



**Decision No 18/2021**  
**of 10 November 2021**  
**of the Management Board**  
**on the Cooperation Agreement between the European Labour Authority and**  
**SOLVIT for the referral of cases for mediation**

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) According to recital (6) of the founding regulation, 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) According to Article 13 (6) of the founding Regulation, the Management Board is entrusted 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

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

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

- (3) 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.
- (4) With a view to better coordinate the referral of cases and the exchange of information between the Authority and SOLVIT, a cooperation agreement should be established between the two bodies. Cases referred by SOLVIT to the Authority for its consideration shall be processed in accordance with the agreement.

HAS DECIDED:

*Sole Article*

The Cooperation Agreement between the European Labour Authority and SOLVIT for the referral of cases for mediation as annexed to this Decision is hereby adopted.

Done at Bratislava, 10 November 2021

For the Management Board,

*(e-signed)*

Tom BEVERS

Chair of the Management Board

**Cooperation Agreement**  
**between**  
**the European Labour Authority and SOLVIT**  
**for the referral of cases for mediation**

The European Labour Authority, represented for the purpose of signing this Cooperation Agreement by its Executive Director, Marius-Cosmin Boiangiu,

and

SOLVIT, represented for the purpose of signing this Cooperation Agreement by the Director of Directorate E of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs of the European Commission, Mary Veronica Tovsak Pleterski,

hereinafter collectively referred to as the 'Parties', or individually as 'ELA' or 'SOLVIT'

have agreed as follows:

**Part I - General principles of cooperation**

**Article 1 - Legal framework**

1. ELA is established by Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019<sup>2</sup> (the 'founding Regulation').
2. ELA's objective, as defined in Article 2 of the founding Regulation, is to contribute to ensuring fair labour mobility across the Union and assist Member States and the European Commission in the coordination of social security systems within the Union. To that end, ELA shall mediate and facilitate a solution in cases of cross-border disputes between Member States on the application of relevant Union law.
3. Pursuant to Article 13(1) of the founding Regulation, the aim of mediation is to reconcile divergent points of view between the Member States regarding individual cases of application of Union law in the areas covered by the Regulation and to adopt a non-binding opinion.
4. Following Commission Recommendation 2013/461/EU of 17 September 2013 on the principles governing SOLVIT<sup>3</sup> (the 'Commission Recommendation'), SOLVIT was established as a network of centres set up by Member States and EEA States within their own national administrations, as

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<sup>2</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>3</sup> Commission Recommendation 2013/461/EU of 17 September 2013 on the principles governing SOLVIT (*OJ L 249, 19.9.2013, p. 10–15*)

a fast and informal means of resolving problems individuals and businesses encounter with decisions of public authorities when exercising their rights in the internal market. The network of national SOLVIT centres ('national SOLVIT centres') is assisted and supported by the European Commission coordination team ('EC SOLVIT'), which among other things manages and maintains a SOLVIT application created within the Internal Market Information System to support the handling of SOLVIT cases.

5. SOLVIT's objective, as prescribed in point I. of the Commission Recommendation, is to deliver fast, effective and informal solutions to problems individuals and businesses encounter when their EU rights in the internal market are being denied by public authorities. It contributes to a better functioning single market by fostering and promoting better compliance with Union law.
6. Recital (16) of the founding Regulation underlines the need for ELA to cooperate with other relevant Union initiatives and networks, including in particular SOLVIT. Recital (23) of the founding Regulation outlines a framework for the relationship between ELA and SOLVIT in relation to mediation. It foresees that Member States should be able to refer disputed individual cases to ELA for mediation after failing to solve them by means of direct contact and dialogue. Furthermore, it stipulates that the SOLVIT network should be able to refer to ELA for its consideration cases in which the problem cannot be solved due to differences between national administrations.
7. The purpose of this Agreement is to ensure that ELA and SOLVIT meet the requirements of the founding Regulation and, at the same time, achieve both ELA's and SOLVIT's objectives through cooperation and better coordination for the referral of cases and the exchange of information. This involves coordinating effectively the referral of unresolved SOLVIT cases, as defined in Article 3, from SOLVIT to ELA for its consideration, including overseeing admissibility of such cases to the mediation procedure and ensuring the necessary exchange of information and follow-up.

## **Article 2 – Cooperation and Communication channels**

1. SOLVIT and ELA should adhere to principles of mutual information and cooperation aimed at ensuring the implementation of this Agreement, fulfilling both the purpose of Article 13 of the founding Regulation concerning mediation between Member States and achieving the objective of the Commission Recommendation.
2. Close and effective collaboration and overview of cases referred between ELA and SOLVIT should be ensured through nominated contact points. Every effort should be made to ensure that the relevant National Liaison Officers are kept informed. In the case of SOLVIT, the nominated contact point will be EC SOLVIT, that is the European Commission team, which assists and supports the functioning of SOLVIT. In the case of ELA, the nominated contact point will be the Mediation Secretariat referred to in Article 19(26) of the Rules of Procedure for Mediation.
3. Information regarding cases referred to ELA for its consideration and relevant documents should be exchanged electronically ensuring that the content is anonymized appropriately as referred to in Article 5 (2) of the Rules of Procedure for Mediation.

## **Part II – Cooperation on mediation**

### **A. SOLVIT’s role and responsibility**

#### **Article 3 – Eligible cases for referral**

1. Pursuant to Article 1 (3) and (6) of this Agreement, SOLVIT may refer those cases which have been closed as unresolved in the SOLVIT database to ELA for its consideration for admission to the mediation procedure. These are cases where no solution could be found under the SOLVIT procedure.
2. Only unresolved cases relating to the application of the Union law in areas covered by the founding Regulation, as specified in its Article 1(4), shall be referred to ELA for mediation.

#### **Article 4 – Mutual agreement of national SOLVIT centres to refer the case**

1. SOLVIT cases are generally handled by two SOLVIT centres, the ‘home centre’<sup>4</sup> and the ‘lead centre’<sup>5</sup>. They cooperate in an open and transparent manner with a view to finding fast and effective solutions for applicants and have the best overview of the cases’ progress.
2. Prior to referring a case to ELA for its consideration, national SOLVIT centres should mutually agree that the ELA mediation procedure is an appropriate step forward to find a solution where the SOLVIT procedure and its mechanisms failed to find a practical solution. The SOLVIT centres should check carefully that the legal questions raised in the unresolved case fall within the remit of the founding Regulation. Their agreement for referral should be reached within fifteen working days of the date of closing the case as unresolved in the SOLVIT database.

#### **Article 5 – Informal legal advice**

1. Pursuant to the Commission Recommendation, Commission experts may assist and support national SOLVIT centres by providing informal legal advice in complex cases, upon request of the SOLVIT centres. Such legal advice is informal only, optional, and not binding on the Commission. Commission informal legal advice falls within the scope of Regulation (EC) 1049/2001 concerning public access to European Parliament, Council and Commission documents. EEA countries should consider applications with due regard to the principle of sincere cooperation.
2. National SOLVIT centres are encouraged to obtain informal legal advice from the Commission’s services during the SOLVIT procedure with the aim to reconcile the divergent points of view and to identify the source and nature of the dispute. That advice should be submitted to ELA together with the referral of the case for its consideration.

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<sup>4</sup> ‘Home Centre’: the SOLVIT centre in the Member State that has the closest links with the applicant based on for example nationality, residence, establishment or the place where the applicant acquired the rights at stake, Section I.B, point 7 of the Recommendation 2013/461/EU

<sup>5</sup> ‘Lead Centre’: the SOLVIT centre of the Member State in which the alleged breach of Union law governing the internal market has occurred, Section I.B, point 8 of the Recommendation 2013/461/EU

### **Article 6 – Procedure for referral of the case by national SOLVIT centres to ELA**

1. Once the SOLVIT centres have mutually agreed on a referral of a case to ELA, they should both inform, within 5 working days, their relevant national authority and the EC SOLVIT contact point defined in Article 2 (2) of this Agreement.
2. The national SOLVIT centres should agree which national SOLVIT centre is responsible for making the referral (the 'referring centre').
3. The referring centre should send the case to the ELA nominated contact point defined in Article 2 (2) of this Agreement.
4. Cases referred to ELA must include all the documents described in Annex 1 of this Agreement.
5. The ELA nominated contact point shall acknowledge the receipt of referrals from the referring centre.

## **B. ELA's role and responsibility**

### **Article 7 – Consideration of SOLVIT's referral**

1. Upon receiving the referral from the concerned national SOLVIT centre, ELA will assess, within 15 working days, the case summary and any other documents submitted and verify whether the dispute falls within the scope of mediation, in accordance with Article 3 of this Agreement.
2. ELA may request additional information and/or clarifications from any of the involved national SOLVIT centres in order to assess the case in detail before reaching its decision on whether to launch its mediation procedure.
3. If the referred dispute falls outside ELA's scope, ELA shall inform the referring national SOLVIT centre and EC SOLVIT accordingly. If the dispute falls within the scope of its mediation procedure, ELA may consider launching a mediation procedure on its own initiative on the basis of Article 13(2) of the founding Regulation. In this case, the applicable provisions in the Rules of Procedure for mediation at ELA's own initiative shall apply. In such a case, ELA will notify the referring centre and EC SOLVIT.

### **Article 8 – Notification to EC SOLVIT**

1. ELA should inform EC SOLVIT on its decision and other activities carried out during any mediation procedure launched on the basis of cases referred by the referring centre, in accordance with Article 2 of this Agreement.
2. ELA shall notify EC SOLVIT, about the admissibility or not of the case to the mediation procedure, and whether ELA will suggest launching a mediation procedure on its own initiative in relation to the referred case - within 10 working days of the date when the decision was taken, including the reasoning.
3. In the event that ELA launches the mediation procedure on the basis of a case referred by the referring centre, ELA shall notify, within 10 working days, EC SOLVIT about every stage of the mediation procedure and its outcome.

### **Article 9 – Reporting by ELA**

Pursuant to Article 13 (13) of the founding Regulation and the Rules of Procedure for Mediation, ELA shall report to the Commission twice a year with regard to the outcome of the mediation cases it has conducted as well as cases which were not pursued. This will include information about cases handled according to this Agreement.

### **Part III – Miscellaneous**

#### **Article 10 – Evaluation of the cooperation**

The Parties shall jointly assess, initially after two years from the date of entry into force of this Agreement, and then on a needs basis, the progress made in the implementation of this Agreement.

#### **Article 11 – Settlement of disputes**

Any disputes arising from the interpretation or application of this Agreement shall be settled by means of consultation and negotiation between representatives of the Parties.

#### **Article 12 – Amendments and supplements to the Agreement**

1. This Agreement may be amended or supplemented at any time by mutual agreement between the Parties.
2. All amendments and supplements shall be done in writing. They will enter into force on the day following their signature by both Parties.

#### **Article 13 – Termination**

This Agreement may be terminated in writing by either Party by giving a three months' notice.

#### **Article 14 – Entry into force**

This Agreement enters into force on the day following its signature by both Parties.

(e-signed)

MARIUS-COSMIN BOIANGIU  
EXECUTIVE DIRECTOR

(e-signed)

MARY VERONICA TOVSAK PLETESKI  
DIRECTOR

## ANNEX 1

### ***Information to be included in the case summary referred to in Article 6***

Purpose: When national SOLVIT centres agree to refer a case to ELA for mediation, the request that is sent should present clearly the concerns of both the national SOLVIT centres involved in the request. This will be done in a case summary which allows ELA to determine the cause and nature of the dispute. The case summary shall not contain any personal data.

The case summary shall include:

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

- A description of the dispute containing the views of both national SOLVIT centres both on the facts and application of EU law
- national authorities involved
- the main issues of contention
- the Union act/s on which the dispute is based
- contact point in the referring centre
- confirmation of mutual agreement between both SOLVIT centres for referral

#### **2. Additional documents:**

- informal legal advice obtained from the Commission services, if provided in the case concerned

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

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

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

- If the unresolved case concerns the application of the EU social security coordination rules, information about whether the case has ever been referred to the Administrative Commission for the Coordination of Social Security Systems referred to in Article 71 of Regulation (EC) No 883/2004<sup>6</sup>; (hereinafter “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

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<sup>6</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)



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 concern an issue which requires a new interpretation of Regulations (EC) No 883/2004 and 987/2009<sup>7</sup>, this will be outside the scope of the ELA mediation procedure.

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<sup>7</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1)