



Sixth meeting of the European Labour Authority Working Group on Mediation

25 October 2022

- Summary of deliberations -

The ELA Working Group on Mediation (hereafter ‘the Group’) held its sixth meeting on 25 October 2022 by video conference. The agenda of the meeting comprised one item, namely the presentation of the guidelines on the implementation of the key documents in the area of mediation.

Welcome and Introduction

The Chair, Mr Malcolm Scicluna – Head of the Cooperation Support Unit, welcomed the participants and proceeded to present the points of the agenda. The agenda was subsequently adopted.

In his introductory remarks, the Chair gave an update on the latest developments since the last meeting of the Group on 3 December 2021. He reminded the participants that the key documents for mediation were adopted by the Management Board in 2021 and highlighted that ELA had subsequently developed four documents aimed at conveying the mediation procedure in a structured and accessible manner to the relevant stakeholders, i.e. the General Guidelines and Workflows for the mediation procedure, the Guidance for the Member States on the ELA mediation procedure, the Guidance for Mediators and Mediation Board on the ELA mediation procedure and the Guidance for the interaction between ELA and the Administrative Commission (AC), as well as relevant templates.

Guidance on the ELA Mediation Procedure

Mr Harald Hauben (representative from Eftheia), recalled the timeline that led to this meeting, in particular developing the integrated note of April 2022, the training on the mediation workflows in June 2022, the finalization of the General guidelines and workflows for the mediation procedure, and the Guidelines for the AC-ELA interaction in August 2022, the Guidance for Member States and the Guidance for Mediators and Mediation Board in September 2022 and, lastly, the graphic finalization and communication materials in October 2022.

Mr Hauben emphasized that the principles that had governed the development of the guidance were twofold. Firstly, the respect of the legal bases relevant to the mediation procedure, the cross-referencing and double checking of the rules of procedures, the Cooperation Agreement between the AC and ELA and the Cooperation Agreement between ELA and SOLVIT for the referral of cases for mediation and the founding regulation. Secondly, to convey information in a clear, precise and detailed wording while maintaining a simple and accessible language. Mr Hauben underlined that the general aim of the guidance had been to translate the legal documents that constitute the basis for mediation at ELA into operational documents easily accessible to the users, without altering or modifying those legal bases.

Mr Hauben then proceeded to a quick overview of the mediation process.

Firstly, he detailed the initiation phase and presented the key documents prepared in that respect for Member States, namely the templates for the request for mediation, the detailed statement and the acceptance-refusal letter, and for ELA, namely the templates for the letter of acknowledgement, letter to request additional information and letter of invitation to mediate, as well as the admissibility check-list.

One expert pointed out that the European Commission is missing in the workflow as the latter may launch an infringement procedure against a Member State that fails to implement EU law. The same expert also stressed the importance of Member States' approval to the involvement of the social partners in the mediation procedure and that this approval should be clearly mentioned in the text.

The representative from DG GROW asked about the possibility for SOLVIT to refer several unresolved disputes involving the same Member States, relating to the same legal question, but concerning different individuals, and whether such disputes should be dealt separately or in a single case. The Chair clarified that the Mediation Secretariat at ELA would not process the personal data of individuals and, therefore, finds it appropriate to have one single mediation procedure in such case.

Secondly, the different steps of the first stage of the mediation procedure and the key documents in relation to each of them were presented. The first step of this stage of the procedure, concerning the notification to Member States and the appointment of a mediator was described and the templates of the notification letter and of the mediator's appointment were presented to the experts. The second step of the first stage of the mediation procedure concerning the mediation process itself, as well as the templates of the mediation outline and of the non-binding opinion were also presented. Finally, the third step concerning the conclusion of the first stage and presented the templates of the factual report and of the agreement to go to the second stage were presented.

One expert stressed the importance of addressing the role of national liaison officers in the first and second stage of the mediation procedure and, particularly, the fact that they must be informed of the mediation procedure and that Member States have the possibility to ask national

liaison officers to represent them during the mediation procedure. It was proposed that a template may be designed regarding the role of national liaison officers and the need to inform them during the first stage of procedure.

Thirdly, Mr Hauben went through the different steps of the second stage of the mediation procedures. He described the first step concerning the notification to Member States, the appointment of experts to a panel of the Mediation Board and the nomination of a rapporteur and presented the templates of the notification letter and of the notification on panel or full plenary of the Mediation Board composition. He subsequently moved on to the second step on the mediation process and presented the mediation outline and the non-binding opinion templates. Finally, concerning the conclusion of the second stage, he presented to the participants the factual report template.

One expert asked about a situation where two Member States would decide to stop the mediation procedure after its initial start and without the deliverance of an opinion because they would have reached an agreement on their own, outside the mediation procedure. Some experts expressed concern that the only possibility would be to suspend or withdraw from the mediation procedure as it would not reflect the fact that an agreement had actually been reached. In that regard, the Chair emphasized that mediation at ELA is a voluntary process and the situation raised by the expert is provided for in Article 18 of the rules of procedure. Mr Hauben reiterated that conclusion and paid attention to the hypotheses of early closure of the mediation described in the general workflow and guidelines.

The meeting paused for fifteen minutes. Following the break, the meeting focused on specific points of attention in the mediation flow.

Firstly, the different elements of the admissibility check were explained.

Secondly, the differences between the standard and the guided mediation process were highlighted. One expert expressed doubts regarding the relevance of the indication on templates of the mutual choice by the mediator and the Member States of a standard or a guided procedure. This expert stressed that referring to standard or guided procedure may be confusing for all the parties and involved and highlighted the importance of giving some freedom and leeway to the mediators in their duties and suggested to simply let a blank space where the mediator could detail what they intend to do.

Thirdly, the criteria to select a panel or the entire mediation board were clarified. One expert expressed reservations regarding the idea of having panels and suggested to discard the idea for now and to review after one year, based on the first experience, if there is a need for panels. It was also suggested to remove the word “panel” as it could be confusing. Lastly, it was argued that gender and geographical balance were more important than specialization and expertise of the mediators. In that respect, the Chair underlined the possibility foreseen in the founding regulation and in Article 8 of the Rules of Procedure to set up panels and for the chair to choose mediators according their relevant expertise.

Fourthly, the focus turned on the ELA-AC interaction. One expert asked about the information flows between ELA, the AC and the Member States involved in mediation. The representative of the AC clarified that when ELA informs the AC of the existence of a case on social security, the respective national delegations of the AC will be informed by the Cooperation and Conciliation Board (CCB).

One expert asked the Chair about the procedure regarding the approval of the revised documents by the Working Group on mediation, as the WG should give an opinion on the finalized documents before they will be sent to the Management Board. The same expert asked when the revised documents would be sent to the members of the Working Group for their approval.

The Chair explained that these guidelines were prepared by ELA on the basis of the Rules of Procedure and the Cooperation agreements, as approved by the WG and adopted by the Management Board. They add nothing more neither change anything than what is already established in the key documents. Therefore they were not presented to the WG for adoption but for information.

Concluding remarks

The Chair took note of the comments and suggestions made during the meeting and invited the experts to send their written comments by 2 November 2022.

The chair emphasized that the guidelines will be presented for approval to the Management Board, at its meeting on 23-24 November.

Finally, the Chair thanked all the participants in the meeting and ELA and Eftheia teams for their collaboration on the drafting of the documents and the preparation of the meeting.