapter XXII sets out procedural rules.**

F.3.1 If so, are they separate from the chain of command? **Yes x** No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ **No x**

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? **Yes x** No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? **Yes x** No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? **Yes x** No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. **Yes x** No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

**There are several kinds of support (grants, facilities in working hours, leaves) at birth of children, education, schooling.**

**Mothers are granted special leaves and special allowances before and after child birth. Fathers are granted extra leave on the occasion of child birth. Members of armed forces are granted special allowance on occasion of marriage and child birth. Parents are granted annual special allowance for education and schooling, and are granted extra leave days depending on the number of children.**

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any **Yes x** No ☐

measure is in preparation.

**Section 21 and 25. of Status Act of 2001**

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☐ No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☐ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

**As mentioned above, military service is voluntary, except in status of emergency.**

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☐

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☐ No ☐

**As military service is voluntary, it is possible to leave armed forces anytime, except in status of emergency.**

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? **Yes x** No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

**Section 25. of the Status Act of 2001**

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? **Yes x** No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

**Section 21 of the Status Act of 2001, paras3 and 4: Members of the armed forces shall not criticise measures, orders given to them, shall not form their opinions on them, shall not make declarations that prejudice the order and discipline of military service, shall not form private opinions using press publicity in official procedures. Members of the armed forces shall not produce or distribute media compromising the order and discipline of military service, shall not display such posters, notices, or graphic symbols.**

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? **Yes x** No ☐

**Hungarian Defence Forces has a distinct recruiting system that carries out this duty.**

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? **Yes x** No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ **No x**

**K – Freedom of peaceful assembly and association**

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. **Yes x** No ☐

**Status Act, Sections 22-23 on the restrictions of the freedom of peaceful assembly**  
**Status Act, Sections 24.-24/A on the restrictions of association**  
**Status Act, Chapter IV. on trade unions**

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ **No x**

**Since 1989 it has been a basic constitutional principle that political parties shall not influence the armed forces, therefore members of armed forces shall not be members of political parties.**

**L – Right to vote and to stand for election**

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. **Yes x** No ☐

**Status Act Section 27. Members of the armed forces must report immediately to their commander their candidacies, withdrawal from candidacy, the result of the election .**  
**In case the member of the armed forces gets elected, he is suspended from his military service.**

**M- Right to marry**

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. **Yes x** No ☐

**N – Right to protection of property**

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? **Yes x** No ☐

**O – Accommodation**

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? **Yes x** No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? **Yes x** No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? **Yes x** No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. **Yes x** No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☐ **No x**

**Right to dignity is a basic constitutional right, members of the armed forces enjoy fully the protection of the Penal Code.**

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? **Yes x** No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? **Yes x** No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

**Hungarian Defence Forces has a Human services institution system. Regular health care and safety at work services are provided. Persons disabled from service get special pension.**

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. **Yes x** No ☐

**Ministry of Defence Decree 22 of 2006 on the nutrition in Hungarian Armed Forces.**

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? **Yes x** No ☐  
Where appropriate, please provide examples of good practices.

**Members of the armed forces enjoy the same protections as civilians.**

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. **Yes x** No ☐

**In state of emergency only men's military service is compulsory.**

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ **No x**

**T – Persons under the age of 18 enlisted in the armed forces**

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ **No x**

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

**U – Training**

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. **Yes x** No ☐

**It is part of officers' and non-commissioned officers' training**

U.1.1. If the reply to question U.1 is "YES":

U.1.1.1 Is international human rights law part of the training programme? **Yes x** No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? **Yes x** No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? **Yes x** No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? **Yes x** No ☐

U.1.2 If the reply to question U.1 is "NO", please explain why and whether any measure is in preparation.

**V – Allegations of human rights violations**

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. **Yes x** No ☐

**Office of the ombudsman, courts.****Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

**The principles are duly manifested in the Status Act of 2001 and pertinent other laws, and these principles function effeciently, there is no need to any further measures in national legislation. The human rights of members of the armed forces are in harmony with the requirements of the Council of Europe, EU and generally with the rule of law criteria.**

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

**There is no suggestion from Hungary.**

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**There is no suggestion from Hungary.**

**ICELAND**

Iceland has not taken, and will not take measures to adopt the rec. as Iceland does not have any armed forces. We will therefor not answer the list of questions.



## IRELAND

### Section I – Impact assessment

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☒ No ☐

A/COS SP Brigadier General Colm Campbell

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

**Fully satisfactory** ☒ Adequate ☐ Insufficient ☐ Absent ☐

As Ireland has legislated to give domestic effect to the provisions of the European Convention of Human Rights, it is felt that the recommendations and their dissemination will further reinforce the awareness of Human Rights in the Irish Defence Forces.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☒ No ☐

The authority responsible for the implementation of the recommendations has convened a board of officers to propose methods by which the recommendations can be communicated to members of the Defence Forces.

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

N/A

### Section II – Dissemination of the Recommendation

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☒ No ☐

A COS SP Brigadier General Colm Campbell.

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☐

The Recommendation will be disseminated throughout the Defence Forces via the internal electronic notice boards that are located in every barracks throughout the State

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

N/A.

II.4 To which authorities has the Recommendation been distributed?

All necessary bodies within the Defence Forces and Department of Defence.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☒ No ☐

Yes ☐ No ☒

II.6 Has the Recommendation been translated ?

II.7 If not, is this foreseen? Yes ☐ No ☒

II.8 How would you assess the visibility of the Recommendation?

**Fully satisfactory** ☒ Adequate ☐ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

Section 192 of the Defence Act 1954 provides that serious offences such as murder shall be investigated by the civilian police force, An Garda Síochána, except when personnel are on active service or serving outside the jurisdiction of the State. The decision to prosecute in such cases is solely a matter for the Director of Public Prosecutions, an independent decision making body. In the case of personnel serving outside the jurisdiction of the State, the Military Police lead and conduct any investigations involving death or serious injury. In such cases it is the policy to deploy an investigation team from Ireland who operate under Irish standards and legislation.

Members of the Defence Forces also have full access to an independent confidential helpline and counselling service.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☒ No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

Section 192 of the Defence Act 1954 provides that serious offences such as torture or inhuman treatment shall be investigated by the civilian police force, An Garda Síochána, except when personnel are on active service or serving outside the jurisdiction of the State. The decision to prosecute in such cases is solely a matter for the Director of Public Prosecutions, an independent decision making body. The Defence Forces also operate a complaints mechanism whereby any member of the Defence Forces may complain to an independent civilian ombudsman (known as the Ombudsman for the Defence Forces), on any matter including mistreatment, bullying or inappropriate behaviour. Members of the Defence Forces also have full access to an independent confidential helpline and counselling service.

The Defence Forces is a volunteer professional organisation and accordingly does not conscript. However, new entrants to the Defence Forces receive a two week familiarisation course before the formal commencement of their training whereby they are fully briefed on the Defence Forces Dignity Charter, complaints procedures and military codes of conduct for students and instructors.

#### C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service?

Yes ☐

No ☒

N/A

#### D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation.

Yes ☒

No ☐

Yes. Part V of the Defence Act 1954 provides the legal framework for military discipline in the Defence Forces. The Act provides for an independent Military Judge who oversees courts-martial, an independent court-martial administrator who fulfils the role of a court service and an independent Director of Military Prosecutions (DMpros) whose functions mirrors that of his civilian counterpart, the Director of Public Prosecutions (DPP). All members of the Defence Forces who are being tried for court-martial have the right to be legally represented by a civilian lawyer and if convicted may appeal to the Court-Martial Appeals Court which is civilian court consisting one Supreme Court Judge and two High Court Judges. Further, all courts-martial operate under the rules of evidence that are applicable in the civilian criminal law system.

#### E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces?

Yes ☒

No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18?

Yes ☒

No ☐

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?

Yes ☐

No ☒

E.2.2 If the reply to question E.2.1 is "NO", please explain why

and whether any measure is in preparation.

At present the Defence Forces recruit individuals who are 17 years of age. Such persons at present are detained under the same conditions as members who are of 18 years or older. It is the intention of the Department of Defence to amend legislation in the near future in this area which shall restrict recruitment of individuals to persons who are 18 years or older.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? Yes ☐ No ☒  
If so, please specify.

N/A.

**F- Right to a fair trial**

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

Members of the Defence Forces enjoy the full procedural rights and safeguards that are afforded to civilians facing criminal proceedings in accordance with ECHR norms.

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☒

There is no limitation or exclusion on members of the Defence Forces from seeking recourse through the civilian courts on any matter that may affect their civil rights.

F.3 Does your country have military courts? Yes ☒ No ☐

F.3.1 If so, are they separate from the chain of command? Yes ☒ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☒

**G – Right to respect for private and family life, home and correspondence**

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☒ No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure Yes ☒ No ☐

is in preparation.

Members of the Defence Forces enjoy full statutory leave entitlements as per answer at G.5 below. When posted abroad on accompanied missions assistance is provided for access to nursery schools and children's health and educational systems. As stated at B.5 the Defence Forces is a volunteer professional organisation and accordingly does not conscript.

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

All members of the Defence Forces are entitled to Statutory leave which includes Parental, Maternal, Paternity, Adoptive and Carer's leave amongst others. Members of the Defence Forces are provided with a comprehensive welfare system when operating overseas which, subject to the operational environment, includes access to the internet, provision of phone cards and leave outside of the mission area. Further, liaison teams are tasked with assisting the families of members who are deployed overseas with any issue that may be of concern to them.

#### H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Members of the Defence Forces have full access to a dedicated Military Chaplaincy Service which provides Chaplains to each Barracks in the State. Further, Defence Forces Chaplains routinely serve with overseas units of the Defence Forces.

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ No ☒

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☒ No ☒

H.2.2 If not, please explain why and whether any measure is in preparation.

N/A – The Irish Defence Forces is a volunteer professional organisation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

All members of the Defence Forces can voluntarily seek their discharge from the Defence Forces without being required to state a particular reason. At present there have been no recorded cases of individuals leaving the Defence Forces for reasons of conscience and there is no specific measure in place in the Defence Forces that relates to conscientious objectors.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these Yes ☐ No ☒

rights?

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

As stated at H.1, the Defence Forces provides a full time Chaplaincy service to members of the Defence Forces. Further the Defence Forces fully comply with national legislation, in particular the Equality Act which prohibits discrimination on the grounds of religious beliefs or sexual orientation amongst others.

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? **Yes** ☒ **No** ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

Defence Forces Regulation A.7, a Statutory Instrument, provides at Part VII, the Defence Forces protocols and conditions for communications with members of the press and public. For example, paragraph 27 of the aforementioned Statutory Instrument provides that *"the granting of interviews or the divulging of information by any officer or man of the Permanent Defence Force to members of the public on matters pertaining to the service or to the conduct thereof is forbidden."* This prohibition is qualified to state that communication on service matters may be authorised if prior approval is sought by the appropriate authority.

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? **Yes** ☒ **No** ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? **Yes** ☒ **No** ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. **Yes** ☒ **No** ☐

Members of the Defence Forces have rights of access to personal information that is retained by the Defence Forces through the provisions of the Freedom of Information Acts 1997 and 2003 and the Data Protection Acts 1998 and 2003. Restrictions to this right include information of a sensitive security nature about the data subject that was provided in confidence and information that relates to a third party.

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. **Yes** ☒ **No** ☐

Members of the Defence Forces may join representative associations. Enlisted personnel may become members of the Permanent Defence Forces Other Ranks Association (PDFORRA) and commissioned officers, up to and including the rank of Colonel, may become members of the

Representative Association of Commissioned Officers (RACO). Defence Forces Regulation S.6, a Statutory Instrument, regulates the powers of associations. Both associations have a wide scope of representation which primarily relates to pay and conditions of members. Both associations are also restricted from engaging in acts of public agitation.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☐

Section 103(1) of the Defence Act 1954 provides that members of the Permanent Defence Force shall not join, or be a member of, or subscribe to, any political organisation whatsoever. This position is adopted by the Irish State to ensure that those who wear the uniform of the State are non political servants of the State. This prohibition ensures that permanent military personnel understand that while they are in service, their loyalty is to the State as a whole and not to one particular political party who may or may not be in government. There is no measure or review in preparation to lift this prohibition. However, section 103(2) prohibits members of the Reserve Defence Forces only from joining secret societies; there is no such prohibition on joining political parties.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☐ No ☐

As for answer provided at K.2. Members of the Permanent Defence Force may not become members of political parties or become candidates for election to public office. Members of the Defence Forces are free to vote in elections.

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☐ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☐ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☐ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☐ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☐ No ☐

P.2 Are there measures in place to ensure that men and women in the Yes ☐ No ☐

armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation.

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

The Defence Forces have a comprehensive dignity at work programme in place that includes a Dignity Charter which is displayed in all working areas of the organisation. Further, the Defence Forces have clear guidelines in place that are communicated to all members of the Defence Forces which outlines the Defence Forces zero tolerance approach to any form of inappropriate behaviour. This policy also outlines how members, if they feel that they have been subjected to such inappropriate behaviour, may report such abuses to higher authority. Ultimately, if a member feels that such behaviour has not been dealt with adequately by the chain of command, s/he may complain to an independent civilian ombudsman (known as the Ombudsman for the Defence Forces) that is appointed by the Government.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section “Q” of the Appendix to the Recommendation.

The Defence Forces operate a comprehensive Health and Safety programme whereby a trained commissioned officer fulfils the appointment of Health and Safety officer in each barracks in the State. This officer routinely liaises with the States Health and Safety Authority to ensure that best practice in this area is adhered to. Further, the Defence Forces also operate a civil litigation section staffed by military lawyers who also liaise with the State’s Health and Safety Authority so as to ensure a proactive approach is afforded to each member’s safety in the workplace. In response to the Q.3, members of the Defence Forces who are injured in service in the Defence Forces may apply to the Defence Forces Pension Board, an independent statutory body established under Section 5 of the Army Pensions Act 1927.

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

The Defence Forces operate modern dining facilities in all installations throughout the State. Dining facilities are subject to routine and unannounced inspection by both military and civilian health and safety authorities. All personnel in the Defence Forces receive comprehensive briefings on diet and nutrition throughout their careers. Any specific dietary requests that are related to religion or diet are catered for, subject to operational requirements.



S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation?

Yes ☒ No ☐

Where appropriate, please provide examples of good practices.

The Defence Forces fully comply with national legislation in this area, in particular the Equality Acts, which prohibit discrimination on a number of grounds, which include, sex, sexual orientation, race, colour and religion amongst other grounds. The Defence Forces have been to the forefront in international terms in regards to female members, in that there is no restriction in terms of duties or appointments which may be undertaken by females in the Irish Defence Forces.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples.

Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge?

Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18?

Yes ☒ No ☐

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians?

Yes ☒ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons?

Yes ☒ No ☐

T.4 Can these persons take an active part in the hostilities?

Yes ☐ No ☒

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out.

Yes ☒ No ☐

The Defence Forces United Nations Training School routinely conducts courses in both the Law of Armed Conflict (LOAC) and Human Rights Law for both military and civilian students. Lectures on these courses are conducted by military lawyers who have received specialised instruction in the area from established institutions such as the International Institute of Humanitarian Law in San Remo, Italy and the NATO training school in Oberammergau, Germany, amongst other institutions.

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme ?

Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme?

Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme?

Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the

Yes ☒ No ☐

Recommendation, part of the training programme?

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

As per previous answers at B5 and Q1, members of the Defence Forces, including those who may be subject to inappropriate behaviour, bullying and harassment have unrestricted access to an independent civilian ombudsman (known as the Ombudsman for the Defence Forces) who oversees any complaint that may be made.

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

Recommendation U – members of the armed forces should receive training on human rights and international humanitarian law. As all armed forces operate in difficult and stressful environments when deployed overseas particularly where the national legal framework may have unravelled, it is vital that each member of the armed forces fully understand their rights and obligations under both LOAC and Human Rights law so as to ensure there is some legal framework which safeguards vulnerable individuals’ human rights.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes, such examinations should concentrate on specific issues, in particular the training of members of armed forces in both Human Rights Law and IHL and also on the issue of independent redress for members of the armed forces who may feel mistreated in any way.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

No.

**ITALY****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☐

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.  
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☐

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☐

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☐

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

II.4 To which authorities has the Recommendation been distributed?

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☐

II.6 Has the Recommendation been translated ? Yes ☐ No ☐

II.7 If not, is this foreseen? Yes ☐ No ☐

II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A – Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes **X** No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes **X** No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes **X** No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes **X** No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes **X** No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes **X** No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

*In Italy judiciary system, both military and ordinary, is autonomous.*

#### C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☐ No **X**

#### D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

*In Italy the "Military Penal Code of Peace" provides that: "the violations of duties of service and military discipline, not constituting a crime, are scheduled by law or military regulation approved by the President of the Republic and are punished with penalties laid down in those. (art. 38)*

E- Right to liberty and security

- E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐
- E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒
- E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐
- E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.
- E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

F- Right to a fair trial

- F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐
- F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☒ No ☐

*In Italy there are military Courts separate from the ordinary Courts are competence over the military offenses committed by military service in the Armed Forces or considered as such by law at the time the offenses was committed (art. 263 of the Military Penal Code of Peace)*

- F.3 Does your country have military courts? Yes ☒ No ☐
- F.3.1 If so, are they separate from the chain of command? Yes ☒ No ☐
- F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☒

G – Right to respect for private and family life, home and correspondence

- G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☐ No ☒
- G.2 Are there measures in place to ensure that members of the armed Yes ☒ No ☐

forces posted abroad are able to maintain private contacts?

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes **X** No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

*In Italy "The Code of Military" (Book VI, Title V) provides in article 1829 promoting the welfare of military personnel through interventions in favour of him and his family, for example it is expected the reimbursement of expenses incurred for nursery fees, scholarships etc.*

#### H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes **X** No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes **X** No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No **X**

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

*In Italy a professional military can take leave to demand at any time unless must comply with obligations remaining in service contracts at the time of incorporation or at the end of the training courses. (art. 933 military Code)*

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes **X** No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

*In Italy for the military is expected to freedom of religion, in particular the military can exercise their*

*worship of any religion, receive the assistance of their ministers and attended religious services consistent with the needs of service (art. 1671 of the Military Code), it is also planned to freedom of expression (art. 1472).*

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes **X** No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

*the military can freely publish their writings, however, hold public lectures and publicly express their thoughts, except in the case of matters confidential nature of military service or in connection with the service for which permission must be obtained.(art. 1472 Military Code).*

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes **X** No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes **X** No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No **X**

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☐

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☐

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☐ No **X**

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of Yes ☐ No **X**

members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service?

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes **X** No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes **X** No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes **X** No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

*Italian Code of the Military prohibits any form of direct or indirect discrimination, harassment including sexual violence against military calling other ministerial decrees implementation of European direct. It provides an equal treatments working conditions: in particular it prohibits all forms of discrimination in the allocation of tasks, assignments or transfers (art. 1468)*

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes **X** No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes **X** No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section “Q” of the Appendix to the Recommendation.

*The protection of health and safety in the workplace for members of the Armed Forces is equivalent to the civilian within the limits of compatibility with the special tasks and activities (art. 184 of the Military Code).*

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, Yes **X** No ☐



please provide examples of good practices.

*Members of the Armed Forces is provided a service provisioning.*

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? Yes ☒ No ☐

Where appropriate, please provide examples of good practices.

*Italian Code of the Military prohibits any form of direct or indirect discrimination, harassment including sexual violence against military calling other ministerial decrees implementation of European direct. It provides an equal treatments working conditions: in particular it prohibits all forms of discrimination in the allocation of tasks, assignments or transfers (art. 1468)*

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☒ No ☐

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☒ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☒ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☒

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

Yes **X** No ☐

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**LIECHTENSTEIN**

As Liechtenstein belongs to the few countries without armed forces – the Liechtenstein army was abolished in 1868 – Liechtenstein will abstain from filling the questionnaire. Nevertheless, we think that great importance should be attached to the issue of human rights and armed forces and we commend the work done in this field.

**LITHUANIA****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☒

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☒

Principles and/or measures safeguarding human rights of members of the armed forces have been implemented in laws, regulations and other legal acts of the Republic of Lithuania (and applied in practice) already before the Recommendation was issued.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☒

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

None

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☒

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

None

II.4 To which authorities has the Recommendation been distributed?

To the Ministry of National Defence of the Republic of Lithuania, also to the Lithuanian Armed Forces.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

II.6 Has the Recommendation been translated? Yes ☐ No ☒

II.7 If not, is this foreseen? Yes ☒ No ☐

II.8 How would you assess the visibility of the Recommendation?

Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☒

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

There is no separate military justice system in the Republic of Lithuania. Thus according Code of Criminal Procedure investigations into suspicious deaths or alleged violations of the right to life of a member of the armed forces are conducted by Military Police or Police, but always under the scrutiny of the civil (independent) prosecutor and, where applicable, pre-trial judge. Both Police and General Inspectorate of Ministry of National Defence has "confidence hotline" to which acts inconsistent with the right to life of a member of the armed forces may be reported without a fear of retaliation. In some particular situations during the trial process even the identity of the witnesses may be classified in order to protect them.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ No ☒

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

There are no specific measures in place for conscripts, because starting from the year 2008 call-up of conscripts to the initial continuous military service was suspended by the decision of the Seimas of the Republic of Lithuania (Lithuanian Parliament).  
There are specific articles in the Criminal Code of the Republic of Lithuania which prevent torture or other inhuman or degrading treatment or punishment. For example, it is a crime for a commander to perform military duties using physical violence against a subordinate serviceman; also it is a crime for serviceman to unlawfully demand another serviceman to behave according to his instruction or to humiliate another serviceman by using mental coercion, physical violence or a weapon.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, Yes ☒ No ☐ and which are the differences in nature and duration of such service?

According to the Law on National Conscription it is possible to exact an alternative service instead of compulsory military service. Those who wish to exact alternative service shall apply in writing. Such request must be grounded on religious or pacifistic beliefs (beliefs which prevent armed service). While completing alternative service persons are assigned *pro bono publicum* duties (which are not related to the use of weapons, special means or forced use of physical power) in state's or municipal institutions. Length of alternative service is either 10 months (instead of 9 months of initial continuous military service) or 4 months (instead of 70 to 90 days of basic military training). Serviceman for the period of alternative service enjoy the same social guarantees as those serving in compulsory military service.

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Disciplinary Statute of Lithuanian Armed Forces (enacted by Seimas of the Republic of Lithuania (Lithuanian Parliament)) empowers military commanders to investigate disciplinary offences (which do not constitute administrative or criminal offences) committed by members of armed forces and invoke summary punishments (together with preventive measures). Disciplinary Statute of Armed Forces sets out which acts or omissions by members of the armed forces constitute disciplinary offences, the procedures to be followed at disciplinary hearings, and the types and duration of punishment that may be imposed. According to the Disciplinary Statute of Armed Forces following sanctions (punishments) for disciplinary offences are possible:

a) for members of compulsory or professional service:

- reprimand
- additional tasks of service
- prohibition to leave the territory of the military facilities
- reduction of salary
- reduction of rank
- discharge from military service

b) for retirees:

- reprimand
- deprivation of the right to wear military uniform during festive occasions
- reduction of the rank of retiree

c) for cadets:

- reprimand
- additional tasks of service
- prohibition to leave the territory of the military facilities
- reduction of scholarship
- discharge from position
- expulsion from institution of military education

Summary punishments, depending on sanction, may be imposed starting by company commander and other commanders up in chain of command, including the Commander of Armed Forces, the Minister of National Defence and the President of the Republic. The level of command which may impose sanction depends on the rank (or position) of the offender and the type of sanction. There is no military tribunal or comparable entity for imposing summary punishments. No approval from the judge or court required to impose aforementioned sanctions. Commander, who has the right to

impose a disciplinary punishment, has full discretion to exercise his disciplinary powers with regard to summary punishments. However his decision may be revoked by his superiors or Inspector General of Ministry of National Defence if he imposed sanction in violation of Disciplinary Statute of Armed Forces. It is possible for a superior to annul a summary punishment imposed by subordinate, however he can not replace the annulled punishment directly by a new one (without a new investigation procedure). In addition, superiors have the right to mitigate or tighten the punishment (i.e. they are not bound by the principle of "reformatio in pejus"). According to the Disciplinary Statute of Armed Forces commanders have the right to impose all the punishments, which may be imposed by their subordinates. Military personnel have the right to appeal a summary punishment to the superiors of the commander, which imposed punishment, or directly to the Inspector General of the Ministry of National Defence (decisions of Inspector General are appealed to the Minister of National Defence). If all possibilities of appeal within the Armed Forces or Ministry of National Defence are exhausted, the decision may be appealed to court (administrative). An appeal does not suspend the execution of the punishment. The superiors of the commander, which imposed the punishment, are responsible for the legality and reasonability of punishments imposed. Within Armed Forces of the Republic of Lithuania there is a Law department (comprised from military personnel (officers) and civilian employees, both with legal background) which helps commanders to strictly adhere to the requirements of Disciplinary Statute of Armed Forces. Before the disciplinary punishment is imposed by the commander, summary punishment proceedings are reviewed by military legal adviser in order to ensure that investigation was done properly, impartially and at length and proposed punishment is according the law. Within the Ministry of National Defence there is also Law department, which additionally reviews summary punishment proceedings and advise the Minister of National Defence, if according to the Disciplinary Statute, punishment to be imposed by the Minister of National Defence.

After the disciplinary punishment was imposed by the commander (or when punishment to be inflicted by the Minister of National Defence), summary punishment proceedings are sent to the General Inspectorate of the Ministry of National Defence, where it undergoes additional reviewing.

Disciplinary Statute of Armed Forces requires commanders to start investigation procedure every time they become aware of the disciplinary offence (alleged disciplinary offence). Investigation is performed by an officer, having the same or higher military rank than the offender, which is appointed by the commander. Offender has the right to challenge investigator (on the grounds of partiality, etc.). Violation of requirements regarding investigation procedure constitutes disciplinary offence itself.

#### E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

Members of the armed forces are deprived of liberty according to the same procedure prescribed by law as any other (i.e. civil) citizen of the Republic of Lithuania.

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? Yes ☐ No ☒

If so, please specify.

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions.

Yes ☐ No ☒

F.3 Does your country have military courts?

Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command?

Yes ☐ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation?

Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment?

Yes ☒ No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts?

Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad?

Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

Law on the Organisation of the National Defence System and Military Service provides, that servicemen in professional military service shall be granted maternity leave in accordance with the procedure laid down by labour legislation. Also it provides, that male servicemen in professional military service shall be granted paternity leave of the duration specified by labour legislation at their request by a decision of their immediate commander (superior officer). Where the servicemen in professional military service serving at a military element of international operations may not be granted the paternity leave taking into consideration the location of the military element and requirements for readiness thereof, they shall be paid a one-time benefit in the amount of their average remuneration as calculated in accordance with the procedure laid down by the



Government. Also the said law provides, that servicemen in professional military service shall be granted parental leave in accordance with the procedure laid down by labour legislation at their request and by a decision of their immediate commander (superior officer) for a period until a child attains the age of three years, but not exceeding the term of expiry of a contract on professional military service of a serviceman who is granted the leave. Servicemen in professional military service serving in military elements of international operations shall, taking into consideration the location of a military element and requirements for readiness thereof, be granted a parental leave not later than within six months following filing of a request therefor. Upon granting the parental leave, a serviceman is dismissed from office and is transferred to the temporary reserve of the personnel of professional military service. The serviceman may return to service prior to completion of the leave subject to giving a written notice thereof not later than 14 days in advance to the Minister of National Defence or to his duly authorised commander (superior officer). Upon returning to service, the serviceman is appointed to a position commensurate with his rank.

*H – Freedom of thought, conscience and religion*

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Law on the Organisation of the National Defence System and Military Service sets that freedom of thought, religion and conscience shall be guaranteed for a serviceman and shall not be restricted in any way. Due to the fact, that the predominant religion in Lithuania is Christianity (with the largest confession being Roman Catholicism - about 80 percent of whole population), the same religion is predominant in Lithuanian Armed Forces. Religious services to the Roman Catholics (or other confessions, if required) within Lithuanian Armed Forces are provided by military chaplains.

H.2 Do conscripts have the rights to be granted conscientious objector status?

Yes ☒ No ☐

H.2.1 If so, is an alternative service of a civilian nature available?

Yes ☒ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

here is no specific provision in the Law on National Conscription for the granting of conscientious objector status to the conscripts which are already performing initial continuous military service. However despite the fact that conscription is still possible under the said law, starting from the year 2008 call-up of conscripts to the initial continuous military service was suspended by the decision of the Seimas of the Republic of Lithuania (Lithuanian Parliament). Currently draftees are called-up to accomplish basic military training only on a voluntarily basis. If the suspension for call-up of conscripts will be abolished in a future, any requests to grant conscientious objector status will be resolved according highest human rights standards.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions?

Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Law on the Organisation of the National Defence System and Military Service provides that a serviceman who has concluded a contract on professional military service may terminate service prior

to the expiry of a term undertaken under the contract solely in accordance with the procedure laid down by the Minister of National Defence and upon his decision for recognised valid reasons. While not specifically mentioned in the said procedure laid down by the Minister of National Defence, reasons of conscience would constitute a recognised valid reason for the termination of the contract on professional military service. However, if the request to terminate service prior to the expiry of a term undertaken under the contract for the reasons of conscience would not be satisfied, serviceman has a right to appeal such decision to a court.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☐ No ☒

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

Law on the Organisation of the National Defence System and Military Service provides that servicemen shall exercise the human rights and freedoms guaranteed by the Constitution of the Republic of Lithuania. However the right to dissemination of information and expression of opinion may be restricted by laws and the statutes based on the law only to the extent that is necessary to perform a serviceman's duties and ensure military discipline and obedience as well as attain the goals of service. The same law defines those restrictions - active service servicemen shall be prohibited from making political statements, articles or speeches publicly voicing disagreement with the policy declared and implemented by a democratically elected government of the State (the Seimas, the President of the Republic, the Government) or publicly raising political demands to the government of the State.

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No ☒

#### K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and Yes ☒ No ☒

whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Law on the Organisation of the National Defence System and Military Service, article 36, prohibits participation of members of the armed forces in trade unions, thus there are no military trade unions in the Republic of Lithuania. However members of armed forces are allowed to participate in the activities of military associations and confederations.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☒

Law on the Organisation of the National Defence System and Military Service, article 36, prohibits members of armed forces to participate in any kind of political activities: they are required to be politically impartial, and serve the nation and the country. As for today there are no plans to review or lift these restrictions. However, retired servicemen, volunteer servicemen and other servicemen in the active reserve may participate in political activities but they can not associate such activities with their servicemen status or wear the uniform.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☒ No ☐

Right to vote for the members of the armed forces is not restricted: they can vote as they wish , however they can not participate in any kind of political activities, therefore they can not be elected to any state or municipality office.

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☒ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal Yes ☒ No ☐

value? If not, please explain why and whether any measure is in preparation.

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Law on the Organisation of the National Defence System and Military Service provides, that the human dignity of every serviceman must be respected, a serviceman may not suffer humiliation. Criminal Code of the Republic of Lithuania (Art. 152) provides, that a person who, in seeking sexual contact or satisfaction, harasses a person subordinate to him in office or otherwise by vulgar or comparable actions or by making offers or hints shall be considered to have committed a misdemeanour. Disciplinary Statute of Lithuanian Armed Forces provides, that a serviceman, who harasses verbally, in writing or by action against another person's sexual self-determination and integrity (if that does not impose criminal liability) shall be considered to have committed disciplinary offence.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

Law on the Organisation of the National Defence System and Military Service provides, that a serviceman who becomes disabled while in the performance of official duties or due to service or a serviceman who does not become disabled, but has had lasting effects owing to a health disorder and the degree of his fitness for service has been reduced shall be paid a one-time compensation. Compensation amounts are also set in the said law and it depends of the percentage of serviceman's lost capacity to work. In the event of a serviceman's death, a one-time compensation shall be paid in the amount of 120 one month's basic pays (without bonuses) as established for a professional military serviceman with an appropriate rank during the first year of service, which shall not be less than 100 minimum monthly salaries as established by the Government per each dependant of the serviceman. The compensation shall be paid in equal instalments to the perished person's spouse, father, mother and each dependant of the serviceman.

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

Law on the Organisation of the National Defence System and Military Service provides, that servicemen in initial mandatory military service shall be supplied with food in accordance with the physiological nutrition standards as established by the Government or an institution authorised by it. In the cases when servicemen in initial mandatory military service are released from service by a decision of a unit's commander and are authorised to leave the unit for more than one day, a pecuniary

reimbursement of expenses for meals in the amount established for professional military servicemen shall be paid to them for the days free of service. Servicemen in professional military service, with the exception of the servicemen sent to foreign training establishments or to a place of service abroad where complete supply is provided, shall be provided with food according to the physiological nutrition standards established by the Government or an institution authorised by it or shall be paid a pecuniary reimbursement of expenses for meals in the amount established by the Government.

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? Yes ☒ No ☐

Where appropriate, please provide examples of good practices.

Law on the Organisation of the National Defence System and Military Service provides, that servicemen shall exercise the human rights and freedoms guaranteed by the Constitution of the Republic of Lithuania. Exercise by servicemen of the rights to protection of private life, guarantees of the place of service, rest and leisure time, freedom of association, choice of the place of residence and free movement, inviolability of official accommodation, participation in meetings, group petitions, dissemination of information and expression of opinion may be restricted by laws and the statutes based on the law only to the extent that is necessary to perform a serviceman’s duties and ensure military discipline and obedience as well as attain the goals of service. However those restrictions, which are in force, are not based on grounds such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status of the servicemen.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

Such training is normally given by the officers/employees of the Law Department of Lithuanian Armed Forces or guest lecturers (from other State’s institutions, NGO’s, etc.).

U.1.1. If the reply to question U.1 is “YES”:

- U.1.1.1 Is international human rights law part of the training programme ? Yes ☒ No ☐
- U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐
- U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐
- U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

#### V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Law on the Organisation of the National Defence System and Military Service provides, that a serviceman whose rights as guaranteed by this Law or relating to the serviceman's service in the national defence system (i.e. human rights included) have been violated may refer to a superior commander or the Inspector General of Ministry of National Defence. These persons must investigate the facts and take the measures necessary to forthwith eliminate the violations. If the serviceman is not satisfied with the results of such investigation, he may refer to court. Alternatively any serviceman may report alleged human right violations to the The Seimas Ombudsmen's Office of the Republic of Lithuania.

### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

No special measures needed.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

From the national perspective there is no need for further periodical examination.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

No issues.

## LUXEMBOURG

### Section I – Étude d'impact

I.1 Une autorité a-t-elle été désignée comme responsable de la mise en œuvre de la Recommandation ? Si oui, laquelle ? Oui ☐ **Non** ☒

I.2 Comment évalueriez-vous l'impact de la Recommandation sur les droits de l'homme des membres des forces armées dans votre pays ? Merci de motiver votre réponse.

Pleinement satisfaisant ☐ Adéquat ☐ Insuffisant ☐ **Inexistant** ☒

Les recommandations ont pour la plus grande partie toujours été appliquées aux forces armées luxembourgeoises

I.3 Des mesures spécifiques pour la promotion et la protection des droits de l'homme des membres des forces armées ont-elles été adoptées suite à et en application de l'adoption de la Recommandation ? Si oui, merci de donner quelques exemples. Oui ☐ **Non** ☒

I.4 Si des obstacles ont été rencontrés lors de la mise en œuvre de la Recommandation, de quels obstacles s'agit-il ?

### Section II – Diffusion de la Recommandation

II.1 Une autorité a-t-elle été désignée comme responsable de la diffusion de la Recommandation ? Si oui, laquelle ? Oui ☐ **Non** ☒

II.2 Des événements spécifiques ont-ils été organisés en vue de la diffusion de la Recommandation ? Si oui, merci de donner quelques exemples. Oui ☐ **Non** ☒

II.3 Si des obstacles ont été rencontrés lors de la diffusion de la Recommandation, de quels obstacles s'agit-il ?

II.4 Après de quelles autorités la recommandation a-t-elle été distribuée ?

II.5 La Recommandation a-t-elle été distribuée aux membres des forces armées ? Oui ☐ **Non** ☒

II.6 La Recommandation a-t-elle été traduite ? Oui ☐ **Non** ☒

II.7 Si non, est-il prévu de la traduire ? Oui ☐ **Non** ☒

II.8 Comment évalueriez-vous la visibilité de la Recommandation ? Pleinement satisfaisante ☐ Adéquate ☐ Insuffisante ☐ **Inexistante** ☒

### Section III – Mise en œuvre des dispositions spécifiques

#### A – Droit à la vie:

A.1 Des mesures ont-elles été mises en place pour garantir une enquête indépendante et effective dans tous les cas de mort suspecte ou de violation alléguée du droit à la vie d'un membre des forces armées ? Oui ☐ **Non** ☐

A.2 Des mesures ont-elles été mises en place pour encourager le signalement d'actes attentatoires au droit à la vie des membres des forces armées et protéger les personnes qui signalent l'existence de tels actes contre toutes représailles? Oui ☐ **Non** ☐

A.3 Merci de bien vouloir donner des informations sur le cadre légal de ces mesures et des exemples de mesures en place. Si vous avez répondu « *Non* » à une ou plusieurs des questions ci-dessus, merci de bien vouloir expliquer pourquoi de telles mesures ne sont pas en place et d'indiquer si des mesures sont en cours de préparation.

Pas de mort suspecte ou violation alléguée du droit à la vie d'un membre des forces armées constatée.  
Pas de mesure en cours de préparation.

#### B – Torture et autres mauvais traitements

B.1 Des mesures ont-elles été mises en place pour protéger les membres des forces armées de tortures ou d'autres peines ou traitements inhumains ou dégradants ? Oui ☐ **Non** ☐

B.2 Des mesures spécifiques ont-elles été mises en place pour les catégories plus vulnérables, telles que par exemple les appelés ? Oui ☐ **Non** ☐

B.3 Des mesures ont-elles été mises en place pour garantir une enquête indépendante et effective dans toutes les allégations d'actes de torture ou d'autres mauvais traitements, ou lorsque les autorités soupçonnent que c'est le cas, sur la base d'éléments raisonnables? Oui ☐ **Non** ☐

B.4 Des mesures ont-elles été mises en place pour encourager le signalement d'actes de torture ou d'autres mauvais traitements et protéger les personnes qui signalent l'existence de tels actes contre toutes représailles ? Oui ☐ **Non** ☐

B.5 Merci de bien vouloir donner des informations sur le cadre légal de ces mesures et des exemples de mesures en place. Si vous avez répondu « *Non* » à une ou plusieurs des questions ci-dessus, merci de bien vouloir expliquer pourquoi de telles mesures ne sont pas en place et d'indiquer si des mesures sont en cours de préparation.

Le statut des militaires luxembourgeois est basé sur celui des fonctionnaires d'Etat. Ces mesures ont depuis toujours été reprises dans le statut du fonctionnaire en général et des militaires en particulier.

#### C – Travaux forcés ou obligatoires

C.1 Le service militaire est-il obligatoire ? Si oui, peut-on effectuer un autre service à la place du service militaire obligatoire et quelles sont les différences en nature et durée de cette autre forme de service ? Oui ☐ **Non** ☐



D – Discipline militaire

D.1 Existe-t-il un cadre légal défini organisant le système de discipline militaire conformément aux paragraphes 19-21 de l'Annexe à la Recommandation ? Si oui, merci de bien vouloir indiquer une référence au cadre légal pertinent. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

**Oui** ☐ Non ☐

- Loi du 31 décembre 1982 concernant la refonte du code pénal militaire  
- Loi modifiée du 16 avril 1979 concernant la discipline dans la Force publique actuellement soumise à une révision substantielle

E - Droit à la liberté et à la sûreté

E.1 Existe-t-il une procédure prévue par la loi qui traite de la privation de liberté des membres des forces armées ?

**Oui** ☐ Non ☐

E.2 La détention de membres des forces armées âgés de moins de 18 ans est-elle permise ?

Oui ☐ **Non** ☐

E.2.1 Si oui, les conditions de détention satisfont-elles aux exigences établies au paragraphe 23 de l'annexe à la Recommandation ?

Oui ☐ Non ☐

E.2.2 Si la réponse à la question E.2.1 est « Non », merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

L'âge minimal pour membres de l'Armée luxembourgeoise est supérieur ou égal à 18 ans

E.3 Des limites ou restrictions aux garanties énoncées aux paragraphes 24 à 27 de l'Annexe à la Recommandation sont-elles possibles ? Si oui, merci de spécifier lesquelles.

Oui ☐ **Non** ☐

F- Droit à un procès équitable

F.1 Dans le cadre des procédures qui sont considérées comme pénales au sens de la Convention européenne des droits de l'homme, les membres des forces armées bénéficient-ils de droits et garanties procéduraux dans la même mesure que dans toute procédure pénale contre des personnes civiles, conformément aux paragraphes 28, 30 et 31 de l'Annexe à la Recommandation ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

**Oui** ☐ Non ☐

F.2 Existe-t-il un cadre légal défini régissant les restrictions ou exclusions du droit d'accès à un tribunal qui puisse examiner les contestations des membres des forces armées sur leurs droits et obligations de caractère civil ? Si oui, merci de donner quelques exemples de ces restrictions ou exclusions.

Oui ☐ **Non** ☐

F.3 Existent-ils des tribunaux militaires?

**Oui** ☐ Non ☐

F.3.1 Si oui, sont-ils séparés de la chaîne de commandement ?

**Oui** ☐ ☐

F.3.2 Si la réponse à la question F.3 est « OUI », y a-t-il une différence entre l'organisation et le fonctionnement des juridictions militaires, en comparaison avec les tribunaux civils, en ce qui concerne en particulier les

Oui ☐ **Non** ☐

garanties procédurales établies aux paragraphes 33 et 34 de l'Annexe à la Recommandation?

G – Droit au respect de la vie privée et familiale, du domicile et de la correspondance

G.1 Des mesures ont-elles été mises en place pour garantir que les appelés soient affectés près de leurs proches et de leur domicile et que le déploiement de membres professionnels loin de leurs proches et de leur domicile ne soit pas utilisé comme peine disciplinaire ? Oui ☐ **Non** ☒ Pas d'appelés aux forces armées Lux

G.2 Des mesures ont-elles été mises en place pour permettre aux membres des forces armées affectés à l'étranger de maintenir des contacts privés? **Oui** ☐ Non ☐

G.3 Des programmes d'assistance ont-ils été mis en place pour les personnes accompagnant les membres des forces armées affectés à l'étranger ? Oui ☐ **Non** ☐

G.4 Les membres des forces armées peuvent-ils bénéficier d'un congé parental, d'allocations appropriées pour enfant à charge, d'un accès à des écoles maternelles et d'un système adéquat de santé et d'enseignement pour les enfants ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. **Oui** ☐ Non ☐

G.5 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées au respect de la vie privée et familiale, du domicile et de la correspondance, conformément à la Section « G » de l'Annexe à la Recommandation.

- Les membres des forces armées jouissent des mêmes droits concernant congés, sécurité sociale etc que les fonctionnaires d'Etat. En plus, ils disposent de
- congés compensatoires, prime de régime militaire, prime d'astreinte

H – Liberté de pensée, de conscience et de religion

H.1 Des mesures ont-elles été mises en place pour permettre aux membres des forces armées de s'acquitter, dans la mesure du possible, de leurs obligations religieuses ? Si oui, merci d'indiquer quelques exemples. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☐ **Non** ☐

- Jusqu'aujourd'hui, il n'y a eu que très peu de cas où des militaires veulent s'acquitter de leurs obligations religieuses.

A l'instant, il n'y a pas de mesures qui sont en préparation

H.2 Les appelés ont-ils la possibilité d'obtenir le statut d'objecteur de conscience ? Oui ☐ **Non** ☐

H.2.1 Si oui, un service alternatif de nature civile est-il possible ? Oui ☐ **Non** ☐

H.2.2 Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Au Luxembourg, le service militaire obligatoire a été aboli en 1967

H.3 Les objecteurs de conscience sont-ils exposés à des sanctions, mesures disciplinaires ou poursuites pénales ? Oui ☐ **Non** ☐

H.4 Des membres professionnels des forces armées peuvent-ils quitter les forces armées pour raisons de conscience ? Si oui, merci d'indiquer dans quelles conditions et quelle est la procédure, et notamment si de telles demandes peuvent être réexaminées par un organe indépendant et impartial. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☐ Non ☐

Le membre professionnel qui désire quitter les forces armées doit introduire sa demande de démission. Jusqu'aujourd'hui, il n'y a pas eu de telle demande auprès de l'Armée luxembourgeoise.

H.5 Des mesures ont-elles été mises en place pour garantir que les appelés et les membres des forces armées soient informés respectivement, du droit à l'obtention du statut d'objecteur de conscience et de celui de quitter les forces armées pour raisons de conscience, ainsi que des procédures disponibles pour les exercer ?

Oui ☐ Non ☐

H.6 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées à la liberté de pensée, de conscience et de religion, conformément à la Section « H » de l'Annexe à la Recommandation.

#### I – Liberté d'expression

I.1 Existe-t-il un cadre légal défini régissant les formalités, conditions et restrictions au droit à la liberté d'expression pour les membres des forces armées ?

Oui ☐ Non ☐

I.2 Si oui, merci de le présenter brièvement, en donnant en particulier quelques exemples des éventuelles restrictions au droit à la liberté d'expression.

#### J – Droit à l'accès aux informations pertinentes

J.1 Des mesures ont-elles été mises en place pour garantir que des informations complètes et détaillées sur le recrutement dans les forces armées et les engagements découlant de l'enrôlement soient fournies aux recrues potentielles ?

Oui ☐ Non ☐

J.2 Les membres et anciens membres des forces armées ont-ils accès à leurs données personnelles, y compris leurs dossiers médicaux et autres informations sur leur exposition à des situations potentiellement dangereuses à leur santé ?

Oui ☐ Non ☐

J.3 Si oui, existe-t-il des restrictions à ce droit à l'accès à l'information ? Merci de donner quelques exemples, le cas échéant.

Oui ☐ Non ☐

#### K – Droit à la liberté de réunion pacifique et à la liberté d'association avec d'autres

K.1 Les membres des forces armées ont-ils le droit d'adhérer à des associations ou syndicats militaires établis conformément à la loi ? Si oui, merci de bien vouloir indiquer les éventuelles conditions et restrictions à ce droit. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures pour réviser ou lever les restrictions ou interdictions existantes sont en préparation.

Oui ☐ Non ☐

Actuellement, il existe deux associations militaires au sein de l'Armée luxembourgeoise, à savoir: l'APOL (association professionnelle des officiers luxembourgeois) et le SPAL (Syndicat professionnel de l'Armée luxembourgeoise) lequel regroupe les sous-officiers, caporaux et soldats-volontaires) Pour y devenir membre, il suffit de faire partie de la carrière respective et de faire une demande d'adhésion.

K.2 Les membres des forces armées peuvent-ils adhérer à des partis politiques ? Si oui, merci de bien vouloir indiquer les éventuelles conditions et restrictions à ce droit. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures pour réviser ou lever les restrictions ou interdictions existantes sont en préparation. **Oui** ☐ Non ☐

Dans le service, le militaire de l'Armée et le personnel policier du corps de la Police et de l'Inspection générale de la Police doit s'abstenir de toute manifestation en faveur ou en défaveur d'une tendance politique déterminée. A l'intérieur des installations de service toute action de propagande en faveur ou en défaveur d'un parti ou d'un groupe politique est interdite, même en dehors du service

L – Droit de vote et de se présenter aux suffrages

L.1 Existe-t-il des restrictions aux droits électoraux des membres des forces armées et à l'appartenance dans les forces armées d'un membre se présentant à des élections ou pendant la durée de son mandat ? Si oui, merci de donner quelques exemples. **Oui** ☐ Non ☐

L'acceptation par un fonctionnaire d'un mandat de député entraîne les conséquences prévues par la loi. Les militaires de carrière ne peuvent pas faire partie d'un conseil communal

M- Droit de se marier

M.1 Les membres des forces armées ont-ils le droit de se marier et de conclure des partenariats civils conformément aux droits dont jouissent les civils ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. **Oui** ☐ Non ☐

N – Droit à la protection de ses biens

N.1 Des mesures ont-elles été mises en place pour garantir que les biens appartenant aux membres des forces armées, y compris les appelés, et consignés lors de leur enrôlement, soient rendus à l'issue de leur service militaire ? **Oui** ☐ **Non** les biens ne sont pas consignés ☐

O – Logement

O.1 Des mesures ont-elles été mises en place pour garantir un logement de niveau suffisant pour les membres des forces armées et leurs familles, à la fois sur le territoire national et à l'étranger ? **Oui** ☐ Non ☐

O.2 Si le logement se situe dans une caserne, des dortoirs séparés pour femmes et hommes sont-ils prévus ? **Oui** ☐ Non ☐

P – Rémunération et pension

P.1 Les membres professionnels des forces armées ont-ils droit à une rémunération leur permettant d'avoir un niveau de vie décent et une pension de retraite suffisante ? **Oui** ☐ Non ☐

P.2 Des mesures ont-elles été mises en place pour garantir aux hommes et aux femmes membres des forces armées une rémunération égale pour un même travail ou un travail de valeur égale? Si non, merci de bien vouloir **Oui** ☐ Non ☐

en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Q – Droit à la dignité, à la protection sociale et à la sécurité au travail

Q.1 Des mesures spécifiques ont-elles été mises en place pour protéger la dignité au travail des membres des forces armées, particulièrement en matière de prévention du harcèlement sexuel ? Si oui, merci d'indiquer le cadre légal pertinent et de donner quelques exemples. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☐ Non ☐

- existence d'une déléguée à l'égalité

Q.2 Les soins médicaux fournis au cours d'opérations militaires et en raison d'opérations militaires sont-ils gratuits pour les personnes ayant servi?

Oui ☐ Non ☐

Q.3 Existe-t-il un régime de réparation ou d'indemnités pour les membres des forces armées quittant les forces armées pour raison de blessure suite à leurs fonctions ou en cas de décès au cours de leur service?

Oui ☐ Non ☐

Q.4 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées à la dignité, à la protection sociale et à la sécurité au travail, conformément à la Section « Q » de l'Annexe à la Recommandation.

R – Alimentation

R.1 Des mesures ont-elles été mises en place pour garantir le droit des membres des forces armées à une alimentation décente et suffisante, en conformité avec la section « R » de l'Annexe à la Recommandation ? Le cas échéant, merci de donner quelques exemples de bonnes pratiques.

Oui ☐ Non ☐

Possibilité d'avoir des repas végétariens

Repas adaptés à l'occasion de certaines fêtes religieuses

S – Non-discrimination

S.1 Des mesures ont-elles été mises en place pour garantir que les membres des forces armées puissent jouir de leurs droits et libertés sans aucune discrimination, en conformité avec la Section « S » de l'Annexe à la Recommandation ? Le cas échéant, merci de donner quelques exemples de bonnes pratiques.

Oui ☐ Non ☐

S.2 Existe-t-il des restrictions à l'accès des femmes dans les forces armées, ou à des types particuliers d'activités professionnelles au sein des forces armées ? Si oui, merci de donner quelques exemples.

Oui ☐ Non ☐

S.3 L'orientation sexuelle constitue-t-elle un motif pour empêcher l'accès aux forces armées, ou pour renvoyer un membre des forces armées?

Oui ☐ Non ☐

T – Personnes âgées de moins de 18 ans recrutées dans les forces armées

T.1 Votre législation permet-elle le recrutement volontaire de

Oui ☐ Non ☐

personnes de moins de 18 ans dans les forces armées?

T.2 Si oui, y a-t-il des mesures en place pour assurer la pleine information des devoirs qui s'attachent au service militaire et le consentement éclairé de ces personnes et de leurs parents ou gardiens légaux ? Oui ☐ Non ☐

T.3 Des mesures spéciales ont-elles été mises en place pour protéger le bien-être physique et psychologique de ces personnes ? Oui ☐ Non ☐

T.4 Ces personnes peuvent-elles participer directement aux hostilités ? Oui ☐ Non ☐

#### U – Formation

U.1 Des activités de formation visant à acquérir une meilleure connaissance des droits de l'homme par les membres des forces armées sont-elles prévues? Si oui, merci d'indiquer par qui sont-elles menées. Oui ☐ Non ☐

Dans le cadre de la formation continue des cadres de carrière, suivi de formations spécifiques à ce sujet.

U.1.1. Si la réponse à la question U.1 est « *Oui* »:

U.1.1.1 Le droit international des droits de l'homme fait-il partie du programme de formation ? Oui ☐ Non ☐

U.1.1.2 Les droits de l'homme des membres des forces armées font-ils partie du programme de formation ? Oui ☐ Non ☐

U.1.1.3 La prévention des mauvais traitements et de la discrimination fait-elle partie du programme de formation ? Oui ☐ Non ☐

U.1.1.4 Le droit international humanitaire, y compris les devoirs mentionnés au paragraphe 84 de l'Annexe à la Recommandation, fait-il partie du programme de formation? Oui ☐ Non ☐

U.1.2 Si la réponse à la question U.1 est « *Non* », merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

#### V – Allégations de violations des droits de l'homme

V.1 Des mesures ont-elles été mise en place pour garantir aux membres des forces armées le droit de présenter des allégations de violations des droits de l'homme, en particulier en matière de discrimination, harcèlement ou violence, devant un mécanisme indépendant ? Si oui, merci d'indiquer de quelle autorité/mécanisme s'agit-il et quelle est la procédure. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☐ Non ☐

- assistante sociale, psychologue de l'Armée.

### **Section IV – Suivi**

IV.1 Quelles mesures recommanderiez-vous pour garantir le respect des principes énoncés dans la Recommandation et dans son Annexe dans les législations et les pratiques nationales?

IV.2 Le Conseil de l'Europe devrait-il continuer à examiner périodiquement la mise en œuvre de cette Recommandation ? Si oui, cet examen devrait-il, à l'avenir, se concentrer sur des problèmes spécifiques, et le cas échéant sur lesquels ?

--

IV.3 Existe-t-il des questions sur lesquelles la Recommandation et son Annexe devraient être modifiés ou complétés ? Si oui, merci d'indiquer lesquelles.

--

**REPUBLIC OF MOLDOVA****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☒

n/a

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

*The Recommendation explains ultimately the fundamental Convention's rights. As a consequence, the impact of a general dissemination of the Convention's provisions and promotion of the rights therein, would not require particular attention on the Recommendation.*

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☒ No ☐

*Certain measures on such a promotion were included in National Plan of Actions on Human Rights and other policy documents on human rights. These measures make part of general framework on promotion of human rights. It has been not specifically separated in a special category of policy documents.*

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

No obstacles.

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☒

n/a

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

n/a

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

No obstacles.

II.4 To which authorities has the Recommendation been distributed?

Ministry of External Affairs and the Ministry of Defence (informed)

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

II.6 Has the Recommendation been translated ? Yes ☐ No ☒



II.7 If not, is this foreseen? Yes ☒ No ☐

II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ Adequate ☐ Insufficient ☒ Absent ☐

### Section III – Implementation of specific provisions

#### A – Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

*The domestic criminal system and the criminal prosecution include such measures. Furthermore, there were established specialised Military Prosecutors within the general system of Prosecutors’ Offices. The military prosecutors are entitled to carry out criminal investigations and prosecution of all events involving military personnel (under the criminal jurisdiction in personam). The Ministry of Defence and every military entity have their own legal framework that also are dealing with such matters.*

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☒ No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

*See mutatis mutandis the above comments.*

#### C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is Yes ☒ No ☐

possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service?

*The military service in Moldova is compulsory in its nature. However, there are several forms of military service, which are as follows: contractual military service; long term or short term compulsory military service; service for military personnel in reserve and/or mobilised personnel; civil alternative service for individuals who oppose to military service on basis of conscience or religion; and other special forms of service that replace the compulsory military service (for special categories of persons such as female conscripts, students in military academies and schools or in institutions with military oriented education, and finally within high educational institutions).*

#### D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*Internal disciplinary rules, code of ethics and the Military Service Rules.*

#### E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

*Note: In Moldova there cannot be members of armed forces under the age of 18 at all. The statutory age limit for being a member of army forces is after 18 years old. The minors after the age of 16 are registered as potential conscripts but they are to be enrolled in one of the forms of military service only after 18 years old.*

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

*n/a*

#### F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

*n/a*

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of Yes ☐ No ☒

members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions.

n/a

F.3 Does your country have military courts? Yes ☒ No ☐

F.3.1 If so, are they separate from the chain of command? Yes ☒ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☒

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☒ No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*Note: The Moldovan Constitutional Court has recently adopted a Decision on constitutionality of certain domestic law provisions in light of recent developments of the European Court's case-law resulted from the Konstantin Markin case (Konstantin Markin v. Russia (GC), no. 30078/06, 22 March 2012). Any legal provisions that may prohibit granting of a parental leave for male military personnel have been declared unconstitutional and therefore void.*

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

See above.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*The domestic legal framework on military service allows a special civil alternative service for individuals who oppose to military service on basis of their conscience or religion. The Moldovan state policy is however focused on defining an individuals' religious orientation prior to their enrolment in military service. A person once enrolled in compulsory or contractual military service is not expressly prohibited to express his or her religious beliefs but the State's policy in this sense is leaded, hypothetically, by the principle of secularity while that person is under the military service.*

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☒ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

*See above.*

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*Under the statutory provisions, if a professional member of the armed forces became a member of any religious organisation while in service he becomes incompatible de jure with his military status. As a consequence he can withdraw himself from a military service. If there is a lawsuit in this regards that the matter must be brought before the domestic court that will decide.*

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

*n/a*

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☐ No ☒

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

*The high and medium level military professional personnel may be restricted in expressing their opinions but only if such opinion is expressed on behalf of the Military authorities which they represent. However, their personal opinions are protected by general legal framework applicable for any public servant who may express freely his or her opinion accompanied by a remark that these opinions are not official position of the authorities that they represent.*

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No ☒

*The access to personal information is governed by general legal framework that regulates protection and access to personal data. That framework has been adopted recently.*

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

n/a

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

n/a

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☒ No ☐

n/a

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

n/a

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☐ No ☒

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive Yes ☒ No ☐

remuneration giving them a decent standard of living and an adequate retirement pension?

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

n/a

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

*The domestic general legal framework on combating sexual offences and harassment is applicable to the military personnel.*

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons?

Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service?

Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section “Q” of the Appendix to the Recommendation.

n/a

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes ☒ No ☐

n/a

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes ☒ No ☐

*The Republic of Moldova has recently adopted the non-discrimination legislation which is to be implemented. It will be applicable to this field as well.*

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples.

Yes ☒ No ☐

*Women can access only contractual military service with certain conditions provided by the law on*

*military service.*

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? n/a n/a

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? n/a n/a

T.4 Can these persons take an active part in the hostilities? n/a n/a

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

*There are measures but not to a greater extent. The measures are implemented to increase the general knowledge covering all rights of the military personnel and they are not specifically oriented to field of human rights. The personnel are however instructed in respect of humanitarian law.*

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☐ No ☒

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☐ No ☒

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☐ No ☒

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

*In preparation*

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*These allegations can be brought with the domestic prosecution and judiciary on general basis.*

#### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

--

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

--

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

--

Prepared by Lilian Apostol  
Agent for the Government of the Republic of Moldova, *a.i.*



## NETHERLANDS

### Section I – Impact assessment

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which?

Yes ☐

No ☒

*Assigning a particular authority responsible for the implementation of the Recommendation was not necessary, because the items addressed by the Recommendation were already part of the legal position of the members of the armed forces of the Netherlands, see question I.2.*

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☒ Adequate ☐ Insufficient ☐ Absent ☐

*The Netherlands had already put in place a national system ensuring human rights of members of the armed forces, before the adoption of the Recommendation. In the Netherlands, human rights of both citizens and members of the armed forces are protected under the Dutch constitution and international human rights treaties to which the Netherlands is a party (In the Dutch legal order treaty provisions which may be binding on all persons by virtue of their contents, become binding after they have been published and may thus be directly applied in Dutch courts (art. 93, Dutch Constitution)).*

*Limitations to human rights, laid down in either the Dutch constitution or in international human rights treaties, will need to fully meet the requirements of the Dutch constitution and/or the relevant international human rights treaties (such as the requirement that limitations should be provided by law). Thus, prior to the adoption of the Recommendation, human rights of members of the armed forces were already ensured by the Dutch constitution and by international human rights treaties to which the Netherlands is a party, allowing for limitations to these rights only under strict conditions.*

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples.

Yes ☐

No ☒

*Since a system ensuring human rights of members of the armed forces was already in force before the adoption of the current recommendation (see question I.2), no specific measures were required after and pursuant to the adoption of the Recommendation.*

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

-

### Section II – Dissemination of the Recommendation

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which?

Yes ☐

No ☒

*See Section I.*

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples.

Yes ☐

No ☒

*See Section I.*

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

*See Section I.*

II.4 To which authorities has the Recommendation been distributed?

*The Directorate of legal affairs of the Ministry of Foreign Affairs and the Directorate of legal affairs and the Directorate of personnel policy of the Ministry of Defence.*

II.5 Has the Recommendation been distributed to members of the armed forces?

Yes ☐

No ☒

*The items addressed by the Recommendation were already part of the legal position of the members of the armed forces of the Netherlands.  
See Section I.*

II.6 Has the Recommendation been translated ?

Yes ☐

No ☒

II.7 If not, is this foreseen?

Yes ☐

No ☒

II.8 How would you assess the visibility of the Recommendation?

Fully satisfactory ☒ Adequate ☐ Insufficient ☐ Absent ☐

➔ See Question I.2.

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces?

Yes ☒

No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation?

Yes ☒

No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

*Under the authority of the (civil) Public Prosecution Service, the Royal Military Constabulary is responsible for investigating criminal offences within the armed forces (art. 14, Dutch Code of Criminal Procedure (Wetboek van Strafvordering)). In the Netherlands, the procedural safeguards for criminal investigations concerning civilians are applicable to investigations concerning the armed forces (Dutch Criminal Code (Wetboek van Strafrecht) and the Code of Criminal Procedure. These safeguards are complemented by procedural safeguards aimed specifically at criminal offences within the armed forces, such as the Dutch Military Criminal Code (Wetboek van Militair Strafrecht) and the Military Criminal Justice Act (Wet militaire strafrechtspraak).*

*Persons reporting acts mentioned under A.2 are specifically protected under the rules on integrity for members of the armed forces (article 12 quater, Military Personnel Act 1931 (Militaire*

ambtenarenwet 1931), further specified in Chapter 11a of the General military personnel regulation (Algemeen militair ambtenarenreglement).

B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ No ☒

➔ *Since 1997 conscription in the Netherlands has been suspended.*

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

B.1 See answer to Section I, question I.2.  
B.2 Since 1997 conscription in the Netherlands has been suspended.  
B.3 See answer to question A.3  
B.4 See answer to question A.3

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☐ No ☒

*Since 1997 conscription in the Netherlands has been suspended.*

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*The relevant legal framework consists of the Military disciplinary code (Wet militair tuchtrecht), Dutch military criminal code (Wetboek van Militair Strafrecht)- and the Military Criminal Justice Act (Wet militaire strafrechtspraak).*

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☒ No ☐

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?

Yes ☒ No ☐

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify.

Yes ☐ No ☒

-

#### F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

Yes ☒ No ☐

*In the Netherlands, the procedural safeguards for criminal proceedings concerning civilians are applicable to proceedings concerning the armed forces (Dutch Criminal Code (Wetboek van Strafrecht) and the Dutch Code of Criminal Procedure (Wetboek van Strafvordering)). These safeguards are complemented by procedural safeguards aimed specifically at criminal proceedings concerning members of the armed forces (Military Criminal Code (Wetboek van Militair Strafrecht) and the Military Criminal Justice Act (Wet militaire strafrechtspraak)).*

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions.

Yes ☒ No ☐

*In the Netherlands, the legal framework on the right to have access to a tribunal for the determination of civil rights and obligations operates equally for both civilians and members of the armed forces.*

F.3 Does your country have military courts?

Yes ☐ No ☐

*In the Netherlands the military judicial organisation operates within a hybrid system. Certain civilian courts operate with a military criminal chamber. In principle the procedures and safeguards of these chambers are the same as of the civil courts. The main differences concern the defence of the defendant (the possibility of bringing a military defence counsel (officier raadsman) and the composition of the military chamber (consisting of two civilian judges and one military member; Military Criminal Justice Act (Wet militaire strafrechtspraak) and the Judiciary (Organisation) Act (Wet op de Rechterlijke Organisatie)).*

F.3.1 If so, are they separate from the chain of command?

Yes ☒ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation?

Yes ☒ No ☐

➔ *The differences in the organisation and operation of military courts comply with Paragraphs 33 and 34 of the Appendix. See answer to*

question F.3.

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☒ No ☐

➔ *Since 1997 conscription in the Netherlands has been suspended.*

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

-

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

*Members of the armed forces of the Netherlands enjoy the same respect for their private and family life, home and correspondence as other citizens of the Netherlands. See question I.2.*

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*The Netherlands armed forces have chaplains of Roman Catholic, Protestant, Jewish, Hindu, Moslem and Humanist denomination serving with the armed forces to provide religious support. In addition, at all military bases there are facilities for private prayers and religious services, which may be used for all religious denominations. Moreover, the armed forces provide, as much as possible, food consistent with the various religious obligations of members of the armed forces (kosher, halal, vegetarian).*

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☐ No ☐

➔ *Since 1997 conscription in the Netherlands has been suspended.*

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☐ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

-

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☐

➔ *Since 1997 conscription in the Netherlands has been suspended.*

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and Yes ☒ No ☐

the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

*The Act on conscientious objection to military service (Wet gewetensbezwaren militaire dienst) provides the legal framework for members of the armed forces leaving the armed forces for reasons of conscience. The Minister of Defence may approve a request for acknowledgement of serious conscientious objections of a member of the armed forces (art. 3, Act on conscientious objection to military service). The acknowledgement of serious conscientious objections results in full exemption from military service and dismissal from the armed forces (art. 9, Act on conscientious objection to military service). The request can be reviewed by the Administrative Jurisdiction Division of the Dutch Council of State (Afdeling Bestuursrechtspraak van de Raad van State; art. 7b, Act on conscientious objection to military service).*

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights?

Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

*Members of the armed forces enjoy the same freedom of thought, conscience and religion as other citizens of the Netherlands. See question I.2.*

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces?

Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

*See Section I, Question I.2.*  
*In addition, article 12a of the Military Personnel Act 1931 (Militaire ambtenarenwet 1931) states that members of the armed forces should refrain from using their right to express thoughts, opinions or feelings, if those thoughts, opinions or feelings are connected to the fulfillment of their function and if by expressing them the proper fulfillment of their function or the functioning of the public service could no longer be reasonably guaranteed. This is a norm addressed to the individual who makes his own considerations; only, should he egress he can be called to task afterwards. The right to freedom of expression is limited by the pledge of secrecy in regard of classified information (Dutch Criminal Code (Wetboek van Strafrecht) and the Military Personnel Act 1931). This limitation is covered by the requirements for limitations of human rights – see Section I, question I.2.*

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits?

Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health?

Yes ☒ No ☐

Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any.

*The access to personnel files of members of the armed forces is regulated by the legal framework on data protection, complemented by specific rules on data protection in the armed forces (Dutch Personal Data Protection Act (Wet bescherming persoonsgegevens); Regulation on Dutch personal data protection act ministry of Defence (Regeling Wet bescherming persoonsgegevens ministerie van Defensie)). In principle the right of access is unrestricted, with only very limited exceptions to this right, such as restriction for reasons of national safety or for the protection of the person concerned (art. 43, Dutch Personal Data Protection Act).*

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☒ No ☐

*Members of the armed forces are compelled to report any (future) additional functions, which could affect the interest of the military service, as far as this is connected to the fulfillment of their function (art. 126b, General military personnel regulation (Algemeen militair ambtenarenreglement); Regulation on additional functions Defence (Regeling nevenwerkzaamheden Defensie)). Members of the armed forces are entitled to freedom of assembly and association, unless the proper fulfillment of their function or the functioning of the public service (as far as this is connected to the fulfillment of their function) would thereby no longer be reasonably guaranteed. This requirement does not apply to membership of political parties and trade unions (art. 12a, Military Personnel Act 1931 (Militaire ambtenarenwet 1931); art. 126b, General military personnel regulation (Algemeen militair ambtenarenreglement)).*

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☒ No ☐

See Question K.1.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples.

Yes ☒ No ☐

See Question K.1.

*In addition, members of the armed forces who are appointed or elected as member of a public body can be temporarily exempted from military service, based on the extent of their activities as member of a public body, unless this would be against the interests of the military service (art. 12c, Military Personnel Act 1931 (Militaire ambtenarenwet 1931)).*

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of

Yes ☐ No ☒

members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service?

➔ *No property of members of the armed forces is retained upon joining the armed forces.*

#### O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

➔ *Note: there are no dormitories. Except for initial training, accommodation consists of individual rooms for 1, 2 or 4 persons.*

#### P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

-

#### Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*Dignity at work of members of the armed forces, in particularly as regards the prevention of sexual harassment, is ensured by the legal framework on integrity for members of the armed forces (Chapter 11a of the Dutch military personnel regulation (Algemeen militair ambtenarenreglement)). Those reporting wrongs regarding dignity at work are for example protected under these rules on integrity.*

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section “Q” of the Appendix to the Recommendation.

-

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed Yes ☒ No ☐



forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

-

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes ☒ No ☐

-

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples.

Yes ☒ No ☐

*Women cannot serve in the Royal Marines, the Army special forces (Korps Commandotroepen) or in the submarine service. This is because it is not possible to guarantee a minimum amount of privacy in these particular divisions of the armed forces.*

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge?

Yes ☐ No ☒

#### T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18?

Yes ☒ No ☐

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians?

Yes ☒ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons?

Yes ☒ No ☐

T.4 Can these persons take an active part in the hostilities?

Yes ☐ No ☒

#### U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out.

Yes ☒ No ☐

*Knowledge of human rights is part of the curriculum of the initial training for all parts of the armed forces.*

U.1.1. If the reply to question U.1 is "YES":

U.1.1.1 Is international human rights law part of the training programme?

Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme?

Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme?

Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation,

Yes ☒ No ☐

part of the training programme?

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*First of all, human rights violations of members of the armed forces fall within the ambit of the national protection system of the Dutch constitution and international human rights treaties to which the Netherlands is a party, see Section I, Question I.2.*

*In addition, members of the armed forces may file a complaint with their superior, a specifically appointed confidant or the ‘Commissie integriteit overheid’ (a commission responsible for issues of integrity within government; art. 126j, Dutch Military Personnel Regulation (Algemeen militair ambtenarenreglement)). The legal framework on integrity for members of the armed forces applies (chapter 11a Military Personnel Regulation).*

**Section IV - Follow-up**

*General remark: many Member States, including the Netherlands, had already put in place national systems ensuring human rights of members of the armed forces, before the adoption of the Recommendation. Future questionnaires should take this into account.*

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

*See the general remark above under ‘Section IV’.*

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

*See the general remark under ‘Section IV’.*

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

*See the general remark under ‘Section IV’.*

**NORWAY****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☐

The Norwegian Government is responsible for the protection of the human rights of all citizens, including members of armed forces. The Norwegian Ministry of Defence is responsible for the implementation of the particularities relating to the protection of the human rights of the members of the Armed Forces.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

The impact of the recommendation is esteemed to be adequate, as its content is already part of national law.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☒

The human rights of the members of the armed forces in Norway are already covered by national law. Seeing as the rights evoked in the recommendation already exist under our current laws, no specific measures have been adopted after the adoption of the recommendation.

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

None.

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☒

As mentioned under question I.1 it is the Norwegian Ministry of Defence who in part is responsible for the protection of the human rights of members of the Armed Forces.

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

As mentioned under question I.3 the rights evoked in the recommendation already exist under our current laws, therefore there was no need to organize specific events to ensure the dissemination of the recommendation.

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

II.4 To which authorities has the Recommendation been distributed?

- II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒
- II.6 Has the Recommendation been translated? Yes ☐ No ☒
- II.7 If not, is this foreseen? Yes ☐ No ☒
- II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

- A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐
- A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

The regular penal legal system (penal law and criminal procedural law) naturally applies to members of the armed forces, as to any other citizen. The military penal law applies specifically (militære straffelov).

#### B – Torture and other forms of ill-treatment

- B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐
- B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☒ No ☐
- B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐
- B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

All military personnel are informed of their duty to report any allegation of such treatment. Examples of measures in place are the Ombudsmann for the Armed Forces serving under the

Parliament, or simply the officers in charge on the base which have particular responsibility when they're on duty (vaktkommandør and daghavende officer). As what regards conscripts, they have an elected representative to whom they can transmit any such complaints personally ("tillitsmann"). You also find elected representatives of employees in every office in the Armed Forces, to whom one can transmit any complaints of the working environment (Verneombud). There is also the possibility to place anonymous complaints either written or oral (to a call center).

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service?

Yes ☒ No ☐

Until this summer (1<sup>st</sup> July 2012) one could apply for "siviltjeneste" / civil service instead of military service. This alternative is now phased out and those who do not want to complete a regular military service have to apply for a dispensation from military service based on reasons of conscience ("fritak fra militærtjeneste av overbevisningsgrunner", see militærnektekterloven § 1).

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Disiplinærloven ('Disciplinary law'), entered into force on 1<sup>st</sup> January 1989.

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces?

Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18?

The same legal framework applies to members of armed forces under the age of 18 as to other citizens under the age of 18. According to the procedural penal law (Straffeprosessloven § 174) the police may detain persons under 18 if this is of essential importance ("særlig påkrevd").

Yes ☒ No ☐

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?

Yes ☒ No ☐

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify.

Yes ☐ No ☒

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the

Yes ☒ No ☐

Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☒

F.3 Does your country have military courts? Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home NO they are placed in military bases in Norway but they are entitled to a certain amount of travels home free of charge during their posting, and that posting of professional members far from their family and home is not used as a disciplinary punishment YES? Yes ☒ No ☒

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

One example is the fact that you have "family coordinators" on most bases, whose job is to facilitate contact between the families and the member of the Armed Forces. You also have very good financial aid systems when it comes to visiting family outside of the base (the army covers all travel expenses for either the spouse or the soldier/officer for up to 40 travels/year). The army also organizes therapy sessions for couples, or 'family days' where the entire family is invited on the base.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, Yes ☒ No ☐

please provide examples. If not, please explain why and whether any measure is in preparation.

A. Legal framework:

- Directive on the adjustment for religious exercise in the armed forces («Direktiv vedrørende tilrettelegging for religionsutøvelse i forsvaret») from 2001. This directive treats regulations on diet, religious symbols worn with uniforms as well as religious holidays. (it is currently being updated and will be reissued in 2013).
- Guidelines for the service corps in the armed forces relating to the provisioning of the army regulating alternative diets in the armed forces from 2008.
- Agreement for the army chaplains regulating the role of army chaplains in the free exercise of religions other than Christianity from 20.may 2011.

B. Examples from the above listed framework:

- Diet: Alternative diets shall be offered to personnel that of religious or other reasons cannot eat the regular meals offered. This also applies on military exercises.
- Religious symbols: Religious symbols allowed with uniform in the Armed Forces are linked to the larger officially registered religious communities in Norway. The right to wear and the restrictions in using them are independent of personnel categories. The permitted symbols may be used with all orders of uniform and in most types of military duties. The unit commander will consider whether the use of such symbols may jeopardise requirements regarding health, security and operational effectiveness. Possible restrictions in the use of permitted religious symbols will have to be assessed objectively on a case to case basis. The following joint rules apply to all religions: Hair and beard shall be well groomed. Pendants, necklaces and the likes shall be worn invisibly under the uniform.
- Regulations pertaining to the various religions:

- **Islam**

Female Muslim soldiers may wear shirts with long sleeves though the rest of the unit wears shirts with short or rolled up sleeves. Alternatively a long sleeve undershirt in black colour may be used under the uniform shirt.

Wearing a tight Hijab, following the shape of the head, is allowed but not a loose fitting one. The colour of the hijab is to be plain patterned black without decoration. Hijab does not replace military headgear and shall therefore be used under the ordinary military headgear.

Niqab, jilbab, burka and other clothing concealing the face and/or the uniform is not permitted.

- **Sikhism**

Long hair shall be worn in a knot either on top of the head or at the neck. The knot may be covered by a turban or a patka. Turban may replace other military headgear. Normally it shall be in the same colour as the unit's headgear. The colour of the headband of the turban shall be black. Headgear badge shall be fitted just above the triangle of the headband. Wearing a helmet or other protective equipment is not always compatible with the use of a turban. In such cases a patka may be worn. If so, the colour of the patka shall be black, plain patterned. Patka does not replace military headgear. An iron bangle (bracelet) may be worn on the right wrist and is permissible to wear as long as it does not come in conflict with health and security and operational effectiveness.

A symbolic knife may be worn over a shirt. When jacket is used, the knife is worn under the jacket. Carrying a knife in public is done according to the local police regulations.

- **Judaism**

Male members of the Jewish faith may wear a black, plain pattern kippa without ornaments under military headgear or alone when military headgear is not used. Kippa does not replace military headgear.

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☐ No ☒

H.2.2 If not, please explain why and whether any measure is in preparation.

See the reply under question C.1.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

See answer to H.1

Other examples: Time off from military service usually follows National public holidays (Christian holidays). Each soldier/officer is entitled to the same amount of days off duty, but the commander may accord additional days off for specific religious celebrations.

Chapels, praying and quiet rooms: The armed forces may lend out their chapels to other Christian communities. The army chaplain shall also assist in finding suitable venues on base for other religions.

### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

Sikkerhetsloven ('law on safety') which provides restrictions on the freedom of expression when it comes to for instance the handling of classified documents.

### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐



J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No ☒

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☐ No ☒

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☒ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Likestillingsloven ('law on equal status' from 1978).

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Likestillingsloven ('law on equal status' from 1978). Especially § 8a. Arbeidsmiljøloven ('law on working environment'). Especially chapter 13 on the protection against discrimination.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

Arbeidsmiljøloven ('law on working environment'). Especially chapter 13 on the protection against discrimination.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? See T.4. Yes ☒ No ☐

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☒ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☒ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☒

Personnel under the age of 18 can apply for membership in the “Heimevernsungdom” (‘Home Guard Youth’). Membership in the Home Guard Youth is a part time activity with meetings and outdoor exercises conducted mainly during evenings and weekends. They have the status of non-combatants and cannot undergo training in combat or fighting, or in the use of heavy weapons. Most of their training relates to physical exercise, first aid and outdoor-life.

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☐ No ☒

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

This is among others regulated by the Chief of Armed Forces directive on notification/reporting (Varslingsdirektivet). Employees have a duty to inform their superiors, a specially elected representative (“verneombud”) or other public services of any misconduct such as discrimination, bullying, etc. These duties also derive from legal duties (“Arbeidsmiljøloven”, ‘law on working environment’).

#### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

As mentioned earlier, the principles set out in the recommendation are already complied with in national legislation.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

It depends on the answers in this questionnaire. Those countries that do not already provide the same level of protection as the recommendation could be subjected to a follow-up questionnaire in the future in order to see whether any measures have been taken.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

--

**POLAND****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☒

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☒ No ☐

Pursuant to the adoption of the recommendation, the promotion and the protection of the human rights of the members of armed forces has been incorporated in military training programmes, including the civil education programme for all members of the Polish Armed Forces.

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

No obstacles have been encountered.

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☒ No ☐

Military schools and field commanders of military units.

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☒ No ☐

In march 2011, the Human Rights Defender (Ombudsman) arranged a special meeting on the meaning of the Recommendation to the personnel of the Polish Armed forces. Apart from that, the President of the Defence Commission of the Sejm (lower chamber of the Polish Parliament) of the Republic of Poland organized a special meeting of the Commission on the abovementioned issue.

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

No obstacles have been encountered.

II.4 To which authorities has the Recommendation been distributed?

The recommendation has been delivered to the Office of the Human Rights Defender, to the Sejm of the Republic of Poland and to the Ministry of National Defence. Then, it has been distributed among field commanders of military units and chiefs ( commanders, directors, commandants) of organizational units of the Ministry of National Defence.

II.5 Has the Recommendation been distributed to members of the Yes ☒ No ☐

armed forces?

- II.6 Has the Recommendation been translated ? Yes ☒ No ☐
- II.7 If not, is this foreseen? Yes ☐ No ☐
- II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

- A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐
- A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐
- A.3 If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

#### B – Torture and other forms of ill-treatment

- B.1 Are there measures in place to protect members of the armed forces from torture or inhuman or degrading treatment or punishment? Yes ☒ No ☐
- B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ No ☒
- B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or ill-treatment? Yes ☒ No ☐
- B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐
- B.5 If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

Due to successful professionalization of the Polish Armed Forces, which has completed in 2010, there are no conscripts. The basic law on military personnel is unified and concerns all soldiers.

#### C – Forced or compulsory labour

- C.1 Is military service compulsory? If so, please indicate whether it is possible to exact another service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☐ No ☒

#### D – Military Discipline

- D.1 Is there a clear legal framework in place governing military discipline in Yes ☒ No ☐

accordance with paragraphs 19-21 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation.

**E- Right to liberty and security**

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

In accordance with the Polish Law, the minimum age for an enlisting individual is 18.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

**F- Right to a fair trial**

F.1 In criminal matters, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

F.2 Are military courts separated from the chain of command? Yes ☒ No ☐

F.3 Are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraph 34 of the Appendix to the Recommendation? Yes ☐ No ☒

**G – Right to respect for private and family life, home and correspondence**

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☐ No ☒

G.2 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☒ No ☐

G.3 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

H.2 Is it possible to grant conscripts conscientious objector status? Yes ☐ No ☒

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☐ No ☒

H.2.2 If not, please explain why and whether any measure is in preparation.

Due to the process of professionalization of the Polish Armed Forces, which has been completed in 2010, the service of conscripts is no longer in effect.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience? Yes ☒ No ☐

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☒ No ☐

I.2 If any, please provide examples of restrictions to the right to freedom of expression.

In accordance with article 26 paragraph 2 of the Constitution of the Republic of Poland as of 1997, the Polish Armed Forces are neutral in political affairs. The law on the protection of classified information (mostly set out in the Statue on the protection of classified information as of 2010) also implies restrictions to the right to freedom of expression, but solely in terms of classified information.

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☒ No ☐

Restrictions may be legally introduced under the Statue on the protection of classified information as of 2010.



K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☒

Pursuant to the Statute on military service as of 2003, participation of soldiers in unions is strictly prohibited. However, the same legal act and appropriate ordinances under it allow of their participation in societies and organizations.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☒

Under article 26 of the Constitution of the Republic of Poland as of 1997, the armed forces of the Republic of Poland are legally obliged to be neutral in political affairs. As a consequence, other legal acts of lesser rank introduce specific restrictions regarding political activity of soldiers, including general ban on participation in political parties, societies or other organizations having political goals

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☒ No ☐

In accordance with Polish law, soldiers have full voting rights. There are, however, certain restrictions regarding election campaign (a soldier has to be granted a temporarily leave of absence with no salary for that period) and if he is elected, he is obliged to leave the armed forces.

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☒ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for the families of members of armed forces, both on the national territory and abroad? Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

P – Remuneration and pension

P.1 Are there measures in place to ensure that men and women in the Yes ☒ No ☐

armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation.

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

The Plenipotentiary of the Prime Minister for equal treatment has been nominated. In the Ministry of National Defence, the Women Rights Defender has been also introduced. Legal measures, e.g. specific provision in General Rules for the Armed Forces, have been successfully applied. The Ministry of National Defence has launched information and education campaign on equal treatment and personal relations in the military environment. Pamphlets and other publications concerning sexual harassment have been widely distributed among soldiers.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

R – Nutrition

R.1 Are there measures in place to ensure that specific dietary needs are taken into account in accordance with paragraph 75 of the Appendix to the recommendation? Yes ☐ No ☒

S – Non-discrimination

S.1 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

No limitations on enlisting are imposed. There are certain limitations with regard to particular types of occupational activities (military positions) due to pregnancy.

S.2 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information and consent of these persons and of their parents or legal guardians? Yes ☐ No ☒

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☒

T.4 Can these persons take part in combat situations? Yes ☐ No ☒

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? Yes ☒ No ☐

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.2 Is international humanitarian law part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, to which authorities can such allegation be brought. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

By the mandate of section 117 of the General Rules for the Armed Forces, each soldier is entitled to press complaints in case of violation of his or her rights. Soldiers are also entitled to press complaints to the Human Rights defender or to the Plenipotentiary of the Prime Minister for equal treatment at any time. In such cases, no official channels are required. Generally, pursuant to the Statue on military service as of 2003, soldiers are entitled to appeal from a decision to the appropriate organ of higher level on the basis of the Code of administrative proceeding as of 1960, however, in cases of arisen from duly, actions may be taken solely through the official channels.

**Section IV – Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

No particular need to introduce new measures. The existing ones are considered fully satisfactory.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

No such need with regard to the Republic of Poland

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

No such issues have been identified.

**PORTUGAL****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which?

Yes ☐No ☒

?

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐Adequate ☐Insufficient ☐Absent ☒

The Portuguese legislation in place prior to the signature of the Recommendation already covered most of these rights. Although most measures apply, up to this date, it's not possible to carry out an impact assessment.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples.

Yes ☐No ☒

Matters relating to human rights are nuclear throughout the training provided as part of the curriculum of most courses in military training.

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Not applicable

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which?

Yes ☐No ☒

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples.

Yes ☐No ☒

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

Not applicable

II.4 To which authorities has the Recommendation been distributed?

The Ministries of Foreign Affairs, Defense, Justice and the General Staff of the Armed Forces, were part of a working group on human rights in the armed forces, which led to the drafting of the recommendation.

II.5 Has the Recommendation been distributed to members of the armed forces?

Yes ☐No ☐

II.6 Has the Recommendation been translated ?

Yes ☐No ☒

II.7 If not, is this foreseen? Yes ☒ No ☐

II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☒

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

The Portuguese legal system (law) already guarantees those measures on equal terms with civilians. The Constitution, the Penal Codes, the Military justice Code, rules of military discipline and Military Status of Armed Forces, are the legal documents that specify these rights and duties.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☒ No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

The rules of military discipline (Orgânico Law n.º2/2009, of July 22<sup>th</sup>) contain the rights and duties of the military regarding these matters.

#### C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military Yes ☐ No ☒

service, and which are the differences in nature and duration of such service?

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

There are the Military justice Code (Law 100/2003, of november 15<sup>th</sup>) and the rules of military discipline (Orgânico Law n.º2/2009, of july 22<sup>nd</sup>). Since 2003, military courts work only in time of war, out of these situations special civil courts try military crimes.

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces’ civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☒

Not applicable

F.3 Does your country have military courts? Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is “yes”, are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Yes ☐ No ☐

## Recommendation?

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☒ No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

The Portuguese Armed Forces members have the same Constitutional protection and rights concerning their private and family life, home and correspondence, as normal citizens. The Armed Forces provide through their internet, national scope and internal documentation, and the information necessary for the effective enjoyment of parental leave and other matters concerning the legislation applicable to them. For instance the army provides means of communication to their military so that they are able to communicate with their relatives when they are on missions outside the national territory. Any correspondence sent to the address of any branch of the Armed Forces, is not open and delivered to the addressee only. Also medical confidentiality is respected for all the medical data of any military.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

The law gives freedom of religion to armed forces members. Regardless of their confession the state guarantees religious assistance (Decree Law n.º 251/2009, of september 23<sup>rd</sup>). Each branch of the armed forces has a religious assistance service.

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☒ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒  
Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

There are no measures to be implemented.

It should be noted that, according to current legislation, the military have the right to ask to leave the Armed Forces.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights?

Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section “H” of the Appendix to the Recommendation.

Nothing to report.

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces?

Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

The Portuguese Constitution establishes in its Article 270<sup>o</sup>, the possibility of restrictions to the right to freedom of expression, implemented in the National Defense Law.

The National Defense Law (Organic Law n.º 1-B/2009, of July 7<sup>th</sup>) concerning the freedom of speech states that the military, in active service, have the right to make public statements about any subject, with the reservation status of their own military condition, provided they do not endanger cohesion and discipline of the armed forces, nor the politics, party and syndical exemption duty of their members.

The military in active service are subject to confidentiality duties regarding matters covered by judicial secrecy or privilege of State and by other classification systems, the facts about the military capacity, the equipment and operational measures that come to their knowledge in the exercise of their functions, as well as the elements contained in data centers and personnel records that cannot be disclosed.

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits?

Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health?

Yes ☒ No ☐

Yes ☐ No ☒



J.3 If so, are there restrictions to this right of access? Please provide examples, if any.

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☒ No ☐

The military associations have the normal conditions of civil associations, with the restrictions contained in the provisions applicable to military, by their Status and the rules of military discipline. The National Defense Law (Organic Law n.º 1-B/2009, of July 7<sup>th</sup>), refers that the military in active service are entitled to form or join any associations regarding they do not have a political party or trade union nature. In Portugal the military form several professional associations. The organic Law n.º 3/2001, of august 29<sup>th</sup>, regulates the right of association of the military. The exercise of associative activities referred to this law cannot, in any way conflict with the duties and legally defined functions or compliance with service missions.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☐ No ☒

The armed forces are at the service of the Portuguese people and are strictly non-partisan. The law states that the military in active service are strictly nonpartisan and cannot use their weapons, rank or their role to intervene in political, party or trade union, consisting it their exemption duty. The military on active duty may attend political party meetings and union legally summoned but cannot speak nor exercise any role in the preparation, organization, or conduct or execution of the decisions taken, and provided that in civilian clothes and do not bear any national or Armed Forces symbol.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples.

Yes ☒ No ☐

In wartime, the military in active service cannot contest elections to organs of sovereignty, self-government of the Autonomous Regions and local authorities, or the European Parliament. In peacetime, the military in active service can apply for the bodies referred by special license granted by the Chief of Staff of the branch to which they belong.

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service?

Yes ☐ No ☐

Not applicable

Q – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☐ No ☒

This measure is included in the developing work of the Plan for Gender Equality in the Armed Forces. The issues to protect the dignity at work are governed by the general law, the sexual harassment comes under Penal Code.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section “Q” of the Appendix to the Recommendation.

The Armed Forces provide their military with mission vacations, specific payments in case of accident and death, in accordance with law requirements. The health care is provided by the Armed Forces Hospital. They are also beneficiaries of their own health system (ADM), which gives access to affordable medicines and medical care in private hospitals, at lower prices.

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

The meals served at military canteens are planned by a dietitian.

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation?

Yes ☒ No ☐

Where appropriate, please provide examples of good practices.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples.

Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge?

Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18?

Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians?

Yes ☐ No ☐

Not applicable

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons?

Yes ☐ No ☐

Not applicable

T.4 Can these persons take an active part in the hostilities?

Yes ☐ No ☐

Not applicable

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out.

Yes ☒ No ☐

Each Branch of the Armed Forces provides training in human rights, preparing its military for missions within this framework on the national territory, in humanitarian operations and military-technical cooperation missions.

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme ?

Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme?

Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme?

Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme?

Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

According article 34<sup>o</sup> to the National Defense Law, the military can complain to the “*Provedor de justiça*” any actions or omissions of public authorities responsible for the Armed Forces, resulting in violation of their rights, liberties and guarantees.  
Also the crimes listed can be brought to normal justice.  
There is no measure in preparation.

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

Nothing to report.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Nothing to report.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

Nothing to report.

**ROMANIA****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☒

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

The members of the armed forces enjoy, in accordance with the constitutional and legislative provisions, the exercise of all rights referred to by the present Recommendation.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes No ☒

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

None

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☒

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

None

II.4 To which authorities has the Recommendation been distributed?

Ministry of National Defence, Ministry of Interior, other armed structures.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☒ No ☐

II.6 Has the Recommendation been translated? Yes ☒ No ☐

II.7 If not, is this foreseen? Yes ☐ No ☐

II.8 How would you assess the visibility of the Recommendation?

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

***The legal framework is provided by the Constitution, the Romanian Penal Code, and all the International Conventions that Romania is part of and by the following specific legislation:***  
 - ***Order of the Minister of National Defense no. MS. 92/2008 for approving the Rules of interior order in unit, (unpublished);***  
 - ***Order of the Minister of National Defense no. M. 26 /2009 for approving the Military Discipline Regulation, published in the Official Gazette of Romania, Part I, no. 187/25 March 2009;***  
 - ***Order of the Minister of National Defense no. MS. 26/2008 for approving the PM. 3 - instructions regarding events in the Romanian Army (unpublished);***  
 - ***Order of the Minister of National Defence no. M 17/2008 for approving the rules of procedure applicable to civilian personnel of Ministry of National Defence (unpublished);***  
 - ***Order of the Minister of National Defence no. M 219/2007 for approving the instructions on the organization and functioning of labour safety and health in the Romanian army, (unpublished).***

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☒ No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

***The legal framework is provided by:***  
***the Constitution;***  
***all the International Conventions that Romania is part of;***

- ***the Romanian Penal Code:***

“...Article 266. - (1) Any person who, having knowledge of the commission of offenses under the criminal law against life or resulted in death of a person, it shall promptly notify the authorities is punishable by imprisonment from 6 months to 2 years or a fine”.

“... Omission of notification

...Article 267. - (1) The public official who, having knowledge of the commission of an offense under the criminal law in connection with the service which it performs its duties, fails to immediately notify the prosecuting authorities is punishable by imprisonment from 3 months to 3 years fine.

(2) When the offense is committed negligently, the punishment shall be imprisonment from three months to one year or a fine.”....

- **the Order of the Minister of National Defence no. MS. 26/2008 for approving the PM. 3 - instructions regarding events in the Romanian Army (unpublished), the Order of the Minister of National Defense no. MS. 92/2008 for approving the Rules of interior order in unit, (unpublished) and the Order of the Minister of National Defense no. M. 26 /2009 for approving the Military Discipline Regulation, published in the Official Gazette of Romania, Part I, no. 187/25 March 2009.**

#### C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service?

Yes ☐ No ☒

**Romania has suspended the compulsory military service starting with 1<sup>st</sup> January 2007, through the Law no. 395/2005 on peacetime suspension of compulsory military service and transition to voluntary military service, published in the Official Gazette of Romania, Part I, no. 1155/20 December 2005.**

#### D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

**The legal framework is provided by:**

- **the Romanian Penal Code;**
- **the Law no. 80/1995 on the military personnel statute, published in the Official Gazette of Romania, Part I, no. 155/20 July 1995;**
- **the Order of the Minister of National Defense no. M. 26 /2009 for approving the Military Discipline Regulation, published in the Official Gazette of Romania, Part I, no. 187/25 March 2009;**
- **the Order of the Minister of National Defense no. M. 76 /2010 for approving RG – 7 Regulation of organization and functioning of the Council of Honor, published in the Official Gazette of Romania, Part I, no. 522 from 27 July 2010;**
- **the Order of the Minister of National Defense no. M. 153 /2005 for approving RG – 8 Regulation of Councils Court, (unpublished).**

#### E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces?

Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18?

Yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?

Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

***According to the article 55 of the Romanian Constitution, citizens may be conscripted from the age of 20.  
For military service as soldiers and noncommissioned professionals can be recruited and employed people aged between 18 and 50 years.***

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify.

Yes ☐ No ☒

**F- Right to a fair trial**

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions.

Yes ☐ No ☒

F.3 Does your country have military courts?

Yes ☒ No ☐

F.3.1 If so, are they separate from the chain of command?

Yes ☒ No ☐

F.3.2 If the reply to question F.3 is “yes”, are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation?

Yes ☐ No ☒

**G – Right to respect for private and family life, home and correspondence**

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment?

Yes ☒ No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts?

Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad?

Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐



G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

**The legal framework is provided by:**

- *the Law no. 80/1995 on the military personnel statute, published in the Official Gazette of Romania, Part I, no. 155/20 July 1995;*
- *THE Law no. 384/2006 on the status of professional soldiers and sergeants, published in the Official Gazette, Part I no. 868 of 24/10/2006;*
- *the Law no. 121/2011 on the participation of armed forces in missions and operations outside the territory of the Romanian State, published in the Official Gazette, Part I no. 427 of 17/06/2011.*

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

**According to the article 29 of the Law no. 80/1995 on the military personnel statute, religious membership is free, except those that by law, are contrary to the rules of keeping public order, those which violate morals or affect the profession.**

**Symbols, literature and objects of religious significance may be use by military personnel in an individual manner.**

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☒ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

**Romania has suspended the compulsory military service starting with 1<sup>st</sup> January 2007.**

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

**There are no specific legal provisions regarding this situation, but, according the article 85 of the Law no. 80/1995 on the military personnel statute, it is possible to request to leave the armed forces for reason of conscience/personnel reasons.**

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

***The legal framework is provided by Romanian Constitution and the Law no. 80/1995 on the military personnel statute, published in the Official Gazette of Romania, Part I, no. 155/20 July 1995.***

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

***According the article 29 of the Law no. 80/1995 on the military personnel statute, military personnel may express their political opinions only outside service. The public expression of opinions contrary to the interests of Romania and the armed forces is not allowed.***

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting there from are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No ☒

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

***Military personnel may establish, according the military regulations, various forms of professional associations, scientific-technical, cultural, sporting, recreational or charitable, except unions or associations that are contrary to the chain of command and the military order and discipline.***

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☒

***According the article 28 of the Law no. 80/1995 on the military personnel statute, the active members of the armed forces are not allowed to join political parties or political organizations.***

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☒ No ☐

***According the article 28 of the Law no. 80/1995 on the military personnel statute, the active members of the armed forces are not allowed to run for election as member of local administration, of Parliament or as President.***

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes **X** No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes **X** No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes **X** No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes **X** No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes **X** No ☐

***Through the Order of the Minister of National Defence no. M. 57/2003 for the approval of "M.R.U. 9, measures to implement the national action plan for equality between women and men in the activity of the Ministry of National Defence, "were established specific measures that ensure equal opportunities and treatment between women and men in labour relations and professional activity.***

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes **X** No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes **X** No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

***The legal framework is provided by the Law no. 80/1995 on the military personnel statute,***

***published in the Official Gazette of Romania, Part I, no. 155/20 July 1995 and the Emergency Ordinance no. 82/2006 on the recognition of merit military personnel engaged in military action, published in the Official Gazette, Part I no. 896 of 03/11/2006.***

**R – Nutrition**

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

- ***Government Ordinance no. 26/1994 regarding the right to nutrition in peace time for the national defence, public order and security system’s personnel, republished in the Official Gazette of Romania, Part I, no. 144 from 9th April 1998;***
- ***Government Decision no. 501/1994 regarding the approval of the nutrition norms, on caloric limits, personnel categories entitled to, and public institutions of the national defence, public order and security system within these norms are applicable (unpublished)***
- ***Government Decision no. 1474/2009 regarding the approval of the nutrition, equipment and technique norms and supplies necessary for nutrition activity, applicable within the institutions of the national defence, public order and security system, during mobilization, war time, siege and emergency situations;***
- ***Instructions regarding the militaries nutrition in Ministry of National Defence during peace time, approved through the Order of the minister of national defence no. M.S. 96/2008 (unpublished)***
- ***Instructions regarding the application in the Ministry of National Defence of nutrition norms and equipment norms with technique and supplies necessary for nutrition activity during mobilization, war time, siege and emergency situations, approved through the Order of the minister of national defence no. M.S. 79/2011 (unpublished).***

**S – Non-discrimination**

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

**T – Persons under the age of 18 enlisted in the armed forces**

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by who is such training activities carried out. Yes ☒ No ☐

***International Humanitarian Law Centre is a structure specialized in providing IHL training for Romanian Armed Forces, through the dissemination of specific information, the integration of international treaties in internal legal acts and by publishing and disseminating related publications.***

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

***Law no. 571/2004 on protection of personnel in public authorities, public institutions and other units who reports violations, published in the Official Gazette, Part I no. 1214 of 17 December 2004***

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

None

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

None

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

None

## SAINT-MARIN

### Section I – Étude d'impact

I.1 Une autorité a-t-elle été désignée comme responsable de la mise en œuvre de la Recommandation ? Si oui, laquelle ? Oui ☐ Non ☒

*Le Ministre des Affaires Etrangères a chargé le Commandement Supérieur des Forces Armées (Comando Superiore delle Milizie) de diffuser la Recommandation parmi les Commandements des Forces Armées respectives.*

I.2 Comment évalueriez-vous l'impact de la Recommandation sur les droits de l'homme des membres des forces armées dans votre pays ? Merci de motiver votre réponse.  
Pleinement satisfaisant ☐ Adéquat ☒ Insuffisant ☐ Inexistant ☐

*La Recommandation sur les droits de l'homme des membres des forces armées a été diffusée parmi les destinataires et ultérieures mesures plus efficaces seront individuées*

I.3 Des mesures spécifiques pour la promotion et la protection des droits de l'homme des membres des forces armées ont-elles été adoptées suite à et en application de l'adoption de la Recommandation ? Si oui, merci de donner quelques exemples. Oui ☐ Non ☒

*Saint-Marin a ratifié le Protocole à la Convention relative aux droits des enfants concernant l'implication d'enfants dans les conflits armés (Décret n.116/2011), mais cette mesure n'est pas une conséquence directe de l'adoption de la Recommandation*

I.4 Si des obstacles ont été rencontrés lors de la mise en œuvre de la Recommandation, de quels obstacles s'agit-il ?

*Les corps militaires de la République de Saint Marin sont : la « Guardia di Rocca », la Gendarmerie, la Bande militaire, la Garde du Grand Conseil Général.*  
*La discipline est contenue dans la Loi n. 15/1990 «Règlement Organique et Discipline des Corps Militaires» et les Règlements des Corps (Loi n.131/1987 et Loi n.100/1997 pour la Gendarmerie ; Loi n.132/1987 et Loi n.99/1997 pour la Guardia di Rocca ; le Décret n.62/1997 pour la Bande militaire ; la Loi 17 juin 1882 pour la Garde du Conseil).*  
*Pour tous les Corps le recrutement est volontaire, leur service est fourni dans le territoire de la République et ils n'ont jamais participé à des conflits armés en conformité avec l'article 1 de la Déclaration des droits des citoyens et des principes fondamentaux de l'ordonnement de Saint Marin de 1974 (la République refuse la guerre comme instrument de résolution des disputes entre les Etats...).*  
*Les droits garantis par la Déclaration de 1974 (qui rappelle aussi la Convention Européenne des droits de l'homme à l'article 1) concernent aussi les membres des forces armées (droit d'égalité et de non discrimination art.4 ; droits inviolables de la personne humaine art.5 ; libertés civiles et politiques, de domicile, d'association, de conscience, de religion art.7 ; droit d'électorat aux conditions prévues par la loi art.7 ; droit de former des partis politiques et des syndicats art.8 ; droit au travail, à une rétribution juste, au repos hebdomadaire, grève, à la sécurité sociale art.9 ; droit à la propriété art.10 ; droit au développement de la personnalité des jeunes art.11 ; protection de la famille art.12 ; droit au procès équitable art.15).*  
*Il ne s'agit pas de véritables obstacles à la mise en œuvre de la Recommandation, mais la présente situation juridique explique le fait que, dans certains domaines, des mesures spécifiques et des bonnes pratiques particulières n'ont pas été adoptées pour les membres des forces armées.*

## Section II – Diffusion de la Recommandation

II.1 Une autorité a-t-elle été désignée comme responsable de la diffusion de la Recommandation ? Si oui, laquelle ? Oui ☒ Non ☐

*Voir réponse 1.1.*

II.2 Des événements spécifiques ont-ils été organisés en vue de la diffusion de la Recommandation ? Si oui, merci de donner quelques exemples. Oui ☐ Non ☒

II.3 Si des obstacles ont été rencontrés lors de la diffusion de la Recommandation, de quels obstacles s'agit-il ?

II.4 Après de quelles autorités la recommandation a-t-elle été distribuée ?

*Voir réponse 1.1.*

II.5 La Recommandation a-t-elle été distribuée aux membres des forces armées ? Oui ☒ Non ☐

II.6 La Recommandation a-t-elle été traduite ? Oui ☒ Non ☐

II.7 Si non, est-il prévu de la traduire ? Oui ☐ Non ☐

II.8 Comment évalueriez-vous la visibilité de la Recommandation ?  
Plinement satisfaisante ☐ Adéquate ☒ Insuffisante ☐ Inexistante ☐

## Section III – Mise en œuvre des dispositions spécifiques

### A – Droit à la vie:

A.1 Des mesures ont-elles été mises en place pour garantir une enquête indépendante et effective dans tous les cas de mort suspecte ou de violation alléguée du droit à la vie d'un membre des forces armées ? Oui ☐ Non ☒

A.2 Des mesures ont-elles été mises en place pour encourager le signalement d'actes attentatoires au droit à la vie des membres des forces armées et protéger les personnes qui signalent l'existence de tels actes contre toutes représailles ? Oui ☐ Non ☒

A.3 Merci de bien vouloir donner des informations sur le cadre légal de ces mesures et des exemples de mesures en place. Si vous avez répondu « Non » à une ou plusieurs des questions ci-dessus, merci de bien vouloir expliquer pourquoi de telles mesures ne sont pas en place et d'indiquer si des mesures sont en cours de préparation.

*Les membres des Corps militaires de Saint Marin n'ont jamais participé à des conflits armés, donc des mesures spécifiques – sauf les garanties reconnues pour le droit à la vie de chaque homme – n'ont pas été adoptées.*

B – Torture et autres mauvais traitements

B.1 Des mesures ont-elles été mises en place pour protéger les membres des forces armées de tortures ou d'autres peines ou traitements inhumains ou dégradants ? Oui ☐ Non ☒

B.2 Des mesures spécifiques ont-elles été mises en place pour les catégories plus vulnérables, telles que par exemple les appelés ? Oui ☐ Non ☒

B.3 Des mesures ont-elles été mises en place pour garantir une enquête indépendante et effective dans toutes les allégations d'actes de torture ou d'autres mauvais traitements, ou lorsque les autorités soupçonnent que c'est le cas, sur la base d'éléments raisonnables? Oui ☐ Non ☒

B.4 Des mesures ont-elles été mises en place pour encourager le signalement d'actes de torture ou d'autres mauvais traitements et protéger les personnes qui signalent l'existence de tels actes contre toutes représailles ? Oui ☐ Non ☒

B.5 Merci de bien vouloir donner des informations sur le cadre légal de ces mesures et des exemples de mesures en place. Si vous avez répondu « Non » à une ou plusieurs des questions ci-dessus, merci de bien vouloir expliquer pourquoi de telles mesures ne sont pas en place et d'indiquer si des mesures sont en cours de préparation.

*La République de Saint Marin, par la Loi n.8/1953 a adhéré aux Conventions de Genève (12 août 1949) pour la protection des victimes des conflits : Convention relative au traitement des prisonniers de guerre; Convention pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne; Convention pour l'amélioration du sort des blessés, des malades et des naufragés des forces armées sur mer; Convention relative à la protection des personnes civiles en temps de guerre.*

C – Travaux forcés ou obligatoires

C.1 Le service militaire est-il obligatoire ? Si oui, peut-on effectuer un autre service à la place du service militaire obligatoire et quelles sont les différences en nature et durée de cette autre forme de service ? Oui ☐ Non ☒

*A Saint Marin n'existe pas un service militaire obligatoire, ni un service civil obligatoire; le service militaire est exclusivement volontaire. La Loi n.15/1990 a prévu un cas de mobilisation générale qui ne s'est jamais vérifié dans l'histoire et que la République s'est engagée à abolir avec la Déclaration annexe à la ratification du Protocole à la Convention relative aux droits des enfants concernant l'implication d'enfants dans les conflits armés (Décret n.116/2011)*

D – Discipline militaire

D.1 Existe-t-il un cadre légal défini organisant le système de discipline militaire conformément aux paragraphes 19-21 de l'Annexe à la Recommandation ? Si oui, merci de bien vouloir indiquer une référence au cadre légal pertinent. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☒ Non ☐

*Le système de discipline militaire est décrit dans la Loi n.15/1990, qui définit le type et la durée des sanctions disciplinaires (art. 81), les actes ou omissions qui comportent des sanctions disciplinaires (artt. 82-91), l'autorité compétente pour infliger ces sanctions (art. 18), les procédures à suivre dans une audience disciplinaire (art. 94-98), la participation et le droit de défense de l'accusé (art. 92) et le droit d'appel (art. 93).*



E - Droit à la liberté et à la sûreté

E.1 Existe-t-il une procédure prévue par la loi qui traite de la privation de liberté des membres des forces armées ? Oui ☒ Non ☐

*Parmi les sanctions disciplinaires sont prévues l'arrestation de 1 à 15 jours et la détention de 15 à 90 jours (artt. 88 e 89 Loi n.15/1990); de même, le membre d'une force armée peut être jugé pour un crime devant un Tribunal Pénal et condamné à l'incarcération (art. 80).*

E.2 La détention de membres des forces armées âgés de moins de 18 ans est-elle permise ? Oui ☐ Non ☒

*Les membres des forces armées ont toujours au moins 18 ans*

E.2.1 Si oui, les conditions de détention satisfont-elles aux exigences établies au paragraphe 23 de l'annexe à la Recommandation ? Oui ☒ Non ☐

E.2.2 Si la réponse à la question E.2.1 est « Non », merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

E.3 Des limites ou restrictions aux garanties énoncées aux paragraphes 24 à 27 de l'Annexe à la Recommandation sont-elles possibles ? Si oui, merci de spécifier lesquelles. Oui ☐ Non ☒

F- Droit à un procès équitable

F.1 Dans le cadre des procédures qui sont considérées comme pénales au sens de la Convention européenne des droits de l'homme, les membres des forces armées bénéficient-ils de droits et garanties procéduraux dans la même mesure que dans toute procédure pénale contre des personnes civiles, conformément aux paragraphes 28, 30 et 31 de l'Annexe à la Recommandation ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☒ Non ☐

F.2 Existe-t-il un cadre légal défini régissant les restrictions ou exclusions du droit d'accès à un tribunal qui puisse examiner les contestations des membres des forces armées sur leurs droits et obligations de caractère civil ? Si oui, merci de donner quelques exemples de ces restrictions ou exclusions. Oui ☐ Non ☒

F.3 Existent-ils des tribunaux militaires?

*Un organisme composé par des militaires, le Conseil de Discipline, s'occupe du procès disciplinaire* Oui ☐ Non ☒

F.3.1 Si oui, sont-ils séparés de la chaîne de commandement ? Oui ☐ Non ☐

F.3.2 Si la réponse à la question F.3 est « OUI », y a-t-il une différence entre l'organisation et le fonctionnement des juridictions militaires, en comparaison avec les tribunaux civils, en ce qui concerne en particulier les garanties procédurales établies aux paragraphes 33 et 34 de l'Annexe à la Recommandation? Oui ☐ Non ☐

G – Droit au respect de la vie privée et familiale, du domicile et de la correspondance

G.1 Des mesures ont-elles été mises en place pour garantir que les appelés soient affectés près de leurs proches et de leur domicile et que le déploiement de membres professionnels loin de leurs proches et de leur domicile ne soit pas utilisé comme peine disciplinaire ? Oui ☐ Non ☒

G.2 Des mesures ont-elles été mises en place pour permettre aux membres des forces armées affectés à l'étranger de maintenir des contacts privés ? Oui ☐ Non ☒

G.3 Des programmes d'assistance ont-ils été mis en place pour les personnes accompagnant les membres des forces armées affectés à l'étranger ? Oui ☐ Non ☒

G.4 Les membres des forces armées peuvent-ils bénéficier d'un congé parental, d'allocations appropriées pour enfant à charge, d'un accès à des écoles maternelles et d'un système adéquat de santé et d'enseignement pour les enfants ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☒ Non ☐

*Ils ont les mêmes droits que les personnes civiles.*

G.5 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées au respect de la vie privée et familiale, du domicile et de la correspondance, conformément à la Section « G » de l'Annexe à la Recommandation.

*Voir réponse 1.4.*

H – Liberté de pensée, de conscience et de religion

H.1 Des mesures ont-elles été mises en place pour permettre aux membres des forces armées de s'acquitter, dans la mesure du possible, de leurs obligations religieuses ? Si oui, merci d'indiquer quelques exemples. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☐ Non ☐

*La liberté de religion est un principe fondamental et des restrictions déraisonnables ne sont pas autorisées.*

H.2 Les appelés ont-ils la possibilité d'obtenir le statut d'objecteur de conscience ? Oui ☐ Non ☒

H.2.1 Si oui, un service alternatif de nature civile est-il possible ? Oui ☐ Non ☐

H.2.2 Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

*Le recrutement est volontaire*

H.3 Les objecteurs de conscience sont-ils exposés à des sanctions, mesures disciplinaires ou poursuites pénales ? Oui ☐ Non ☐

H.4 Des membres professionnels des forces armées peuvent-ils quitter les forces armées pour raisons de conscience ? Si oui, merci d'indiquer dans quelles conditions et quelle est la procédure, et notamment si de Oui ☐ Non ☐

telles demandes peuvent être réexaminées par un organe indépendant et impartial. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

*Le recrutement est volontaire*

H.5 Des mesures ont-elles été mises en place pour garantir que les appelés et les membres des forces armées soient informés respectivement, du droit à l'obtention du statut d'objecteur de conscience et de celui de quitter les forces armées pour raisons de conscience, ainsi que des procédures disponibles pour les exercer ? Oui ☐ Non ☐

H.6 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées à la liberté de pensée, de conscience et de religion, conformément à la Section « H » de l'Annexe à la Recommandation.

*Voir réponse 1.4.*

#### I – Liberté d'expression

I.1 Existe-t-il un cadre légal défini régissant les formalités, conditions et restrictions au droit à la liberté d'expression pour les membres des forces armées ? Oui ☐ Non ☒

I.2 Si oui, merci de le présenter brièvement, en donnant en particulier quelques exemples des éventuelles restrictions au droit à la liberté d'expression.

*L'article 12 de la Loi n.15/1990 prévoit: «L'Etat dispose de mesures effectives pour sauvegarder et promouvoir le développement de la personnalité des militaires et assurer leur dignité dans l'exercice du service militaire. L'Etat encourage l'élévation culturelle, la formation de la conscience civique et la préparation professionnelle des militaires et dispose les conditions pour l'effective poursuite»*

#### J – Droit à l'accès aux informations pertinentes

J.1 Des mesures ont-elles été mises en place pour garantir que des informations complètes et détaillées sur le recrutement dans les forces armées et les engagements découlant de l'enrôlement soient fournies aux recrues potentielles ? Oui ☒ Non ☐

J.2 Les membres et anciens membres des forces armées ont-ils accès à leurs données personnelles, y compris leurs dossiers médicaux et autres informations sur leur exposition à des situations potentiellement dangereuses à leur santé ? Oui ☒ Non ☐

J.3 Si oui, existe-t-il des restrictions à ce droit à l'accès à l'information? Merci de donner quelques exemples, le cas échéant. Oui ☐ Non ☒

#### K – Droit à la liberté de réunion pacifique et à la liberté d'association avec d'autres

K.1 Les membres des forces armées ont-ils le droit d'adhérer à des associations ou syndicats militaires établis conformément à la loi ? Si oui, merci de bien vouloir indiquer les éventuelles conditions et restrictions à ce droit. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures pour réviser ou lever les restrictions ou interdictions existantes sont en préparation. Oui ☒ Non ☐

*Pas de restrictions.*

K.2 Les membres des forces armées peuvent-ils adhérer à des partis politiques ? Si oui, merci de bien vouloir indiquer les éventuelles conditions et restrictions à ce droit. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures pour réviser ou lever les restrictions ou interdictions existantes sont en préparation. Oui ☒ Non ☐

*Ils ne peuvent pas participer aux manifestations politiques en uniforme*

L – Droit de vote et de se présenter aux suffrages

L.1 Existe-t-il des restrictions aux droits électoraux des membres des forces armées et à l'appartenance dans les forces armées d'un membre se présentant à des élections ou pendant la durée de son mandat ? Si oui, merci de donner quelques exemples. Oui ☒ Non ☐

*Les membres des forces armées ne peuvent pas se porter candidats aux élections politiques (art. 18 Loi n. 6/1996)*

M- Droit de se marier

M.1 Les membre des forces armées ont-ils le droit de se marier et de conclure des partenariats civils conformément aux droits dont jouissent les civils ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☒ Non ☐

N – Droit à la protection de ses biens

N.1 Des mesures ont-elles été mises en place pour garantir que les biens appartenant aux membres des forces armées, y compris les appelés, et consignés lors de leur enrôlement, soient rendus à l'issue de leur service militaire ? Oui ☐ Non ☐

*Les biens des membres des forces militaires ne sont pas consignés lors de leur enrôlement.*

O – Logement

O.1 Des mesures ont-elles été mises en place pour garantir un logement de niveau suffisant pour les membres des forces armées et leurs familles, à la fois sur le territoire national et à l'étranger ? Oui ☐ Non ☐

*Il n'y a pas de restrictions sur le droit de choisir une habitation approprié*

O.2 Si le logement se situe dans une caserne, des dortoirs séparés pour femmes et hommes sont-ils prévus ? Oui ☐ Non ☐

*Il n'y a pas de casernes*

P – Rémunération et pension

P.1 Les membres professionnels des forces armées ont-ils droit à une rémunération leur permettant d'avoir un niveau de vie décent et une pension de retraite suffisante ? Oui ☒ Non ☐

P.2 Des mesures ont-elles été mises en place pour garantir aux hommes et aux femmes membres des forces armées une rémunération égale pour un même travail ou un travail de valeur égale? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☐ Non ☐

*La rémunération est prévue par les Règlements des Corps Militaires (Loi n. 132/1987 et Loi n.99/1997 ; Loi n.133/1987 et Loi n.100/1997), qui prévoient aussi les indemnités, les allocations*

*familiales, le treizième mois et la liquidation de la retraite*

Q – Droit à la dignité, à la protection sociale et à la sécurité au travail

Q.1 Des mesures spécifiques ont-elles été mises en place pour protéger la dignité au travail des membres des forces armées, particulièrement en matière de prévention du harcèlement sexuel ? Si oui, merci d'indiquer le cadre légal pertinent et de donner quelques exemples. Oui ☐ Non ☒  
Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

*Il n'y a pas de mesures spécifiques: aux membres des forces armées il est appliqué le code pénal, en particulier les articles contre la violation de la liberté sexuelle (art. 171) et harcèlement sur le lieu de travail (art.181 bis)*

Q.2 Les soins médicaux fournis au cours d'opérations militaires et en raison d'opérations militaires sont-ils gratuits pour les personnes ayant servi? Oui ☒ Non ☐

*Le système sanitaire national garantit aux membres des forces armées les traitements nécessaires de façon gratuite*

Q.3 Existe-t-il un régime de réparation ou d'indemnités pour les membres des forces armées quittant les forces armées pour raison de blessure suite à leurs fonctions ou en cas de décès au cours de leur service? Oui ☐ Non ☐

*Les membres des forces armées sont assurées pour les dangers et les accidents qui peuvent causer la mort ou l'invalidité (Règlements des Corps)*

Q.4 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées à la dignité, à la protection sociale et à la sécurité au travail, conformément à la Section « Q » de l'Annexe à la Recommandation.

*Voir réponse 1.4.*

R – Alimentation

R.1 Des mesures ont-elles été mises en place pour garantir le droit des membres des forces armées à une alimentation décente et suffisante, en conformité avec la section « R » de l'Annexe à la Recommandation ? Le cas échéant, merci de donner quelques exemples de bonnes pratiques. Oui ☐ Non ☐

*Voir réponse 1.4.*

S – Non-discrimination

S.1 Des mesures ont-elles été mises en place pour garantir que les membres des forces armées puissent jouir de leurs droits et libertés sans aucune discrimination, en conformité avec la Section « S » de l'Annexe à la Recommandation ? Le cas échéant, merci de donner quelques exemples de bonnes pratiques. Oui ☐ Non ☐

*Voir réponse 1.4.*

S.2 Existe-t-il des restrictions à l'accès des femmes dans les forces armées, ou à des types particuliers d'activités professionnelles au sein des forces armées ? Si oui, merci de donner quelques exemples. Oui ☐ Non ☒

S.3 L'orientation sexuelle constitue-t-elle un motif pour empêcher Oui ☐ Non ☒

l'accès aux forces armées, ou pour renvoyer un membre des forces armées?

T – Personnes âgées de moins de 18 ans recrutées dans les forces armées

T.1 Votre législation permet-elle le recrutement volontaire de personnes de moins de 18 ans dans les forces armées? Oui ☐ Non ☒

*Les Règlements des Corps Militaires prévoient que le recrutement volontaire concerne seulement des personnes de plus de 18 ans ; la Loi n.15/1990, disciplinant un cas jamais vérifié de mobilisation générale des citoyens de 16 à 60 ans, va être modifiée*

T.2 Si oui, y a-t-il des mesures en place pour assurer la pleine information des devoirs qui s'attachent au service militaire et le consentement éclairé de ces personnes et de leurs parents ou gardiens légaux ? Oui ☐ Non ☐

T.3 Des mesures spéciales ont-elles été mises en place pour protéger le bien-être physique et psychologique de ces personnes ? Oui ☐ Non ☐

T.4 Ces personnes peuvent-elles participer directement aux hostilités ? Oui ☐ Non ☐

U – Formation

U.1 Des activités de formation visant à acquérir une meilleure connaissance des droits de l'homme par les membres des forces armées sont-elles prévues? Si oui, merci d'indiquer par qui sont-elles menées. Oui ☐ Non ☐

*Des mesures spécifiques n'ont pas encore été établies; les Commandants des Forces Armées vont trouver les formules/moyens/méthodes les plus efficaces pour une meilleure connaissance des droits de l'homme parmi les destinataires.*

U.1.1. Si la réponse à la question U.1 est « Oui »:

U.1.1.1 Le droit international des droits de l'homme fait-il partie du programme de formation ? Oui ☐ Non ☐

U.1.1.2 Les droits de l'homme des membres des forces armées font-ils partie du programme de formation ? Oui ☐ Non ☐

U.1.1.3 La prévention des mauvais traitements et de la discrimination fait-elle partie du programme de formation ? Oui ☐ Non ☐

U.1.1.4 Le droit international humanitaire, y compris les devoirs mentionnés au paragraphe 84 de l'Annexe à la Recommandation, fait-il partie du programme de formation? Oui ☐ Non ☐

U.1.2 Si la réponse à la question U.1 est « Non », merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

V – Allégations de violations des droits de l'homme

V.1 Des mesures ont-elles été mise en place pour garantir aux membres des forces armées le droit de présenter des allégations de violations des droits de l'homme, en particulier en matière de discrimination, harcèlement ou violence, devant un mécanisme indépendant ? Si oui, merci d'indiquer de quelle autorité/mécanisme s'agit-il et quelle est la procédure. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en Oui ☐ Non ☐

cours de préparation.

*Voir réponse 1.4.*

#### **Section IV – Suivi**

IV.1 Quelles mesures recommanderiez-vous pour garantir le respect des principes énoncés dans la Recommandation et dans son Annexe dans les législations et les pratiques nationales?

*La diffusion de la Recommandation et la formation des membres des forces armées peuvent contribuer à l'information concernant leurs droits*

IV.2 Le Conseil de l'Europe devrait-il continuer à examiner périodiquement la mise en œuvre de cette Recommandation ? Si oui, cet examen devrait-il, à l'avenir, se concentrer sur des problèmes spécifiques, et le cas échéant sur lesquels ?

*Le monitoring sur les principes fondamentaux (droit à la vie et à n'être pas soumis à des peines ou traitements inhumains ou dégradants) pour les membres des forces armées impliquées dans les conflits doit être constante*

IV.3 Existe-t-il des questions sur lesquelles la Recommandation et son Annexe devraient être modifiés ou complétés ? Si oui, merci d'indiquer lesquelles.

**SERBIA****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☐

*Not authorized*

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

*Not authorized*

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☐

*Not authorized*

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

*Not authorized*

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☐

*Not authorized*

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☐

*Not authorized*

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

*Not authorized*

II.4 To which authorities has the Recommendation been distributed?

*Not authorized*

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

II.6 Has the Recommendation been translated? Yes ☐ No ☐

II.7 If not, is this foreseen? Yes ☐ No ☐

II.8 How would you assess the visibility of the Recommendation?



Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

*Criminal Code of the Republic of Serbia*

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ No ☒

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

*Civilian structures of the Republic of Serbia are responsible for all criminal offences by SAF personnel*

#### C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☐ No ☒

#### D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in

preparation.

*Not familiar with the Recommendation*

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☐  
N/A

*All SAF personnel are 18 years or older*

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐  
N/A

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

N/A

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? Yes ☐ No ☐  
If so, please specify.

N/A

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☒

F.3 Does your country have military courts? Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐  
N/A

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐  
N/A

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far Yes ☐ No ☒

from their family and home is not used as a disciplinary punishment?

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☐ No ☒

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

*Not familiar with the Recommendation*

#### H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*They take part in religious ceremonies, they celebrate the St. Patron's Day, etc.*

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☒ No ☐ N/A

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☐ No ☐ N/A

H.2.2 If not, please explain why and whether any measure is in preparation.

*Military service in the Republic of Serbia is professional and voluntary.*

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*They can leave the armed forces anytime, without giving explanations.*

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with

section “H” of the Appendix to the Recommendation.

*Not familiar with the Recommendation*

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

*Defined by the Law on the Serbian armed forces*

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ No ☒

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

*With restrictions prescribed by the law on the Serbian armed forces*

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☒

*Regulated by the law on the Serbian armed forces*

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☒ No ☐

*They can vote, but they cannot be elected*

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☒ No ☐

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☐ No ☒

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

<i>Law on preventing harassment at work</i>
---------------------------------------------

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

<i>Not familiar with the Recommendation</i>
---------------------------------------------

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☐ No ☐

<i>Not familiar with the Recommendation</i>
---------------------------------------------

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? Yes ☐ No ☐

Where appropriate, please provide examples of good practices.

*Not familiar with the Recommendation*

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐ N/A

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐ N/A

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐ N/A

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

*Training is given by responsible officers on the unit level*

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☐ No ☐

*Not familiar with the Recommendation*

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

N/A

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed Yes ☒ No ☐

forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

*Each Unit has a designated person for support due to prevention of harassment at work*

#### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

*Not familiar with the Recommendation*

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

*Not familiar with the Recommendation*

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

*Not familiar with the Recommendation*

**SLOVAK REPUBLIC****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☐

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.  
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

*Citizens of Slovak Republic enjoy high standard of human rights treatment on a long-term basis. The same applies to the relationships within the Armed Forces of the Slovak Republic. For this reasons no specific measures were needed to be adopted after the Recommendation on human rights was accepted in 2010.*

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☐

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☐

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

II.4 To which authorities has the Recommendation been distributed?

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☐

II.6 Has the Recommendation been translated? Yes ☐ No ☐



II.7 If not, is this foreseen? Yes ☐ No ☐

II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? X No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? X No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

Although there are no suspicious deaths or violations of the right to life of the members of the Armed Forces of the Slovak Republic, in case anything mentioned above would happen, it is a task and duty under the law of the competent authorities to investigate fairly. As far as exposing member of the armed forces to situations where his life would be avoidably put at risk without a clear and legitimate military purpose shall be taken as a breach of commander's duties set forth by the Military service act, commander is fully responsible for such a breach. According to the Military service act provisions, the member of the Armed Forces of the Slovak Republic shall not be, under any circumstances, persecuted neither punished when making a complaint against commander or any other member of the armed forces. Violation of these provisions is considered a breach of the duties of the professional soldier for which a member of the Armed Forces of the Slovak Republic is disciplinary responsible.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? X No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ X

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? X No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? X No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

Torture, inhuman and degrading treatment is strictly prohibited under the Constitution of the Slovak Republic. Any violator is fully criminally responsible for any act that would constitute any of the crimes mentioned above. When reporting such violation, the member of the Armed Forces of the Slovak Republic shall not be persecuted neither punished, otherwise the violator shall face disciplinary punishment or even criminal punishment, when such act would be classified as a crime under the Criminal Code. There is no special regime for such categories as conscripts as there is no compulsory military service in Slovak Republic. All of the members of the Armed Forces of the Slovak Republic are professional soldiers and professional soldiers who prepare for the military service, such as cadets.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service?

Yes ☐ X

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation.

Yes X No ☐

The provisions of the Military service act (no. 346/2005) concerning military discipline deal with all the details under which a member of the Armed Forces of the Slovak Republic is responsible for a breach of military duties. Specific provisions of the Act provide that a member of the Armed Forces of the Slovak Republic is disciplinary responsible for a culpable violation and infringement of his duties which are laid down by law. Professional soldier shall not be punished twice for the same conduct. Penalty may be imposed only if oral hearing is not sufficient in order to restore military discipline. Every disciplinary measure shall be imposed within 30 days from the date, when the commander found out that a violation of a duty was committed but not later than year from the violation. In this case every member of the Armed Forces of the Slovak Republic is entitled to cooperate fully, to comment all the allegations taken against him, to defence himself and propose all the evidence that would support his defence. Every disciplinary penalty is obliterated within one year. Right to appeal is guaranteed.

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces?

Yes ☐ X

E.2 Is it lawful to detain members of armed forces under the age of 18?

Yes ☐ X

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation?

Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

Deprivation of liberty is under Slovak law admissible when all the conditions prescribed by law are fully met. There is no special regime for the members of the Armed Forces of the Slovak Republic, i.e. every deprivation of liberty can be executed only by competent authority within the criminal procedure. Members of the Armed forces of the Slovak Republic are subjects to the general judicial jurisdiction.

It is against the law to recruit persons under 18 years of age to the Armed forces of the Slovak Republic.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? Yes ☐ X  
If so, please specify.

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. X No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ X

F.3 Does your country have military courts? Yes ☐ X

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☐ X

The Armed Forces of the Slovak Republic are fully professional, i.e. there are no conscripts serving compulsory.

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? X No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? X No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare X No ☐

benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation.

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation.

X No ☐

There are two kinds of religious/spiritual service available for the members of the Armed Forces of the Slovak Republic and their families – one for the Roman-catholic believers and one for the members of any of 11 participating churches and religious communities represented by the Ecumenical Council of Churches in the Slovak Republic. Under the Military service act commanders, in cooperation with military religious personnel, are obliged to create all the conditions needed for spiritual life and religious activities of the members of the Armed Forces of the Slovak Republic. On the other hand, members of the Armed Forces of the Slovak Republic, as a part of their fundamental rights, have right for appropriate spiritual care and are entitled to access all the religious activities as far as it does not conflict with legitimate needs of the armed forces. In general, all the people living within the territory of Slovak Republic enjoy their constitutional right for freedom of religion.

H.2 Do conscripts have the rights to be granted conscientious objector status?

X No ☐

H.2.1 If so, is an alternative service of a civilian nature available?

X No ☐

As far as there is no compulsory military service in Slovak Republic, described situation may arise at the time, when the Parliament declares hostilities or war. Under the separate Act on alternative service at the time of war, every person that may be subject to conscription has, under the conditions set forth by the law, right to deny the "emergency" military service for religious reasons or reasons of conscience.

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions?

Yes ☐ X

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Yes ☐ X

There is no special option to quit the Armed Forces of the Slovak Republic for reasons of conscience. The member of the Armed Forces of the Slovak Republic has a right to quit the armed forces if he requires. In case the professional soldier served the minimal time period set out in the contract, his right to quit the armed forces is absolute. In case he/she did not serve required time periods, it is upon the competent commander to decide whether to grant the request. Procedure stated above is

taken for economic reasons and for planning personnel purposes. However, the issue is as well as several others discussed by competent ministerial and military bodies as the valid Military service act is a subject to analysis and is currently in a pre-legislative process.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☐ X

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☐ X

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

Within the Military service act there is no legal framework that deals with the right to freedom of expression of the members of armed forces. However, there are no specific legal limitations to execute this right by the members of the Armed forces of the Slovak Republic when compared to civilians.

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? X No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? X No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☐ X

#### K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☐

Joining trade unions is currently forbidden for the members of the Armed forces of the Slovak Republic. Similar to the issue stated in the question H.4, valid restrictions to the right of the professional soldiers to join trade unions is analysed nowadays within the legislative changes of the

## Military service act.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ X

The members of the armed forces as well as the policemen in Slovak Republic are not entitled to join political parties. This restriction is currently not planned to be a subject to change.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. X No ☐

It is prohibited by the Military service act to be elected to certain functions at the time when being member of the Armed Forces of the Slovak Republic. If elected for president, member of national and European parliament, appointed a member of the Government of the Slovak Republic, elected for a member of municipal parliament and mayor (if this position is paid) etc., professional soldier would be released from the membership. Similar restrictions apply to all state employees in Slovak Republic.

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. X No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☐ X

There is no legal framework within which a private property of the members of the Armed Forces of the Slovak Republic could be retained.

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? X No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☐ X

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? X No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. X No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation.

X No ☐

The issue of protection of dignity at work is covered by single part of the Military service act that deals with the fundamental rights of the members of the Armed forces of the Slovak Republic. Failure to ensure the protection of human dignity at work may result in disciplinary punishment of the commander. Certain forms of violation of the right to dignity (such as sexual harassment) remain as well criminal under the Criminal Code, in case conditions set forth by the law are met.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons?

X No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service?

X No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

X No ☐

Under the Military service act the commanders shall ensure that the members of the Armed Forces of the Slovak Republic are provided with food that meets all the nutritional standards. Warm meal as well as appropriate drink belongs to professional soldier every time his/her shift lasts for at least 4 hours a day. When the shift lasts for at least 11 hours a day the commander may provide for another warm meal. The option becomes a duty in case when the working shift lasts for 12 hours a day or more. When the shift lasts for at least 17 hours a day, professional soldier may be given another warm meal.

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation?

X No ☐

Where appropriate, please provide examples of good practices.

The whole principle of equal treatment covered separately by the Military service act for military personnel is based on the general Anti-discrimination act that guarantees equal execution of rights and fundamental freedoms to every person living within the territory of Slovak Republic. Any discrimination based on the sex, race, colour or religion is strictly prohibited as it conflicts with the articles of the Constitution of the Slovak Republic. Professional soldier who believes his/her rights were violated by breaching the principle of equal treatment is free to seek legal protection by the

court. The Military service act protects explicitly every person from unlawful treatment when willing to have his/her claims reviewed by the court.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ X

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ X

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ X

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. X No ☐

Training programmes aimed at increasing the knowledge of human rights and international humanitarian law by the members of the Armed forces of the Slovak Republic are carried out by the General Staff of the Armed forces of the Slovak Republic and by the Armed Forces Academy, depending on specific issues and whether training programme is targeted on “already-made” professional soldiers or those who are at the preparation process.

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? X No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? X No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? X No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? X No ☐

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in X No ☐



particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

Under the Military service act citizen, when joining the Armed Forces of the Slovak Republic, and professional soldier who believes his rights were violated by breaching the principle of equal treatment has a right to have his claims examined by the impartial and independent court. Under the particular articles of Military service act the member of the Armed Forces of the Slovak Republic shall not be persecuted neither punished when making a complaint against commander or any other member of the armed forces. Violation of these provisions is considered a breach of the duties of the professional soldier for which a member of the Armed Forces of the Slovak Republic is disciplinary responsible.

## Section IV - Follow-up

*IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?*

--

*IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?*

--

*IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.*

--

**SLOVENIA****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No **x**

The authority for the implementation of the Recommendation was not directly assigned, although there has been some measures taken in accordance to assure the equal opportunities policy. The policy is making up a comprehensive policy of the country, organization and individual. As such, the policy of ensuring equal treatment of an individual, irrespective of his personal situation, is vital for the functioning of modern and democratic societies. The basic principles of the Constitution of the Republic of Slovenia do not permit any form of discrimination, and the Constitution also provides mechanisms to eliminate the consequences of violations to human rights and basic freedoms.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate **x** Insufficient ☐ Absent ☐

Our national legislation provides a good framework for enjoying the rights guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as for protection of the human rights of members of the armed forces; therefore, the Recommendation impacts just like an affirmative factor. We could emphasize the positive impact of military education & training system which includes the most important elements of human rights issue

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No **x**

In parallel with the professionalization of the Slovenian Armed Forces (SAF), a government project PROVOJ was launched to include a subproject on promoting the principles of equal opportunities also within the SAF. Considering international and national legislation, the goal of this subproject was primarily to improve the understanding of issues concerning discrimination in society, improvements to the functioning of the established equal opportunity system and contribution to the development of moral, legal and political values on the necessary anti-discrimination campaign.

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

/

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No **x**

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No **x**

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

/

II.4 To which authorities has the Recommendation been distributed?

/

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

II.6 Has the Recommendation been translated? Yes ☐ No ☒

II.7 If not, is this foreseen? Yes ☒ No ☐

II.8 How would you assess the visibility of the Recommendation?

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

There are some internal measures which are undertaken in a case of independent and effective investigation although all measures are in a legal framework of civilian legislation. In this case the civil bodies for investigation and prosecution are involved.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☒ No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

Rules of the SAF in accordance with Defence Law and Law on Service in the SAF determine all aspects of military behaviour, culture and responsibility in the chain of lead and command.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☐ No ☒

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

The military discipline is regulated in the Defence Law and Law on service in SAF.

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

There is limitation by the Defence Law, that person under 18 can not be member of the SAF.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

Detention is the responsibility and the competence of the Military police. Procedures and measures are regulated by the same legislation as for the civilians.

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☒

/

F.3 Does your country have military courts? Yes ☐ **No x**

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐

**G – Right to respect for private and family life, home and correspondence**

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? **Yes x** No ☐

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? **Yes x** No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? **Yes x** No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. **Yes x** No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

The national legislation of labour assure for each member and his/her family to perform rights and responsibilities in the area of social, health, education, etc areas. With the Law on the SAF the system for "comprehensive care for the members of the SAF" was introduced, which include the various areas of help, consulting, etc.

**H – Freedom of thought, conscience and religion**

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. **Yes x** No ☐

H.2 Do conscripts have the rights to be granted conscientious objector status? **Yes x** No ☐

H.2.1 If so, is an alternative service of a civilian nature available? **Yes x** No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

Conscientious objector is still defined by the law, although the execution is postponed due to the fact that in Slovenia military service is not compulsory.

H.3 Are conscientious objectors exposed to sanctions, disciplinary Yes ☐ **No x**

measures or judicial prosecutions?

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

Professional members can break as per agreement the contract, independently on the reason.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights?

Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces?

Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

The right to freedom of expression is limited by matters of national security and topics related to performing military duties, both of which are provided by the national legal framework.

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting the refrom are provided to potential recruits?

Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health?

Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any.

Yes ☐ No ☒

#### K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation.

Yes ☒ No ☐

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing

Yes ☐ No ☒

restrictions or prohibitions is in preparation.

This is limited by the national legislation.

*L – Right to vote and to stand for election*

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☐ No ☒

*M- Right to marry*

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*N – Right to protection of property*

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☒ No ☐

*O – Accommodation*

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

*P – Remuneration and pension*

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*Q – Right to dignity, health protection and security at work*

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section “Q” of the Appendix to the Recommendation.

This area is regulated by different legislation such as Health and Safety Law, Labour Law, ...

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. **Yes** x **No** ☐

All members of the SAF are in title to receive free meal prepared in accordance with standard HACCAP.

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? **Yes** x **No** ☐  
Where appropriate, please provide examples of good practices.

A special mention deserves the employment legislation that needs to comply with national guidelines in key areas, in particular the provision of equal opportunities for women and men in all domains of social life, in the work environment which respects the dignity of all employees and a greater role and involvement of women in all areas and levels of the armed force structure, and in women’s engagement in human resource processes , including recruitment, promotion, remuneration, education and others.

General and employment-related legal documents:

- Equal Opportunities for Women and Men Act,
- Resolution on the National Programme for Equal Opportunities for Women and Men 2005-2013,
- Periodical Plan for the Implementation of the Resolution on the National Programme for Equal Opportunities for Women and Men 2010 and 2011,
- Decree on Measures for Protecting the Worker's Dignity at Work in State Administration,
- SOP Procedures and Measures for Protecting Dignity in the SAF,
- SOP Procedures in Cases of Alleged Mobbing in the SAF,
- Draft Action Plan of the RS Government for the Implementation of UN Security Council Resolutions 1325 and 1820,
- Directive for the Implementation of UN Security Council Resolutions 1325 and 1820 on Women, Peace and Security,
- Military Code of Ethics of the Slovenian Armed Forces,
- Defence Act,
- Service in the Slovenian Armed Forces Act,
- Civil Servants Act,
- Employment Relationship Act,
- Decree on Internal Organisation, Posts Classification, Posts and Titles in the Bodies of Public Administration and Justice.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. **Yes** ☐ **No** x

There are no forbidden areas for female soldiers nor programmes or disciplines excluding women in the SAF. The equal opportunities policy thus allows for representation of women in all SAF units and commands at all levels.



S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

Upgrading of education programmes with the contents deriving from UN Security Council Resolutions 1325 and 1820, with issues regarding professional competence for intervention, mediation and work with socially underprivileged groups, as well as topics promoting the importance of equal opportunities, protection of dignity etc. Within the framework of comprehensive care for SAF personnel, several workshops on personnel issues were organized. The feedback received proves the importance of building and maintaining interpersonal relationships as an important factor of positive psycho-social environment.

In accordance with this the leadership programme for generals, admirals, officers and with the exception for civilians was adopted. This programme enables to gain and to upgrade of knowledge to perform all spectrum of task in national as well in international society. Program is a base for all members of the SAF which are preparing to undertake the highest position within the SAF. Separate levels of military education are also integrated into a public education system.

U.1.1. If the reply to question U.1 is "YES":

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is "NO", please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an Yes ☒ No ☐

independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

Internal regulation in the SAF determines procedures and the authority for execution of human dignity rights. All measures are in cohesion with national legislation.

#### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

The Slovenian national legislation and practice are already complied with the Recommendation and in its Appendix.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes, the Council of Europe should examine periodically the implementation of this Recommendation. It is necessary to provide an inside view on the progress or situation in the field of taking care of human rights in the armed forces.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

/

**SPAIN**

Please find enclosed our authorities' responses to your survey on the human rights within the armed forces. **Our answers prompt the following remarks:**

1. In the absence of evidence on the follow-up (translation, dissemination, the designation of a responsible authority etc.) we chose not to answer questions in section one and two (impact, assessment, dissemination of the recommendation) rather than responding negatively.
2. We respond "N/A" (not applicable) if the question asked does not concern our armed forces. This is in particular the case about the issues involving conscripts or soldiers less than 18 years of age.

**Section III – Implementation of specific provisions****A - Right to life**

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

*The right to life is consecrated in the Spanish Constitution. Organic Law 11/1995 (27 Nov. 1995) abolished the death penalty in military criminal legislation even in times of war. Therefore, in Spain, the death penalty is not applicable in any case. Spanish Military Penal Code (organic Law 13/85) includes several articles on the punishment of suspicious deaths or alleged violations of the right to life of a member of the armed forces. This Code also guarantees an independent investigation. Furthermore, military legal framework always includes a mandatory obligation to report events that might constitute an offence or be contrary to the Law. For example, the Spanish Military Procesal Law (organic Law 2/89) established in article 134 that members of the armed forces who see or know the perpetration of any offence are "obliged" to report it, as soon as possible, to the Military Judicial Authorities or to the immediate Military Authority. Similarly, Spanish Military penal Code (organic Law 13/85) and Disciplinary Regime (organic Law 8/98, article 45), within their scopes, include similar provisions.*

**B – Torture and other forms of ill-treatment**

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ No ☐  
N/A ☒

B.3 Are there measures in place to ensure an independent and effective Yes ☒ No ☐

investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred?

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

*Law 9/2011 on Rights and Obligations of the Members of the Armed Forces sets out the framework for the definition of the rights and duties of its members. In article 6 (Rules of behavior), point 5, clearly states that members of the armed forces will respect and demand for themselves the dignity and inviolable rights of the human being. The Royal Decree 96/2009 (Reales Ordenanzas para las Fuerzas Armadas) develops Law 9/2011 and constitutes the moral rule by which the armed forces must abide. Article 11 also refers to the dignity of the person, establishing that in any case, military personnel will be subjected or subject others to any measure that might involve any damage to their personal dignity or an unlawful limitation of their rights.*

*Spanish Military Penal Code and Disciplinary Regime punish these kinds of offences and set out the procedures for an independent and effective official investigation.*

*As mentioned before, military legal framework always includes a mandatory obligation to report events that might constitute an offence or be contrary to the law. For example, the Spanish Military Procesal Law (organic Law 2/89) established in article 134 that members of the armed forces who see or know the perpetration of any offence are "obliged" to report it, as soon as possible, to the Military Judicial Authorities or to the immediate Military Authority. Similarly, Spanish Military penal Code (organic Law 13/85) and Disciplinary Regime (organic Law 8/98, article 45), within their scopes, include similar provisions.*

#### C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, Yes ☐ No ☒ and which are the differences in nature and duration of such service?

*Spanish armed forces are purely professional and compulsory military service was abolished in Spain in 2001.*

#### D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*Spanish Military Penal Code (organic Law 13/85) and Disciplinary regime (Organic Law 8/98) constitutes the main legal framework governing military discipline*

#### E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒

*One of the conditions to be eligible as a member of the armed forces in Spain is to be of legal*

age/adult (18 years)
----------------------

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐  
N/A ☒

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? Yes ☐ No ☒  
If so, please specify.

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☒ No ☐

<i>According to the legal framework, there is no limitation to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations.</i>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

F.3 Does your country have military courts? Yes ☒ No ☐

F.3.1 If so, are they separate from the chain of command? Yes ☒ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation?

<p><i>The military justice system is neither special nor separate from the ordinary justice system. The Supreme Court which is placed at the top of the military jurisdiction has no competence for the examination of appeals for cassation on military matters (Chamber n°5). Organic Law 6/1985, of the Judicial Power, establishes in article 3(2) that: "the competencies of military jurisdiction will be limited to the strictly military framework with respect to the facts regulated as military by the Military Criminal Code, and the existence of a state of siege, in agreement with the declaration of this situation and the organic law that regulates it". In the case of uncertainty as to who has jurisdiction, the question must be referred to the Supreme Court Chamber of Conflicts of Jurisdiction, according to article 39 of Organic Law 6/1985 on the Judiciary. Finally, military cases can also be brought before the Constitutional Court.</i></p> <p><i>Regarding the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation, there are no differences in the organisation and operation of military courts in comparison with civil courts.</i></p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☒ No ☐

*Spanish armed forces are purely professional. Royal Decree 456/2011 (Reglamento de destinos del personal militar profesional) sets out the procedure of posting of professional members of the armed forces. Seniority, merit or professional effectiveness are different criteria established in the decree when assigning different positions. Posting regulations do not content any measure related with disciplinary punishment.*

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☒ No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☒ No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

*Reconciling family and professional life of members of the armed forces is one of the priorities of the Spanish Ministry of Defence. As an example of measures included in section "G" of the Appendix to the Recommendation, the Spanish MoD has developed a policy of pre-schools in military facilities. Currently there are a total of 26 pre-schools and more than 1200 children attending these centres.*

#### H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*Article 9 of the Law 9/2011 on Rights and Obligations of the Members of the Armed Forces states that military personnel have the right to freedom of religion that shall be protected and respected in accordance with the constitutional Law 7/1980.*  
*As an example, Law 26/1992 approving the Agreement of Cooperation between the Spanish state and the Islamic Commission of Spain, includes several elements in relation with the rights of military personnel of the Muslim faith, specifically (art.8) "to receive Islamic spiritual support and to participate in religious activities and rites inherent to the Islam, subject to authorisation by their superiors, who shall endeavour that these be compatible with the needs of service, facilitating the places and suitable means for this purpose".*

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☐ No ☐ N/A ☒

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☐ No ☐ N/A ☒

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☐  
N/A ☒

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*There are different procedures to follow in order to resign from the armed forces depending on the different categories or contracts but finally it is always a free decision of the individual which can not be limited by any authority. Therefore reasons of conscience might be a personal reason to resign from the armed forces.*

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☐ No ☐  
N/A ☒

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

#### I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

*The right to freedom of expression and information for the members of the armed forces is regulated in article 12 of Law 9/2011 of the Members of the Armed Forces. The article contents several restrictions to this right, such as issues related with national defence and security, confidential information, respect to the dignity of people and public institutions and authorities. The principle of political neutrality also prevents members of the armed forces from engaging in any political activities. Regarding issues related to the service within the armed forces, the right to freedom of expression is also subject to the limits deriving from military discipline.*

#### J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any.

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☒

*Members of the Armed Forces can join lawfully established military associations but the right to syndication is limited. Both issues have been recently regulated by Law 9/2011 on Rights and Duties of the Members of the Armed Forces.*

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☐ No ☒

*Law 9/2011 on Rights and Duties of the Members of the Armed Forces establishes the obligation of military personnel to political neutrality, specifically prohibiting joining political parties.*

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☐ No ☒

*Members of the Spanish armed forces have the right to vote without any limitation (active suffrage). The right to stand for election (passive suffrage) is not limited but when members are included as candidates on lists of elections or during the term of office upon being elected, those members have to change to a different administration situation ('special service').*

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☐ No ☐ N/A ☒

*In any case, there is no retention of any property of members of the armed forces upon joining the armed forces.*

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☒ No ☐

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☒ No ☐



P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? Yes ☒ No ☐  
If not, please explain why and whether any measure is in preparation.

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*Spanish Military penal Code and Disciplinary Regime include within their different scopes articles protecting the dignity at work of members of the armed forces. Both codes typify and punish offences related with sexual harassment.*

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section “Q” of the Appendix to the Recommendation.

*As an example, there is a collective life and accident insurance signed by the Spanish MoD covering all members of the armed forces (duty and reserve). The full content of this insurance (Spanish language) can be found at: <http://portal.mdef.es/portalseguro/CargorPaginico.do>*

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

*A specific publication produced by Inspección general de sanidad (main authority on issues related with nutrition) titled “Manual de Alimentación y seguridad Alimentaria en las Fuerzas Armadas” (Manual on Nutrition and Food Security) provides a comprehensive reference and sets out the appropriate guidelines on this topic.*

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

*The principle of equality is consecrated in article 14 of Spanish constitution that states that ‘Spaniards are equal before the law, without any discrimination for reasons of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance’. Law 9/2011 on Rights and Duties of the Members of the Armed Forces (art.4), in the same vein, extends this principle within the sphere of the armed forces. Furthermore, the same article of this Law established that military authorities will foster*

*the measures to ensure that the equality of men and women is true and effective.*

*Ministerial Order 51/2011 of 28 July created the Military Observatory for equality between women and men in the Armed forces and regulated its structures and operation.*

*The 'Idoia Rodríguez Buján' award might be an example of good practice. The 'Soldado Idoia Rodríguez Buján, Mujer en las Fuerzas Armadas' award ('Soldier Idoia Rodríguez Buján, Women in the Armed Forces') was created by the Ministerial order 509/2007, March 6, 2007, with two different objectives: first, in remembrance of Idoia, as she was the first Spanish military woman to die when carrying out an overseas mission (Afghanistan); and second, in recognition of the efforts made by any organization, collective or individuals, which had promoted the equality of opportunities and women's integration in the Spanish Armed Forces.*

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

*The principle of gender is being fully applied in the assignments to the different Military Units. In this way, all posts are open for every man and woman who can meet the specified requirements in each case, without any gender-based restrictions. Nowadays, none of the different Corps keep formal restrictions to women's access, thus granting that all posts will be covered on the principles of merit and capability.*

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

*Spanish armed forces are purely professional and compulsory military service was abolished in Spain in 2001. Recruitment is always voluntary and only involves persons who have reached the age of 18 (Royal decree No. 1735/2000, adopting the General regulations on enlistment and Promotion in the Armed Forces).*

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐ N/A ☒

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐ N/A ☒

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐ N/A ☒

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☒ No ☐

*There is a wide range of training within the armed forces regarding human rights law and international humanitarian law. All military personnel in the armed forces is trained on these areas during their initial formation and later on. The level and context of this activities depend on the specific audience, ranging from courses devoted to the lawyer Branch of the armed forces, different ranks within the combatant units, etc...*

*Other than that, the new "Royal Ordinances of the Armed Forces" (Reales Ordenanzas para los Fuerzas Armadas), promulgated on February 2009, include in its chapter VI a complete repertory of*

*International Humanitarian Law rules to be applied by and to military operations in Spain and abroad when engaged in war and peace missions.*

U.1.1. If the reply to question U.1 is "YES":

- |         |                                                                                                                                                          |                                         |                             |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|-----------------------------|
| U.1.1.1 | Is international human rights law part of the training programme ?                                                                                       | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| U.1.1.2 | Are the human rights of the members of armed forces themselves part of the training programme?                                                           | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| U.1.1.3 | Are prevention of ill-treatment and discrimination part of the training programme?                                                                       | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| U.1.1.4 | Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

U.1.2 If the reply to question U.1 is "NO", please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

Yes ☒ No ☐

*Human rights violations are typified and punished in the military legal framework. As mentioned previously and according to the reporting procedure or through the chain of command, the allegations must always reach the competent and independent authority.*

**Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

*All of them except those conflicting with the due principle of political neutrality in the armed forces of different countries.*

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

*The Council of Europe should continue examining periodically the implementation of the recommendation with a general approach and assessment.*

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

*None.*

**SWEDEN****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☒ No ☐

The Government Offices are responsible for recommendations made within the framework of international organisations, such as the European Council.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Human rights are a cornerstone in the Swedish constitution and legislation. The members of the Swedish Armed Forces enjoy all the rights and protection that are mentioned in the Recommendation. The Recommendation was therefore already fulfilled in Sweden when it was adopted by the Committee of Ministers. Because of this, although the Recommendation has served as a useful reminder on this important topic, it is hard to say that it has had any special impact.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☒

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

See answer under I.2.

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☐

See answer under I.2.

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☒

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

See answer under I.2.

II.4 To which authorities has the Recommendation been distributed?

Swedish authorities are to follow Swedish law and regulations. The Recommendation has therefore not been distributed to any authorities. The Government Offices are responsible for deeming if there is a need for revised legislation. As has been stated under I.2 the Recommendation is deemed to be fulfilled in Sweden.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

II.6 Has the Recommendation been translated? Yes ☐ No ☒

II.7 If not, is this foreseen? Yes ☐ No ☒

II.8 How would you assess the visibility of the Recommendation?

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☒ No ☐

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☒ No ☐

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

There is no difference between suspicious deaths and alleged violations to the right to life of members of the armed forces or of others. Suspected crimes are to be reported to the police.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ No ☐

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

Military service is not compulsory in Sweden since 1 July 2010. However, see answer under C.1. There were special measures in place for conscripts. These measures will be applied if the system with compulsory service would be reinstated. Torture or other inhuman or degrading treatment is prohibited by law. The Swedish Armed Forces, as all governmental authorities, has a specific commission on staff liability that handles labour related matters about discipline, suspension, dismissal or discharge. The commission's decisions can result in a warning, a salary deduction, a dismissal or a discharge. The commission is to report a matter to the police if a misconduct is likely to render more than a fine.

#### C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☐ No ☒

Military service is not compulsory in Sweden since 1 July 2010. There is however a possibility for the Government to decide that compulsory military service shall be used if there is a need due to Swedish defence preparedness. This is regulated in the National Total Defence Act (1994:1809).

#### D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Lagen (1994:1811) om disciplinansvar inom totalförsvaret, m.m. (Act on Disciplinary Liability within the Total Defence) with corresponding ordinance (1995:241) govern issues concerning military discipline. Possible disciplinary sanctions according to the law are warning, extra duty and salary deduction.

#### E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☒ No ☐

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☒

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☒

#### F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes ☒ No ☐

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces’ civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☒

F.3 Does your country have military courts? Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is “yes”, are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☐ No ☐

**Comment:** Concerning conscripts, see answer under C.1. Concerning disciplinary punishment, see answer under B.5 and D.1. Posting cannot be used as a disciplinary punishment.

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes x No ☐

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes x No ☐

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children’s health and educational systems? If not, please explain why and whether any measure is in preparation. Yes x No ☐

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section “G” of the Appendix to the Recommendation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes x No ☐

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes x No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes x No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No x

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes x No ☐

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☒ No ☐

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

The freedom of expression is guaranteed in the Swedish constitution. Restrictions regarding the freedom of expression when it concerns classified information are regulated in the Instrument of Government, the Freedom of the Press Act, the Fundamental Law on the Freedom of Expression, the Public Access to Information and Secrecy Act (2009:400) and the Criminal Code.

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes ☒ No ☐

Medical records might be classified in the own interest of the individual if he or she is undergoing a medical treatment and if it, with respect to the purpose of the treatment is of vital importance that the information is not given to him or her. This is regulated in the Public Access to Information and Secrecy Act (2009:400).

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

The right to join associations and trade unions is guaranteed in the Swedish constitution. There are no restrictions.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐



There are no restrictions.

*L – Right to vote and to stand for election*

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☐ No ☒

*M- Right to marry*

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*N – Right to protection of property*

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☐ No ☐

**Comment:** The property of members of the armed forces is not retained upon joining the armed forces.

*O – Accommodation*

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad?

Yes ☐ No ☐

**Comment:** Accommodation is offered to those who undergo basic military training. There are no special measures regarding accommodation for hired personnel and their families in Sweden. There are special measures for personnel on missions abroad.

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☐ No ☒

*P – Remuneration and pension*

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes ☒ No ☐

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

*Q – Right to dignity, health protection and security at work*

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

The Discrimination Act prohibits discrimination related to a person's sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. The Work

Environment Act contains rules on the obligations of employers on the prevention of illness and accidents at work. The Swedish Armed Forces is working actively, for example through information campaigns, in order to combat discrimination. - See also answer under V.1.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes ☒ No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes ☒ No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes ☒ No ☐

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes ☐ No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes ☐ No ☒

#### T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ No ☒

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

#### U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by Yes ☒ No ☐

whom are such training activities carried out.

The Swedish Armed Forces and the Swedish National Defence College

U.1.1. If the reply to question U.1 is "YES":

U.1.1.1 Is international human rights law part of the training programme? Yes ☒ No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☒ No ☐

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes ☒ No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes ☒ No ☐

U.1.2 If the reply to question U.1 is "NO", please explain why and whether any measure is in preparation.

#### V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

Allegations of human rights violations that constitute a crime can be reported to the police. Allegations of discrimination, harassment etc. can be reported to the Equality Ombudsman (DO). DO is a government agency that seeks to combat discrimination on grounds of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. Allegations of discrimination, harassment etc. can also be reported to the Office of the Chancellor of Justice and the Parliamentary Ombudsmen.

### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Possible future examination of the implementation of the Recommendation should focus on the issues which this follow-up indicates have the most shortcomings in terms of implementation.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**SUISSE****Section I – Étude d'impact**

I.1 Une autorité a-t-elle été désignée comme responsable de la mise en œuvre de la Recommandation ? Si oui, laquelle ? Oui ☐ Non ☒

I.2 Comment évalueriez-vous l'impact de la Recommandation sur les droits de l'homme des membres des forces armées dans votre pays ? Merci de motiver votre réponse.

Pleinement satisfaisant ☐ Adéquat ☐ Insuffisant ☐ Inexistant ☒

*Ces droits sont déjà garantis à tous les citoyens, qu'ils soient militaires de carrière, miliciens ou simples citoyens, de par la Constitution fédérale.*

I.3 Des mesures spécifiques pour la promotion et la protection des droits de l'homme des membres des forces armées ont-elles été adoptées suite à et en application de l'adoption de la Recommandation ? Si oui, merci de donner quelques exemples. Oui ☐ Non ☒

*Ces droits sont fixés dans la Constitution fédérale et applicables à tout citoyen, civil ou militaire.*

I.4 Si des obstacles ont été rencontrés lors de la mise en œuvre de la Recommandation, de quels obstacles s'agit-il ?

*Il n'y a pas eu d'obstacles.*

**Section II – Diffusion de la Recommandation**

II.1 Une autorité a-t-elle été désignée comme responsable de la diffusion de la Recommandation ? Si oui, laquelle ? Oui ☐ Non ☒

II.2 Des événements spécifiques ont-ils été organisés en vue de la diffusion de la Recommandation ? Si oui, merci de donner quelques exemples. Oui ☐ Non ☒

II.3 Si des obstacles ont été rencontrés lors de la diffusion de la Recommandation, de quels obstacles s'agit-il ?

*Il n'y a pas eu d'obstacles car les éléments contenus dans la Recommandation sont déjà appliqués au sein de l'armée.*

II.4 Auprès de quelles autorités la recommandation a-t-elle été distribuée ?

*Département fédéral de justice et police (DFJP) : Office fédéral de la justice (OFJ) ; Département fédéral de la défense, de la protection de la population et des sports (DDPS) : Secrétariat général DDPS (SG-DDPS), Défense, Office de l'auditeur en chef (OAC).*

II.5 La Recommandation a-t-elle été distribuée aux membres des Oui ☐ Non ☒

forces armées ?

II.6 La Recommandation a-t-elle été traduite ? Oui ☐ Non ☒

II.7 Si non, est-il prévu de la traduire ? Oui ☐ Non ☒

II.8 Comment évalueriez-vous la visibilité de la Recommandation ?

Pleinement satisfaisante ☐ Adéquate ☐ Insuffisante ☒ Inexistante ☐

### Section III – Mise en œuvre des dispositions spécifiques

#### A – Droit à la vie:

A.1 Des mesures ont-elles été mises en place pour garantir une enquête indépendante et effective dans tous les cas de mort suspecte ou de violation alléguée du droit à la vie d'un membre des forces armées ? Oui ☒ Non ☐

A.2 Des mesures ont-elles été mises en place pour encourager le signalement d'actes attentatoires au droit à la vie des membres des forces armées et protéger les personnes qui signalent l'existence de tels actes contre toutes représailles? Oui ☒ Non ☐

A.3 Merci de bien vouloir donner des informations sur le cadre légal de ces mesures et des exemples de mesures en place. Si vous avez répondu « Non » à une ou plusieurs des questions ci-dessus, merci de bien vouloir expliquer pourquoi de telles mesures ne sont pas en place et d'indiquer si des mesures sont en cours de préparation.

*L'indépendance de la justice militaire est garantie de par la loi.*

*(art. 1 Procédure pénale militaire, RS 322.1)*

*De manière organisationnelle, la justice militaire est subordonnée directement au chef du Département fédéral de la défense, de la protection de la population et des sports (DDPS) et n'est donc pas intégrée dans la chaîne de commandement de l'armée.*

*Le Règlement de service (RS 510.107.0), distribué à tous les militaires, indique également quels sont les droits et les moyens à disposition pour les faire respecter.*

#### B – Torture et autres mauvais traitements

B.1 Des mesures ont-elles été mises en place pour protéger les membres des forces armées de tortures ou d'autres peines ou traitements inhumains ou dégradants ? Oui ☒ Non ☐

B.2 Des mesures spécifiques ont-elles été mises en place pour les catégories plus vulnérables, telles que par exemple les appelés ? Oui ☒ Non ☐

B.3 Des mesures ont-elles été mises en place pour garantir une enquête indépendante et effective dans toutes les allégations d'actes de torture ou d'autres mauvais traitements, ou lorsque les autorités soupçonnent que c'est le cas, sur la base d'éléments raisonnables? Oui ☒ Non ☐

B.4 Des mesures ont-elles été mises en place pour encourager le signalement d'actes de torture ou d'autres mauvais traitements et protéger les personnes qui signalent l'existence de tels actes contre toutes

représailles ?

B.5 Merci de bien vouloir donner des informations sur le cadre légal de ces mesures et des exemples de mesures en place. Si vous avez répondu « *Non* » à une ou plusieurs des questions ci-dessus, merci de bien vouloir expliquer pourquoi de telles mesures ne sont pas en place et d'indiquer si des mesures sont en cours de préparation.

*Le Règlement de service (RS 510.107.0), distribué à tous les militaires, indique également quels sont les droits et les moyens à disposition pour les faire respecter.*

*Les droits repris dans ce document sont les mêmes que ceux qui sont mentionnés dans la Constitution fédérale (RS 101).*

### C – Travaux forcés ou obligatoires

C.1 Le service militaire est-il obligatoire ? Si oui, peut-on effectuer un autre service à la place du service militaire obligatoire et quelles sont les différences en nature et durée de cette autre forme de service ? Oui ☒ Non ☐

*L'art. 59 Constitution fédérale prévoit que le service militaire, la protection civile ou un service de remplacement (service civil) est obligatoire. Celui qui ne peut ni faire le service militaire, ni la protection civile ou le service de remplacement doit payer une taxe.*

*Le service civil est une contribution civile à la Confédération en vue de promouvoir la cohésion sociale, de résoudre des conflits sans violence, de développer et de maintenir durablement notre patrimoine culturel. Il dure une fois et demie le service militaire.*

*La protection civile assume des tâches de protection, d'assistance et d'appui. Elle est avant tout un moyen d'intervention du deuxième échelon dans le cadre du système coordonné de protection de la population. En principe, elle est engagée pour renforcer les autres organisations partenaires, en particulier lors d'événements de grande ampleur s'étendant sur une longue durée. L'obligation de servir commence au début de l'année durant laquelle la personne astreinte atteint l'âge de 20 ans et s'étend jusqu'à la fin de l'année durant laquelle elle atteint 40 ans.*

### D – Discipline militaire

D.1 Existe-t-il un cadre légal défini organisant le système de discipline militaire conformément aux paragraphes 19-21 de l'Annexe à la Recommandation ? Si oui, merci de bien vouloir indiquer une référence au cadre légal pertinent. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☒ Non ☐

*Oui, un cadre légal défini organise le système de discipline militaire. Les fautes disciplinaires sont traitées aux art. 180 ss du Code pénal militaire (CPM ; RS 321.0).*

### E - Droit à la liberté et à la sûreté

E.1 Existe-t-il une procédure prévue par la loi qui traite de la privation de liberté des membres des forces armées ? Oui ☒ Non ☐

E.2 La détention de membres des forces armées âgés de moins de 18 ans est-elle permise ? Oui ☐ Non ☒

E.2.1 Si oui, les conditions de détention satisfont-elles aux exigences établies au paragraphe 23 de l'annexe à la Recommandation ? Oui ☐ Non ☐

E.2.2 Si la réponse à la question E.2.1 est « *Non* », merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

--

E.3 Des limites ou restrictions aux garanties énoncées aux paragraphes 24 à 27 de l'Annexe à la Recommandation sont-elles possibles ? Si oui, merci de spécifier lesquelles.

Oui ☐ Non ☒

--

#### F- Droit à un procès équitable

F.1 Dans le cadre des procédures qui sont considérées comme pénales au sens de la Convention européenne des droits de l'homme, les membres des forces armées bénéficient-ils de droits et garanties procéduraux dans la même mesure que dans toute procédure pénale contre des personnes civiles, conformément aux paragraphes 28, 30 et 31 de l'Annexe à la Recommandation ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☒ Non ☐

--

F.2 Existe-t-il un cadre légal défini régissant les restrictions ou exclusions du droit d'accès à un tribunal qui puisse examiner les contestations des membres des forces armées sur leurs droits et obligations de caractère civil ? Si oui, merci de donner quelques exemples de ces restrictions ou exclusions.

Oui ☐ Non ☒

--

F.3 Existent-ils des tribunaux militaires?

Oui ☒ Non ☐

F.3.1 Si oui, sont-ils séparés de la chaîne de commandement ?

Oui ☒ Non ☐

F.3.2 Si la réponse à la question F.3 est « OUI », y a-t-il une différence entre l'organisation et le fonctionnement des juridictions militaires, en comparaison avec les tribunaux civils, en ce qui concerne en particulier les garanties procédurales établies aux paragraphes 33 et 34 de l'Annexe à la Recommandation?

Oui ☐ Non ☒

#### G – Droit au respect de la vie privée et familiale, du domicile et de la correspondance

G.1 Des mesures ont-elles été mises en place pour garantir que les appelés soient affectés près de leurs proches et de leur domicile et que le déploiement de membres professionnels loin de leurs proches et de leur domicile ne soit pas utilisé comme peine disciplinaire ?

Oui ☐ Non ☒

G.2 Des mesures ont-elles été mises en place pour permettre aux membres des forces armées affectés à l'étranger de maintenir des contacts privés?

Oui ☒ Non ☐

G.3 Des programmes d'assistance ont-ils été mis en place pour les personnes accompagnant les membres des forces armées affectés à

Oui ☐ Non ☒

l'étranger ?

G.4 Les membres des forces armées peuvent-ils bénéficier d'un congé parental, d'allocations appropriées pour enfant à charge, d'un accès à des écoles maternelles et d'un système adéquat de santé et d'enseignement pour les enfants ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☒ Non ☐

*Cette question ne s'applique que très partiellement à la Suisse.*

*Etant donné que le système suisse est basé sur le principe de la milice, toutes les prestations mentionnées dans la question sont mis à disposition par les autorités civiles, respectivement mis en place de par des lois fédérales applicables à tous les citoyens.*

*Pour ce qui est des militaires de carrière, ceux-ci bénéficient des mêmes droits que les civils.*

G.5 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées au respect de la vie privée et familiale, du domicile et de la correspondance, conformément à la Section « G » de l'Annexe à la Recommandation.

*Voir réponse G.4.*

#### H – Liberté de pensée, de conscience et de religion

H.1 Des mesures ont-elles été mises en place pour permettre aux membres des forces armées de s'acquitter, dans la mesure du possible, de leurs obligations religieuses ? Si oui, merci d'indiquer quelques exemples. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☒ Non ☐

*D'après le chiffre 95 du Règlement de service (RS 510.107.0), la liberté de croyance et de conscience est garantie. La participation à des services religieux est possible pour autant que la marche de service le permette.*

H.2 Les appelés ont-ils la possibilité d'obtenir le statut d'objecteur de conscience ?

Oui ☒ Non ☐

H.2.1 Si oui, un service alternatif de nature civile est-il possible ?

Oui ☒ Non ☐

H.2.2 Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

H.3 Les objecteurs de conscience sont-ils exposés à des sanctions, mesures disciplinaires ou poursuites pénales ?

Oui ☒ Non ☐

**REMARQUE :** *Ceux qui ne sont pas admis au service civil, au service sans arme ou déclarés inaptes, risquent d'être punies pénalement d'une peine privative de liberté de 18 mois au plus ou d'une peine pécuniaire (art. 81 CPM), s'ils refusent de faire du service militaire.*

H.4 Des membres professionnels des forces armées peuvent-ils quitter les forces armées pour raisons de conscience ? Si oui, merci d'indiquer dans quelles conditions et quelle est la procédure, et notamment si de telles demandes peuvent être réexaminées par un organe indépendant et impartial. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☒ Non ☐

*Etant donné que ceux-ci sont engagés par des contrats de droit public, il leur suffit de résilier la*



*relation de travail comme pour n'importe quel employé. Concernant leur service obligatoire (de milice), ils ont la possibilité de déposer une demande de service civil s'ils ne peuvent pas concilier le service militaire avec leur conscience (cf. supra C.1). Un organe indépendant et impartial examine les demandes (voir les art. 16 ss loi fédérale sur le service civil [SC ; SR 824.0])*

H.5 Des mesures ont-elles été mises en place pour garantir que les appelés et les membres des forces armées soient informés respectivement, du droit à l'obtention du statut d'objecteur de conscience et de celui de quitter les forces armées pour raisons de conscience, ainsi que des procédures disponibles pour les exercer ? Oui ☒ Non ☐

H.6 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées à la liberté de pensée, de conscience et de religion, conformément à la Section « H » de l'Annexe à la Recommandation.

*Le chiffre 95 du Règlement de service (RS 510.107.0) indique ce que les militaires ont le droit de faire ou de demander en ce qui concerne les libertés mentionnés ci-dessus.*

#### I – Liberté d'expression

I.1 Existe-t-il un cadre légal défini régissant les formalités, conditions et restrictions au droit à la liberté d'expression pour les membres des forces armées ? Oui ☒ Non ☐

I.2 Si oui, merci de le présenter brièvement, en donnant en particulier quelques exemples des éventuelles restrictions au droit à la liberté d'expression.

*Selon le chiffre 96 du Règlement de service (RS 510.107.0), les militaires peuvent s'exprimer librement. Néanmoins, les déclarations faites ne doivent pas entraver l'exécution des missions, l'obéissance due aux supérieurs, la discipline ni troubler la marche de service.*

*De plus, il est interdit aux militaires d'organiser, par exemple, des assemblées politiques pendant le temps de travail/repos, dans la sphère de la communauté et lorsqu'ils portent l'uniforme.*

#### J – Droit à l'accès aux informations pertinentes

J.1 Des mesures ont-elles été mises en place pour garantir que des informations complètes et détaillées sur le recrutement dans les forces armées et les engagements découlant de l'enrôlement soient fournies aux recrues potentielles ? Oui ☒ Non ☐

J.2 Les membres et anciens membres des forces armées ont-ils accès à leurs données personnelles, y compris leurs dossiers médicaux et autres informations sur leur exposition à des situations potentiellement dangereuses à leur santé ? Oui ☒ Non ☐

J.3 Si oui, existe-t-il des restrictions à ce droit à l'accès à l'information? Merci de donner quelques exemples, le cas échéant. Oui ☒ Non ☐

*Selon le chiffre 98, al. 2, du Règlement de service (RS 510.107.0), l'accès à l'information est limité par les dispositions sur la sauvegarde du secret militaire et par les dispositions sur la protection de la personnalité (devoir de discrétion, secret professionnel, protection des données).*

K – Droit à la liberté de réunion pacifique et à la liberté d'association avec d'autres

K.1 Les membres des forces armées ont-ils le droit d'adhérer à des associations ou syndicats militaires établis conformément à la loi ? Si oui, merci de bien vouloir indiquer les éventuelles conditions et restrictions à ce droit. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures pour réviser ou lever les restrictions ou interdictions existantes sont en préparation.

Oui ☒ Non ☐

*Il n'y a pas de restrictions.*

K.2 Les membres des forces armées peuvent-ils adhérer à des partis politiques ? Si oui, merci de bien vouloir indiquer les éventuelles conditions et restrictions à ce droit. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures pour réviser ou lever les restrictions ou interdictions existantes sont en préparation.

Oui ☒ Non ☐

*Il n'y a pas de restrictions.*

L – Droit de vote et de se présenter aux suffrages

L.1 Existe-t-il des restrictions aux droits électoraux des membres des forces armées et à l'appartenance dans les forces armées d'un membre se présentant à des élections ou pendant la durée de son mandat ? Si oui, merci de donner quelques exemples.

Oui ☐ Non ☒

M- Droit de se marier

M.1 Les membre des forces armées ont-ils le droit de se marier et de conclure des partenariats civils conformément aux droits dont jouissent les civils ? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

Oui ☒ Non ☐

N – Droit à la protection de ses biens

N.1 Des mesures ont-elles été mises en place pour garantir que les biens appartenant aux membres des forces armées, y compris les appelés, et consignés lors de leur enrôlement, soient rendus à l'issue de leur service militaire ?

Oui ☒ Non ☐

O – Logement

O.1 Des mesures ont-elles été mises en place pour garantir un logement de niveau suffisant pour les membres des forces armées et leurs familles, à la fois sur le territoire national et à l'étranger ?

Oui ☒ Non ☐

**REMARQUE:** Ces questions ne trouvent que difficilement application en Suisse. En effet, les militaires de carrière ne vivent pas en caserne mais ont un appartement ou une maison dans les villes et villages du pays, comme les autres citoyens. Par contre, des logements d'un niveau suffisamment élevé sont attribués aux diverses troupes lorsqu'elles sont en service.

O.2 Si le logement se situe dans une caserne, des dortoirs séparés pour femmes et hommes sont-ils prévus ?

Oui ☒ Non ☐

P – Rémunération et pension

P.1 Les membres professionnels des forces armées ont-ils droit à une rémunération leur permettant d'avoir un niveau de vie décent et une pension de retraite suffisante ? Oui ☒ Non ☐

P.2 Des mesures ont-elles été mises en place pour garantir aux hommes et aux femmes membres des forces armées une rémunération égale pour un même travail ou un travail de valeur égale? Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☒ Non ☐

Q – Droit à la dignité, à la protection sociale et à la sécurité au travail

Q.1 Des mesures spécifiques ont-elles été mises en place pour protéger la dignité au travail des membres des forces armées, particulièrement en matière de prévention du harcèlement sexuel ? Si oui, merci d'indiquer le cadre légal pertinent et de donner quelques exemples. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☒ Non ☐

*En vertu des articles 153 ss CPM, les infractions à l'intégrité sexuelle sont poursuivies d'office. De plus, le chiffre 79 al. 3 Règlement de service (RS 510.107.0) indique que les supérieurs ne doivent pas donner d'ordre visant à offenser la dignité humaine. En dernier lieu, il convient de mentionner que les chiffres 102 ss. Règlement de service indiquent quels sont les moyens à disposition de chaque militaire afin d'obtenir une protection juridique adéquate.*

Q.2 Les soins médicaux fournis au cours d'opérations militaires et en raison d'opérations militaires sont-ils gratuits pour les personnes ayant servi ? Oui ☒ Non ☐

Q.3 Existe-t-il un régime de réparation ou d'indemnités pour les membres des forces armées quittant les forces armées pour raison de blessure suite à leurs fonctions ou en cas de décès au cours de leur service? Oui ☒ Non ☐

Q.4 Le cas échéant, merci de donner quelques exemples de bonnes pratiques relatives au droit des membres des forces armées à la dignité, à la protection sociale et à la sécurité au travail, conformément à la Section « Q » de l'Annexe à la Recommandation.

*Création d'une assurance militaire (RS 833.1) répondant des affections physiques, mentales ou psychiques ainsi que de leurs conséquences économiques.*

R – Alimentation

R.1 Des mesures ont-elles été mises en place pour garantir le droit des membres des forces armées à une alimentation décente et suffisante, en conformité avec la section « R » de l'Annexe à la Recommandation ? Le cas échéant, merci de donner quelques exemples de bonnes pratiques. Oui ☒ Non ☐

*D'après le chiffre 101 al 1 Règlement de service, les militaires sont nourris et logés. Dans le règlement 60.006 "Recettes de cuisine", les principes de base de la cuisine militaire sont clairement indiqués: sain, simple, suffisant selon le besoin et succulent.*

S – Non-discrimination

S.1 Des mesures ont-elles été mises en place pour garantir que les membres des forces armées puissent jouir de leurs droits et libertés sans aucune discrimination, en conformité avec la Section « S » de l'Annexe à la Recommandation ? Le cas échéant, merci de donner quelques exemples de bonnes pratiques. Oui ☒ Non ☐

*Ces droits sont garantis dans la Constitution fédérale et sont applicables aux civils comme aux militaires. Toute violation d'un tel droit peut donc faire l'objet d'une enquête par la justice compétente (civile ou militaire).*

S.2 Existe-t-il des restrictions à l'accès des femmes dans les forces armées, ou à des types particuliers d'activités professionnelles au sein des forces armées ? Si oui, merci de donner quelques exemples. Oui ☒ Non ☐

*Il existe une restriction d'accès des femmes dans le sens qu'elles doivent demander à pouvoir effectuer le service militaire (art. 59 al. 2 Constitution fédérale, RS 101). Cependant, lorsqu'elles ont effectué cette demande, toutes les positions leur sont ouvertes.*

S.3 L'orientation sexuelle constitue-t-elle un motif pour empêcher l'accès aux forces armées, ou pour renvoyer un membre des forces armées ? Oui ☐ Non ☒

T – Personnes âgées de moins de 18 ans recrutées dans les forces armées

T.1 Votre législation permet-elle le recrutement volontaire de personnes de moins de 18 ans dans les forces armées ? Oui ☐ Non ☒

T.2 Si oui, y a-t-il des mesures en place pour assurer la pleine information des devoirs qui s'attachent au service militaire et le consentement éclairé de ces personnes et de leurs parents ou gardiens légaux ? Oui ☐ Non ☐

T.3 Des mesures spéciales ont-elles été mises en place pour protéger le bien-être physique et psychologique de ces personnes ? Oui ☐ Non ☐

T.4 Ces personnes peuvent-elles participer directement aux hostilités ? Oui ☐ Non ☐

U – Formation

U.1 Des activités de formation visant à acquérir une meilleure connaissance des droits de l'homme par les membres des forces armées sont-elles prévues ? Si oui, merci d'indiquer par qui sont-elles menées. Oui ☒ Non ☐

*Chaque soldat doit passer un cours interactif concernant les droits de l'Homme et le droit des conflits armés. De plus, il reçoit un aide-mémoire avec les dix règles élémentaires. Chaque commandant de compagnie doit ensuite veiller à rafraîchir périodiquement les connaissances de ses soldats. Dans les cours d'avancement, un bloc d'instruction est prévu afin de traiter pour des droits mentionnés ci-dessus.*

*Les soldats qui servent à l'étranger reçoivent une éducation additionnelle pour l'engagement dans les champs droits de l'homme et droit international humanitaire.*

U.1.1. Si la réponse à la question U.1 est « Oui »:

- U.1.1.1 Le droit international des droits de l'homme fait-il partie du programme de formation ? Oui ☒ Non ☐
- U.1.1.2 Les droits de l'homme des membres des forces armées font-ils partie du programme de formation ? Oui ☒ Non ☐
- U.1.1.3 La prévention des mauvais traitements et de la discrimination fait-elle partie du programme de formation ? Oui ☒ Non ☐
- U.1.1.4 Le droit international humanitaire, y compris les devoirs mentionnés au paragraphe 84 de l'Annexe à la Recommandation, fait-il partie du programme de formation ? Oui ☒ Non ☐

U.1.2 Si la réponse à la question U.1 est « *Non* », merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation.

#### V – Allégations de violations des droits de l'homme

V.1 Des mesures ont-elles été mise en place pour garantir aux membres des forces armées le droit de présenter des allégations de violations des droits de l'homme, en particulier en matière de discrimination, harcèlement ou violence, devant un mécanisme indépendant ? Si oui, merci d'indiquer de quelle autorité/mécanisme s'agit-il et quelle est la procédure. Si non, merci de bien vouloir en expliquer les raisons et d'indiquer si des mesures sont en cours de préparation. Oui ☒ Non ☐

*En premier lieu, il prend contact avec ses supérieurs. Si rien ne se passe, il peut toujours faire appel à la justice militaire qui est indépendante et qui ne se trouve pas dans la voie hiérarchique.*

### **Section IV - Suivi**

IV.1 Quelles mesures recommanderiez-vous pour garantir le respect des principes énoncés dans la Recommandation et dans son Annexe dans les législations et les pratiques nationales?

*Aucun commentaire.*

IV.2 Le Conseil de l'Europe devrait-il continuer à examiner périodiquement la mise en œuvre de cette Recommandation ? Si oui, cet examen devrait-il, à l'avenir, se concentrer sur des problèmes spécifiques, et le cas échéant sur lesquels ?

*Aucun commentaire.*

IV.3 Existe-t-il des questions sur lesquelles la Recommandation et son Annexe devraient être modifiés ou complétés ? Si oui, merci d'indiquer lesquelles.

*Pour ce qui est de la Suisse, certaines questions ne sont pas adaptées à notre système de milice. En effet, les soldats sont tous des citoyens et disposent des mêmes droits au militaire qu'au civil. De plus, les soldats sont en caserne pour des durées limitées et peuvent en général rentrer régulièrement pendant leur service.*

**"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes ☐ No ☒

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.  
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

THE MEMBERS OF THE ARMED FORCES ARE NOT FULLY AWARE ABOUT THE EXISTENCE OF THIS RECOMMENDATION.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes ☐ No ☒

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

THE MEMBERS OF THE ARMED FORCES ARE NOT FULLY AWARE ABOUT THE EXISTENCE OF THIS RECOMMENDATION.

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes ☐ No ☐

THERE IS NO AUTHORITY ASSIGNED WITHIN THE MOD OF THE REPUBLIC OF MACEDONIA RESPONSIBLE FOR THE DISSEMINATION OF THE RECOMMENDATION.

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes ☐ No ☐

NO, BUT ODIHR ORGANIZED A SEMINAR FOR PROMOTION OF THE MANUAL FOR THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF THE MEMBERS OF THE ARMED FORCES ON 20 NOVEMBER 2012.

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

THERE WAS NO ADDITIONAL ACTIVITIES FOR THE DISSIMAINATION OF THE RECOMMENDATION WITHIN THE ARMY OF THE REPUBLIC OF MACEDONIA

II.4 To which authorities has the Recommendation been distributed?

WITHIN THE MINISTRY OF DEFENCE BUT NOT WITHIN THE ARMY.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes ☐ No ☒

II.6 Has the Recommendation been translated ? Yes ☐ No ☒

II.7 If not, is this foreseen? Yes ☒ No ☐

II.8 How would you assess the visibility of the Recommendation?

INSUFFICIENT

Fully satisfactory ☐

Adequate ☐

Insufficient ☒

Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes ☐ No ☐

THERE ARE MEASURES WHICH ENSURES INDEPENDENT AND EFFECTIVE INVESTIGATION OF SUSPICIOUS DEATHS OR ALLEGED VIOLATIONS OF THE RIGHT TO LIFE OF THE ARMED FORCES AND THESE MEASURES ARE ALL PART OF THE NATIONAL CODE FOR CRIMINAL PROCEDURES.

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes ☐ No ☐

THERE ARE SUCH MEASURES PROVIDED WITH THE NATIONAL LAW ON WITNESS PROTECTION

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

MEASURES PROVIDED WITH THE CODE FOR CRIMINAL PROCEDURES AND LAW ON WITNESS PROTECTION.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? **Yes** ☒ No ☐

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes ☐ **No** ☒

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? **Yes** ☒ No ☐

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? **Yes** ☒ No ☐

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

TORTURE AND OTHER INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT IS FORBIDDEN FIRSTLY BY THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA AND THEREFORE EVERY BREACH OF THIS RULE IS PUNISHABLE BY LAW (CRIMINAL LAW). THERE IS NO CONSCRIPT SERVICE IN THE ARMY. EVERY PERSON IS EQUAL BEFORE THE CONSTITUTION AND THE LAW, SO EVERYBODY IS PROTECTED BY THE CONSTITUTION AND BY THE LAW, INCLUDING THE MEMBERS OF THE ARMED FORCES. THERE ARE MEASURES THAT ENSURES INDEPENDENT AND EFFECTIVE INVESTIGATION FOR ACTS OF TORTURE AND OTHER ILL-TREATMENT AND THEY ARE INCLUDED IN THE CODE FOR CRIMINAL PROCEDURE.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes ☐ No ☐

MILITARY SERVICE IN THE REPUBLIC OF MACEDONIA IS NOT COMPULSORY.

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes ☐ No ☐

MILITARY DISCIPLINE IS COVERED BY THE LAW ON SERVICE IN THE ARMY OF THE REPUBLIC OF MACEDONIA.

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes ☐ No ☐

THE PROCEDURE DEALING WITH THE DEPRIVATION OF LIBERTY IS THE SAME FOR EVERY CITIZEN OF THE REPUBLIC OF MACEDONIA INCLUDING THE MEMBERS OF THE ARMED FORCES. THIS PROCEDURE IS PRESCRIBED IN THE LAW FOR CRIMINAL PROCEDURE.

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes ☐ No ☐

IN THE REPUBLIC OF MACEDONIA THERE ARE NO MEMBERS OF THE ARMED FORCES UNDER THE AGE OF 18.

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes ☐ No ☐

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes ☐ No ☐

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Yes ☐ No ☐



Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

THE CRIMINAL PROCEEDINGS AGAINST THE MEMBERS OF THE ARMED FORCES ARE THE SAME AS FOR THE CIVILIANS AND THEY ARE PRESCRIBED BY THE LAW FOR CRIMINAL PROCEDURE.

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes ☐ No ☒

F.3 Does your country have military courts? Yes ☐ No ☒

F.3.1 If so, are they separate from the chain of command? Yes ☐ No ☐

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes ☐ No ☐

G – Right to respect for private and family life, home and correspondence

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes ☐ No ☒

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes ☐ No ☒

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes ☐ No ☒

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes ☐ No ☐

THE MEMBERS OF THE ARMED FORCES ENJOYS PARENTAL LEAVE, AND FREE HEALTH PROTECTION WHILE THEY ARE IN THE REPUBLIC OF MACEDONIA. IF THEY ARE SENT ABROAD, THE MEMBERS OF THEIR FAMILY ALSO ENJOYS FREE HEALTH PROTECTION.

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes ☐ No ☐

THE MEMBERS OF THE ARMED FORCES ARE ALLOWED TO PRACTICE THEIR RELIGION BUT OUTSIDE OF THE WORKING HOURS.

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes ☐ No ☐

H.2.1 If so, is an alternative service of a civilian nature available? Yes ☐ No ☐

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes ☐ No ☐

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

THE MEMBERS OF THE ARMED FORCES CAN LEAVE THE ARMED FORCES ANY TIME AND FOR ANY REASON NOT ONLY FOR REASONS OF CONSCIENCE. THE PROCEDURE IS PRESCRIBED IN THE LAW ON SERVICE IN THE ARMED FORCES OF THE REPUBLIC OF MACEDONIA.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes ☒ No ☐

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

YES FOR THE MEMBERS OF THE ARMED FORCES

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes ☐ No ☐

THE MEMBERS OF THE ARMED FORCES HAVE THE RIGHT TO FREEDOM OF EXPRESSION, EXCEPT FOR CLASSIFIED INFORMATION

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

THEY CANNOT REVEAL CLASSIFIED INFORMATION IN PUBLIC.

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes ☒ No ☐

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes ☒ No ☐

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. **NO** Yes ☐ **No** ☒

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

WITHOUT ANY RESTRICTIONS

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes ☒ No ☐

YES, BUT THEY SHOULD PRACTICE THEIR POLITICAL ACTIVITIES OUTSIDE OF THE WORKING HOURS AND WITHOUT UNIFORM

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes ☐ **No** ☒

THEY CAN VOTE AND STAND FOR ELECTION ACCORDING TO THE ELECTORAL CODE

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes ☒ No ☐

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes ☐ **No** ☒

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes ☐ No ☐

ACCORDING TO THE LAW ON SERVICE IN THE ARMED FORCES OF THE REPUBLIC OF MACEDONIA THE MEMBERS OF THE ARMED FORCES ARE ENTITLED TO APARTMENT IN THE PLACE OF SERVICE AND ALSO ABROAD. IF IT IS NOT POSSIBLE TO GIVE THEM AN APARTMENT ON THE TERRITORY OF THE REPUBLIC OF MACEDONIA, THEN THEY ARE ENTITLED TO REIMBURSEMENT FOR RENTING IT.

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes ☒ No ☐

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate Yes ☐ No ☐

retirement pension?

EVERY MEMBERS OF THE ARMED FORCES ARE RECEIVING REMUNERATION, BUT NOT EVERYONE CAN RECEIVE ADEQUATE RETIREMENT PENSION

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation.

Yes ☒

No ☐

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation.

Yes ☒

No ☐

ACCORDING TO THE NATIONAL LAWS SEXUAL HARASSMENT PUNISHABLE BY LAW.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons?

Yes ☒

No ☐

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service?

Yes ☒

No ☐

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes ☐

No ☒

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes ☒

No ☐

YES, ACCORDING TO THE LAW ON SERVICE IN THE ARMED FORCES OF REPUBLIC OF MACEDONIA AND OTHER NATIONAL LAWS.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples.

Yes ☐

No ☒

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge?

Yes ☐

No ☒

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes ☐ **No ☒**

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes ☐ No ☐

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes ☐ No ☐

T.4 Can these persons take an active part in the hostilities? Yes ☐ No ☐

#### U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes ☐ No ☐

THE TRAINING ACTIVITIES FOR THESE TOPICS ARE NOT SUFFICIENT

U.1.1. If the reply to question U.1 is "YES":

U.1.1.1 Is international human rights law part of the training programme? **Yes ☒** No ☐

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes ☐ **No ☒**

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? **Yes ☒** No ☐

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? **Yes ☒** No ☐

U.1.2 If the reply to question U.1 is "NO", please explain why and whether any measure is in preparation.

#### V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. **Yes ☒** No ☐

SUCH ALLEGATIONS CAN BE REPORTED TO THE RELEVANT AUTHORITIES SUCH AS POLICE AND STATE PROSECUTOR'S OFFICE.

### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

No
----

## UKRAINE

### Section I – Impact assessment

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? **No**

***Though no authority has been assigned as the only one responsible for the implementation of the Recommendation, a number of Ukrainian ministries, within their terms of reference, have been involved in the process, in particular:***

***- Ministry of Justice of Ukraine ensures the preparation of proposals on bringing the Ukraine's legislations in compliance with the Council of Europe's principals and standards, including those concerning human rights of members of the armed forces:***

***- Ministry of Defence (MoD) as military authority to which the Armed Forces of Ukraine are subordinate and Ministry of Internal Affairs (MIA) to which the Interior troops are subordinate ensures human rights protection towards military personnel.***

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory ☐ **Adequate** ☒ Insufficient ☐ Absent ☐

Recommendations will have an impact on improving the legal culture of personnel.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. **No**

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

***No obstacles***

### Section II – Dissemination of the Recommendation

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? **Yes**

***Ministry for Foreign Affairs of Ukraine ensured the dissemination of the Recommendation to the Ministry of Defence, Ministry of Justice, Ministry of Internal Affairs and Office of the Ukrainian Parliament Commissioner for Human Rights***

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. **Yes**

***The Recommendation was used by educational department of the Ministry of Internal Affairs during in the framework of humanitarian traininging for all categories of personnel. Methodological materials are printed in a special issue of the Interior Troops` newspaper "Ratnyk" (№ 29-30, printed on 08/10/2012)***

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

***There were no problems with dissemination of the Recommendation***

II.4 To which authorities has the Recommendation been distributed?

**Ministry of Defence, Ministry of Justice, Ministry of Internal Affairs and Office of the Ukrainian Parliament Commissioner for Human Rights**

II.5 Has the Recommendation been distributed to members of the armed forces? No

II.6 Has the Recommendation been translated ? Yes

II.7 If not, is this foreseen? Yes

II.8 How would you assess the visibility of the Recommendation?  
 Fully satisfactory ☒ Adequate ☒ Insufficient ☐ Absent ☐

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

***According to the current Ukrainian legislation the procedure of investigating deaths, violations of the right to life and health is assigned to the appropriate law enforcement and judicial authorities. In case of appropriate grounds, persons who provide information about crimes or who are victims of crime, have the right to security according to the provisions of the Law of Ukraine "On safety of persons involved in criminal proceedings", the Criminal Procedure Code and the Disciplinary Statute of Armed Forces of Ukraine.***

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes

***According to the Ukrainian legislation the procedure of independent and effective investigation into alleged acts of torture or other ill-treatment is assigned to the appropriate law enforcement and judicial authorities.***

B.4 Are there measures in place to encourage reporting of acts of



torture or other ill-treatment and to protect those reporting such acts against retaliation?

Yes

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

***Constitution of Ukraine, Criminal Code of Ukraine (Art. 126, 127, 406), Disciplinary Statute of Armed Forces of Ukraine***

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service?

Yes

***According to Article 1 of the Law of Ukraine "On Military Duty and Military Service «Motherland defence, independence and territorial integrity of Ukraine is the constitutional duty of the Ukrainian citizens».***

***The person can be allowed not to perform military duty, which is only possible in the cases stipulated by this Law.***

***If the performance of military duty contradicts the religious beliefs of a person, the fulfilment of his duty should be replaced by alternative (non-military) service.***

***The right to alternative service have only persons whose religious beliefs forbid them using weapons.***

***Alternative service is performed in the service of state owned enterprises, institutions and organizations, as well as of the organizations under the patronage of the Red Cross Society of Ukraine.***

***The duration of military service is 12 months, in this time the duration of alternative service is 1,5 time longer.***

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation.

Yes

- ***Disciplinary Statute of the Armed Forces of Ukraine, adopted by the Law of Ukraine on March 24, 1999 № 551-XIV;***

- ***Code of Ukraine on Administrative Offences;***

- ***the Resolution of the Verkhovna Rada of Ukraine of 23.06.1995 № 243/95-VR "On Approval of the financial responsibility of servicemen for damage caused to the state "***

- ***Directive of the Supreme Commander of the Armed Forces of Ukraine on October 28, 2002 № 1-1/1384 "On additional measures to improve discipline in the Armed Forces of Ukraine and other military formations";***

- ***the conception of educational work in the Armed Forces and other military formations of Ukraine, approved by the President of Ukraine and dated on September 4, 1998 № 981/98;***

***order of the Commander-in-chief of Interior Troops of Ukraine from 06.02.2007 № 50 "On improvement of work to ensure military discipline and crime prevention in the Interior Troops of Ukraine."***

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces?

Yes

***Criminal Procedure Code of Ukraine defines the same procedure of***

***imprisonment for all groups of society***

E.2 Is it lawful to detain members of armed forces under the age of 18? **Yes**  
***Criminal Procedure Code of Ukraine defines arrest and detention procedure of a minor as a preventive measure only in exceptional cases depending on the severity of the crime.***  
***Parents or persons in loco parentis must be informed about the arrest and detention of a minor.***

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? **No**

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. **No**

***F- Right to a fair trial***

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. **Yes**

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces’ civil rights and obligations? If any, please provide examples of such limitations or exclusions. **No**

F.3 Does your country have military courts? **No**  
***According to the Law of Ukraine “On the Judicial System and Status of Judges” (2010) the military courts were eliminated in Ukraine***

F.3.1 If so, are they separate from the chain of command?

F.3.2 If the reply to question F.3 is “yes”, are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation?

***G – Right to respect for private and family life, home and correspondence***

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? **Yes**

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? **Yes**

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? **No**

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. **Yes**

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. **Yes**

***According to Article 35 of the Constitution of Ukraine, everyone has the right to freedom of belief and religion. This right includes the freedom to practice any religion or no one, to perform alone or collectively religious rites or rituals, conduct religious activities.***

***Article 6 of the Law of Ukraine "On social and legal protection of servicemen and members of their families" confirms that the military has the right to profess any religion or profess no one, openly express their religious or atheistic beliefs. Commanders (chiefs) of military formations and units enable soldiers to participate in worships and religious rites in free from military service duty time.***

***If the performance of military duty contradicts the religious beliefs, the fulfilment of this duty shall be replaced by alternative (non-military) service.***

***Establishing religious organizations at the military administration departments, other military departments and units is prohibited.***

H.2 Do conscripts have the rights to be granted conscientious objector status? **Yes**

H.2.1 If so, is an alternative service of a civilian nature available? **Yes**

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? **No**

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. **No**

***The grounds for dismissal of servicemen are clearly regulated by Article 26 of the Law of Ukraine "On Military Duty and Military Service", by the Decree of the President of Ukraine, adopted on December 10, 2008 № 1153 "On Regulations of the citizens of Ukraine military service in the Armed Forces of Ukraine" and by the Resolution of the Cabinet of Ministers of Ukraine "On approval of the list of circumstances or other valid reasons that could be grounds for dismissal from the army professional servicemen " (adopted March 4, 1995 № 150)***

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? **Yes**

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? **No**

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

***According to Article 8 of the Law of Ukraine "On the Internal Troops of Ukraine", activities of all political parties and movements are not permitted in the Internal troops, as well as participation therein of military officers and re-enlisted military members is prohibited.***

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? **Yes**

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? **Yes**

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. **No**

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. **Yes**

***According to Article 5 of the Law of Ukraine «On social and legal protection of servicemen and members of their families» the members of armed forces have the right to establish their associations (trade unions) in accordance with the legislation of Ukraine. The members of armed forces can not be members of any political parties, organizations or movements***

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. **No**

***According to Article 5 of the Law of Ukraine «On social and legal protection of servicemen and members of their families» the members of armed forces can not to be members of any political parties, organizations or movements.***

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. **No**

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. **Yes**

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? **Yes**

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? **Yes**

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? **Yes**

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? **No**

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. **Yes**

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. **Yes**

***The Constitution of Ukraine, The Criminal Code of Ukraine, Statute of internal service in Armed Forces***

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? **Yes**

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? **Yes**

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. **Yes**

***There are legal frameworks for such type of State's support of servicemen. It foresees, in particular, norms and kinds of nutrition for different services and categories of military members***

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? **Yes**  
Where appropriate, please provide examples of good practices.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. **Yes**

***Women cannot be conscripted. They can join the Armed Forces via contract. No restrictions concerning types of occupation***

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? **No**

T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? **Yes**

***According to the current Ukrainian legislation the person is able to serve on active military service only from 18 years old. Joining the military higher educational establishments and contracting for the professional service are permitted in 17 years.***

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? **Yes**

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? **Yes**

T.4 Can these persons take an active part in the hostilities? **No**

U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. **Yes**

***It is provided by the officers of the educational departments and units***

U.1.1. If the reply to question U.1 is "YES":

U.1.1.1	Is international human rights law part of the training programme ?	Yes
U.1.1.2	Are the human rights of the members of armed forces themselves part of the training programme?	Yes
U.1.1.3	Are prevention of ill-treatment and discrimination part of the training programme?	Yes
U.1.1.4	Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme?	Yes

U.1.2 If the reply to question U.1 is "NO", please explain why and whether any measure is in preparation.

V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

***In accordance with the Criminal Procedure Code of Ukraine, the Law of Ukraine "On Public Appeals" servicemen have the right to apply to the law enforcement agencies and judicial institutions to protect their rights and freedoms.***

***Statute of the Armed Forces of Ukraine and the Law of Ukraine "On social and legal protection of servicemen and members of their families" stipulate that serviceman may apply to the Court with regard to illegal actions of military officials and military command***

## Section IV - Follow-up

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

***Elaboration of the flexible mortgage lending mechanism for professional military personnel.  
Elaboration of the scheme of housing renting for professional military personnel.  
To amend the anti-corruption legislation of Ukraine in order to extend the list of paid employment jobs, which are allowed during off-duty time (at present it is allowed to be engaged in teaching activities, research and creative activities, medical practice, as well as to serve as instructors and to have referee practice in sport).***

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

***Yes, it would be useful***

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

***No***

**SAINT-SIÈGE**

Soyez remerciés pour l'envoi du questionnaire sur la mise en œuvre de sa Recommandation sur les droits de l'homme des membres des forces armées (CM/Rec(2010)4), adopté par procédure écrite par le CDDH.

Bien que n'étant pas directement concerné par ce questionnaire du fait de son statut d'observateur auprès du Conseil de l'Europe, de la non-signature de la Convention européenne des Droits de l'Homme, le Saint-Siège saisit cette occasion pour réaffirmer l'importance qu'il accorde à la mise en œuvre des droits de l'homme et particulièrement du droit à la liberté religieuse des membres des forces armées.

Je vous adresse aussi, ainsi qu'au secrétariat, mes remerciements pour le travail accompli et nous serions très intéressés par les suites éventuelles de ce questionnaire.



## OSCE Office for Democratic Institutions

Thank you for sharing this questionnaire with ODIHR.

We welcome the Council of Europe's initiative to promote and strengthen the rights of armed forces personnel. In our Human Rights, Gender and Security programme the human rights of members of the armed forces is a key area of work. The Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel produced by ODIHR and DCAF is still a major resource in our work and I am pleased to comment on the draft questionnaire based on our experience in developing this Handbook, including the development of a questionnaire, and in implementing our programmatic work.

Let me first note that it is interesting that the questionnaire attempts to capture any impact of the Recommendation on human rights of members of the armed forces (CM/Rec(2010)4). There is also a section on the dissemination of the Recommendation the results of which can also provide insights.

Please find a few comments and suggestions on the questionnaire below :

**More open-ended questions:** It is understandable that the structure of the questionnaire follows the general layout and structure of the Recommendation, i.e. asking questions in relation to specific rights. This brings about many good questions, however, it would be beneficial to ask more open-ended questions. It appears to me that there are too many questions that are 'yes'/'no' type of questions, which is likely to trigger limited substantive information. In most cases further explanations are sought only for 'no' responses, i.e. why a certain measure is not in place. It would be equally important or interesting to know what is in place and how it works if the response is 'yes'.

**Cover legal frameworks:** There should be more coverage of the legal framework in place in which the particular rights are enshrined and guaranteed. This includes specific laws, the Constitution etc.

**Include ombudsman institutions/complaints mechanisms:** It would be beneficial to include questions more specifically on access to independent complaints mechanisms such as military ombudsman institutions, their mandate, powers etc.

**Consider role of civil society:** The role of the civil society is also of importance for example to monitor the situation in the barracks, provide training etc. Civilians may also serve in the military courts or have a role in military justice matters in one way or another.

**Expand on the training section:** This crucial section could include questions on training for commanders and service personnel, training on particular topics such as gender, spotting bullying, racial discrimination amongst other topics.

**More comprehensive coverage of non-discrimination:** In addition to covering non-discrimination based on gender and sexual orientation, ethnicity, language and religion are

important issues. The questions here should ideally capture any limitations on any other grounds than the ones already cited.

**Provide more examples:** For certain respondents it may be helpful to have more specific questions or examples provided. For example, "Describe any measures put in place to promote military professionalism and respect such as a code of conduct". The 'code of conduct' is a concrete example of a measure that can be taken.

**Inclusion of pro-active measures:** This refers to any efforts for example to actively promote women's full participation, equal rights for all ethnic groups, policy of no tolerance of bullying, ability of commanders to demonstrate gender and human rights awareness in order to be promoted etc.

**Identification of good practices and approaches:** Pose questions that can help to identify ways to ensure rights are upheld and respected, which can provide lessons learnt for others in complying with the Recommendation.

-----

I hope this initial feedback will be useful for your purposes. We would be happy to contribute further on this in support of issues of common concern. Please feel free to also share any other information on ongoing or planned work by the Council of Europe to strengthen and promote human rights of armed forces personnel.