



**Decision No 26/2021
of 17 December 2021
of the Management Board
on the Cooperation Agreement between the
Administrative Commission for the coordination of social security systems and
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) 2016/344¹ (“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 the Authority in the implementation of the Founding Regulation concerning mediation and the establishment of the necessary arrangements.
- (3) According to Article 13 (11) of the founding Regulation, the Administrative Commission and the Authority are entrusted to establish a cooperation agreement

¹ OJ L 186, 11.7.2019, p. 21–56

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.

- (4) With a view to better coordinate the disputes related, fully or in part, to matters of social security and the referral of issues concerning social security from the Authority to the Administrative Commission, such disputes and issues shall be processed in accordance with the agreement.
- (5) The Authority shall aim in all its activities at ensuring cooperation, avoiding overlaps, promoting synergies and complementarity with other decentralised Union agencies and specialised bodies, such as the Administrative Commission.
- (6) In the area of social security coordination, the Authority and the Administrative Commission should cooperate closely with the aim of achieving synergies and avoiding duplication.

HAS DECIDED AS FOLLOWS:

Sole Article

The Cooperation Agreement between the Administrative Commission for the coordination of social security systems and the European Labour Authority as annexed to this Decision is hereby adopted.

Done by written procedure

Bratislava, 17 December 2021

For the Management Board

Tom BEVERS

Chair of the Management Board

**Cooperation Agreement between the
Administrative Commission for the coordination of social security
systems and
the European Labour Authority**

The Administrative Commission for the coordination of social security systems, represented for the purpose of signing this Cooperation Agreement **by the Chair of the Administrative Commission**

and

the European Labour Authority, represented for the purpose of signing this Cooperation Agreement **by its Executive Director.**

Hereafter referred to individually as '**the Party**' or collectively as '**the Parties**' ,

Having regard to Regulation (EU) 2019/1149 establishing the European Labour Authority (hereinafter: the Regulation 2019/1149)² to assist Member States and the European Commission in their effective application and enforcement of Union law related to labour mobility across the Union and the coordination of social security systems within the Union;

Having regard to Article 72 of Regulation (EC) No 883/2004 on the coordination of social security systems (hereinafter: the Regulation 883/2004)³, whereby the Administrative Commission for the coordination of social security systems (hereinafter: the AC) is responsible for dealing with any administrative questions or questions of interpretation arising from the provisions of the 'Coordination Regulations'⁴ or any agreement or arrangement concluded thereunder;

Having regard to Article 13(11) of Regulation 2019/1149, whereby in the area of mediation, the AC and European Labour Authority (hereinafter: the ELA) should establish a cooperation agreement in order to ensure good cooperation, to coordinate the activities in mutual agreement and to avoid duplication in cases of mediation which concern both issues of social security and labour law;

Having regard to Article 14 of Regulation 2019/1149, whereby the ELA shall aim in all its activities at ensuring cooperation, avoiding overlaps, promoting synergies and complementarity with other decentralised Union agencies and specialised bodies, such as the AC;

² 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.

³ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

⁴ Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council, including the provisions of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 insofar as they are still applicable, Regulation (EU) No 1231/2010 of the European Parliament and of the Council and Council Regulation (EC) No 859/2003 extending the provisions of Regulations (EEC) No 1408/71 and (EEC) No 574/72 to nationals of third countries who are not already covered by these Regulations solely on the grounds of their nationality

Having regard to Article 74a of Regulation 883/2004, whereby, without prejudice to the tasks and activities of the AC, the ELA shall support the application of this Regulation in accordance with its tasks set out in Regulation 2019/1149 and both Parties shall cooperate in order to coordinate the activities in mutual agreement and avoid any duplication. To that end, the AC shall conclude a cooperation agreement with the ELA;

Having regard to the long experience of the AC on issues which relate to the coordination of social security systems;

Whereas the ELA and the AC need to cooperate closely in the field of the coordination of social security systems with the aim of achieving synergies and avoiding duplication;

Have agreed as follows:

TITLE I

General Provisions

Article 1

Purpose, definitions and general principles

- (1) The purpose of this Cooperation Agreement between the AC and the ELA (hereinafter: the Cooperation Agreement) is to establish a cooperation framework in the field of the coordination of social security systems. Accordingly, it aims at coordinating the activities and avoiding any duplication in a manner that takes into consideration the legal division of competences between both Parties in the field of coordination of social security systems.
- (2) For the purpose of the Cooperation Agreement, the term “coordination of social security systems” shall have the meaning assigned to it by the Coordination Regulations.
- (3) In applying this Cooperation Agreement, both Parties shall be guided by the principles established in Regulation 2019/1149 and the Coordination Regulations:
 - (a) As laid down in Regulation 2019/1149, in particular Article 1(2) thereof, the ELA shall assist the Member States and the Commission in their effective application and enforcement of EU labour mobility law, and the coordination of social security systems within the EU.
 - (b) As laid down in Regulation 883/2004, in particular Article 72 thereof, the tasks of the AC include dealing with all administrative questions and questions of interpretation arising from the Coordination Regulations, facilitating the uniform application, fostering and developing cooperation between the Member States, and encouraging the use of new technologies to facilitate the free movement of persons.
 - (c) It follows from paragraphs (a) and (b) that the ELA shall consult and, if necessary, refer to the AC whenever addressing issues covered by Article 72 of Regulation 883/2004.
- (4) In applying this Cooperation Agreement, the ELA and the AC commit themselves to the principles of sincere cooperation and mutual trust. Moreover, they shall ensure effective communication between each other. Where no specific deadlines are referred to in this Cooperation Agreement, the parties shall strive to respond to queries arising by either

Party on matters relating to this Cooperation Agreement within a reasonable period of time and shall aim to keep each other informed in case of delays to provide the requested information.

- (5) In their cooperation with each other, the Parties shall assist each other, work together and reinforce one another, whilst respecting the competences mentioned in paragraph (3).

TITLE II

Horizontal provisions on cooperation in the field of coordination of social security systems

Article 2

Scope of cooperation

Without prejudice to Title III providing for specific procedures and measures in case of disputes between Member States, which could be subject to mediation, this Title deals with all aspects of horizontal cooperation in the area of coordination of social security systems between the AC and the ELA.

Article 3

Mutual information

To safeguard the best way of communication on all issues related to the coordination of social security systems, both Parties agree on the following measures:

- (a) Representatives of the ELA shall be invited to meetings of the AC, its Working Parties and any other bodies set up by the AC in the capacity of special participant, whenever issues are on the agenda, which are of relevance to ELA's mandate and activities, in accordance with the rules of procedure of the AC.
- (b) Representatives of the AC and its Secretariat shall be invited to meetings of the Management Board of the ELA and any other bodies set up within the ELA, whenever issues are on the agenda, which are of relevance to the AC's mandate and activities, in accordance with the rules of procedure of the Management Board or the relevant body.
- (c) Upon request of either Party, preparatory meetings before or debriefing meetings after the meetings mentioned under point (a) and (b) shall be organized by the Party which is responsible for the meeting.
- (d) Whenever approved by the respective Party, the records of proceedings or minutes of the meetings mentioned under points (a) and (b) shall be sent to the other Party for information.
- (e) The Parties may propose to organise joint workshops on a periodical basis, to discuss specific topics of cooperation and common interest, and to ensure synergies and complementarity in their activities. The agenda of these workshops shall be commonly agreed between the Parties.

- (f) The AC and the ELA shall inform each other on their annual work programs as soon as they are adopted by the respective Party. Either Party may indicate interest on specific topics and activities and, in this case, both Parties shall agree on ways to commonly work on these topics and activities.
- (g) The Parties may agree to launch joint initiatives on topics of common interest in the area of coordination of social security systems, such as analyses, training programs, studies, risk assessment, questionnaires, information campaigns, collection of statistical data, etc.
- (h) The AC shall inform the ELA about any relevant decision it takes related to the interpretation and application of the Coordination Regulations. This information shall be made available as soon as the decision is taken; in case of formal Decisions, Recommendations or Conclusions of the AC, these shall be made after the adoption by the AC, before publishing them in the OJEU. The relevant texts shall be made available via the single points of contact referred to in Article 5.
- (i) The ELA shall inform the AC about any relevant decision adopted by the Management Board, taken on topics which fall within the scope of cooperation between the AC and the ELA as soon as these decisions are taken. The relevant texts shall be made available via the single points of contact referred to in Article 5.
- (j) Upon request of either Party, the requested Party shall transmit any other information or texts, which could be of interest for the other Party, and which does not contain any confidential or sensitive information.
- (k) Both Parties may agree on other measures aimed at improving their cooperation in the area of coordination of social security systems.

Article 4

Repository of relevant information

- (1) The Parties shall agree together on the best way to share documents between them. This may include the setting-up of a digital repository containing all relevant documents of common interest, which shall be accessible by both Parties.
- (2) Each Party shall be responsible to keep its documents updated.

Article 5

Contact between the Parties

- (1) Contacts and communication between both Parties in all aspects of the application of this Cooperation Agreement shall be made through single points of contact (SPOC) which are communicated by the respective Secretariats of the Parties. These contacts shall use as far as possible electronic means of communication. The Secretariats shall communicate how the SPOC may be contacted, before the entry into force of this agreement.

- (2) The Parties shall inform each other immediately in the event of changes to the SPOC.
- (3) Each Party shall decide how to organise its SPOC. However, the SPOC shall be the only point of contact between the Parties.

TITLE III

Cooperation in the area of mediation when a dispute relates, fully or in part, to matters of social security

Chapter 1

Information from the ELA to the AC about a dispute relating, fully or in part, to matters of social security, in accordance with Article 13(11) first subparagraph of Regulation 2019/1149

Article 6

Stage at which the ELA shall inform the AC

- (1) When a dispute relating, fully or in part, to matters of social security, is referred to the ELA from all Member States party to the dispute, the ELA shall inform the AC before the start of the first stage of the mediation procedure. The same applies in cases where ELA suggests launching a mediation procedure on its own initiative, in accordance with Article 13(2) of Regulation 2019/1149, and all Member States party to the dispute agree to their participation.
- (2) If the referral referred to in the first sentence of paragraph 1 was not received from all Member States that are party to the dispute, ELA shall contact the Member State/s that did not make a request, to confirm or not their agreement to participate in mediation. Once all Member States confirm their agreement to participate, the ELA shall inform the AC before the start of the first stage of the mediation procedure. When one or more Member States decide not to participate in mediation, the ELA will not launch the first stage of mediation, and the ELA shall not inform the AC.
- (3) The ELA shall also inform the AC at any stage after the mediation procedure is launched, if new elements are brought into the dispute which concern social security and which were initially not evident or documented. In cases of doubts on whether a dispute relates, fully or in part, to matters of social security, the ELA and the AC shall decide by common agreement.
- (4) In the cases mentioned in paragraph (1)-(3), the ELA shall not launch or shall suspend the procedure on the part which relates with social security matters until the AC provides the ELA with its decision on whether it requests the referral of the dispute in accordance with Article 8.

Article 7

Modalities for providing the information

- (1) Pursuant to Article 6, when informing the AC, the ELA shall transmit the detailed statement referred to in the Rules of Procedure for mediation of the ELA and where applicable, any other documentation concerning the coordination of social security systems submitted by the Member States to the ELA. The AC may request additional information directly from the Member States concerned, including via their national delegations in the AC. All information received by that way shall be forwarded to the ELA, if the mediation process continues there.
- (2) If the dispute relates, fully or in part, to matters of social security the ELA shall inform all Member States party to the dispute that the detailed statement will be referred to the AC. Information included in the detailed statement which does not relate to coordination of social security systems shall not be referred to the AC.
- (3) Once established, the AC shall be given access to the record of disputes referred to in the Rules of Procedure for mediation of the ELA. This access shall only concern disputes, or parts thereof, relating fully or in part, to matters of social security.

Chapter 2

Referral of a dispute to the AC, upon request of the AC in accordance with Article 13(11) third subparagraph of Regulation 2019/1149

Article 8

Deadline and stage at which a request for a referral to the AC takes place

- (1) The AC may request the referral of a dispute before the start of the first stage of the mediation procedure, as provided in Article 6(1), and at any other stage during the procedure when it is informed by the ELA under Article 6(3). Pursuant to Article 13(11) of Regulation 2019/1149, such referral shall be subject to the agreement of all Member States that are party to the dispute.
- (2) Within 20 working days of the receipt of the relevant information from the ELA as provided in Article 7(1), the AC shall inform the ELA on whether or not:
 - (a) it is requesting the ELA to refer the dispute concerning social security to the AC, together with a justification and declaration stating the agreement of all the Member States party to the dispute to refer the dispute relating to social security to the AC; and
 - (b) the dispute concerns an issue of new interpretation of the Coordination Regulations which was not conclusively dealt with either by the AC, or any institutions such as the Court of Justice of the European Union or any other specialised body entrusted by Union law to provide such interpretations, and thus falls within the exclusive competence of the AC to deal with such issue in accordance with Article 72 of Regulation 883/2004.
- (3) The ELA shall inform the Member States party to the dispute of the decision by the AC.

- (4) In cases where, within the deadline stipulated in paragraph (2), the AC informs the ELA that it is not requesting the referral of the dispute, the ELA shall proceed with the launch of the mediation procedure in accordance with the Rules of Procedure for mediation of the ELA.
- (5) In cases where, within the deadline stipulated in paragraph (2), the AC does not inform the ELA on whether to refer the dispute or not, the procedure shall be suspended, and ELA shall inform the Member States party to the dispute accordingly. In such case, the ELA shall not launch the mediation procedure before the AC confirms its decision on the question stipulated in paragraph (2)(b). The AC shall endeavour to inform the ELA within the deadline on whether the dispute can rely on interpretations that have 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, such as the AC. If this is the case, the ELA shall proceed with the launch of the mediation procedure.
- (6) Pursuant to paragraph (5), if the AC confirms that the dispute requires a new interpretation of the Coordination Regulations, and the AC makes no request for the referral of the dispute within the deadline, the ELA shall not launch its mediation procedure until the decision of the AC on this issue is received. The ELA shall inform the Member States party to the dispute accordingly and recommend that they may refer the case to the AC to address this specific legal issue before the ELA mediation procedure can be launched.
- (7) If the ELA mediation procedure has been launched pursuant to paragraphs (4) and (5), and if no new elements concerning social security are brought into the dispute, other than those which were initially evident and documented, and which were communicated to the AC, the AC shall not request the ELA to refer the dispute afterwards. In such cases the dispute shall continue to be mediated by the ELA, unless it receives a request by any Member State that is party to the dispute in accordance with Article 13(11) fourth subparagraph of Regulation 2019/1149.

Chapter 3

Referral of a dispute to the AC, upon request of any Member State that is party to the dispute in accordance with Article 13(11) fourth subparagraph of Regulation 2019/1149

Article 9

Request of any Member State

- (1) Any Member State party to the dispute may request, at any stage of the mediation, to refer the issue concerning social security to the AC. When receiving such request, the ELA shall not launch, or in the case the mediation procedure has already been launched, shall suspend the procedure concerning social security. ELA shall refer the issue concerning social security to the AC in accordance with Article 7, including the detailed statement and any other relevant documentation. If applicable, the ELA shall launch or continue its mediation procedure solely on the issues not concerning social security. The ELA shall inform the Member States party to the dispute accordingly.
- (2) Upon receipt of the referral in accordance with paragraph (1), the AC shall deal with the issue in accordance with its own rules. Should the AC be of the opinion that the ELA mediation procedure is better suited, due to the circumstances of the case, to deal with

the dispute, the AC may recommend to the Member States concerned to refer the dispute back to the ELA.

Article 10

Disagreement by any Member State party to the dispute to refer the issue concerning social security to the AC

- (1) If any of the Member States party to the dispute does not agree to refer the issue concerning social security to the AC, the ELA and the AC shall assess the case and agree on a joint non-binding recommendation to the Member States concerned, indicating which body could be more effective to deal with the dispute, and taking into account the general principles laid down in Article 1.
- (2) If after receiving the joint non-binding recommendation, there is still no common agreement between the Member States to which body the case should be referred, and in view that both mediation and conciliation are a voluntary process, the abstract question behind the case shall remain with the AC who shall deal with the issue in accordance with its own rules.

Chapter 4

Situations where a dispute is brought to ELA and the AC

Article 11

Dispute settlement options

- (1) In principle, Member States party to a dispute relating, fully or in part, to matters of social security may choose to bring their dispute either to the ELA or to the AC. The simultaneous use of both the mediation procedure of the ELA and the conciliation procedure of the AC to hear the same identical case shall be avoided.
- (2) Should such a situation arise, the ELA and the AC shall assess the case and agree on a joint non-binding recommendation to the Member States concerned, indicating which body could be more effective to deal with the dispute, and taking into account the general principles laid down in Article 1.
- (3) If after receiving the joint non-binding recommendation as referred to under paragraph (2), there is still no common agreement between the Member States to which body the case should be referred to, and in view that both mediation and conciliation are a voluntary process, the case shall remain with the AC who shall deal with the issue in accordance with its own rules.

Article 12

Inadmissibility of conciliation or mediation in a case, which has been the subject of a non-binding opinion either by the AC or by the ELA

- (1) In principle, disputes processed by the ELA or the AC with the adoption of a non-binding opinion shall not be admissible under a dispute-settlement procedure of the other Party. This provision shall apply only to the same cases or the same aspects of a case.
- (2) At the end of the mediation/conciliation procedure, the other Party shall be informed of its result.

TITLE IV

Final Provisions

Article 13

Evaluation of the cooperation

The Parties shall endeavour to assess on a needs basis the progress made in the implementation of this Cooperation Agreement and, if appropriate, discuss the possibility of further cooperation activities and amendments of this Cooperation Agreement.

Article 14

Settlement of disputes

All disputes, which may emerge in connection with the interpretation or application of this Cooperation Arrangement, shall be settled by means of consultations and negotiations between the Parties.

Article 15

Amendments and supplements

- (1) This Cooperation Agreement may be amended at any time by mutual consent between the Parties. All the amendments and supplements must be in writing.
- (2) The amended Cooperation Agreement will enter into force on the day agreed by both Parties.

Article 16

Entry into force

This Cooperation Agreement shall enter into force on the first day of the sixth month following its signature by the ELA and the AC, whichever takes place later.

Done at, on in the English language.

For the Administrative Commission for the coordination of social security systems:	For the European Labour Authority:
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