



**Decision No 17/2021**  
**of 10 November 2021**  
**of the Management Board**  
**on the Rules of Procedure for mediation of the European Labour Authority**

THE MANAGEMENT BOARD OF THE EUROPEAN LABOUR AUTHORITY,

Having regard to Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344<sup>1</sup> (“the founding Regulation” and “the Authority”), and in particular Article 13 thereof,

Whereas:

- (1) The Authority was established in order to help strengthen fairness and trust in the internal market. The objective of the Authority is to contribute towards ensuring fair labour mobility across the Union and assist Member States and the Commission in the coordination of social security systems. To that end, the Authority should mediate and facilitate a solution in the case of disputes between Member States regarding individual cases of application of Union law in areas covered by the founding Regulation.
- (2) The founding Regulation entrusts the Management Board to adopt the rules of procedures for mediation, including working arrangements and the appointment of mediators, the applicable deadlines, the involvement of experts from the Member States, the Commission and the Authority, and the possibility of the Mediation Board to sit in panels composed of several members. On 15 December 2020, the Management Board adopted Decision 20/2020 setting up the Working Group on mediation to advise and assist the Authority in the

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<sup>1</sup> OJ L 186, 11.7.2019, p. 21–56

implementation of the Founding Regulation concerning mediation and the establishment of the necessary arrangements.

- (3) The Authority's mediation procedure should be without prejudice to the competences of the Administrative Commission, as provided in Article 72 of Regulation (EC) No 883/2004<sup>2</sup>. These competences include, inter alia, dealing with all administrative questions and questions of interpretation arising from the provisions of Regulations (EC) No 883/2004 and 987/2009<sup>3</sup>.
- (4) In order to ensure good cooperation between the Authority and the Administrative Commission as regards cases of mediation which concern, fully or in part, matters of social security, a cooperation agreement should be established between the two bodies.
- (5) With a view to better coordinate the referral of cases and the exchange of information between the Authority and the SOLVIT network, a cooperation agreement should be established between the two bodies.
- (6) The mediation procedure aims to reconcile the divergent points of view between Member States who, upon request and subject to their agreement, decide to refer the case for mediation. The outcome will be a non-binding opinion by common agreement of the Member States that are party to the dispute, which may be adopted with the involvement of other stakeholders included in the mediation process, as provided in Article 13 of the founding Regulation.
- (7) The rules of procedure should provide for an efficient and effective mediation procedure, based on internationally recognised principles and norms which apply to this kind of dispute resolution mechanisms. They should also provide for a timely resolution of disputes referred by the Member States.
- (8) The provisions contained in these rules of procedure supplement and clarify the provisions contained in the founding Regulation, in particular Article 13 thereof.

HAS DECIDED:

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<sup>2</sup> OJ L 166, 30.4.2004, p. 1–123

<sup>3</sup> OJ L 284, 30.10.2009, p. 1–42

Sole Article

The Rules of Procedure for mediation as annexed to this Decision are hereby adopted.

Done at Bratislava, 10 November 2021

For the Management Board,

Tom BEVERS

Chair of the Management Board

## **RULES OF PROCEDURE FOR MEDIATION**

### **Article 1**

#### **Definitions**

For the purposes of these Rules of Procedure, the following definitions apply:

- i. 'founding Regulation' means Regulation (EU) 2019/1149 establishing a European Labour Authority<sup>4</sup>;
- ii. 'Management Board' means the Management Board referred to in Article 16 of the founding Regulation;
- iii. 'social partner organisations' means the members of the social partner organisations at Union level, in accordance with Article 17(1) of the founding Regulation, as well as national and sectoral social partners;
- iv. 'National Liaison Officers' or 'NLOs' means the officers referred to in Article 32 of the founding Regulation;
- v. 'Administrative Commission' means the Administrative Commission for the coordination of social security systems referred to in Article 71 of Regulation (EC) No 883/2004<sup>5</sup>;
- vi. 'SOLVIT network' means the network established by Commission Recommendation of 17.9.2013 on the principles governing SOLVIT<sup>6</sup>;
- vii. 'national SOLVIT centres' includes both the 'home centre' and the 'lead centre' in the Member State as defined in Commission Recommendation of 17.9.2013 on the principles governing SOLVIT.
- viii. 'individual case of application of Union law' means cases of application of Union law which may be referred for mediation by the Member States involving institutions, persons and legal entities who are identifiable for the Member States that are party to the dispute, and where two or more Member States have a divergent point of view regarding the application of Union law in the areas covered by the founding Regulation;
- ix. 'mediator' means a person who conducts a mediation in accordance with Article 13(3) of the founding Regulation, and is appointed by the Management Board in accordance with Article 7 of the Rules of Procedure;

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<sup>4</sup> Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21–56 )

<sup>5</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1)

<sup>6</sup> Commission Recommendation 2013/461/EU of 17 September 2013 on the principles governing SOLVIT (OJ L 249, 19.9.2013, p. 10–15)

- x. 'expert of the Mediation Board' means a person who sits on the Mediation Board in accordance with Article 13(5) of the founding Regulation, and is appointed by the Management Board in accordance with Article 7 of the Rules of Procedure;
- xi. 'experts participating in an advisory capacity' means the experts from the Member State, the Commission and the Authority referred to in Article 13(3) of the founding Regulation (as regards the first stage of mediation), the experts from the Commission and the Authority referred to in Article 13(5) of the founding Regulation (as regards the second stage of mediation), as well as the experts referred to Article 19(19) and (20) of the Rules of Procedure.

## **I. RULES OF PROCEDURE**

### **A. General provisions**

#### **Article 2**

##### **Objective**

Pursuant to Article 13(1) of the founding Regulation, the Authority may facilitate a solution in case of a dispute between two or more Member States regarding individual cases of application of Union law in areas covered by the founding Regulation. The purpose of such mediation shall be to reconcile divergent points of view between the Member States that are party to the dispute and to adopt a non-binding opinion.

#### **Article 3**

##### **Scope**

- (1) Disputes admissible for the mediation procedure shall be disputes between Member States regarding individual cases of application of Union law in areas covered by Article 1(4) of the founding Regulation.
- (2) The mediation procedure shall not concern matters of Union law that require a legal opinion at Union level. However, disputes that concern the application of Union law by a Member State based on an interpretation that has already been provided by the Court of Justice of the European Union or any other specialised body entrusted by Union law to provide such interpretations, shall be admissible.
- (3) Pursuant to Article 13(1) and 13(9) of the founding Regulation, the mediation procedure shall be without prejudice to the powers of the Court of Justice of the European Union. Cases in which there are ongoing court proceedings at national

or Union level shall not be admissible for mediation by the Authority. Where court proceedings at national or Union level are initiated during the mediation procedure, the Member States that are party to the dispute shall without delay inform the Authority and the other Member State/s of this fact, and the mediation procedure shall be suspended.

## **Article 4**

### **Basic principles**

- (1) The Authority shall aim to put in place an effective mediation procedure that provides for a structured process to reconcile the divergent points of view between the Member States and to adopt a non-binding opinion.
- (2) The mediation procedure shall be based on the principles of neutrality, impartiality, sincere cooperation and inclusivity. The Authority shall also ensure that the mediation procedure aims to achieve rapid and balanced non-binding opinions, and that an unbiased procedure is guaranteed respecting the principles of fairness and effectiveness.
- (3) Mediators, experts of the Mediation Board, and experts participating in an advisory capacity shall keep strict confidentiality in respect of the data, documents, findings, discussions and results pertaining to the mediation procedure, without prejudice to the reporting provisions in the founding Regulation and of these Rules of Procedure.
- (4) Mediators, experts of the Mediation Board, and experts participating in an advisory capacity in the mediation procedure shall not act as representatives of their Member State, but on the basis of their professional expertise in an impartial manner. They shall abstain from participating as mediators or experts of the Mediation Board in a dispute to which one of the parties is the Member State that nominated them, when their impartiality could be compromised in any other way, or when their participation could give rise to a conflict of interest. Nevertheless, mediators or experts of the Mediation Board may act as national representatives in accordance with Article 19(2), when the Member State that nominated them is a Member State party to the dispute.

## **Article 5**

### **General conditions**

- (1) Pursuant to Article 13(2) and 13(7) of the founding Regulation, the mediation procedure shall be launched upon request of one or more Member States

concerned and shall be voluntary. It shall be conducted only with the agreement of all Member States that are party to the dispute.

- (2) Pursuant to Article 13(8) of the founding Regulation, Member States shall ensure that all personal data related to a case which is presented for mediation is anonymised in such a manner that the data subject is not or no longer identifiable. This shall also apply to national SOLVIT centres who may refer cases for the Authority's consideration. The Authority shall not process the personal data of individuals concerned by the case at any point in the course of the mediation.
- (3) In accordance with the principle of sincere cooperation, the Member States party to the dispute shall endeavour to keep within the indicative deadlines specified in these Rules of Procedure, in order to preserve the efficiency and effectiveness of the mediation procedure.

## **Article 6**

### **Access to documents**

Applications for access to the Authority's documents shall be handled in accordance with Decision No 8/2020 of 24 April 2020 of the Management Board laying down the rules for applying Regulation (EC) 1049/2001 with regard to European Labour Authority documents. EEA countries and Switzerland shall also consider applications with due consideration to the principle of sincere cooperation.

## **B. Structure and organisation**

### **Article 7**

#### **Appointment of mediators and experts of the Mediation Board**

- (1) Pursuant to Article 13(3) of the founding Regulation, the first stage of mediation shall be conducted between the Member States that are party to the dispute and a mediator. Pursuant to Article 13(4) of the founding Regulation, if no solution is found in the first stage of mediation, the Authority shall launch the second stage of mediation before its Mediation Board, subject to the agreement of all Member States that are party to the dispute. Pursuant to Article 13(5) of the founding Regulation, the Mediation Board shall be composed of experts from the Member States other than those that are party to the dispute.
- (2) The Management Board shall appoint an adequate number of mediators and experts from the Member States who will sit on the Mediation Board. The Authority shall launch a call for the Management Board members from the

Member States to nominate persons to act as mediators or experts to sit on the Mediation Board. The standard form of the call annexed to these Rules of Procedure shall be used for this purpose.

- (3) Persons nominated for mediators shall possess the necessary knowledge and skills in the field of dispute resolution mechanisms including mediation, and preferably, basic knowledge related to any of the different areas within the scope of the mediation procedure. Persons nominated as experts of the Mediation Board shall possess the requisite expertise and competence for dealing with disputes related to any of the different areas within the scope of the mediation procedure. The appointed mediators and experts of the Mediation Board shall participate in specialised training on mediation techniques including on the Rules of Procedure for mediation, and in the field of industrial relations and collective agreements, in order to ensure the high quality standard of the mediation procedure and of non-binding opinions.
- (4) The Authority shall establish a list of all nominations received, including all the details specified in the standard form annexed to the Rules of Procedure, and an assessment on whether, in the Authority's view, the persons nominated for mediators and experts satisfy the requirements in paragraph 3. The list shall be sent to the Management Board who shall appoint at least 6 mediators, and 18 experts of the Mediation Board from the list for a term of 36 months. Mediators and experts of the Mediation Board may be appointed for consecutive terms. The Authority shall keep the list of mediators and experts of the Mediation Board updated. In order to ensure the continuity of the mediation procedure, the list shall be automatically extended beyond that period for as long as a new list has not been established. If an appointed mediator or expert of the Mediation Board leaves before the expiry of this term, the Management Board shall appoint a replacement for the remaining period. Subject to the mutual agreement of the Member States that are party to the dispute, all mediators or experts of the Mediation Board shall continue hearing disputes which were launched before the end of the term, and shall retain office until mediation reaches the end in accordance with Article 18.
- (5) The appointed mediators or experts of the Mediation Board, including the Chair and Deputy Chairs of the Mediation Board, and experts participating in an advisory capacity shall act in a neutral and impartial manner in accordance with Article 4(4). They shall avoid any situation liable to give rise to potential conflicts of interest. Each mediator or expert of the Mediation Board shall, upon being appointed on a specific dispute, sign a declaration declaring that he or she is not in a situation of conflict of interests and shall update the Authority in the case of a change of circumstances about any conflict of interests. The declaration of absence of conflict of interest to be used is annexed to these Rules of Procedure.



- (6) The Management Board shall ensure that the list of appointed mediators and experts of the Mediation Board achieves the necessary geographical, professional and gender balance.
- (7) Costs incurred by mediators or experts of the Mediation Board, including the Chair and Deputy Chairs of the Mediation Board, and experts participating in an advisory capacity, for fulfilling the functions as provided in these Rules of Procedure shall be reimbursed in accordance with Decision 1/2019 of 11 September 2019 of the Executive Director on the rules for reimbursement of travel, subsistence allowance and other expenses.

## **Article 8**

### **The Mediation Board**

#### **A. Establishment of panels**

- (1) Pursuant to Article 13(6) of the founding Regulation, the Mediation Board may sit as one or in panels composed of several members.

#### **B. System of Chairmanship**

- (2) A Chair and two Deputy Chairs shall be appointed by the Management Board for a term of 36 months. Exceptionally, the initial term of the Deputy Chairs shall be 48 months. For this purpose, the Authority shall invite the Management Board members from the Member States to nominate persons for these positions, using the standard form referred to in Article 7(2). For the reasons specified in paragraph 4 of this Article, the appointed Chair, the first and second Deputy Chairs shall originate from different Member States, respecting the necessary geographical and gender balance. Should the number of persons nominated for the office of Chair and Deputy Chairs exceed the number required, the Management Board shall take a decision by vote, in accordance with Article 21 of the founding Regulation.
- (3) In order to ensure the continuity of the mediation procedure, the term of office referred to in paragraph 2 of this Article shall be automatically extended beyond that period for as long as the new Chair and Deputy Chairs have not been appointed. If the Chair or the Deputy Chairs leave before the expiry of this term, the Management Board shall appoint a replacement for the remaining period.
- (4) The first Deputy Chair shall carry out the functions of the Chair in particular for those cases in which, pursuant to Article 4(4) of these Rules of Procedure and Article 13(5) of the founding Regulation, the Chair is not allowed or unable to participate. The second Deputy Chair shall carry out the functions of Chair, in

particular for those cases in which the Chair and the first Deputy Chair are not allowed or unable to participate.

- (5) The functions of the Chair shall include:
- a) inviting appointed experts of the Mediation Board with relevant expertise in the field of the dispute to participate in the Mediation Board, appoint the panel of the Mediation Board, and inform the Member States that are party to the dispute including their respective NLOs and the Authority about its composition, as provided for in Article 19(11);
  - b) nominating the rapporteur from amongst the experts of the Mediation Board or the panel, depending on the case, as provided for in paragraph 8 of this Article;
  - c) presiding over all meetings of the Mediation Board or the panel, depending on the case;
  - d) acting as the representative and main point of reference for the Mediation Board in the communications and relations with the Management Board, Member States that are party to the dispute including their respective NLOs and the Authority;
  - e) coordinating the work of the Mediation Board, ensuring that the basic principles provided in Article 4 and the work arrangements provided in Article 19 are observed by the Mediation Board;
  - f) ensuring the high quality of the mediation procedure and of non-binding opinions;
  - g) deciding on the most effective working arrangements for conducting the second stage of the mediation procedure, in consultation with the Member States party to the dispute, in accordance with Article 19.

In carrying out these functions, the Chair shall consult and be assisted by the Deputy Chairs.

### **C. Composition**

- (6) The panel of the Mediation Board shall consist of the Chair, the Deputy Chairs and at least six other experts of the Mediation Board selected from the list of experts appointed by the Management Board in accordance with Article 7(4). In order to ensure the efficiency and effectiveness of the procedure, the panel of the Mediation Board should indicatively not consist of more than twelve experts of the Mediation Board from Member States other than those that are party to the dispute.
- (7) When appointing the panel of the Mediation Board, the Chair shall ensure that it consists of experts of the Mediation Board with relevant knowledge and expertise in relation to the nature and subject area of the dispute, and where possible, that it respects the necessary geographical and gender balance.
- (8) For each dispute which is referred to the Mediation Board, the Chair shall nominate a rapporteur from amongst the experts of the Mediation Board or the

panel, depending on the case, taking into account the nature of the dispute and the expertise, competence and availability of that expert. The rapporteur shall be responsible for preparing the factual report and non-binding opinion, taking into account all the views of the members of the Mediation Board or the panel, depending on the case, the Member States that are party to the dispute and other experts participating in an advisory capacity, in accordance with Article 19.

### **C. Preliminary stages of the mediation procedure**

#### **Article 9**

##### **Request by the Member States**

- (1) Pursuant to Article 13(2) of the founding Regulation, where a dispute cannot be solved by direct contact and dialogue between the Member States that are party to the dispute, one or more of the Member States concerned may request the Authority to launch a mediation procedure.
- (2) The request should present clearly the concerns of the Member State/s making the request and must include a detailed statement. A model of the detailed statement, including the information to be included therein is annexed to these Rules of Procedure. The Authority may request additional information and/or clarifications from the Member State/s concerned that are necessary for a sound assessment of the dispute. The Member States concerned shall anonymise all personal data related to the case as provided in Article 5(2).
- (3) Upon receiving such request, the Authority shall acknowledge its receipt. If the dispute relates, fully or in part, to matters of social security, the Authority shall give due consideration to any requests by the Administrative Commission or the Member States to refer the issue concerning social security to the Administrative Commission, as provided in Article 11, prior to launching the mediation procedure in accordance with Article 14.

#### **Article 10**

##### **Mediation at the Authority's own initiative**

- (1) Pursuant to Article 13(2) of the founding Regulation, the Authority may suggest launching a mediation procedure on its own initiative. Pursuant to Article 7(1)(e) of the founding Regulation, the Authority shall consider whether to refer unresolved requests under Article 7(1) of the founding Regulation to mediation in accordance with Article 13(2). In such case, the Authority shall ask each Member State that is party to the potential dispute to confirm, within 15 working days from receipt of request, in writing, including by electronic means, whether the resolution of the

potential dispute has already been tried by direct contact and dialogue and whether it agrees that the Authority launches the mediation procedure, if the direct contact and dialogue was unsuccessful.

- (2) Where all Member States party to the potential dispute inform the Authority that direct contact and dialogue already took place with no solution achieved and give their respective agreement, the Authority shall launch the mediation procedure in accordance with Article 14 and without prejudice to Article 11.

## **Article 11**

### **Disputes relating, fully or in part, to matters of social security**

- (1) Pursuant to Article 13(10) of the founding Regulation, mediation shall be without prejudice to the competence of the Administrative Commission. Furthermore, mediation shall take into account all relevant decisions of the Administrative Commission.
- (2) Pursuant to Article 13(11) of the founding Regulation, when a dispute relates, fully or in part, to matters of social security, the Authority shall inform the Administrative Commission. Upon request of the Administrative Commission and in agreement with the Member States that are party to the dispute, the Authority shall refer the issue concerning social security to the Administrative Commission. Upon request of any Member State that is party to the dispute, the Authority shall refer the issue concerning social security to the Administrative Commission. That referral may be made at any stage of the mediation.
- (3) The Authority and the Administrative Commission shall establish a cooperation agreement, in order to ensure good cooperation, to coordinate the activities in mutual agreement and to avoid any duplication in cases of mediation which concern both issues of social security and labour law. The cooperation agreement shall include arrangements to implement Article 13(10) and (11) of the founding Regulation, which shall be considered an integral part of these Rules of Procedure.

## **Article 12**

### **Referral of cases by the SOLVIT network**

- (1) Referring to Recital (23) of the founding Regulation, the SOLVIT network may refer to the Authority for its consideration cases in which the problem cannot be solved due to differences between national administrations.

- (2) With a view to better coordinate the referral of cases and the exchange of information, the Authority and the SOLVIT network shall conclude a cooperation agreement. Cases referred by the SOLVIT network to the Authority for its consideration shall be processed in accordance with the agreement.

### **Article 13**

#### **Refusal by a Member State to participate in mediation**

Pursuant to Article 13(7) of the founding Regulation, where a Member State decides not to participate in mediation, it shall inform the Authority and the other Member States that are party to the dispute in writing, including by electronic means, of the reasons for its decision within 15 working days from receipt of request by the Authority in accordance with Article 14(3).

### **Article 14**

#### **Direct contact and dialogue between the Member States that are party to the dispute**

- (1) Member States may request the Authority to launch the mediation procedure once all efforts to resolve the dispute by direct contact and dialogue have been exhausted.
- (2) When the request is received from all the Member States that are party to the dispute, the Authority shall launch the first stage of the mediation procedure, after verifying that the dispute falls within the scope of the mediation procedure, without prejudice to Article 11. The Member States concerned shall provide the Authority with the detailed statement referred to in Article 9(2) within 15 working days from the submission of their request.
- (3) When the request is not received from all the Member States that are party to the dispute, the Authority shall, prior to launching the first stage of the mediation procedure, contact the Member State/s that did not make a request to confirm their participation in mediation. The Member State/s concerned shall confirm in writing, within 15 working days from the receipt of the request, including by electronic means, of their agreement or otherwise. When all Member States concerned agree to participate in mediation, they shall provide the Authority with the detailed statement referred to in Article 9(2) within 15 working days from the date the Member States inform the Authority of their agreement.
- (4) In the event that one or more Member States decides not to participate in mediation, Article 13 shall apply accordingly.

## **D. Stages of the mediation procedure**

### **Article 15**

#### **First stage of mediation**

- (1) Pursuant to Article 13(2) of the founding Regulation, where a dispute cannot be solved by direct contact and dialogue between the Member States that are party to the dispute, the Authority shall launch a mediation procedure, and the Member States party to the dispute will be notified in writing accordingly. The date of that notification shall be considered the date of the launch of the first stage of mediation.
- (2) Pursuant to Article 13(3) of the founding Regulation, the first stage of mediation shall be conducted between the Member States that are party to the dispute and a mediator, who shall adopt a non-binding opinion by common agreement.
- (3) As soon as the mediator is appointed in accordance with Article 19(5), the Authority shall make available to the appointed mediator the detailed statements, and any other additional relevant information and/or clarifications in relation to the dispute that were submitted by the Member States that are party to the dispute in accordance with Article 9(2).
- (4) The mediator shall conduct the mediation procedure in accordance with the applicable working arrangements provided in Article 19.
- (5) Pursuant to Article 13(4) of the founding Regulation, if no solution is found in the first stage of mediation, the Authority shall launch a second stage of mediation before its Mediation Board, subject to the agreement of all Member States that are party to the dispute.

### **Article 16**

#### **Second stage of mediation**

- (1) Pursuant to Article 13(5) of the founding Regulation, the Mediation Board composed of experts from Member States other than those that are party to the dispute shall seek to reconcile the divergent points of view of the Member States that are party to the dispute and shall agree on a non-binding opinion.
- (2) No later than 10 working days from the submission of the final factual report by the mediator as provided in Article 19(10), indicating that no solution was found during the first stage of mediation, the Authority shall, subject to the agreement of all Member States that are party to the dispute, launch the second stage of mediation. The Member States party to the dispute shall be notified in

writing accordingly. The date of that notification shall be considered as the date of the launch of the second stage of mediation.

- (3) The Authority shall make available to the Chair of the Mediation Board the final factual report prepared by the mediator, the detailed statements and any other additional relevant information and/or clarifications in relation to the dispute which were submitted by the Member States that are party to the dispute.
- (4) The Mediation Board shall conduct the mediation procedure in accordance with the applicable working arrangements provided in Article 19.

## **Article 17**

### **Mediation outcome**

- (1) Pursuant to Article 13(3) and 13(5) of the founding Regulation, the outcome of the mediation procedure shall be the adoption of a non-binding opinion. The non-binding opinion shall take into account the EU acquis and other interpretative documents provided by specialised bodies entrusted by Union law. It may contain recommendations and specific solutions to solve the dispute. A model of the non-binding opinion is annexed to these Rules of Procedure. If there can be no common agreement reached on a certain issue, a non-binding opinion shall not be adopted.
- (2) The adopted non-binding opinion shall not have any legal effect, be legally binding or be enforceable. Furthermore, it shall not prejudice the initiation of infringement proceedings by the European Commission or proceedings before the Court of Justice of the European Union or national authorities. Nevertheless, once the Member States that are party to the dispute have agreed to a solution, each Member State should take the measures necessary to implement it within the agreed time limit and report to the Authority in accordance with Article 20.
- (3) The Authority shall take the necessary measures to establish and maintain a record of disputes referred and resolved through its mediation procedure in an electronic format.

## **Article 18**

### **End and suspension of the mediation procedure**

- (1) Once the mediation procedure is launched, the procedure shall end on the date of the adoption of a non-binding opinion, at any stage of the mediation procedure.
- (2) The mediation procedure may also end:

- a) At the first stage, by a written declaration of the mediator, after consultation with the Member States that are party to the dispute, that further efforts at mediation would be to no avail, or that there is no common agreement on the adoption of a non-binding opinion by the end of the time limits provided in Article 19(9), and one or more of the Member States concerned does not agree that the Authority launches the second stage of mediation, on the date of that declaration;
  - b) At the second stage, by a written declaration of the Chair of the Mediation Board, after consultation with the Member States that are party to the dispute, that further efforts at reconciling the divergent points of view of the Member States would be to no avail, or that there is no common agreement on the adoption of a non-binding opinion by the end of the time limits provided in Article 19(16), on the date of that declaration;
  - c) By a written declaration of the mediator or the Chair of the Mediation Board, after consultation with the Member States that are party to the dispute, that the information, evidence, facts and circumstances presented by the Member States that are party to a dispute require verification, or that further information is necessary, and there is no agreement by the Member States concerned on the suggestion by the mediator or the Chair of the Mediation Board in accordance with Article 19(22);
  - d) By a written request of one or more Member States that are party to the dispute, at any stage of the mediation procedure, on the date of that request;
  - e) By a written request of the Administrative Commission, before the launch of the first stage of the mediation procedure, in agreement with the Member States that are party to the dispute, to refer the issue concerning social security to the Administrative Commission, on the date of that request;
  - f) By a written request of the Administrative Commission and in agreement with the Member States that are party to the dispute, to refer the issue concerning social security to the Administrative Commission, at any stage of the mediation procedure, indicating that the dispute concerns elements of new interpretation of Regulations (EC) No 883/2004 and 987/2009 which were not evident or documented when it was informed before the launch of the first stage of the mediation procedure, on the date of that request;
  - g) By a written request of any Member State that is party to the dispute, to refer the issue concerning social security coordination to the Administrative Commission, at any stage of the mediation procedure, on the date of that request;
- (3) The mediation procedure shall be suspended:
- a) By a written request of one or more Member States that are party to the dispute, at any stage of the mediation procedure, indicating that Court proceedings were initiated after the launch of the mediation procedure;
  - b) When, a mediation procedure has been launched on a dispute which relates, fully or in part, to matters of social security, and which has been referred to the Administrative Commission at any stage of the mediation procedure.



## **II. WORKING ARRANGEMENTS**

### **Article 19**

#### **A. General provisions**

- (1) In carrying out their work, the mediators and the Mediation Board shall rely on practical and flexible working methods, including the exchange of e-mails, web-based meetings, and telephone or video conferences whilst observing the basic principles enshrined in Article 4.
- (2) Member States that are party to the dispute shall appoint a national representative to represent them during the mediation procedure, who may be supported by other experts from the same Member State. The National Liaison Officers designated by the Member States that are party to the dispute shall be informed and act as facilitators of the procedure and, where necessary, as points of contact for communication between the Member States concerned, the mediator and the Chair of the Mediation Board during the mediation procedure.
- (3) Any physical proceedings during both stages of mediation, shall take place at the headquarters of the Authority, unless agreed otherwise between the Member States that are party to the dispute, and the mediator or Chair of the Mediation Board. Physical hearings convened during the second stage of mediation in accordance with paragraph 13 shall take place at the headquarters of the Authority.
- (4) The mediator and the Chair of the Mediation Board may, at any time during the mediation procedure, address questions in writing to any of the Member States that are party to the dispute. Each of the Member States concerned shall receive a copy of any questions and shall also provide the other party with a copy of its written response to such questions. Each Member State shall be given the opportunity to provide written comments on the other Member State's reply within 15 working days of the date of receipt of that response. The time allowed to provide written comments shall not affect the running of the overall timelines as provided in paragraphs 9 and 16 of this Article.

#### **B. Working arrangements during the first stage of mediation**

- (5) As soon as the first stage of mediation is launched in accordance with Article 15, the Authority shall invite the Member States that are party to the dispute to mutually agree on a mediator from the list of mediators appointed by the Management Board in accordance with Article 7(4). The mediator shall be appointed at the latest within 10 working days from the launch of the first stage. If no common agreement can be reached on the selection of the mediator, the Authority shall, without delay, appoint a mediator by considering the nature of the

dispute and the expertise, competence and availability of the mediators on the list.

- (6) The mediator shall decide on the most appropriate approach to organise the proceedings after consulting the Member States that are party to the dispute, in order to reconcile the divergent points of view and facilitate a solution to the dispute in the most efficient and effective manner. In particular, the mediator may organise meetings between the Member States that are party to the dispute, consult them jointly or individually, and provide any additional support requested by the Member States concerned. In cases where the mediator wishes to meet or talk to one of the Member States that are party to a dispute, he or she shall inform the other Member State in advance and as soon as possible after his or her unilateral meeting or discussion with the first Member State.
- (7) The mediator shall facilitate a discussion between the Member States that are party to a dispute with a view to reach a satisfactory solution to the dispute. The mediator shall assist, in an impartial and transparent manner, the Member States that are party to a dispute in bringing clarity to the issue, and in adopting a non-binding opinion by common agreement which includes a mutually acceptable solution. The mediator shall ensure the flow of information and encourage the Member States to reach such a solution.
- (8) The mediator may offer advice and propose a solution to the Member States that are party to a dispute, taking into account the EU acquis and other interpretative documents provided by specialised bodies entrusted by Union law. The Member States concerned may accept or reject the proposed solution, and agree on a different solution. The mediator shall not, in any way, impose a solution on the Member States concerned, or express an opinion on which of the Member States that are party to a dispute is right or wrong.
- (9) The Member States that are party to the dispute and the mediator shall endeavour to adopt a non-binding opinion by common agreement within 45 working days from the appointment of the mediator. In the case of highly complex disputes, the mediator may, in agreement with the Member States that are party to the dispute, extend the timeframe by 15 additional working days for the purpose of undertaking further discussions. The mediator shall immediately inform the Authority about the agreement of such an extension.
- (10) By the end of the time limits provided for in paragraph 9, the mediator shall submit in writing a draft factual report to the Member States that are party to a dispute and to the Authority. The mediator may, in agreement with the Member States that are party to the dispute, request an additional 10 working days for completing the report. A model of the report is annexed to these Rules of Procedure. The mediator shall grant the Member States concerned 15 working days to comment on the draft report and, where applicable, the non-binding

opinion. In case a non-binding opinion is to be adopted, the Authority shall ensure, within the same time limit, that the non-binding opinion conforms with the EU acquis. After considering the comments submitted within the deadline provided, the mediator shall submit, in writing, a final factual report and, where applicable, the non-binding opinion to the Member States concerned and to the Authority within 15 working days.

### **C. Working arrangements during the second stage of mediation**

- (11) As soon as the Authority launches the second stage of mediation in accordance with Article 16, the Chair shall, unless the Mediation Board sits as one, without delay appoint the panel of the Mediation Board in accordance with Article 8 point C (Composition). The panel shall be appointed within 10 working days from the launch of the second stage of mediation, and the Chair shall inform the Member States that are party to the dispute and the Authority of its composition.
- (12) The Chair of the Mediation Board shall, after consulting the Member States that are party to the dispute, decide on the most appropriate approach to organise the proceedings in order to reconcile the divergent points of view and facilitate a solution in a dispute in the most efficient and effective manner.
- (13) At the request of the Chair of the Mediation Board, and after consulting the Member States that are party to a dispute, a hearing shall be convened in order to allow for an oral submission. At least 15 working days in advance of the hearing, the Authority shall notify the parties on the date, time, venue and modalities of the hearing. The following persons may attend the hearing:
  - a) the Chair and the Deputy Chairs;
  - b) the experts of the Mediation Board or the panel, depending on the case, hearing the dispute, including the rapporteur;
  - c) the national representatives appointed by the Member States that are party to the dispute to represent them, who may be supported by other experts from the same Member State;
  - d) the National Liaison Officers from the respective Member States that are party to the dispute;
  - e) experts from the Commission, experts from the Authority, and experts from social partner organisation who may participate in an advisory capacity as provided in paragraph 19.
- (14) The Chair of the Mediation Board shall ensure that the Member States that are party to a dispute are afforded equal speaking time during the hearing. The Mediation Board may direct questions to all Member State during the hearing. Each Member State that is party to a dispute may provide to the Mediation Board and to the other Member State/s that is/are party to the dispute supplementary written submissions concerning any matter arising during the hearing within 15 working days of the date of the hearing. The time allowed to provide

supplementary written submissions shall not affect the running of the overall timelines for concluding the second stage of mediation as provided in paragraph 16 of this article.

- (15) Paragraphs 7 and 8 shall apply *mutatis mutandis*.
- (16) The Member States that are party to a dispute and the Mediation Board shall endeavour to adopt a non-binding opinion by common agreement within 45 working days from the appointment of the Mediation Board or the panel, depending on the case, as provided in paragraph 11. In the case of highly complex disputes, the Chair of the Mediation Board may, in agreement with the Member States that are party to the dispute, extend the timeframe by 15 additional working days for the purpose of undertaking further discussions. The Chair shall immediately inform the Authority about the agreement of such an extension.
- (17) By the end of the time limits provided for in paragraph 16, the rapporteur shall submit in writing a draft factual report to the Member States that are party to a dispute and to the Authority. The rapporteur may, in agreement with the Member States that are party to the dispute, request an additional 10 working days for completing the report. A model of the report is annexed to these Rules of Procedure. The rapporteur shall grant the Member States concerned 15 working days to comment on the draft report and, where applicable, the non-binding opinion. In case a non-binding opinion is to be adopted, the Authority shall ensure, within the same time limit, that the non-binding opinion conforms with the EU acquis. After considering the comments submitted within the deadline provided, the rapporteur shall submit, in writing, a final factual report and, where applicable, the non-binding opinion to the Member States concerned, the Mediation Board, and to the Authority within 15 working days.
- (18) The panel of the Mediation Board shall dissolve at the end of the second stage of mediation. However, the Chair may decide that the same panel be used to reconcile the divergent points of view in several disputes, in particular in cases of multiple disputes which are related or which contain similarities.

#### **D. Participation of experts in an advisory capacity**

- (19) Upon request and subject to the agreement of the Member States that are party to the dispute, the mediator or the Chair of the Mediation Board shall invite experts from the Member States, the Commission and the Authority to participate in an advisory capacity in accordance with Article 13(3) and (5) of the founding Regulation. Such experts shall contribute to the mediation procedure by submitting opinions, making recommendations and proposing solutions with a view to reconcile the divergent points of view between the Member States that are party to the dispute and to adopt a non-binding opinion.

- (20) Where the dispute concerns issues related to provisions in collective agreements in Member States where the social partners are competent for their application, supervision, interpretation and enforcement, the mediator and the Chair of the Mediation Board shall consult the competent social partner organisations to hear their views on the issues concerned. This is without prejudice to the autonomy of social partners in accordance with Article 1(3) and (6) of the founding Regulation. Social partner organisations at Union level appointed in accordance with Article 17 of the founding Regulation shall communicate to the Authority a first point of contact through which all communications shall be channelled, including the consultations that take place during mediation.
- (21) The mediator or the Chair of the Mediation Board shall take into account the opinions, recommendations and proposed solutions submitted by the experts participating in an advisory capacity, as well as the views expressed by the social partner organisations consulted, with a view to reconcile the divergent points of view between the Member States that are party to the dispute and to adopt a non-binding opinion.

#### **E. Working arrangements applicable to both stages of mediation**

- (22) In cases where a dispute contains conflicting information, evidence, facts and circumstances which cannot be verified by the Member States concerned, or where the collection of further information is necessary for the mediation procedure to follow its ordinary course, the mediator or the Chair of the Mediation Board may suggest to the national representatives of the Member States concerned that they request the Authority to coordinate and support a concerted or joint inspection, in accordance with Articles 8 and 9 of the founding Regulation.
- (23) The information collected during the concerted or joint inspection shall be presented in a report as provided in Article 9(6) of the founding Regulation, to the Member States concerned and the mediator or Chair of the Mediation Board, with sensitive information and personal data duly redacted. The time between the suggestion by the mediator or the Chair of the Mediation Board and the receipt of the report shall pause the running of the overall timelines for concluding the first or second stage of mediation as provided in paragraphs 9 and 16 of this article. Should there be no agreement by the Member States concerned on the suggestion by the mediator or the Chair of the Mediation Board, leading to a situation where the mediation procedure cannot follow its ordinary course, the mediation procedure may come to an end in accordance with Article 18(2)(c).
- (24) The mediator or the Chair of the Mediation Board may request the assistance of the Authority in cases which require the clarification of questions related to the application of specific legislation, or any other information which is required in order for the mediator or the Mediation Board to be in a position to assist the

Member States to agree on a non-binding opinion. The time between the request for assistance and the receipt of the requested information shall pause the running of the overall timelines for concluding the first or second stage of mediation as provided in paragraphs 9 and 16 of this Article.

- (25) The working language for the mediation procedure shall be English, unless commonly agreed otherwise by the Member States party to the dispute and the mediator during the first stage of mediation or the Chair of the Mediation Board during the second stage of mediation. This is without prejudice to the provisions of interpretation and translation services provided by the Authority.
- (26) The Authority shall provide secretarial services, including any translation and interpretation services required for the proper functioning of the mediation procedure during both stages of mediation, including during hearings.

**F. Fast-track mediation**

- (27) The Member States that are party to the dispute may commonly agree, together with the mediator during the first stage of mediation, or the Chair of the Mediation Board during the second stage of mediation, to indicative deadlines shorter than those provided in the working arrangements, provided that the quality of the procedure and of the non-binding opinion can be preserved.

### **III. FINAL PROVISIONS**

#### **Article 20**

##### **Reporting by Member States that are party to a dispute**

- (1) Pursuant to Article 13(12) of the founding Regulation, Member States that are party to a dispute shall report to the Authority, within three months of the adoption of the non-binding opinion, on the measures that they have taken to follow-up on the opinion.
- (2) Member States that are party to the dispute who have not taken measures to follow up on the non-binding opinion adopted through the mediation procedure, shall report to the Authority, within three months of its adoption, with regards to the reasons for not having followed up the non-binding opinion.

#### **Article 21**

##### **Reporting by the Authority**

- (1) Pursuant to Article 13(13) of the founding Regulation, the Authority shall report to the Commission twice a year concerning the outcome of the mediation cases it has conducted and about cases which were not pursued. The reports shall be presented at the end of quarter 1 (covering quarters 3 and 4 of the previous year) and 3 (covering quarters 1 and 2 of the same year).
- (2) The Authority shall monitor and follow-up on the implementation by the Member States of the non-binding opinion adopted during the first and second stages of mediation, and shall report such information to the Management Board on a yearly basis.

#### **Article 22**

##### **Evaluation**

- (1) No later than 36 months from the entry into force of these Rules of Procedure, and every 24 months thereafter, the effectiveness and functionality of the present rules shall be assessed. If necessary, amendments for improving these instruments, based on the experiences gained in the previous months will be proposed to the Management Board, after consulting the Member States.
- (2) No later than one year from the assessment referred to in Article 40(1) of the founding Regulation, the Authority shall evaluate any need to modify these Rules of Procedure based on that assessment, and if necessary, propose amendments to these Rules of Procedure to the Management Board.

## **Article 23**

### **Entry into force**

The present Rules of Procedure shall enter into force on the day following their approval by the Management Board.



## ANNEXES

### **I. Call of expression of interest for nominated mediators/experts of the Mediation Board, Chair and Deputy Chairs of the Mediation Board, referred to in Articles 7(2) and 8(2)**

Purpose: To be used by the Management Board members from the Member States to nominate persons to act as mediators, experts of the Mediation Board, Chair and Deputy Chair of the Mediation Board. The information submitted will also be compiled in a document to enable the Member States party to the dispute to select a mediator which best fits the nature of the dispute, and for the Chair to compose the panel, matching the available experts to the nature and area of the dispute.

#### **1. Details of nominated person**

- Name
- Nominating national institution (employer)
- Address of nominating national institution, contact details, email address
- Member State/nationality
- Current position/ job/ details of employer
- Main responsibilities

#### **2. Professional background and skills of nominated person**

- Professional background
- Language skills
- Area/s of expertise in relation to legal areas within ELA's scope of mediation
- Relevant work experience in relation to legal areas within ELA's scope of mediation
- Experience in mediation/dispute resolution
- Experience in collective agreements/industrial relations

#### **3. Nominated by:** [Management Board member of Member State]

#### **4. Nominated as:**

- ☐ Mediator
- ☐ Expert of the Mediation Board
- ☐ Chair of the Mediation Board
- ☐ Deputy Chair of the Mediation Board

#### **5. Short explanation/justification why the person is being nominated for the position indicated in point**

## **II. Declaration of absence of conflict of interest referred to in Article 7(5)**

Purpose: to be signed by each person appointed to act as mediator, expert of the Mediation Board, Chair or Deputy Chair of the Mediation Board, and by experts participating in an advisory capacity to declare that he or she is not in a situation of conflict of interests.

As required by Article 4(4) of the Rules of Procedure adopted by Decision 16/2021 of the Management Board on 10 November 2021, I the undersigned hereby declare that I have no actual or potential conflict of interest that may negatively affect the performance of the duties that I have committed to duly and appropriately serve as a:

- ☐ Mediator
- ☐ Expert of the Mediation Board
- ☐ Chair of the Mediation Board
- ☐ Deputy Chair of the Mediation Board
- ☐ Expert participating in an advisory capacity to the specific case on which I have been appointed or invited to participate.

Furthermore, as provided in Article 7(5) of the Rules of Procedure, I hereby undertake to inform the European Labour Authority in writing, as soon as any situation of conflict of interest arises during the performance of my duties, by submitting without undue delay a written declaration describing the particular situation of the actual or potential conflict of interest.

A conflict of interest is a situation whereby my private interests and affiliations could actually or potentially be perceived to negatively influence my independence or loyalty towards the European Labour Authority, and includes:

- direct interests (financial benefits arising from, for example, employment contracted work investments, fees etc.);
- indirect financial interests (e.g. grants, sponsorships, or any other kind of benefit);
- interests deriving from my professional activities or that of my family members;
- any membership role or affiliation that I may have in organisations, bodies, clubs with a vested interest in the work of the European Labour Authority;
- any other interests or facts that I the undersigned consider pertinent.

If such a situation arises, I understand that the European Labour Authority shall assess my perceived situation of conflict of interest and shall take any appropriate measure in order to ensure the independence and impartiality of the mediation procedure. The

European Labour Authority shall thus reach a duly reasoned decision with respect to my perceived situation of conflict of interest and the performance of my duties. I undertake to abide by the decision of the European Labour Authority.

I declare on my word of honour that the information provided is true and complete.

Name:

Signature:

Date:

**III. Model of the report to be prepared by the mediator or the rapporteur in accordance with Article 19(10) and (17), including the model non-binding opinion referred to in Article 17**

Purpose: To be issued by the mediator during the first stage of mediation, and the rapporteur during the second stage of mediation, to give a factual account of the proceedings of mediation. If the mediation procedure leads to a mutually acceptable solution, a non-binding opinion will be adopted and included in the factual report.

The report shall include:

**1. Introduction**

- An introduction to the dispute, the parties, and an account of steps undertaken before the mediation procedure has started
- Background of the dispute

**2. Legal context**

- An account of the Union act/s on which the dispute is based

**3. Problem determination**

- An account of each party's version of the issue/s at stake
- Mediator/rapporteur summarises the issue/s at stake in a neutral and non-judgmental way

**4. Issue identification**

- Identification of the issues subject to mediation, in agreement with the Member States party to the dispute

**5. Generation and evaluation of explored solutions**

- An account of the proposed solutions explored for resolving the dispute by the parties, and if applicable, the opinions expressed by the experts who may participate in an advisory capacity, and, if applicable, the views expressed by the competent social partner organisations

**6. Non-binding opinion**

- If the parties agree on the solution for resolving the dispute, the non-binding opinion should be included here, with the following information:
  - Mutually acceptable solution
  - Timeline for implementing the solution
  - Agreed follow-up

- Recommendations
- If the parties do not agree on the solution for resolving the dispute, the mediator/rapporteur should state the facts here

## **7. Conclusion**

- Concluding comments by the mediator/rapporteur on the mediated case (neutral and non-judgmental)

#### **IV. Information to be included in the detailed statement referred to in Article 9(2)**

Purpose: When a Member State submits a dispute to ELA for mediation, the request should be followed by a statement presenting clearly the concerns of the Member State/s making the request. This will be done in a detailed statement which allows the Authority to determine the cause and nature of the dispute. The detailed statement shall not contain any personal data.

The detailed statement shall include:

##### **1. General information**

- a description of the dispute
- Member States involved
- Contact details of national representative
- the divergent points of view
- the main issues of contention
- the Union act/s on which the dispute is based

##### **2. Contact and dialogue stage**

- a dated record of all efforts and exchanges to resolve the dispute
- the outcome of the contact and dialogue

##### **3. Other stakeholder/s involved**

- Involvement of social partners at national level
- Other stakeholder/s

##### **4. Cases concerning social security**

- If dispute concerns social security, has the case ever been referred to the Administrative Commission by any of the parties? If yes provide details, date, etc.
- Disclaimer:
  - ELA will inform the Administrative Commission about all disputes referred to ELA mediation which relate, fully or in part, to matters of social security. For this purpose, the detailed statement will be referred to the Administrative Commission.
  - In agreement with the Member States that are party to the dispute, the Administrative Commission may request ELA to refer the issue concerning social security to the Administrative Commission.
  - Any Member State that is party to the dispute may request ELA to refer the issue concerning social security to the Administrative Commission.
  - If new elements are brought into the dispute which concern social security, which were initially not evident or documented, at any time after the mediation procedure is launched, ELA will suspend the procedure, and

inform the Administrative Commission. ELA will wait for the decision of the Administrative Commission whether it requests, within the specified deadline, the referral of the dispute before proceeding further.

- If disputes concerns an issue which requires a new interpretation of Regulations (EC) No 883/2004 and 987/2009, this will be outside the scope of the ELA mediation procedure.

**5. Agreement by the parties**

- During the contact and dialogue stage, was there agreement between all the parties about the information, facts, circumstances, etc. subject to the dispute?
- Is there agreement between all the parties to refer the dispute for mediation at ELA?