



Workflow guidance for the European Labour Authority to suggest to Member States to carry out a concerted or joint inspection

DECEMBER 2020

List of abbreviations

CJI	Concerted or Joint Inspection
ELA	European Labour Authority
MS	Member State(s)
NLO	National Liaison Officer(s)

Introduction

According to Article 8(1) of Regulation (EU) 2019/1149, the Authority may on its own initiative, propose to the authorities of the Member States (MS) concerned that they undertake a concerted or joint inspection (CJI). The workflow guidance for ELA defines practical steps on how to propose the initiation of CJIs to the concerned MS.

In line with Article 8(4) of Regulation (EU) 2019/1149, the workflow guidance also considers cases where one or more MS decide not to participate in the CJI.

According to Article 8(2) of Regulation (EU) 2019/1149 and for the purposes of this workflow guidance

- Concerted inspections are inspections carried out in two or more MS simultaneously regarding related cases, with each national authority operating in its own territory, and supported, where appropriate, by the staff of the Authority;
- Joint inspections are inspections carried out in MS with the participation of the national authorities of one or more other MS, and supported, where appropriate, by the staff of the Authority.

A concerted or joint inspection should be understood as an activity agreed upon by means of one Agreement between two or more Member States and ELA, irrespective of the number of companies and workplaces inspected, or the number of days of inspection activity. Likewise, the concerned authorities should report on the CJI using one Post-inspection report for the whole activity.

Such CJI can be combined with mutual learning, training activities or other staff exchanges.

The proposed inspection shall be carried out on a voluntary basis, in accordance with the law or practice of the Member State where the inspection takes place. The cooperation of a Member State with ELA shall not affect any existing bilateral/multilateral agreements nor memoranda of understanding concluded by the participating Member States. The proposal shall not entail any legal obligation for the involved parties, other than the ones described in Regulation (EU) 2019/1149. Member States and the Authority shall keep information about envisaged inspections confidential.

Workflow guidance for ELA to suggest to MS to carry out a concerted or joint inspection

This workflow guidance establishes the procedure to carry out CJIs.

1. ELA collects information from complaints, own analyses, risk assessment or data provided by social partner organisations.
2. ELA, including NLOs of concerned MS, initiates a case assessment (internal document).
3. ELA completes the assessment phase and forwards case to the Executive Director.
4. Formal decision of ELA Executive Director on whether to propose a case to the authorities of concerned MS.

5. ELA, via NLOs, sends case data and a proposal to carry out a CJI to MS (letter providing most (available) information as described in the Case description). Two outcomes are possible:
 - a) Concerned MS agree to participate (continue to point 6);
 - b) Concerned MS do not agree to participate:

In the event that one or more MS decides not to participate in a CJI, the national authorities of the other MS shall only undertake such an inspection in the participating MS. MS that decided not to participate shall keep information about such an inspection confidential.

According to Article 8(4) of Regulation (EU) 2019/1149, in a situation where a Member State decides not to participate in a concerted or joint inspection

- The Member State concerned shall inform the Authority and the other MS concerned in writing, including by electronic means, without undue delay of the reasons for its decision and about the measures it plans to take to resolve the case (specifying concrete actions and period), if any.
- Once known, the concerned MS shall inform the Authority and the other MS about the outcomes of the measures they took.
- The Authority may suggest that a MS which did not participate in a CJI, undertake its own inspection on a voluntary basis.

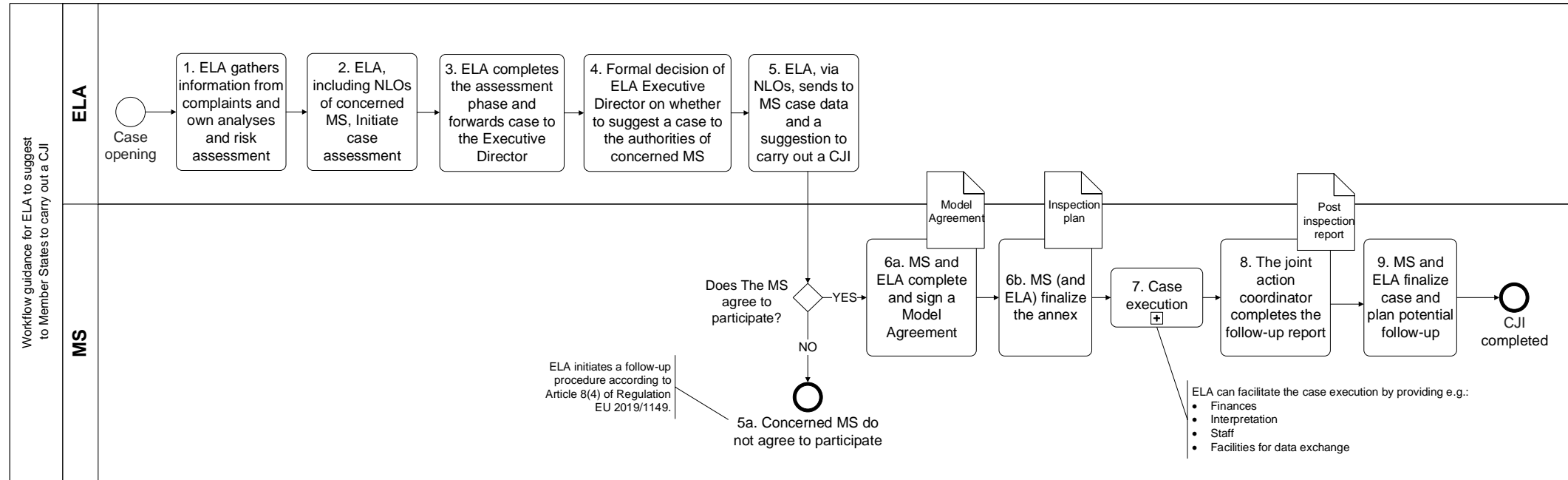
6. Agreement

- a) MS and ELA complete and sign an Agreement to undertake a CJI between the participating Member States, and the Authority. The Agreement shall set out the terms and the conditions for undertaking an inspection in accordance with the law or practice of the MS where the inspection takes place. An Agreement shall not affect any existing bilateral/multilateral agreements, nor a memorandum of understanding concluded by the participating MS.
- b) Member States (and ELA) finalize the relevant annexes, e.g. The Inspection Plan, when ELA staff participation is envisaged in a CJI. When no ELA staff participation is envisaged, the use of this Inspection Plan document as guidance for the participants is encouraged, on a voluntary basis. This document is adaptable to the laws and practices of MS participating in CJIs, and it provides detailed examples on how to proceed during a CJI. Other annexes are on voluntary basis.

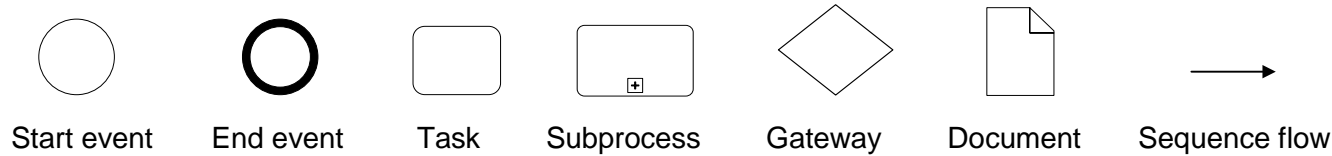
7. Case execution – ELA facilitates execution of CJIs by providing financing, interpretation, staff, facilities for data exchange, conceptual, logistical and technical support, legal expertise, support related to translation, etc.
8. The joint action coordinator completes the follow-up report - the authority of a MS that carries out a CJI shall report to the Authority on the outcome of the inspection in that MS and on the overall operational running of the CJI within six months of the end of the inspection, for which templates are available.
9. MS and ELA finalize case and plan potential follow-up - identify necessity for follow-up to inspections based on the findings.

In case ELA becomes aware of suspected irregularities in the application of EU law at any time, it shall report it to MS and the Commission.

Figure 1. Workflow guidance for ELA to suggest to MS to carry out a concerted or joint inspection



Explanatory Notes



Getting in touch with the European Labour Authority

By e-mail:

- by e-mail: EMPL-ELA-INSPECTIONS@ec.europa.eu
- Contact: <https://www.ela.europa.eu/contact.html>

Finding information about ELA

Online

Information about the European Labour Authority is available on the website: <https://www.ela.europa.eu/index.html>

EU Publications

You can download or order free and priced EU publications from the EU Bookshop at: <http://bookshop.europa.eu>.

EU law and related documents

For access to legal information from the EU, including all EU law since 1951 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>

