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## **EUROPEAN SOCIAL CHARTER**

Response by the Government of Italy to comments submitted by the «European Organization of Military Associations and Trade Unions» (EUROMIL) on the 22nd National Report on implementation of the European Social Charter

Report registered by the Secretariat  
on 12 May 2023

**CYCLE 2023**

## Observations by Italian authorities

The resolution adopted by the General Assembly of the «European Organization of Military Associations and Trade Unions» (EUROMIL) on 28 April 2023 is aimed, in summary, at complaining about the alleged unsuitability of law n.46 of 2022 (containing "Regulations on the exercise of trade union freedom by personnel of the Armed Forces and Military Police , as well as delegation to the Government for regulatory coordination") to guarantee professional Associations of a trade union nature between military personnel (APCSM) adequate protection of trade union rights of military personnel, with particular reference to:

- a. prohibition for associations "to have links with trade union confederations or other trade unions";
- b. the fact that «the competences outlined by the Law should not interfere with the internal organization of the associations»;
- c. the circumstance that "representation is divided into branches while overall representation and collective bargaining are necessary to avoid fragmentation of rights".

Based on these considerations, it is argued that the same law:

- d. "must be modified to guarantee the protection of fundamental rights and establish legitimate representative bodies which can participate in constructive discussions and collective bargaining with the competent authorities";
- e. "does not establish an adequate framework for the recognition of trade union rights of military personnel, as it limits itself to fulfilling the formal obligation to guarantee trade union freedom, without providing the necessary conditions for its effective use and exercise".

The aforementioned **law n.46 of 2022** has:

- a. affirmed the right to free trade union organization in favor of members of the Armed Forces and the military Police, who can also join associations of an inter-force nature, exercising it in compliance with the duties and principles established by article 52 of the Italian Constitution (**art.1**);
- b. provided some explicit prohibitions (**art.4**), aimed at safeguarding the internal cohesion, efficiency, neutrality and operational readiness of the military Administrations (necessary and essential instrumental prerequisites to ensure the effectiveness of the action of the Armed Forces and police to military order), whose action is placed to protect values of the legal system of a supreme and primary nature, which is the military defense of the State.

For these purposes, the possibility has been excluded:

1) for the APCSM, to announce or proclaim a strike or to replace actions for the same purpose, as well as take part in a strike even if proclaimed by other trade union organizations unrelated to military personnel, as well as to join, federate, affiliate or have relations of an organizational or conventional nature with trade union associations other than the military ones;

2) for the military personnel, to join other trade union associations (different from those formed by members of the Armed Forces and military police) due to the specificity of the military system which implies, among other things, the need to avoid unacceptable conditioning in the pursuit of institutional goals;

c. recognized to the associations (**art.5**), within the sphere of the matters of competence, the right to:

(1) submit comments and proposals on the application of laws and regulations to the relevant Ministries, reporting any initiatives to amend the legislation that may be deemed appropriate;

(2) be heard by parliamentary committees;

3) ask to be received by the Ministers responsible and by the senior bodies of the relevant Administrations;

d. provided for the possibility of the APCSM to organize themselves into peripheral divisions (in the regional or territorial sphere), in order to guarantee the exercise of trade union rights also locally, with reference to certain specific matters (e.g., compliance with and application of national bargaining), regulating the methods of communication with the relevant Administrations (**art.6**);

e. identified some requirements to gain access to trade union posts (of an exclusively elective nature) for members of the APCSM, aimed at guaranteeing the most complete unfolding of interlocations with the Armed Forces or Police Forces under the military order of reference (**art. 8**);

f. introduced specific criteria for calculating the "nationwide representativeness" of APCSMs (**art.13**), ensuring peculiar prerogatives to associations that achieve a membership of at least:

(1) 4% of the effective strength of the Administration of reference, if composed of military personnel belonging to a single Armed Force or military police force;

2) 3% of the effective strength of each relevant institution, if composed of military personnel belonging to two or more Armed Forces or military- police forces .

The aforementioned representative APCSMs, specifically, may:

(3) participate, as a "trade union party," in the negotiation procedures [of "sector" (so-called "I level") and "administration" (so-called "II level")] related to military personnel **(Art.11)**;

(4) to liaise with the peripheral articulations - in any case not inferior to the regional level - of the Administrations of reference, with regard to issues of union competence with local relevance **(art. 6)**. These peripheral articulations may also interrelate with the Administration of reference on matters of compliance with and application of national bargaining;

(5) to use a common office space at the central and peripheral headquarters (up to the regional level) of the relevant Armed Force or military- police force, subject to the availability of the Administrations and at no cost to them, in accordance with the modalities determined by the regulations implementing the law **(art. 9)**.

The recognition of the representativeness at the national level of the APCSMs also has effects in terms of protections and rights in favor of those who hold elective posts **(art. 14)**, who are also granted, on the basis of their actual representativeness, posting of workers and paid leave - the amount of which will be established within the framework of the negotiation procedures - for trade union activities;

g. provided for - with specific reference to the negotiation procedures, through which, in the future, the APCSMs will be called upon to deal with the relevant Administrations to define the contents of the employment relationship of military personnel - two levels of bargaining **(art.16)**:

(1) the first, so-called "sector," through which to regulate aspects common to all Military Administrations;

(2) the second, so-called "administration," within which the most characteristic profiles of the individual Armed Forces and Military- Police Forces will be to define the distribution of productivity-oriented wages.

These procedures provide for:

(3) the participation of a "public party" (consisting of a delegation composed of the relevant ministers and the top authorities of the Military Administrations) and a "trade union party" (composed of representatives of the nationally representative APCSMs);

(4) the transposition of the trade union agreements by separate Presidential Decree (one for the Armed Forces and one for the Military Police Forces);

(5) that the same matters currently referred to consultation, as well as the determination of the maximum quota of union postings and leave, to be the subject of negotiation.

In the new structure outlined by Law No. 46 of 2022 and in implementation of the latter [Art.16, paragraph 1 (d) and (e)], Legislative Decree 206 of 2022 introduced specific provisions aimed at:

a. adjusting the bargaining procedures for the personnel of the Armed Forces and the Police Forces with military regulations, according to models similar to those in force for the personnel of the Police Forces with civilian regulations, while respecting the specificity of their respective legal order;

b. regulating the composition of the delegations in charge of the stipulation of labor agreements and the updating of matters subject to bargaining;

c. establishing the so-called "negotiating areas" for the relevant executives, within which to govern the regulatory institutes on labor relations and variable salary :

(1) in analogy to what is already currently established for the managers of the civilian police forces (State Police and Penitentiary Police);

(2) in compliance with the principle of substantial equalization of the treatments of the managers of the Administrations of the «Security-Defense» Section, without prejudice to the peculiarities of the respective regulations.

Until the adoption of the decrees by the Minister for Public Administration for the identification of the union delegations admitted to the negotiation, the mechanism of extension to the managers of the military administrations of the negotiating agreements stipulated between the civilian police forces and the respective unions remains unchanged. This extension, pursuant to article 46, paragraph 6, of Legislative Decree no. 46 of 2017, is referred to a specific Prime Ministerial Decree, ensuring the substantial equalization of the ancillary economic treatments and regulatory institutions of the managers of the «Security- Defence" sector.