



## **Second meeting of the European Labour Authority Working Group on Mediation**

23 April 2021

### **- Summary of deliberations -**

The ELA Working Group on Mediation (hereafter 'the Group') held its second meeting on 23 April 2021 by video conference. The agenda of the meeting comprised three items: (1) updating the Group on negotiations with the Leading Delegations of the Administrative Commission (LD-AC) with regards to the establishment of cooperation agreement. (2) presenting an overview of the views from the experts as a follow up to the 1st meeting of the WG. (3) continuing the presentation and discussion of the proposed key features of the ELA mediation procedure based on the Working Document 2.0 (WD2.0).

In its introductory remarks, the Chair gave an update on the latest developments since the last meeting of the Group on 25-26 February. This includes one comment to the summary of the first meeting of the Working Group which was adopted in the amended version and is now available on [www.ela.europa.eu/mediation](http://www.ela.europa.eu/mediation) Following the first meeting, a request for written views from the experts on 12 issues identified during the discussion was sent to the appointed members. The Chair informed that ELA received 23 replies from the experts from the Member States, the European Parliament and the Social Partner Organisations. The Group received an update on the first round of discussions between representatives from ELA and the LD-AC in relation to the cooperation agreement which took place on the 8 March. The delegations agreed on a non-exhaustive list of open questions. Finally, the Chair welcomed four new experts who joined the Group for their first meeting.

### **ELA/AC negotiations - update on the discussions**

Before giving an update on negotiations held between ELA and the LD-AC, Ms Elisabete Silveira (currently the Chair of the AC) took the opportunity to address the Group. She clarified that after an introductory meeting between the ELA and the AC which took place on 26 January 2021, ELA invited the AC to nominate a limited number of experts to start the discussions with the aim of concluding a cooperation agreement before the end of 2021. A technical group of LD-AC was formed to take the lead on this action, and to be responsible for taking all necessary steps in this direction.

The first meeting between the ELA and the LD-AC took place on 8 March 2021, and the report circulated after the meeting. Ms Silveira clarified that the report which was prepared by ELA doesn't express the position of the AC and, furthermore, the report was drafted by ELA representatives. She informed the Group that a dedicated Working Party will be organized by the AC in June to discuss cooperation with ELA, including in the area of mediation, followed up by a meeting of the AC on 16-17 June. She highlighted that important work is still ahead and expressed her confidence that the negotiating parties will reach a common goal and formalize their cooperation through an agreement.

The Chair also addressed the Group with a view to bring more clarity on the competences of ELA in the area of mediation. The Chair stated that ELA fully respects the competences of the AC as provided in Reg. 883/2004 on the coordination of social security systems. Also, ELA cannot do the same tasks or take over any of the tasks from the AC as provided in Art 72 of Reg. 883/2004, including the task of dealing with all administrative questions and questions of interpretation arising from Reg. 883/2004 and 987/2009. This is not within ELA's mandate. The Chair clarified that ELA's tasks, as laid down in Reg. 2019/1149, are different

than those of the AC, and are more focused on the application and enforcement of EU labour mobility law. This includes social security coordination.

Specifically to the area of mediation, the aim of the mediation procedure is not to come up with a new interpretation of EU labour mobility law within the legal scope of ELA, but to reconcile divergent points of view between Member States who, upon request and subject to their agreement, decide to refer the case for mediation. The result will be a non-binding opinion, which may be adopted with the help of the stakeholders included in the mediation process. However, in view that both the conciliation procedure and the mediation procedure are voluntary in nature, the Chair stated that the decisive factor will be the choice of the Member States party to the dispute. ELA and the LD-AC are looking at various possible scenarios which could come up during the course of mediation, with a view to respect both the choice of the Member States and the division of competences between ELA and the AC.

Following those introductory remarks by the Chair of the AC and the Chair of the Group, ELA provided information on the 1<sup>st</sup> technical meeting between ELA and the LD-AC held on 8 March. The first discussion was an opportunity for both sides to express their views regarding mediation in relation to their competences and horizontal cooperation. It was agreed that open questions identified during this meeting need a period of reflection and exchange of written position before the next meeting planned in May.

### **Overview of the views of experts – presentation of the trends**

ELA then presented the main trends based on the opinions given by experts on 12 issues identified during the discussion at the 1<sup>st</sup> Working Group. These inputs will be taken into account when drafting Rules of Procedure and discussing the cooperation agreement with the AC. Upon request of the experts, ELA agreed to circulate a compilation of replies to experts of the Group, excluding the ones who express their written objection by 30 April.

The discussion followed by focusing on the role of NLOs. Although their role is dominantly seen as a facilitator and point of contact, it was highlighted that their involvement might be useful during the contact and dialogue stage, and during the procedure as point of reference for any clarifications. Several experts underlined that some issues remain questionable for them such as the number of mediation panels and their subject, the need for flexible deadlines, or the role and possible competences of independent assessors.

A representative from the European Commission (DG GROW, SOLVIT) presented to the Group a compilation of views collected from national SOLVIT centres regarding cooperation with ELA and the mediation procedure. Based on 17 replies, the majority expressed the view that the procedure should be as short as possible, effective and deprived of unnecessary administrative burden. Most of the centres agreed to inform the national authorities and, if appropriate, relevant NLOs before bringing the unsolved case to the attention of ELA. It was also added that the conclusion of an MoU is needed in order to facilitate the cooperation and define referral procedure. In that sense, ELA confirmed the latter will be discussed and presented to the Group at a later stage.

### **Key features of the ELA mediation procedure – presentation and discussion**

The Chair presented to the Group the remaining key features of the ELA mediation procedure based on a working document, specifically from sections D – H. After the presentation of each part, the experts took the opportunity to ask for clarifications, express their views and comments.

In particular, in relation to **section D ‘Launch of the mediation procedure’**, ELA reminded the Group about the ongoing negotiations between ELA and LD-AC, the necessity to clarify the competences and coordination between the two entities. From a practical point of view, the experts shared their opinion on the AC’s request for the transfer of the dispute, preferably at the earliest possible stage, however there were also opinions that the AC should be able

to make necessary request both before the first and the second stage of the mediation procedure. Most participants insisted on the need for clarifying the competence issue and also emphasised the need for the AC to adapt its rules of procedure as well as the deadlines. In that regard, the AC representatives informed the Group that this is a very important issue which is currently under assessment.

Concerning **section E ‘Stages of the mediation procedure’**, experts raised several issues concerning the impartiality of mediators and experts of the mediation board in relation to their professional background and nationality. In particular, one expert asked whether volunteers nominated by Member States as mediators or experts of the mediation board, could possibly represent that Member State during the mediation procedure as a national representative, when that Member State is party to the dispute, since they would be abstaining from participating in disputes concerning the Member State that nominated them. Other experts had the view that in such a case, mediators and experts of the Mediation Board may represent their Member State as a national representatives.

On the issue of persons who may be appointed as mediators/experts from Member States, two experts were of the view that they should be civil servants from the nominating Member State, and not from the private sector. In addition, they were of the view that disputes may have political implications, and Member States may avoid referring the case for mediation if the mediators/experts are not civil servants. The representative from the European Commission (DG GROW, SOLVIT) disagreed stating that the basic principles established for the mediation procedures provide sufficient safeguards. One expert asked if the dialogue procedure which may take place in accordance with Decision A1 of the AC, may be considered by ELA as a direct contact and dialogue between the Member States before launching the mediation procedure.

On **Section F ‘Reporting’**, there were no comments from the experts, and on **Section G ‘Final provisions’**, an expert expressed the opinion that Member States should also be involved in the evaluation of the rules of procedure. The experiences gained along the way could provide valuable input and make the mediation procedure more effective. One other expert suggested that the indicative period (3 years) for the evaluation proposed in WD2.0 should be shorter, i.e. 2 years. This would therefore not coincide with the appointment of new mediators/experts of the mediation board which is also set at 3 years. The Chair noted that the initial period was set at 3 years in view that during the first years, the use of the mediation procedure could possibly be low and thus would not provide a sufficient basis to carry out a proper evaluation.

On the last point, **Section H ‘Annexes’**, there were no comments. The Chair invited the experts to submit proposals in writing for inclusion into the model forms or templates to be annexed to the rules of procedure.

### **Conclusions and next steps**

The Chair concluded by informing the experts that the summary of the deliberations will be drafted by the Secretariat and submitted to the experts via written procedure within 21 calendar days. The experts may provide their comments, if any, within 14 calendar days after receiving the Summary. They may submit suggestions, contributions and questions through the functional mailbox [EMPL-ELA-MEDIATION@ec.europa.eu](mailto:EMPL-ELA-MEDIATION@ec.europa.eu).

As regards next steps, ELA will exchange positions in writing with the AC and a 2<sup>nd</sup> technical meeting should take place in May. ELA will start preparing a first draft of the Rules of Procedure, based on the suggestions in the WD 2.0, the discussions during the meetings and the views expressed in writing. The Chair stated that it will be ensured to take all comments into account and as much as possible, everyone’s views into consideration.

On behalf of ELA's Executive Director, the Chair thanked all the experts for their participation and closed the meeting.

**Date of the next meeting: to be announced**