



The mediation procedure

**GENERAL GUIDELINES
AND WORKFLOWS**

September 2022

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1. Introduction

The European Labour Authority (hereinafter ‘ELA’) is established in order to help strengthen fairness and trust in the internal market. To that end, ELA carries out its activities in the area of labour mobility including the free movement for workers, social security coordination and the posting of workers. ELA aims at ensuring that the relevant EU rules are enforced in a fair, simple and effective way. Within that context, Article 13(1) of its founding Regulation 2019/1149 entrusts ELA with a mediation role. Member States can, in common agreement and under certain conditions, submit their disputes to ELA for mediation after failing to solve them by means of direct contact and dialogue. In such instances ELA facilitates the mediation process between the Member States that are party to the dispute in accordance with its established Rules of Procedure (RoP) and cooperation agreements that have been concluded between ELA and the Administrative Commission on the coordination of social security systems (hereinafter ‘the AC’) and the SOLVIT network respectively. The result of such a mediation may lead to the adoption by common agreement of the Member States of a non-binding opinion and resolution of the dispute.

1.1 Why a mediation procedure before ELA?

The objective of ELA is to contribute towards ensuring the effective application and enforcement of Union law related to labour mobility and the coordination of social security, by facilitating smooth cooperation and exchange of information between Member States. ELA is also assigned to mediate and facilitate a solution in the case of disputes between Member States that arise from individual cases of application of Union law in the areas covered by Article 1(4) of its founding Regulation (EU) 2019/1149. Indeed, promoting cooperation and exchange of information cannot be fully effective if there are no possibilities to overcome divergent views on the application of the EU

labour mobility legislation between Member States other than (national and EU) court proceedings. Long existing EU wide networks such as EURES and the Platform on Undeclared Work, which have both been integrated into ELA’s functioning, have greatly promoted the information exchange and mutual learning between Member States’ public institutions and social partners on common challenges but they are primarily focused on national solutions and practices. Their principle aim is not focused on settling disputes on cross-border challenges that concern labour mobility or social security coordination. In this respect, an out-of-court mediation mechanism offers a way forward for Member States if and when the need arises to settle such disputes. Furthermore, the mediation procedure within ELA is intended to be also of an added value when compared to the already existing extra-judicial mechanisms which aim at resolving disputes on cross-border issues in the EU: (1) in the area of EU social security coordination a Dialogue and Reconciliation procedure exists in the framework of the Administrative Commission on the coordination of social security systems¹; (2) in the wider area of internal market the SOLVIT problem-solving network².

For these reasons, a voluntary mediation mechanism has been established within ELA’s mandate, in order to reconcile divergent points of views between Member States in the area of EU labour mobility and social security coordination.

1.2 The ELA mediation procedure

The ELA Mediation procedure is a tailor-made mechanism to resolve disputes on EU labour mobility between Member States in an effective manner. Member States can refer disputed individual cases to ELA for mediation after failing to solve them by means of direct contact and dialogue. Mediation only concerns disputes between Member States.

Based on article 13 (6) of its founding Regulation (EU) 2019/1149, ELA adopted its **Rules of Procedure (RoP)** on 10 November 2021³. The Rules of Procedures for me-

¹ The dialogue and conciliation procedure in the area of social security coordination is limited to certain issues in line with Regulation (EC) No 883/2004 on the coordination of social security, and its implementing Regulation (EC) No 987/2009.

² The SOLVIT network for problem-solving focusses on solving problems for businesses and citizens, not Member States.

³ Rules of procedures for mediation of the European Labour Authority, adopted with decision No 17/2021, available at: https://www.ela.europa.eu/sites/default/files/2022-02/Decision%2017_2021%20ROPM_EN.pdf.

mediation are available in all official languages of the EU. The procedures describe two stages of mediation that can be undertaken by the Member States involved in order to reach a non-binding opinion. The first stage is facilitated entirely by a mediator, chosen by the parties or by the ELA, while the second stage is run before the Mediation Board, or by a restricted panel, appointed by the Chair of the Mediation Board.

ELA also concluded **cooperation agreements** with the Administrative Commission on the coordination of social security systems and with SOLVIT⁴.

A smooth cooperation between the AC and ELA is necessary because of the (partial) overlap in competences regarding EU social security coordination. Disputes between Member States which relate to social security coordination can be dealt with through the Dialogue and Reconciliation procedure at the AC or mediated under ELA's mandate. The AC-ELA cooperation agreement envisages to delineate the respective areas of intervention and processes of communication in situations when disputes which fully or in part concern social security coordination are first being brought before ELA. In such instances ELA always has to inform the AC while the cooperation agreement determines the subsequent steps that are to be taken by both bodies. Coordination is necessary for reasons of efficiency and avoidance of duplication.

Disputes between Member States on the application of EU legislation regarding labour mobility issues that remain unresolved under the SOLVIT dispute resolution mechanism can be referred to ELA by the SOLVIT centres. The latter centres function as a sort of initiator of possible cases for ELA mediation and are not involved during the mediation procedure itself.

As a consequence, the present guidelines consider not only the rules contained in the Rules of Procedure, but also those contained in the two mentioned cooperation agreements.

A request or referral for mediation between Member States on a dispute concerned with the application of the EU labour mobility acquis is processed in line with the pro-

visions of the Rules of procedure for mediation and the cooperation agreements. The actual mediation can only commence once some preliminary administrative steps have been taken while cases for mediation can be initiated to ELA in different ways. The Rules of procedure for mediation provide for two possible consecutive stages of mediation during which the parties to the dispute are intensively involved through negotiations. The mediation between the parties itself is conducted by appointed individual mediators during the first stage or (subsequently) by the Mediation Board established at ELA during the second stage of the mediation procedure. The ELA Mediation Secretariat of the Cooperation Support Unit supports the entire process administratively through secretarial and logistical support services.

ELA's mediation procedure consists of three main phases⁵:



The present guidelines and workflows are structured in a way that is reflecting the sequence of the three main phases of the mediation.

1.3 Aim of the guidelines

The present guidelines are meant to operationalise the Rules of procedure for mediation and the two cooperation agreements with a view to put them into practice. The main objective is to describe the mediation procedure in a structured and accessible way guiding the reader through the different steps of the entire mediation process. The guidelines describe the workflows within each of the main phases of the mediation process and contain a series of tools and templates (forms) in support of these workflows. The templates/forms are integrated in the Annex of the guidelines.

⁴ The AC-ELA Cooperation Agreement entered into force on 1 June 2022 (Decision No. 18/2021); The ELA-SOLVIT Cooperation agreement entered into force on 24 January 2022 (Decision No. 20/2021).

⁵ The RoP distinguishes only between the first and the second stage of mediation, which each are launched by a Notification letter from ELA and are bound by certain time limits. Present guidelines describe and 'add' a preceding phase concerned with the process of submitting and/or referring requests for mediation to ELA before the actual formal launch of the first stage of the mediation.

The guidelines are primarily developed for the use by the key actors who are most directly involved in the mediation process: representatives of Member States considering a request for mediation when they have a dispute with another or different Member States, ELA’s staff from the ELA Mediation Secretariat entrusted with the administrative and logistical support of the ELA mediation process, mediators and experts of the Mediation Board. The workflows presented in the guidelines describe the inter-action and communication between these key-actors during the different phases of the mediation process. The tools and templates serve the different steps and actions that are to be taken by the respective key-actors.

The guidelines have furthermore also an informative objective aimed at the other actors and stakeholders who are less directly involved in the ELA mediation procedure itself such as the AC, the SOLVIT centres, social partners and any other organisation or person who may have an interest in ELA’s mediation function and procedures.

As has been highlighted above ELA’s mediation procedure consists of three main phases⁶:



⁶ See footnote above.

Each of the three phases will be laid out in detail below describing the precise objectives of the particular steps, the actors who might be involved, the timeframes that need to be respected and the templates that can be used by the different actors at each of the steps.

The **initiation phase** of the mediation process concerns all actions that are to be taken before ELA formally decides (not) to launch the first stage of the mediation procedure: the submission of a request for mediation and the intake thereof by ELA, the communication between the different actors and admissibility check prior to the possible launch of the first stage of mediation. During the initiation phase, four actors are potentially involved, namely:

- a) the Member States;
- b) ELA Mediation Secretariat;
- c) SOLVIT; and
- d) the Administrative Commission.

These four actors are considered in the three workflows that are developed for the initiation phase. All three workflows aim to lead the actors to the start of the first mediation stage, although the concrete steps to be taken and timeframes vary according to the workflow in question.

The **first stage of mediation** concerns the selection and appointment of a single mediator, the actual mediation process and the production of an administrative report. The actors possibly involved in this first stage of mediation are the following:

- a) ELA Mediation Secretariat;
- b) a mediator; and
- c) the Member States involved in the dispute.

In certain instances, the Administrative Commission might also be involved during the first stage of mediation. Unlike what is the case regarding the initiation phase, the first stage of mediation is limited to one single workflow regardless of the actors involved as the procedure always follows the same administrative pattern.

Finally, the last phase of the mediation procedure is the **second stage of mediation**. The second stage of mediation is launched by ELA only if a non-binding opinion has not been adopted in the first stage of mediation and the Member States agree to bring their dispute to ELA's Mediation Board. The actors that can be involved during the second stage of mediation are:

- a) ELA Mediation Secretariat;
- b) a Chair;
- c) a Deputy Chair;
- d) the Mediation Board composed of experts or a selected panel;
- e) a rapporteur; and
- f) the Member States, involved in the dispute.

The Administrative Commission might also be involved in the second stage of mediation. The proceedings during the second stage of mediation are contained in a single workflow, as in this case also, the procedure always follows the same administrative pattern.

Important to note is that the workflows presented in this document should be read together with the Workflow Guidance for ELA-AC interaction, which provides detailed steps on the working arrangements when the AC and ELA are involved at the same time in the process.



1.4 Who is concerned: the actors in the ELA mediation procedure

A mediation procedure before ELA can involve different actors, organisations and individuals. At EU Member State level, these actors are either public bodies such as ministries or executive agencies operating within the public administration of the Member State concerned, or they can be social partner organisations. At ELA, the ELA Cooperation and Support unit and its ELA Mediation Secretariat serve as the administrative secretariat for the individual ELA mediation procedures. ELA furthermore appointed mediators⁷ and (experts of) the Mediation Board including a Chair and two Deputy Chairs. The individual mediators and Mediation Board have been entrusted with specific mediation roles and tasks during the process. During an individual ELA mediation procedure, experts in an advisory capacity can also be appointed by the various actors. The Administrative Commission on the coordination of social security systems, established under Article 71 Regulation (EC) No 883/2004, is another entity which, in some in-



stances, may become involved when a dispute is brought for mediation before ELA. The AC has an own dispute resolution mechanism Member States can rely on when they have divergent views on the application of EU social security coordination rules. National SOLVIT centres⁸ may also be involved but only as a possible 'entry point' or mechanism to channel relevant unresolved disputes between Member States to ELA for a possible mediation. Finally, there are some other actors who at certain stages may be (more indirectly) implied into the ELA mediation process such as the European Commission (including EC SOLVIT) and the social partner organisations.



Table 1 presents the main actors who are involved in ELA mediation and describes their roles and responsibilities.



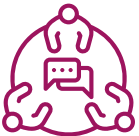
⁷ On 15 March 2022, 13 mediators and 19 experts have been appointed by ELA's Management Board.




⁸ SOLVIT webpage is available at the following link: https://ec.europa.eu/solvit/what-is-solvit/index_en.htm





Table 1. Actors involved: roles and responsibilities

ACTORS INVOLVED IN THE MEDIATION PROCEDURE	ROLES & RESPONSIBILITIES
 <p>THE EUROPEAN LABOUR AUTHORITY, ('ELA')</p>	<p>ROLE: ELA has a mainly administrative role.</p> <p>Within ELA, it is the ELA Mediation Secretariat, which is part of the Cooperation Support Unit, that supports the mediation procedure.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • It provides all the technical support that the actors involved in mediation may need, from the translation of documents to the provision of space or expert advice on the procedures to be followed to conduct mediation. • It appoints the actors involved in the mediation process (mediators, chair, deputy chairs). • It ensures that the information from one actor is conveyed to the other in a comprehensive manner when required by the Rules of procedures for mediation. • It ensures that the non-binding opinions comply with the European legal framework and that the Member States put report on the implementation of the non-binding opinions.
 <p>MANAGEMENT BOARD</p>	<p>ROLE According to Article 17(1) of the founding Regulation, the Management Board shall be composed of: (a) one member from each Member State; (b) two members representing the Commission; (c) one independent expert appointed by the European Parliament; (d) four members, representing cross-industry social partner organisations at Union level, with an equal representation of trade union and employer organisations.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • The Management Board approves the Rules of procedure for mediation of the European Labour Authority. • The Management Board appoints the Chair and the deputy chairs. • The Management Board appoints the mediators and experts from the Member States who will sit on the Mediation Board. • The Management Board ensures that the list of appointed mediators and experts of the Mediation Board achieves the necessary geographical, professional and gender balance.

ACTORS INVOLVED IN THE MEDIATION PROCEDURE	ROLES & RESPONSIBILITIES
 <p>THE MEMBER STATES</p>	<p>ROLE: The 27 EU Member States can turn to ELA for mediation on an individual case of application of Union Law.</p> <p>Practically a request for mediation from a Member State can be forwarded by a representative of the Member State, acting on its behalf; namely a physical person who acts as the main contact point for social security institutions, labour inspectorates, ministries, employment agencies, and so on.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • It is up to the Member States to pursue requests for mediation, to appoint a national representative. • It always remains the sole will of Member States to continue (or not) the mediation process before ELA, which can be terminated by them at any time.
 <p>THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS OF THE EUROPEAN UNION</p>	<p>ROLE: The Administrative Commission, consisting of a government representative from each Member State, is specifically charged with dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and its Implementing Regulation No 987/2009. It has the duty of fostering and developing cooperation between Member States and their institutions in social security matters in order to take into account particular questions regarding certain categories of persons, and of facilitating cross-border cooperation activities in the area of the coordination of social security systems.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • When a dispute before ELA relates, fully or in part, to matters of social security, ELA shall inform the Administrative Commission. • Upon request of the Administrative Commission and in agreement with the Member States that are party to the dispute, ELA shall refer the issue concerning social security to the Administrative Commission.

ACTORS INVOLVED IN THE MEDIATION PROCEDURE	ROLES & RESPONSIBILITIES
 <p>SOLVIT</p>	<p>ROLE: SOLVIT is a service provided by the national administration in each EU country and in Iceland, Liechtenstein and Norway. SOLVIT aims to find fast solutions when a European citizen or a business has suffered a breach of an EU rights by public authorities in another EU country.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • SOLVIT network may refer a dispute to ELA for its consideration, when it considers that the dispute can fall within ELA’s mandate, and the issue could not be solved, by SOLVIT, due to differences between national administrations.
 <p>MEDIATOR</p>	<p>ROLE: The mediator is a person who conducts the first stage of mediation in accordance with Article 13(3) of the founding Regulation. S/ he is appointed by the Management Board of ELA in accordance with Article 7 of the Rules of Procedure.</p> <p>The mediator possesses the necessary knowledge and skills in the field of dispute resolution mechanisms including mediation, and preferably, has basic knowledge related to any of the different areas within the scope of the mediation procedure.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • The mediator conducts the first stage of mediation, supports the parties throughout the mediation, suggesting the best approach to use and attempting to remove obstacles that may stand between the parties and the solution. • The mediator is responsible for drafting the factual report and sending it to ELA and the parties to the dispute, at the end of the first stage of mediation and for the non-binding opinion.
 <p>MEDIATION BOARD</p>	<p>ROLE: In accordance with Article 13(6) of the founding Regulation the Mediation Board is the body composed of experts who are appointed by the Management Board for the mediation during the second stage of mediation.</p> <p>It may only be involved by the Chair in full during the second stage of mediation in cases of exceptional difficulty but the Chair may opt to work with a panel of (maximum 12) experts from the Mediation Board.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • It takes part fully or partly in the second stage of mediation to guide and support Member States in reaching a solution to their dispute. • The Mediation Board may ask direct questions to all Member States during the hearing.

ACTORS INVOLVED IN THE MEDIATION PROCEDURE	ROLES & RESPONSIBILITIES
 <p>CHAIR</p>	<p>ROLE: The Chair of the Mediation Board is appointed by the Management Board for a term of 36 months. The Chair manages the second stage of mediation in accordance with Article 8 (5) of the Rules of procedure.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • The Chair is responsible for deciding whether the second stage will be conducted by the entire Mediation Board or only by a panel. • The Chair nominates the rapporteur. • The Chair ensures that the second stage of mediation is conducted according to the Rules of procedure for mediation. • The Chair is the representative and main point of reference for the Mediation Board in the communications and relations with the Management Board.
 <p>DEPUTY CHAIRS</p>	<p>ROLE: Two Deputy Chairs are appointed by the Management Board for a term of 36 months. They are involved in the second stage of mediation together with the Chair.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • 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.
 <p>RAPPORTEUR</p>	<p>ROLE: The rapporteur is selected amongst the experts of the Mediation Board (or the panel), appointed for the concrete dispute. The rapporteur is appointed by the Chair according to the following criteria:</p> <ul style="list-style-type: none"> • The nature of the dispute and the expertise; • The competence of the expert; • The availability of the expert. <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • The rapporteur is responsible for preparing the factual report and non-binding opinion for the second stage of mediation, taking into account all the views of the members of the Mediation Board (or the panel), the Member States that are party to the dispute, and other experts participating in an advisory capacity (e.g. social partners, members from the European Commission, etc.).

ACTORS INVOLVED IN THE MEDIATION PROCEDURE	ROLES & RESPONSIBILITIES
 <p>EXPERT OF THE MEDIATION BOARD</p>	<p>ROLE: An expert is 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. Persons nominated as experts of the Mediation Board shall possess the expertise and competence for dealing with disputes related to any of the different areas within the scope of the mediation procedure.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • The role of the expert, on the Mediation Board or panel during the second stage of mediation, is to provide technical opinions on the concrete case to find a possible solution.
 <p>EXPERT IN ADVISORY CAPACITY</p>	<p>ROLE (AS REGARDS THE FIRST STAGE OF MEDIATION):</p> <p>The experts from the Member State, the Commission and the Authority referred to in Article 13(3) of the founding Regulation.</p> <p>ROLE (AS REGARDS THE SECOND STAGE OF MEDIATION):</p> <p>The experts from the Commission and the Authority referred to in Article 13(5) of the founding Regulation as well as the experts referred to Article 19(19) and (20) of the Rules of Procedure.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • The experts in advisory capacity submit opinions, make recommendations and propose solutions during the first and second stages of mediation, when asked by the mediator or by the Chair. However, they can intervene only if there is an explicit agreement of the Member States that are party to the dispute.
 <p>SOCIAL PARTNERS ORGANISATIONS</p>	<p>ROLE: 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.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • Provide advice and suggestions during the first and second stages of mediation, when asked by the mediator or by the Chair.
 <p>NATIONAL LIAISON OFFICERS (NLOS)</p>	<p>ROLE: 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.</p> <p>RESPONSIBILITIES:</p> <ul style="list-style-type: none"> • National Liaison Officers working within the Authority should support Member States' compliance with cooperation obligations, speed up exchanges between them through procedures dedicated to reducing delays, and ensure links with other national liaison offices, bodies, and contact points established under Union law.

1.5 Glossary and concepts

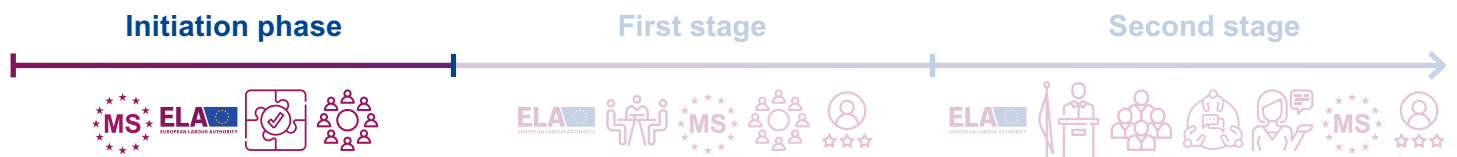
Table 2. The glossary

WORD	MEANING
AC-ELA COOPERATION AGREEMENT	The Cooperation Agreement between the Administrative Commission (AC) and ELA provides rules to ensure good cooperation between the two entities, 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.
ADMISSIBILITY CHECK	Control by ELA before it can decide to (not) launch the first stage of mediation in order to verify that all necessary conditions are fulfilled and ELA deems the issue within its competence.
CASE SUMMARY	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 content of the Case Summary is spelled out in the Annex of the ELA-SOLVIT agreement.
DIRECT CONTACT AND DIALOGUE	Efforts made by Member States that are party to the dispute to resolve the case through direct contact and dialogue with the other Member States that are involved in the dispute, before ELA can launch the mediation procedure.
DIALOGUE AND CONCILIATION PROCEDURE ADMINISTRATIVE COMMISSION	Set out in Decision No. A1, it provides the possibility for Member States to enter into a dialogue and conciliation procedure where there is a disagreement between institutions or authorities of two or more Member States regarding specific cases on the application of Regulation (EC) No. 883/2004 or of Regulation (EC) No. 987/2009.
DETAILED STATEMENT	A statement of the Member State/s making the request for mediation before ELA, which allows ELA to clearly determine the cause and nature of the dispute. It includes the necessary information allowing ELA to verify whether the case can be taken in for mediation.
EARLY CLOSURE	Permanent setback(s) leading to the end of the mediation procedure, before the natural end of the mediation procedure.
ELA MEDIATION PROCEDURE	Mediation procedure before ELA in accordance with the Rules of procedure for mediation, which 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.
ELA-SOLVIT COOPERATION AGREEMENT	The Cooperation Agreement between ELA and SOLVIT is meant to allow the SOLVIT network to be enabled to refer to the Authority for its consideration cases in which the problem cannot be solved due to differences between national administrations. It allows for better coordination between ELA and SOLVIT when it comes to case referral and the exchange of information.

WORD	MEANING
FAST-TRACK MEDIATION	Agreement by Member States that are party to the dispute, 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.
FACTUAL REPORT	Report 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.
FIRST STAGE OF MEDIATION	If the admissibility check does not reveal any obstacles that may end or suspend the mediation procedure, ELA may launch the first stage of mediation, which aims to overcome differences between the parties, with the help and support of a mediator.
FOUNDING REGULATION	Regulation (EU) 2019/1149 establishing a European Labour Authority.
INDIVIDUAL CASE OF APPLICATION OF UNION LAW	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.
INITIATION PHASE	All preliminary actions that are to be taken before ELA formally can decide (not) to launch the first stage of the mediation procedure.
INTERNAL REGISTERING SYSTEM	The system where ELA is storing the information relating to the mediated disputes.
LEGAL OPINION	An opinion on the interpretation of Union law provided by the Court of Justice of the European Union or any other specialised body entrusted by Union law to provide such interpretations.
NON-BINDING OPINION	An opinion without legal effect, included in the final factual report if the parties to the dispute have found a mutually acceptable solution, including the timeline for implementing said solution, an agreed follow-up and recommendations.
RULES OF PROCEDURE (ROP)	The Rules of Procedure supplement and clarify the provisions contained in the founding Regulation, in particular Article 13 thereof. They 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.

WORD	MEANING
SECOND STAGE OF MEDIATION	An additional opportunity to resolve the dispute if no solution was found during the first stage of mediation. The mediation during the second stage is conducted before a Mediation Board (or panel), which is composed of experts from the Member States other than those that are party to the dispute.
SUSPENSION	Temporary setback(s) leading to the suspension of the mediation procedure.





2. The initiation phase of a mediation before ELA

As briefly illustrated above, the mediation process can be initiated in three different ways.



- (2.1) • The first pathway is the one where the **Member States**, involved in the dispute, **initiate the process**. In those cases, there are **two different scenarios**:

Scenario 1

The first scenario is likely to be the most common and concerns a situation in which **one (or some but not all) of the Member States that are involved in a dispute submits a request for mediation to ELA**. In such instances it will be essential to obtain the consent of the other Member State(s) that are involved in the dispute in order to proceed with the initiation of the first stage of mediation, (scenario 1).

Scenario 2

The second scenario occurs when **all Member States involved in the dispute agree to refer the matter to ELA for mediation and submit a request for mediation to ELA jointly or simultaneously** (scenario 2).



- (2.2) • The second pathway relates to those cases where **ELA itself takes the initiative** with respect to a dispute between two (or more) Member States, which remained unresolved even

after direct contact and dialogue. ELA contacts all Member States involved in the dispute and verifies whether they agree to mediate their dispute before ELA.



- (2.3) • Finally, the last possible pathway to bring a dispute before ELA is the one where **SOLVIT deals with a dispute that could fall within ELA's mandate**, and which has **remained unresolved** due to differences between national administrations.

Considering these three different pathways for initiating a possible case for mediation, it is important to note that one needs to qualify his or her starting position and follow the appropriate opening workflow. **Within the selected workflow, the actions required from the individual actors involved, the timeframes that need to be respected, and the documents to be referred to, are outlined in detail.** The only actor that is not incorporated in this specific document is the Administrative Commission. This is due to the fact that **the Administrative Commission is an actor that is (potentially) present throughout the entire procedure. That is why the activities resulting from its intervention in the process are entirely integrated in a separate Workflow Guidance for AC-ELA interaction.** Nonetheless, within the present document, a red box (●) will help the reader to effectively identify the moments when there is a possible interaction with the Administrative Commission, and where necessary to refer back to the separate workflow guidance.

2.1 Workflow guidance when Member State(s) request(s) a mediation before ELA

When a dispute cannot be solved by direct contact and dialogue between the Member States that are party to the dispute, **all, some or only one Member State may request ELA to launch a mediation procedure**. The process is slightly different depending on whether all or only one/some Member States request a mediation. The two processes are illustrated under Scenario 1 and Scenario 2.

SCENARIO 1: One (or some) Member State(s) request(s) a mediation before ELA

A Member State which has an unresolved dispute with another Member State or several other Member states on a cross-border case concerned with labour mobility or social security coordination can decide to request ELA for mediation. The requesting Member State may do this fully at its own initiative and has no obligation to inform the other Member State(s) that are involved in the dispute about its decision. Requesting Member States are free to inform the other Member State(s) or not. **Informing the other Member State(s) about its decision to request a mediation,**

may have the advantage that the other Member State is alerted in time allowing for the necessary preparations and positioning (whether to accept or to deny).

When only one or some (but not all) of the Member States that are involved into a dispute have requested a mediation, ELA is responsible for ensuring that all remaining Member States involved in the dispute are informed about the mediation request(s) that it received from the requesting Member State(s). ELA furthermore will need to ask the remaining Member States whether they agree to mediation or not.

ELA will request all Member States that are involved into the dispute to complete and submit some documents including the Detailed Statement from Member States in which the nature and scope of the dispute is explained from the perspective of the individual Member State completing the forms.

The workflow and accompanying guidelines are outlined below.



1. Member State(s) submit(s) a request for mediation

The Member State(s) which consider mediating a dispute in which they are involved should submit **a request** for mediation to ELA. Member States can do so at any point in time but only under the condition that attempts have been made to resolve the case through direct contact and dialogue with the other Member State(s) that is/are involved in the dispute. This does not necessarily mean that the request will be accepted, as each request will be subjected to an admissibility check by the ELA Mediation Secretariat.

The request can be made by using the form '**Letter of request for Mediation**' (Doc. I) which needs to be completed and signed by the mandated representative of the national public institution requesting mediation. Each Member States that is willing to request a mediation, completes and sends a request for mediation to ELA.

The request for mediation is to be submitted by email to the functional mailbox at ELA (mediation@ela.europa.eu). The electronic submission of a duly signed Request for Mediation suffices and no paper versions need to be sent by post by the requesting Member States. The ELA Mediation Secretariat registers incoming requests for mediation in their 'internal registering system'. The date of registration counts as the date of submission of the requests concerned.



Who can submit a request?

In principle any national public institution or body that has competences in the areas of employment or social security in EU cross-border situations can submit a request for mediation before ELA when they have divergent views and/or an unresolved dispute with a national public institution or body from another Member State on the application of the relevant EU labour and social security acquis. Whereas it usually will be the lead Ministry responsible for employment and/or social security that will be the organization requesting for a mediation on behalf of a Member State concerned, it remains the decision of the Member States to determine whether and, in the affirmative, which other national public institutions or bodies are able to submit a request for mediation to ELA. Such national public institutions or bodies can be (1) social security institutions (2) employment agencies, (3) inspection services or (4) other public agencies.



2. Member State(s) submit(s) the Detailed Statement(s)

Within 15 working days from the submission of their respective requests for mediation Member States should submit to ELA a Detailed Statement by using the Form '**Detailed Statement**' (Doc. II). Nonetheless, Member States are encouraged to submit the Detailed Statement already when requesting a mediation.

The Detailed Statement should include all the necessary information which enables ELA to verify through the admissibility check whether the case can be taken in for mediation.

Requesting Member States need to ensure that all personal data of the individuals and/or business organisations who are involved in the dispute between the Member States are **anonymized** in line with Article 5(2) of the Rules of procedure for mediation.



3. ELA acknowledges receipt and may ask for additional information and clarification

Once ELA has registered an incoming request for mediation from one or more Member States, ELA will electronically send a signed '**Letter of receipt**' (Doc. III) to each of the requesting Member States. In the letter(s) of receipt a case number will be assigned to the dispute for which a request for mediation has been received. ELA will use the email address of the representative from the Member State mentioned in the request for mediation for the sending of the letter of receipt.

ELA may also send a letter for clarification or additional information using the form '**Request for additional information**' (Doc. IV) to the requesting Member State(s) when the information provided in the Request and/or Detailed Statement is not complete and/or insufficient to assess whether the request is eligible for further processing.



4. ELA contacts the Member State(s) that did not make a request

ELA will contact the national representative of the Member States that are party to the dispute which did not submit a request, in accordance with the information contained in the request(s) and/or the Detailed Statement(s) received from the requesting Member State(s).

To that end ELA will send a signed electronic request to all other Member states with a view to confirming their willingness to mediate the dispute before ELA by using the template '**Invitation to mediate**' (Doc. V). ELA registers the letter that was sent into its 'internal registering system'.

The Member State(s) concerned has/have **15 working days** from the receipt of the invitation to mediate, to provide ELA with a reasoned, '**Acceptance/Refusal letter**' (Doc. VI).

OUTCOME A: MEMBER STATE(S) DO NOT ACCEPT TO MEDIATE

In case Member State(s) do not accept to mediate, they will have **15 working days** from the receipt of the invitation to mediate, to send ELA their '**Refusal letter**' (Doc. VI).

When in such cases at least one of the Member States that is involved in the dispute, has sent a motivated refusal letter, ELA will end the mediation procedure immediately.

ELA will send a '**Notification of early closure**' (Doc. VII) to the involved Member States which have requested or accepted mediation as well as to the Member State which refused to participate in mediation

OUTCOME B: MEMBER STATE(S) ACCEPT(S) TO MEDIATE

In case the Member States which have been approached by ELA to confirm their will to mediate, effectively agree to mediate, they will have **15 working days** from the submission of the acceptance letter, to send ELA their **Detailed Statement(s)** (Doc. II) (see paragraph 2).

B.1 ELA ACKNOWLEDGES RECEIPT

As soon as the remaining Member States submit their Detailed Statement, ELA will acknowledge receipt by sending the '**Letter of receipt**' (Doc. III) of the request(s) and of the Detailed Statement(s) from the remaining Member States.

B.2 ELA MIGHT ASK ADDITIONAL INFORMATION OR CLARIFICATIONS

During the examination of the request(s) and the Detailed Statement(s) received from all Member States involved in the dispute, the ELA Mediation Secretariat may require additional information and/or clarifications from the Member States. At this stage of the mediation procedure ELA may request clarifications and additional information with a view to perform the admissibility check. The latter's aim is to assess whether the requests for mediation and information contained in the received Detailed Statements are eligible and sufficiently complete to effectively launch the first stage of mediation and/or to assess whether there is a need to involve the Administrative Commission.

ELA can ask for additional information and clarifications through a **'Request for additional information'** (Doc. IV) throughout the stages of the mediation process.

B.3 MEMBER STATES REPLY (OR NOT) TO THE REQUEST

Member States may provide (or not) the requested additional information and/or clarifications by using the **'Letter to provide additional information'** (Doc. VIII), which they will send electronically to the ELA's functional mailbox for mediation. The submission of the reply to ELA will, in principle, provide ELA with all the sufficient elements and information to conduct the admissibility check (see paragraph B.4) and proceed with the next steps. When all Member States involved have previously agreed to go for the ELA mediation as a solution to mitigate their differences and find solutions to resolve their disputes, preference should be given to proceed in the interests of the Member States as ELA's assessment at this point of the mediation is to merely verify whether the dispute is within the mandate and scope of the mediation procedure.

In a standard situation, Member States will at this stage of the mediation have submitted sufficiently clear and complete information to ELA Mediation Secretariat enabling the latter to proceed. At this point, a critical first milestone of ELA's mediation procedure has been reached as all Member States have agreed to run the ELA mediation procedure as a possible means to resolve the dispute.

B.4 ELA PERFORMS THE ADMISSIBILITY CHECK

ELA will conduct an admissibility check of the case files by using the **checklist entitled 'Admissibility check'** (Doc. IX) **without delay starting from** the receipt of the (last) Detailed Statement. The date of receipt of the last Detailed Statement is the date of the registration in ELA's internal registering system.

ELA Mediation Secretariat will examine all Requests for mediation, Detailed Statements and additional clarification replies that have been received from the respective Member States that are involved in the dispute. The admissibility check is primarily aimed to verify whether there are any obstacles to launch the (first stage of the) mediation

procedure in terms of:

- the parties' voluntary decision of ELA mediation as an adequate means to resolve their disputes;
- the nature and material scope of the dispute as being fit within ELA's mandate;
- existence of judicial proceedings on the same subject matter of the dispute;
- possible need to inform the AC.

Concrete procedure to go through the 'dimensions' of the admissibility check and its checklist:

- The verification is performed by ELA Mediation Secretariat.
- The admissibility check can be carried out by one or several professionals.
- The admissibility check can in practice be done in several consecutive stages and take into account the incoming information from Member States; As soon as all information and documents have been received, the checklist can be fully completed and signed and filed for internal purposes.
- Whenever during the admissibility check, an element is detected that could cause a suspension or early closure, ELA tries to verify whether the obstacle can be removed or overcome.
- The final completed checklist is signed by the Head of Unit of the Cooperation Support Unit, the Mediation Secretariat is part of (Doc. IX) and the next step can be taken.

The dimensions to be assessed during the admissibility check by ELA Mediation Secretariat are listed in the box below:

1. CHECK IF ALL MEMBER STATES THAT ARE PARTY TO THE DISPUTE HAVE BEEN DULY INVOLVED.

If yes, ELA proceeds with the admissibility check.

If no, ELA contacts the MS(s) that has/have not yet been involved and/or have not yet submitted the request for mediation and/or Detailed Statement, through the invitation to mediate letter (Doc. V) and ask for either confirmation of their agreement to mediation in writing within **15 working days**, or to send a refusal in writing within the same timeframe, through a acceptance-refusal letter (Doc. VI). In case of the former, the Member State may also be required to send a Detailed Statement when they have not submitted that together with the acceptance letter.

2. CHECK IF ALL MEMBER STATES THAT ARE PARTY TO THE DISPUTE HAVE SENT THE REQUEST(S) AND/OR THE DETAILED STATEMENT(S).

If yes, ELA proceeds with the admissibility check.

If no, ELA must contact the MS(s) that has/have not yet submitted the request for mediation and/or Detailed Statement, through the **invitation to mediate letter** (Doc. V) and ask for either confirmation of their agreement to mediation in writing within **15 working days**, or to send a refusal in writing within the same timeframe, through the **acceptance-refusal letter** (Doc. VI). In case of the former, the Member State may also be required to send a Detailed Statement when they have not submitted that together with the acceptance letter.

3. CHECK IF ALL MEMBER STATES INVOLVED AGREE TO MEDIATE.

If yes, ELA proceeds with the admissibility check.

If no, ELA notifies the requesting Member State(s) of the refusal from the other Member State(s) and ends the mediation procedure (Doc. VII).

4. CHECK IF MEMBER STATES EXHAUSTED ALL EFFORTS TO RESOLVE THE DISPUTE BY DIRECT CONTACT / DIALOGUE, BEFORE APPLYING TO ELA.

If yes, ELA proceeds with the admissibility check.

If no, ELA check whether there is a willingness to have this direct contact or whether the Member States involved agree to mediate directly.



5. CHECK IF THE DISPUTE CONCERNS RELEVANT EUROPEAN LEGISLATION (SEE BELOW) WITHIN ELA’S MANDATE? (I.E. ARTICLE 1(4) REGULATION (EU) 2019/1149)?
IF NOT – ELA ENDS THE MEDIATION PROCEDURE (DOC. VII).

Posting of workers

Directive 96/71/EC
Directive 2014/67/EU

Social security coordination

Regulation (EEC) 1408/71
Regulation (EEC) 574/72
Regulation (EC) 883/2004
Regulation (EC) 987/2009
Regulation (EC) 859/2003
Regulation (EC) 1231/2010

Free movement of workers

Regulation (EU) 492/2011
Directive 2014/54/EU
Regulation (EU) 2016/589

Social legislation in road transport

Regulation (EC) 561/2006
Directive 2006/22/EC
Regulation (EC) 1071/2009

6. CHECK IF THE DISPUTE CONCERNS MATTERS OF UNION LAW THAT REQUIRE A LEGAL OPINION AT UNION LEVEL.

If yes, ELA suspends/ends the mediation*.

If no, ELA proceeds with the admissibility check.

**The process is may only be suspended when it is possible to deal with the matter which requires a legal opinion separately and proceed the mediation process with the part of the dispute which does not require a legal opinion at Union level; while it is ended when the separation of the matter requiring a legal opinion is not possible. In the latter case, ELA ends the mediation (Doc. VII).*

7. CHECK IF THERE ARE ONGOING COURT PROCEEDINGS (AT NATIONAL OR AT EU LEVEL).

If yes, ELA ends the mediation.

If no, ELA proceeds with the admissibility check.

8. CHECK IF THE DISPUTE FULLY OR IN PART CONCERN MATTERS THAT CONCERN SOCIAL SECURITY COORDINATION IN WHICH THE ADMINISTRATIVE COMMISSION NEEDS TO BE INVOLVED.

If yes, ELA informs the Administrative Commission in accordance with the AC-ELA Agreement (please proceed according to the **Workflow Guidance for AC-ELA interaction**). (●)

If no, ELA proceeds with the admissibility check.

In order to assess dimension 4 regarding previous efforts

that were undertaken by the Member States involved with a view to resolve the dispute through bilateral contacts and dialogue prior to the request for mediation, the mere statement or confirmation from all individual Member States that they have done so, should suffice for ELA Mediation Secretariat to positively assess the dimension since all Member States have confirmed and agreed to the mediation as the preferred way to resolve the dispute. Unnecessary requests to provide additional information on the scope, contents and timing of such bilateral efforts should be avoided as they are redundant at the stage of the admissibility check. They may however become useful at a later stage, during the first stage of the mediation, when a mediator has been appointed and negotiations between the Member States may start. At that point in time the parties to the dispute may find it useful to include and/or reveal the history of the case and/or other details that were not yet disclosed in their request to mediate or in their Detailed Statements.

In order to assess dimension 6 regarding the need for a Legal Opinion at Union level,

the latter concept needs to be interpreted restrictively during the admissibility check so as to avoid creating additional obstacles for the ELA mediation process for the following reasons. First, the outcome of the ELA mediation procedure is an Opinion that can never be binding upon the EU institutions. Second, the ELA mechanism of dispute resolution between Member States is voluntary and is concerning matters that at all times remain potentially subject to the interpretation by national courts and ultimately by the CJEU, by the EU legislator or European Commission as the Guardian of the Treaties. The risk that an Opinion agreed by the respective Member States in a particular case is contravening the correct application of the EU labour mobility acquis is rather small and can always be challenged before court at national and EU level while the European Commission's presence in the functional organisation of the mediation procedure is limiting the risk of infringements of EU legislation. 'Legal Opinion at EU level' needs therefore to be interpreted as the 'need for an interpretation beyond any doubt by the EU legislator, the CJEU or any other body entrusted by EU law (when this delegation is derived from EU legislative acts)' and further qualified by a reference to the available information and the role of the ELA Mediation Secretariat. Only in such rather exceptional instances, will the ELA procedure that is requested and agreed to by the Member States be halted.

The admissibility check conducted by ELA Mediation Secretariat may eventually lead to the following two mutually exclusive outcomes:

ELA decides to **launch the first stage of the mediation procedure (outcome A)**.

This will be the case whenever, following the admissibility check, all eight dimensions that have been assessed do not lead to a suspensive or conclusive outcome.

ELA decides **not to launch the first stage of the mediation procedure (outcome B)**.

This case will occur whenever, following the admissibility check, at least one out of the eight dimensions that have been assessed leads to a suspensive or conclusive outcome.

AC-ELA interaction alert (●)

By the end of the admissibility check the AC might be involved according to the Workflow Guidance for AC-ELA interaction.

A **OUTCOME A:
ELA LAUNCHES THE FIRST STAGE
OF THE MEDIATION PROCEDURE**

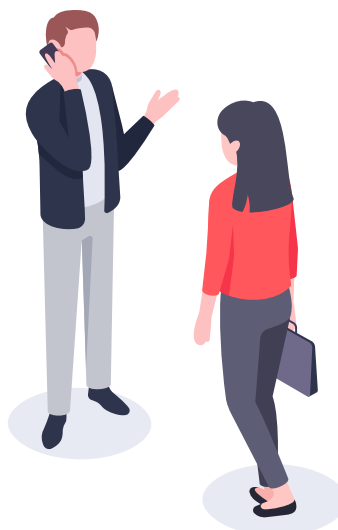
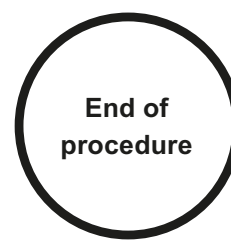
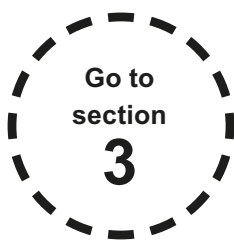
If the admissibility check does not reveal any obstacle and ELA deems the case within its competence, ELA can launch the first stage of the mediation procedure. In order to launch this first stage of the mediation procedure ELA will notify all Member States involved in the dispute through '**Notification of the start of the first stage of mediation**' (Doc. XIII). The notification is addressed to all Member States that are involved in the dispute in a single notification letter which indicates the case number assigned to it.

The sending of the Notification letter to all Member States formally launches the first stage of the mediation procedure. The date of sending the Notification letter counts as the reference date for determining the overall time frame and intermediate steps of the first stage of the mediation procedure.

Once the mediation process has been successfully initiated, all actors should follow the workflow guidance concerning the first stage of the mediation procedure presented in section 3.

B **OUTCOME B:
ELA DOES NOT LAUNCH THE FIRST
STAGE OF THE MEDIATION
PROCEDURE**

When at the end of the admissibility check, one or more dimensions remain which call for a halt to the proceedings and the obstacles have not been removed and/or overcome, the mediation process end. In such a case, ELA Mediation Secretariat will notify all Member States on the state of play and send them a '**Notification of early closure of the mediation procedure**' (Doc. VII). The notification is addressed to all Member States that are involved in the dispute in a single notification letter and sent at the same time. The date of the sending is the date of the closure of the case.

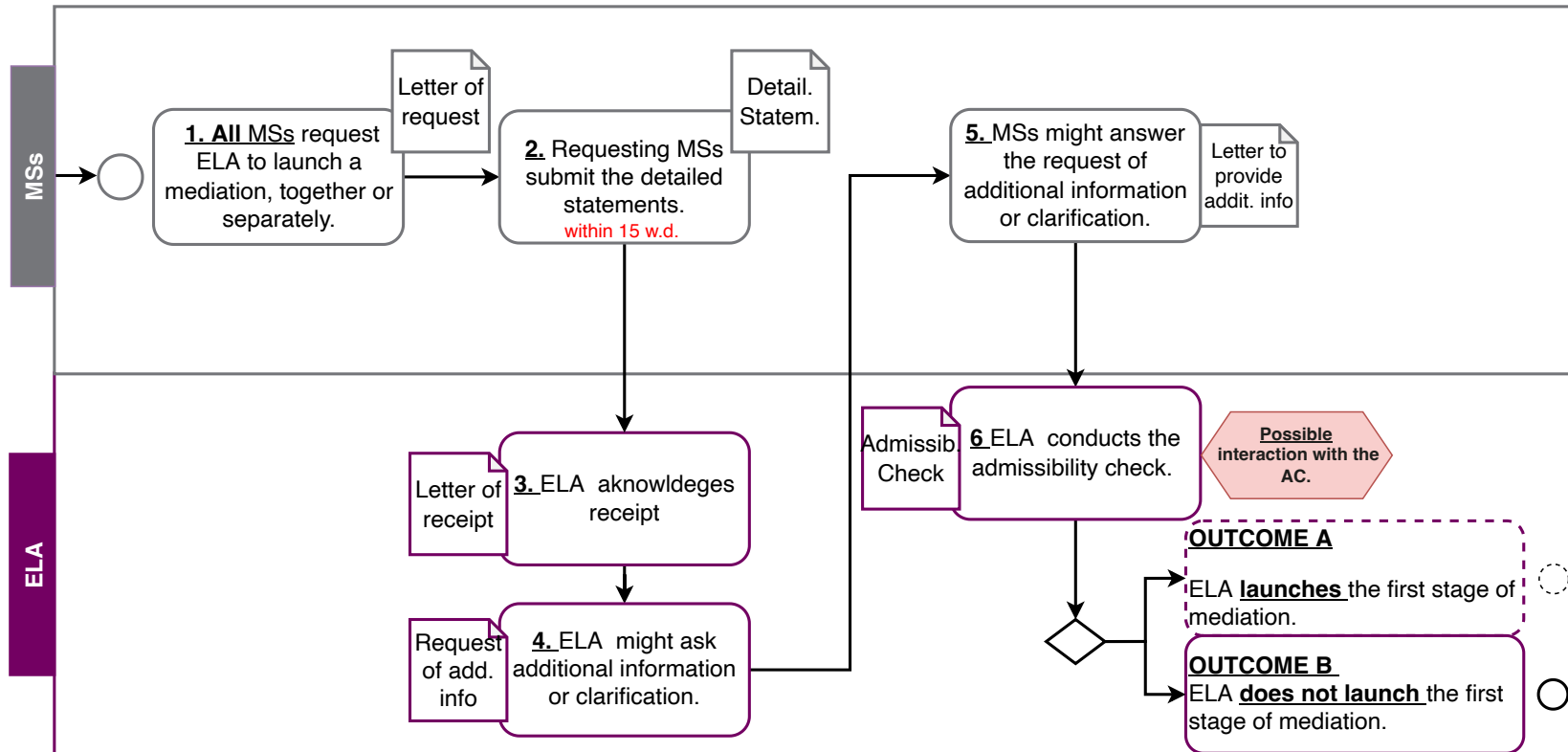


**SCENARIO 2: All Member States request
a mediation before ELA jointly
or simultaneously**

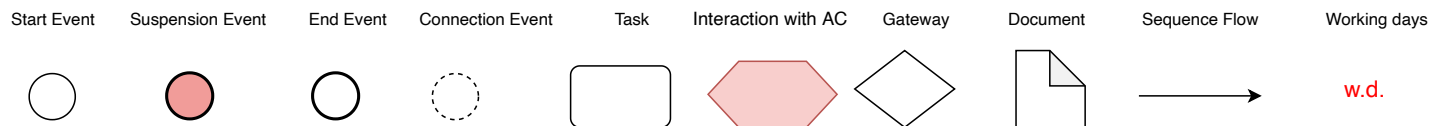
When Member States that are party to a dispute have failed to find a solution, through direct contact and dialogue, **all Member States involved in the dispute can agree** to have their dispute mediated by ELA and request the Authority to mediate jointly or simultaneously.



SCENARIO 2: Workflow guidance when all Member States requests a mediation before ELA



*The numbering of the individual steps in the workflow guidance is in accordance with the detailed description below.





1. Member States submit the requests for mediation

Each Member State involved in the dispute should in principle submit an individual request for mediation to ELA separately (Doc. I) (simultaneous request for mediation). Nonetheless, in exceptional circumstances Member States may also submit a single joint request, signed by all Member States involved (joint requests for mediation). The submission of a joint request implies that the request form itself is exchanged between the Member States concerned for the respective signing by their mandated representatives. This may be too cumbersome from an administrative or practical point of view. For that reason, Member States are advised to complete and send the requests separately to ELA.



2. Member States submit their Detailed Statement(s)

Within 15 working days from the submission of their respective or joint requests for mediation, Member States should submit to ELA **the respective Detailed Statements** (Doc. II).

Unlike what is the case for a joint submission of a request to mediate, Member States cannot submit 'joint' Detailed Statements as the latter documents are meant to describe the points of view of the disputing Member States from their own perspective.

As a consequence, each Member State involved in a dispute completes, signs and submits its own Detailed Statement to ELA.

When Member States complete the Detailed Statements, they ensure that all personal data of the individuals and/or businesses that are subject to the dispute are anonymized in line with Article 5(2) of the Rules of procedure for mediation.



3. ELA acknowledges the receipt of the Requests/Detailed Statements

ELA **acknowledges the receipt** by using the form **Letter of receipt** (Doc. III) of the Request(s) for mediation and of the Detailed Statement(s). When the requests and corresponding Detailed Statements have been received consecutively on different days, separate letters of receipt may have to be written and sent by the ELA Mediation Secretariat to the Member States concerned. In a situation in which all requests and Detailed Statement have been received almost simultaneously, ELA Mediation Secretariat may decide to complete a single Letter of receipt addressing all Member States at once. Various options in between may exist and ELA Mediation Secretariat will act accordingly.



4. ELA may ask additional information or clarifications

During the examination of the request(s) and the Detailed Statement(s) received from all Member States involved in the dispute, the ELA Mediation Secretariat may find out that it needs additional information and/or clarifications from (some of) the Member States. At this stage of the mediation procedure ELA may request clarifications and additional information with a view to perform the admissibility check. ELA will use the form '**Request for additional information**' (Doc. IV), which is always addressed to one Member State only.



5. Member States might reply (or not) to the request

Member States may provide the requested additional information and/or clarifications by using the '**Letter to provide additional information**' (Doc. VIII), which they will send electronically to the ELA's functional mailbox for mediation. The submission of the reply to ELA will in principle provide ELA with sufficient elements and information to conduct the admissibility check (see paragraph 6. ELA performs the admissibility check) and proceed with the

next steps. When all Member States involved have previously already agreed to go for the ELA mediation as a solution to mitigate their differences and find solutions to resolve their disputes, preference should be given to proceed in the interests of the Member States that are involved as ELA's assessment at this point of the mediation is to merely verify whether the dispute is within the mandate and scope of the mediation procedure.

Be this as it may, in a standard situation, Member States will at this stage of the mediation have submitted sufficiently clear and complete information to ELA Mediation Secretariat enabling the latter to proceed. At this point, a critical first milestone of ELA's mediation procedure has been reached as all Member States have agreed to run the ELA mediation procedure as a possible means to resolve the dispute.



6. ELA performs the admissibility check

ELA will perform an admissibility check of the case files by using the checklist entitled '**Admissibility check**' (Doc. IX) **without delay** starting from the receipt of the (last) Detailed Statement. The date of receipt of the last Detailed Statement is the date of the registration in ELA's internal registering system.

ELA Mediation Secretariat will examine all Requests for mediation, Detailed Statements and additional clarification replies received from the respective Member States that are involved in the dispute. The admissibility check is primarily aimed to verify whether there are any obstacles to launch the (first stage of the) mediation procedure in terms of:

- the parties' voluntary decision of mediation before ELA as an adequate means to resolve their disputes;
- the nature and material scope of the dispute falling within ELA's mandate;
- existence of judicial proceedings on the same subject matter of the dispute;
- possible need to inform the AC.



Concrete procedure to go through the ‘dimensions’ of the admissibility check and its checklist:

- The verification is performed by ELA Mediation Secretariat.
- The admissibility check can be carried out by one or several professionals.
- The admissibility check can in practice be done in several consecutive stages and take into account the incoming information from Member States; As soon as all information and documents have been received, the checklist can be fully completed, signed and filed for internal purposes.
- Whenever during the admissibility check, an element is detected that could cause a suspension or early closure, ELA tries to verify whether the obstacle can be removed or overcome.
- The final completed checklist is signed by the Head of Unit of the Cooperation Support Unit, the ELA Mediation Secretariat is part of (Doc. IX) and the next step can be taken.

The dimensions to be assessed during the admissibility check by ELA Mediation Secretariat are listed in the box below:

1. CHECK IF ALL MEMBER STATES THAT ARE PARTY TO THE DISPUTE HAVE BEEN DULY INVOLVED.

- If yes, ELA proceeds with the admissibility check.
- If no, ELA contacts the MS(s) that has/have not yet been involved and/or have not yet submitted the request for mediation and/or Detailed Statement, through the invitation to mediate letter (Doc. V) and ask for either confirmation of their agreement to mediation in writing **within 15 working days**, or to send a refusal in writing within the same timeframe, through a acceptance-refusal letter (Doc. VI). In case of the former, the Member State may also be required to send a Detailed Statement when they have not submitted that together with the acceptance letter.

2. CHECK IF ALL MEMBER STATES THAT ARE PARTY TO THE DISPUTE HAVE SENT THE REQUEST(S) AND/OR THE DETAILED STATEMENT(S).

- If yes, ELA proceeds with the admissibility check.
- If no, ELA must contact the MS(s) that has/have not yet submitted the request for mediation and/or Detailed Statement, through the **invitation to mediate letter** (Doc. V) and ask for either confirmation of their agreement to mediation in writing **within 15 working days**, or to send a refusal in writing within the same timeframe, through the **acceptance-refusal letter** (Doc. VI). In case of the former, the Member State may also be required to send a Detailed Statement when they have not submitted that together with the acceptance letter.

3. CHECK IF ALL MEMBER STATES INVOLVED AGREE TO MEDIATE.

- If yes, ELA proceeds with the admissibility check.
- If no, ELA notifies the requesting Member State(s) of the refusal from the other Member State(s) and ends the mediation procedure (Doc. VII).

4. CHECK IF MEMBER STATES EXHAUSTED ALL EFFORTS TO RESOLVE THE DISPUTE BY DIRECT CONTACT / DIALOGUE, BEFORE APPLYING TO ELA.

- If yes, ELA proceeds with the admissibility check.
- If no, ELA check whether there is a willingness to have this direct contact or whether the Member States involved agree to mediate directly.

5. CHECK IF THE DISPUTE CONCERNS RELEVANT EUROPEAN LEGISLATION (SEE BELOW) WITHIN ELA'S MANDATE? (I.E. ARTICLE 1(4) REGULATION (EU) 2019/1149)?

IF NOT – ELA ENDS THE MEDIATION PROCEDURE (DOC. VII).

Posting of workers

Directive 96/71/EC
 Directive 2014/67/EU

Social security coordination

Regulation (EEC) 1408/71
 Regulation (EEC) 574/72
 Regulation (EC) 883/2004
 Regulation (EC) 987/2009
 Regulation (EC) 859/2003
 Regulation (EC) 1231/2010

Free movement of workers

Regulation (EU) 492/2011
 Directive 2014/54/EU
 Regulation (EU) 2016/589

Social legislation in road transport

Regulation (EC) 561/2006
 Directive 2006/22/EC
 Regulation (EC) 1071/2009

6. CHECK IF THE DISPUTE CONCERNS MATTERS OF UNION LAW THAT REQUIRE A LEGAL OPINION AT UNION LEVEL.

- If yes, ELA suspends/ends the mediation*.
- If no, ELA proceeds with the admissibility check.

**The process may only be suspended when it is possible to deal with the matter which requires a legal opinion separately and proceed the mediation process with the part of the dispute which does not require a legal opinion at Union level; while it is ended when the separation of the matter requiring a legal opinion is not possible. In the latter case, ELA ends the mediation (Doc. VII).*

7. CHECK IF THERE ARE ONGOING COURT PROCEEDINGS (AT NATIONAL OR AT EU LEVEL).

- If yes, ELA ends the mediation.
- If no, ELA proceeds with the admissibility check.

8. CHECK IF THE DISPUTE FULLY OR IN PART CONCERN MATTERS THAT CONCERN SOCIAL SECURITY COORDINATION IN WHICH THE ADMINISTRATIVE COMMISSION NEEDS TO BE INVOLVED.

- If yes, ELA informs the Administrative Commission in accordance with the AC-ELA Agreement (please proceed according to the **Workflow Guidance for AC-ELA interaction**). (●)
- If no, ELA proceeds with the admissibility check.

In order to assess dimension 4 regarding previous efforts

that were undertaken by the Member States involved with a view to resolve the dispute through bilateral contacts and dialogue prior to the request for mediation, the mere statement or confirmation from all individual Member States that they have done so, should suffice for ELA Mediation Secretariat to positively assess the dimension since all Member States have confirmed and agreed to the mediation as the preferred way to resolve the dispute. Unnecessary requests to provide additional information on the scope, contents and timing of such bilateral efforts should be avoided as they are redundant at the stage of the admissibility check. They may however become useful at a later stage, during the first stage of the mediation, when a mediator has been appointed and negotiations between the Member States may start. At that point in time the parties to the dispute may find it useful to include and/or reveal the history of the case and/or other details that were not yet disclosed in their request to mediate or in their Detailed Statements.

In order to assess dimension 6 regarding the need for a Legal Opinion at Union level,

the latter concept needs to be interpreted restrictively during the admissibility check so as to avoid creating additional obstacles for the ELA mediation process for the following reasons. First, the outcome of the ELA mediation procedure is an Opinion that can never be binding upon the EU institutions. Second, the ELA mechanism of dispute resolution between Member States is voluntary and is concerning matters that at all times remain potentially subject to the interpretation by national courts and ultimately by the CJEU, by the EU legislator or European Commission as the Guardian of the Treaties. The risk that an Opinion agreed by the respective Member States in a particular case is contravening the correct application of the EU labour mobility acquis is rather small and can always be challenged before court at national and EU level while the European Commission's presence in the functional organisation of the mediation procedure is limiting the risk of infringements of EU legislation. 'Legal Opinion at EU level' needs therefore to be interpreted as the 'need for an interpretation beyond any doubt by the EU legislator, the CJEU or any other body entrusted by EU law (when this delegation is derived from EU legislative acts)' and further qualified by a reference to the available information and the role of the ELA Mediation Secretariat. Only in such rather exceptional instances, will the ELA procedure that is requested and agreed to by the Member States be halted.

The admissibility check conducted by ELA Mediation Secretariat may eventually lead to the following two mutually exclusive outcomes:

- ELA decides to **launch the first stage of the mediation procedure (outcome A)**.

This will be the case whenever, following the admissibility check, all eight dimensions that have been assessed do not lead to a suspensive or conclusive outcome.

- ELA decides **not to launch the first stage of the mediation procedure (outcome B)**.

This case will occur whenever, following the admissibility check, at least one out of the eight dimensions that have been assessed leads to a suspensive or conclusive outcome.

AC-ELA interaction alert (●)

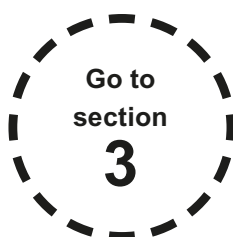
By the end of the admissibility check the AC might be involved according to the Workflow Guidance for AC-ELA interaction.

A **OUTCOME A:**
ELA LAUNCHES THE FIRST STAGE OF THE MEDIATION PROCEDURE

If the admissibility check does not reveal any obstacle and ELA deems the case within its competence, ELA can launch the first stage of the mediation procedure. In order to launch this first stage of the mediation procedure ELA will notify all Member States involved in the dispute through '**Notification of the start of the first stage of mediation**' (Doc. XIII). The notification is addressed to all Member States that are involved in the dispute in a single notification letter which indicates the case number assigned to it.

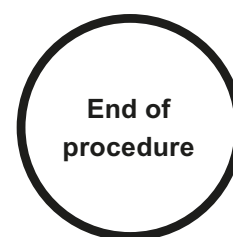
The sending of the Notification letter to all Member States formally launches the first stage of the mediation procedure. The date of sending the Notification letter counts as the reference date for determining the overall time frame and intermediate steps of the first stage of the mediation procedure.

Once the mediation process has been successfully initiated, all actors should follow the workflow guidance concerning the first stage of the mediation procedure presented in section 3.



B **OUTCOME B:**
ELA DOES NOT LAUNCH THE FIRST STAGE OF THE MEDIATION PROCEDURE

When at the end of the admissibility check, one or more dimensions remain which call for a halt to the proceedings and the obstacles have not been removed and/or overcome, the mediation process will be ended. In such a case, ELA Mediation Secretariat will notify all Member States of the state of play and send them a '**Notification of early closure**' (Doc. VII). The notification is addressed to all Member States that are involved in the dispute in a single notification letter and sent at the same time. The date of the sending is the date of the closure of the case.





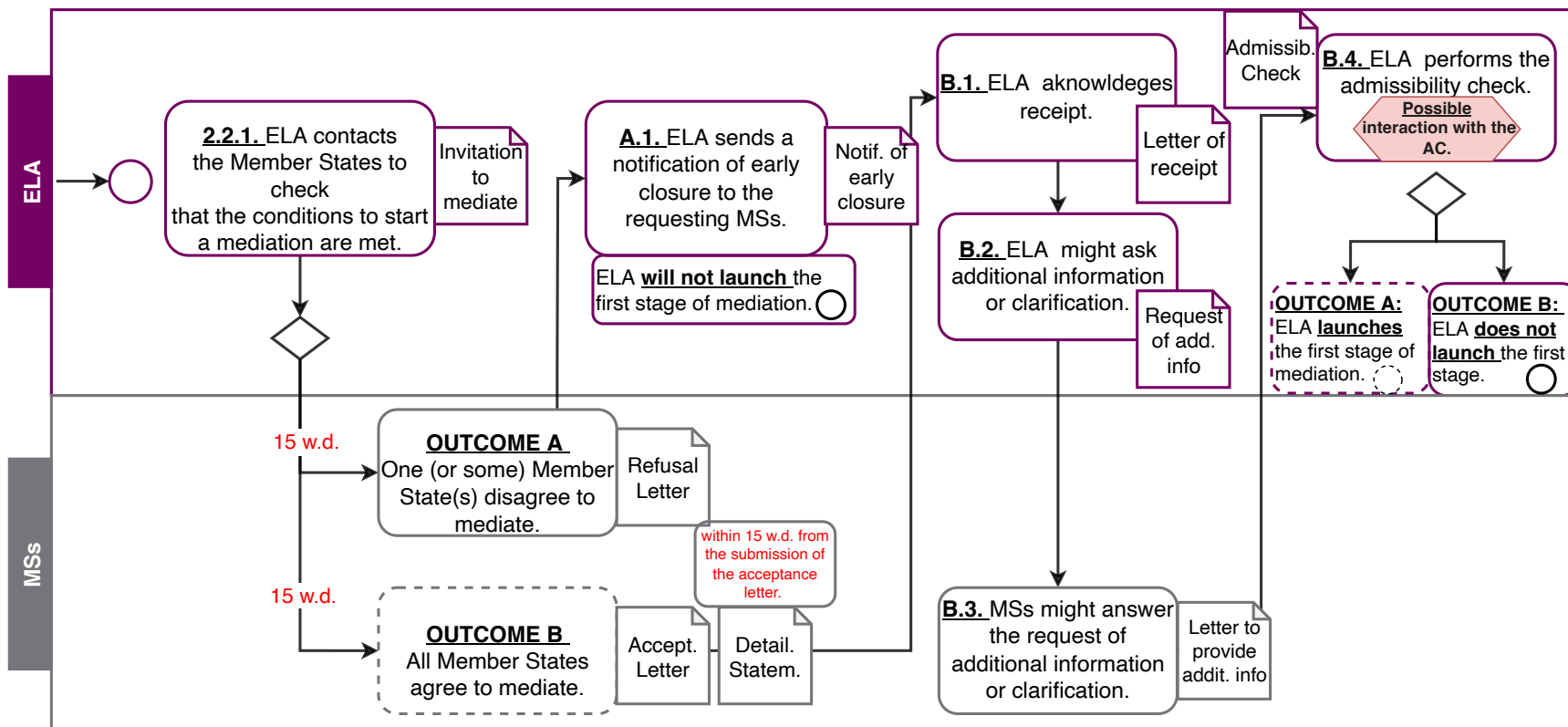
2.2 Workflow guidance when ELA introduces a mediation procedure on its own initiative

ELA has the possibility to initiate a mediation procedure when it becomes aware that two (or more) Member States have an unresolved dispute or divergent opinions regarding the application of EU legislation which falls within ELA's mandate.

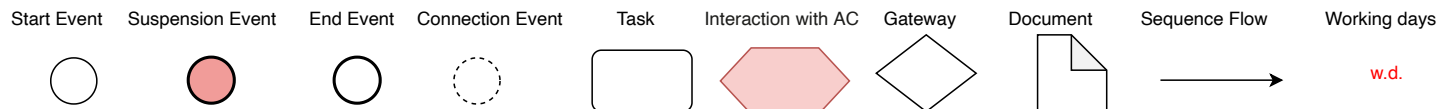
In such instances the initiative is taken directly by ELA, through its ELA Mediation Secretariat.



2.2 Workflow guidance when ELA initiates a mediation procedure



*The numbering of the individual steps in the workflow guidance is in accordance with the detailed description below.



2.2.1 ELA CONTACTS THE MEMBER STATES TO CHECK WHETHER THE CONDITIONS TO START A MEDIATION ARE MET

In order for the mediation procedure to be properly initiated by ELA, two conditions must be met simultaneously.

(1) First, Member States that are involved in a dispute should already have tried to resolve the dispute through direct bilateral contact/dialogue, which ultimately proved to be unsuccessful. The explicit verification of the Member States' efforts by ELA Mediation Secretariat is only necessary when it is not certain that prior contact/dialogue between the Member States involved has taken place with a view to resolve the case. It could indeed be the case that ELA is already aware of two Member States' attempt to resolve a dispute, but that in the end there were no results.

(2) Member States that are involved in a dispute agree to start the mediation process for the particular dispute.

To verify that these conditions are met, ELA Mediation Secretariat sends to each Member State which is involved in the dispute an '**invitation to mediate**' (Doc. V). Member States have **15 working days** to reply to the invitation, from the moment they receive the invitation.

OUTCOME A: ONE (SOME) MEMBER STATE(S) DO NOT AGREE TO MEDIATE

One (or some) Member State(s) can refuse to mediate the particular dispute before ELA. In those cases, they will send a refusal using the '**Acceptance/Refusal letter**' to ELA (Doc. VI) **within 15 working days**, counted as from the date of receipt of the invitation letter.

ELA will end the mediation procedure, since one of the two essential conditions to proceed has not been met. ELA sends all Member States involved a '**Notification of early closure**' (Doc. VII), informing them that the mediation procedure has ended.

OUTCOME B: ALL MEMBER STATES AGREE TO MEDIATE

If the Member States involved agree to mediate, they will each need to:

- send to ELA an acceptance using the '**Acceptance/Refusal letter**' (Doc. VI) **within 15 working days**, counted as from the date of receipt of the invitation letter. In this acceptance letter, Member States must also explicitly state that direct contact/dialogue has been previously established and proved to be unsuccessful.

send to ELA their '**Detailed Statements**' (Doc. II) **within 15 working days**, counted from the submission of the acceptance letter.

When Member States complete the Detailed Statements, they ensure that all personal data of the individuals and/or businesses that are subject to the dispute are anonymized in line with Article 5(2) of the Rules of procedure for mediation.

B.1 ELA ACKNOWLEDGES RECEIPT

As soon as the remaining Member States have submitted their Detailed Statement, ELA acknowledges receipt by sending the '**Letter of receipt**' (Doc. III) of the request(s) and of the Detailed Statement(s) from these remaining Member States.

B.2 ELA MAY ASK FOR ADDITIONAL INFORMATION OR CLARIFICATIONS

During the examination of the request(s) and the Detailed Statement(s) received from all Member States that are involved in the dispute, the ELA Mediation Secretariat may find out that it needs additional information and/or clarifications from the Member States. At this stage of the mediation procedure ELA may request clarifications and additional information with a view to perform the admissibility check. The latter's aim is to assess whether the requests for mediation and information contained in the received Detailed Statements are eligible and sufficiently complete to effectively launch the first stage of mediation and/or to assess whether there is a need to involve the Administrative Commission.

But also at later stages throughout the mediation process, ELA can ask for additional information and clarifications through a '**Request for additional information**' (Doc. IV).

B.3 MEMBER STATES REPLY (OR NOT) TO THE REQUEST

Member States may provide the requested additional information and/or clarifications by using the '**Letter to provide additional information**' (Doc. VIII), which they will send electronically to the ELA's functional mailbox for mediation. The submission of the reply to ELA will in principle provide ELA with sufficient elements and information to conduct the admissibility check (see paragraph B.4) and proceed with the next steps. When all Member States involved have previously already agreed to go for the ELA mediation as a solution to mitigate their differences and find solutions to resolve their disputes, preference should be given to proceed in the interests of the Member States as ELA's assessment at this point of the mediation is to merely verify whether the dispute is within the mandate and scope of the mediation procedure.

any obstacles to launch the (first stage of the) mediation procedure in terms of:

- the parties' voluntary decision of ELA mediation as an adequate means to resolve their disputes;
- the nature and material scope of the dispute as being fit within ELA's mandate;
- existence of judicial proceedings on the same subject matter of the dispute;
- possible need to inform the AC.

In a standard situation, Member States will at this stage of the mediation have submitted sufficiently clear and complete information to the ELA Mediation Secretariat enabling the latter to proceed. At this point, a critical first milestone of ELA's mediation procedure has been reached as all Member States have agreed to run the ELA mediation procedure as a possible means to resolve the dispute.

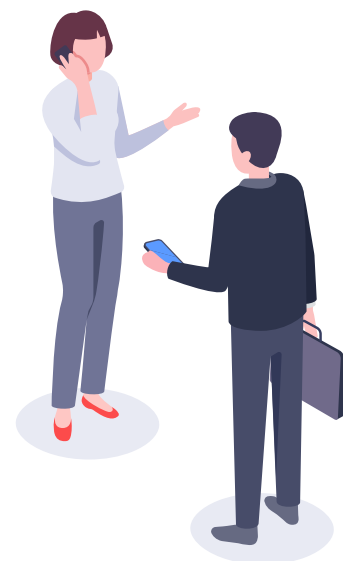
B.4 ELA PERFORMS THE ADMISSIBILITY CHECK

ELA will perform an admissibility check of the case files by using the **checklist entitled 'Admissibility check'** (Doc. IX) without delay starting from the receipt of the (last) Detailed Statement. The date of receipt of the last Detailed Statement is the date of the registration in ELA's internal registering system.

ELA Mediation Secretariat will examine all requests for mediation, Detailed Statements and additional clarification replies that have been received from the respective Member States that are involved in the dispute. The admissibility check is primarily aimed to verify whether there are

Concrete procedure to go through the 'dimensions' of the admissibility check and its checklist:

- The verification is performed by ELA Mediation Secretariat.
- The admissibility check can be carried out by a single or by several professionals.
- The admissibility check can in practice be done in several consecutive stages and take into account the incoming information from Member States; As soon as all information and documents have been received, the checklist can be fully completed and signed and filed for internal purposes.
- Whenever during the admissibility check, an element is detected that could cause a suspension or early closure, ELA tries to verify whether the obstacle can be removed or overcome.
- The final completed checklist (Doc. IX) is signed by the Head of Unit of the Cooperation Support Unit, the ELA Mediation Secretariat is part of and the next step can be taken.



The dimensions that are to be assessed during the admissibility check by ELA Mediation Secretariat are listed in the box below:

1. CHECK IF ALL MEMBER STATES THAT ARE PARTY TO THE DISPUTE HAVE BEEN DULY INVOLVED.

If yes, ELA proceeds with the admissibility check.

If no, ELA contacts the MS(s) that has/have not yet been involved and/or have not yet submitted the request for mediation and/or Detailed Statement, through the invitation to mediate letter (Doc. V) and ask for either confirmation of their agreement to mediation in writing within **15 working days**, or to send a refusal in writing within the same timeframe, through a acceptance-refusal letter (Doc. VI). In case of the former, the Member State may also be required to send a Detailed Statement when they have not submitted that together with the acceptance letter.

2. CHECK IF ALL MEMBER STATES THAT ARE PARTY TO THE DISPUTE HAVE SENT THE REQUEST(S) AND/OR THE DETAILED STATEMENT(S).

If yes, ELA proceeds with the admissibility check.

If no, ELA must contact the MS(s) that has/have not yet submitted the request for mediation and/or Detailed Statement, through the invitation to mediate letter (Doc. V) and ask for either confirmation of their agreement to mediation in writing within **15 working days**, or to send a refusal in writing within the same timeframe, through the acceptance-refusal letter (Doc. VI). In case of the former, the Member State may also be required to send a Detailed Statement when they have not submitted that together with the acceptance letter.

3. CHECK IF ALL MEMBER STATES INVOLVED AGREE TO MEDIATE.

If yes, ELA proceeds with the admissibility check.

If no, ELA notifies the requesting Member State(s) of the refusal from the other Member State(s) and ends the mediation procedure (Doc. VII).

4. CHECK IF MEMBER STATES EXHAUSTED ALL EFFORTS TO RESOLVE THE DISPUTE BY DIRECT CONTACT / DIALOGUE, BEFORE APPLYING TO ELA.

If yes, ELA proceeds with the admissibility check.

If no, ELA check whether there is a willingness to have this direct contact or whether the Member States involved agree to mediate directly.

5. CHECK IF THE DISPUTE CONCERNS RELEVANT EUROPEAN LEGISLATION (SEE BELOW) WITHIN ELA'S MANDATE? (I.E. ARTICLE 1(4) REGULATION (EU) 2019/1149)?

IF NOT – ELA ENDS THE MEDIATION PROCEDURE (DOC. VII).

Posting of workers

Directive 96/71/EC

Directive 2014/67/EU

Social security coordination

Regulation (EEC) 1408/71

Regulation (EEC) 574/72

Regulation (EC) 883/2004

Regulation (EC) 987/2009

Regulation (EC) 859/2003

Regulation (EC) 1231/2010

Free movement of workers

Regulation (EU) 492/2011

Directive 2014/54/EU

Regulation (EU) 2016/589

Social legislation in road transport

Regulation (EC) 561/2006

Directive 2006/22/EC

Regulation (EC) 1071/2009

6. CHECK IF THE DISPUTE CONCERNS MATTERS OF UNION LAW THAT REQUIRE A LEGAL OPINION AT UNION LEVEL.

If yes, ELA suspends/ends the mediation*.

If no, ELA proceeds with the admissibility check.

**The process may only be suspended when it is possible to deal with the matter which requires a legal opinion separately and proceed the mediation process with the part of the dispute which does not require a legal opinion at Union level; while it is ended when the separation of the matter requiring a legal opinion is not possible. In the latter case, ELA ends the mediation (Doc. VII).*

7. CHECK IF THERE ARE ONGOING COURT PROCEEDINGS (AT NATIONAL OR AT EU LEVEL).

If yes, ELA ends the mediation.

If no, ELA proceeds with the admissibility check.

8. CHECK IF THE DISPUTE FULLY OR IN PART CONCERN MATTERS THAT CONCERN SOCIAL SECURITY COORDINATION IN WHICH THE ADMINISTRATIVE COMMISSION NEEDS TO BE INVOLVED.

If yes, ELA informs the Administrative Commission in accordance with the AC-ELA Agreement (please proceed according to the **Workflow Guidance for AC-ELA interaction**). (●)

If no, ELA proceeds with the admissibility check.

In order to assess dimension 4 regarding previous efforts

that were undertaken by the Member States involved with a view to resolve the dispute through bilateral contacts and dialogue prior to the request for mediation, the mere statement or confirmation from all individual Member States that they have done so, should suffice for ELA Mediation Secretariat to positively assess the dimension since all Member States have confirmed and agreed to the mediation as the preferred way to resolve the dispute. Unnecessary requests to provide additional information on the scope, contents and timing of such bilateral efforts should be avoided as they are redundant at the stage of the admissibility check. They may however become useful at a later stage, during the first stage of the mediation, when a mediator has been appointed and negotiations between the Member States may start. At that point in time the parties to the dispute may find it useful to include and/or reveal the history of the case and/or other details that were not yet disclosed in their request to mediate or in their Detailed Statements.

In order to assess dimension 6 regarding the need for a Legal Opinion at Union level,

the latter concept needs to be interpreted restrictively during the admissibility check so as to avoid creating additional obstacles for the ELA mediation process for the following reasons. First, the outcome of the ELA mediation procedure is an Opinion that can never be binding upon the EU institutions. Second, the ELA mechanism of dispute resolution between Member States is voluntary and is concerning matters that at all times remain potentially subject to the interpretation by national courts and ultimately by the CJEU, by the EU legislator or European Commission as the Guardian of the Treaties. The risk that an Opinion agreed by the respective Member States in a particular case is contravening the correct application of the EU labour mobility acquis is rather small and can always be challenged before court at national and EU level while the European Commission's presence in the functional organisation of the mediation procedure is limiting the risk of infringements of EU legislation. 'Legal Opinion at EU level' needs therefore to be interpreted as the 'need for an interpretation beyond any doubt by the EU legislator, the CJEU or any other body entrusted by EU law (when this delegation is derived from EU legislative acts)' and further qualified by a reference to the available information and the role of the ELA Mediation Secretariat. Only in such rather exceptional instances, will the ELA procedure that is requested and agreed to by the Member States be halted.

The admissibility check conducted by ELA Mediation Secretariat may eventually lead to the following two mutually exclusive outcomes:

- ELA decides to **launch the first stage of the mediation procedure (OUTCOME A)**.

This will be the case whenever, following the admissibility check, all eight dimensions that have been assessed do not lead to a suspensive or conclusive outcome.

- ELA decides **not to launch the first stage of the mediation procedure (OUTCOME B)**.

This case will occur whenever, following the admissibility check, at least one out of the eight dimensions that have been assessed leads to a suspensive or conclusive outcome.

AC-ELA interaction alert (●)

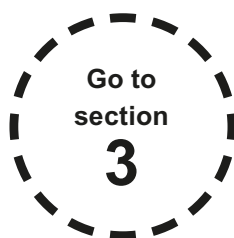
By the end of the admissibility check the AC might be involved according to the Workflow Guidance for AC-ELA interaction.

A **OUTCOME A:
ELA LAUNCHES THE FIRST STAGE
OF THE MEDIATION PROCEDURE**

If the admissibility check does not reveal any obstacle and ELA deems the case within its competence, ELA can launch the first stage of the mediation procedure. In order to launch this first stage of the mediation procedure ELA will notify all Member States involved in the dispute through '**Notification of the start of the first stage of mediation**' (Doc. XIII). The notification is addressed to all Member States that are involved in the dispute in a single notification letter which indicates the case number assigned to it.

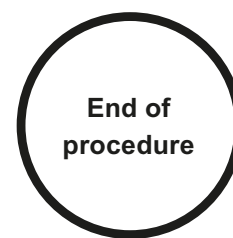
The sending of the Notification letter to all Member States formally launches the first stage of the mediation procedure. The date of sending the Notification letter counts as the reference date for determining the overall time frame and intermediate steps of the first stage of the mediation procedure.

Once the mediation process has been successfully initiated, all actors should follow the workflow guidance concerning the first stage of the mediation procedure presented in section 3.



B **OUTCOME B:
ELA DOES NOT LAUNCH THE FIRST
STAGE OF THE MEDIATION
PROCEDURE**

When at the end of the admissibility check, one or more dimensions remain which call for a halt to the proceedings and the obstacles have not been removed and/or overcome, the mediation process will be ended. In such a case, ELA Mediation Secretariat will notify all Member States of the state of play and send them a '**Notification of the closure of the mediation procedure**' (Doc. VII). The notification is addressed to all Member States that are involved in the dispute in a single notification letter and sent at the same time. The date of the sending is the date of the closure of the case.

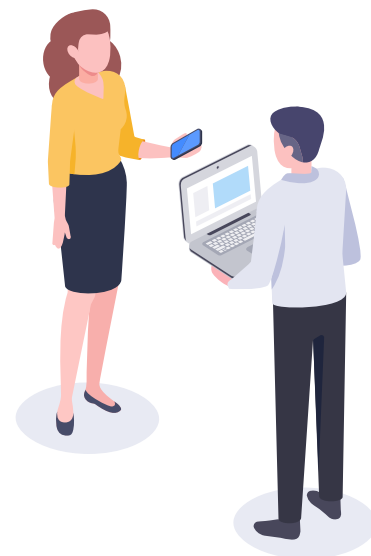




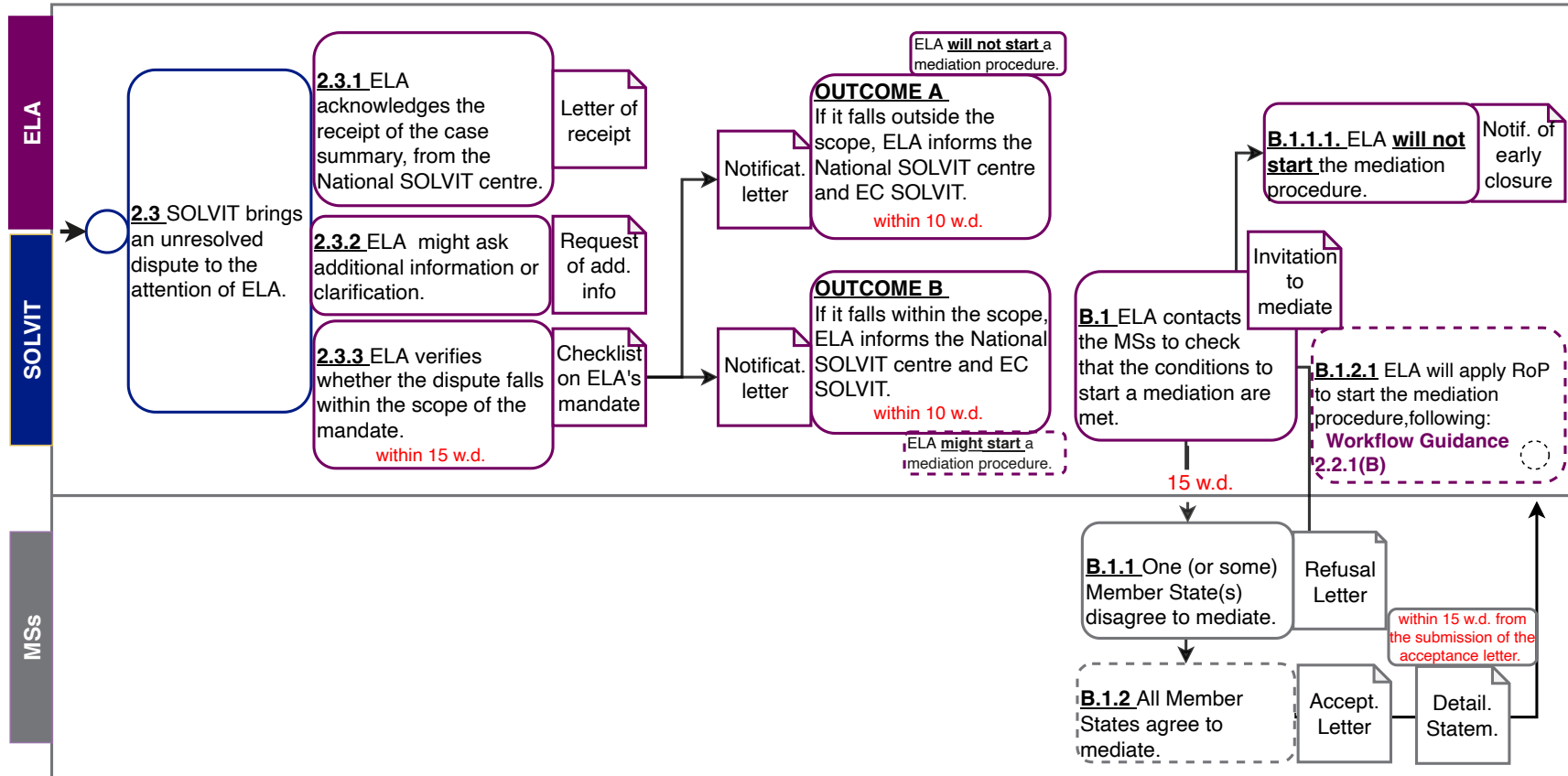
2.3 Workflow guidance when SOLVIT brings an unresolved dispute to the attention of ELA

SOLVIT is a free online mediation network that enables citizens and businesses living, working or studying in a Member State other than their own to ascertain their EU rights where a dispute has arisen between a citizen or a company and a public authority of a Member State or the EEA.

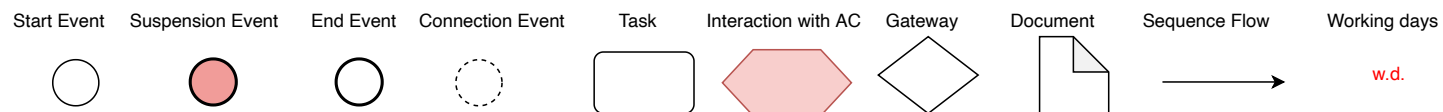
If these disputes fall within the mandate of ELA, it is possible for SOLVIT to consider referring a case that has remained unresolved to ELA. These cases form the third pathway through which the mediation process could be initiated before ELA.



2.3 Workflow guidance when SOLVIT brings unresolved dispute to the attention of ELA



*The numbering of the individual steps in the workflow guidance is in accordance with the detailed description below.



2.3.1 ELA ACKNOWLEDGES THE RECEIPT OF THE CASE SUMMARY, FROM THE NATIONAL SOLVIT CENTRE

When ELA receives the case summary from the National SOLVIT centre, ELA shall **acknowledge its receipt** from the referring centre using the **Letter of receipt (SOLVIT)** (Doc. X).

2.3.2 ELA MIGHT ASK ADDITIONAL INFORMATION OR CLARIFICATION

During the examination of the case summary, ELA may **request additional information and/or clarifications** (Doc. IV) from any of the involved national SOLVIT centres in order to assess the case in detail before reaching its decision on whether to launch the mediation procedure or not.

2.3.3 ELA VERIFIES WHETHER THE DISPUTE FALLS WITHIN THE SCOPE OF THE MANDATE

ELA assesses the case summary and any other documents submitted by the National SOLVIT centre and verifies whether the dispute falls within the scope of the mandate, **within 15 working days**. To assess whether the dispute falls within ELA's mandate to mediate, ELA can use the provided '**Checklist on ELA's mandate**' (Doc. XI). In particular, ELA will need to check whether the dispute concern relevant European legislation within ELA's mandate, according to the table below.

1. DOES THE DISPUTE CONCERN RELEVANT EUROPEAN LEGISLATION WITHIN ELA'S MANDATE? (I.E. ARTICLE 1(4) REGULATION (EU) 2019/1149)?

Posting of workers

- YES
- NO Directive 96/71/EC
Directive 2014/67/EU

Social security coordination


- YES
- NO Regulation (EEC) 1408/71
Regulation (EEC) 574/72
Regulation (EC) 883/2004
Regulation (EC) 987/2009
Regulation (EC) 859/2003
Regulation (EC) 1231/2010

Free movement of workers

- YES
- NO Regulation (EU) No 492/2011
Directive 2014/54/EU
Regulation (EU) 2016/589

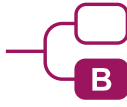
Social legislation in road transport

- YES
- NO Regulation (EC) 561/2006
Directive 2006/22/EC
Regulation (EC) 1071/2009



**OUTCOME A:
THE DISPUTES IS OUTSIDE OF ITS
SCOPE: ELA INFORMS THE
NATIONAL SOLVIT CENTRE AND EC
SOLVIT**

Once ELA has gone through the checklist and has concluded that the dispute falls outside the mandate, it has **10 working days** to notify the National referring SOLVIT centre and the EC SOLVIT about its decision to not mediate the dispute, through the document '**Acceptance/Refusal letter from ELA to SOLVIT**' (Doc. XII). In those cases, the mediation procedure does not start.



**OUTCOME B:
THE DISPUTE IS WITHIN THE SCOPE:
ELA INFORMS THE NATIONAL
SOLVIT CENTRE AND EC SOLVIT**

Once ELA has gone through the checklist and has concluded that the dispute falls within the mandate, it has **10 working days** to notify the National referring SOLVIT centre and the EC SOLVIT about its assessment, through the document '**Acceptance/Refusal letter from ELA to SOLVIT**' (Doc. XII). In those cases, ELA might start a mediation procedure, in line with the Rules of procedure of mediation.

B.1 ELA CONTACTS THE MEMBER STATES TO CHECK THAT THE CONDITIONS TO START A MEDIATION ARE MET

In order for the mediation procedure to be properly initiated by ELA, two conditions must be simultaneously met.

- (1) First, Member States should have already tried to resolve the dispute through direct contact/dialogue, which ultimately proved to be unsuccessful. The explicit verification by ELA is only necessary when it is not certain that prior dialogue between the Member States involved has taken place with a view to resolve the case. It could indeed be the case that ELA is already aware of two Member States' attempt to resolve a dispute, but that in the end there were no results. This condition is presumed fulfilled in SOLVIT cases when the SOLVIT centers of the respective Member States have been in contact but have failed to reach an agreement on the matter at hand.

- (2) Member States agree to start the mediation process for the particular dispute.

To verify that these conditions are met, ELA sends to the Member States which are party to the dispute an '**invitation to mediate**' (Doc. V). Member States have **15 working days** to reply to the invitation.

B.1.1 If one (some) Member State(s) disagree to mediate

One (or some) Member State(s) can disagree to mediate the particular dispute. In those cases, they will send a refusal using the '**Acceptance-Refusal letter**' to ELA (Doc. VI) **within 15 working days**, which starts from the receipt of the invitation letter.

ELA will end the mediation procedure, since one of the two essential conditions to proceed is not met. ELA sends the Member States involved a '**Notification of early closure**' (Doc. VII), informing them that the mediation procedure has ended.

B.1.2 All Member States agree to mediate

If the Member States involved agree to mediate, they will each need to:

- send to ELA an acceptance using the '**Acceptance-refusal letter**' (Doc. VI) within **15 working days**, counted as from the date of receipt of the invitation letter. In this acceptance letter, Member States must also explicitly state that direct contact/dialogue has been previously established and proved to be unsuccessful.
- send to ELA their **Detailed Statements** (Doc. II) within **15 working days**, counted from the submission of the acceptance letter.

B.1.2.1 ELA will apply the same procedure indicated under paragraph 2.2.1 (OUTPUT B)

From this point onwards, the procedure is the same in those cases where ELA initiates the mediation procedure, in accordance with paragraph 2.2.1 (OUTCOME B).



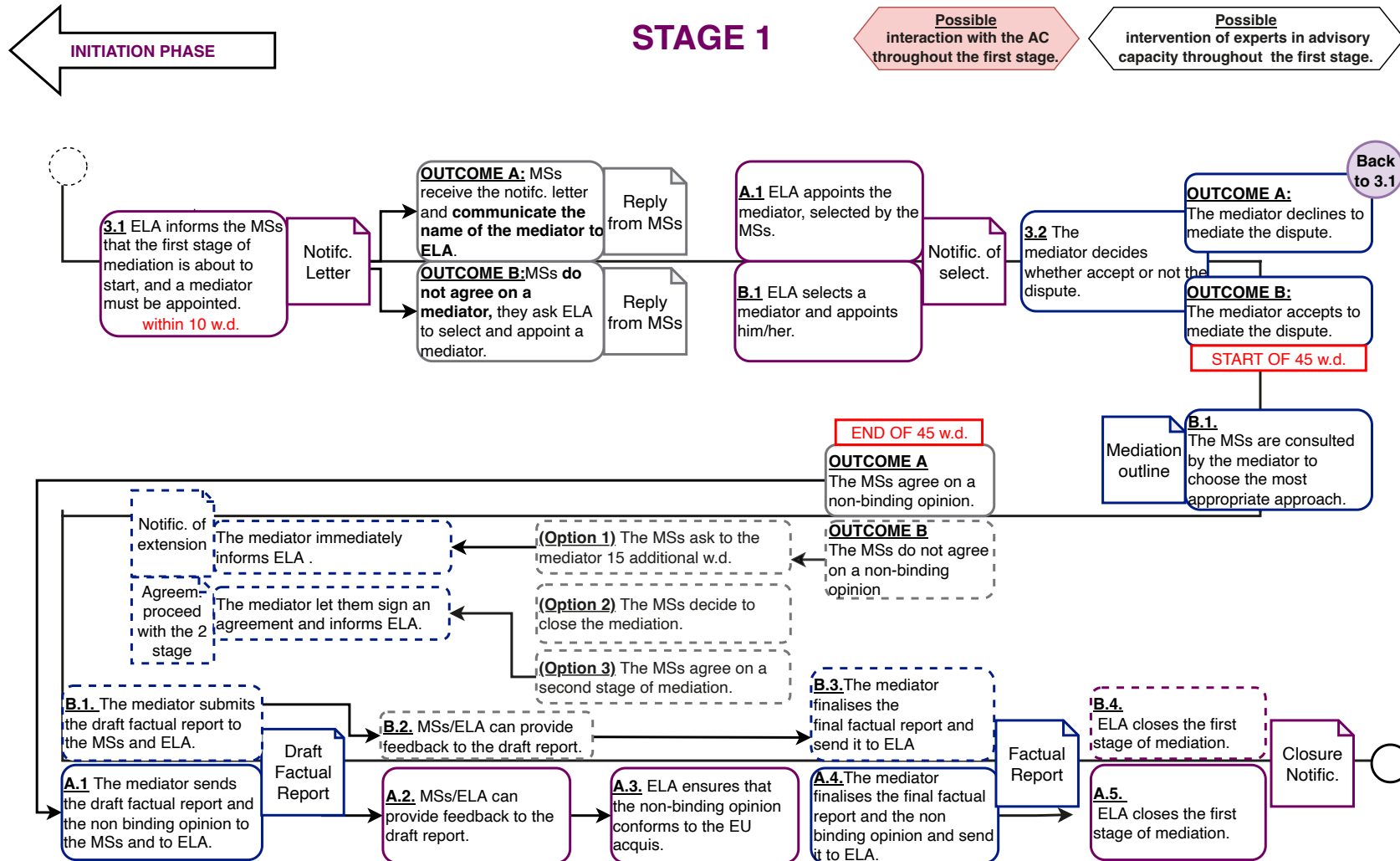
3. Workflow guidance for the first stage of the mediation procedure

Once the initiation phase has ended, ELA can decide to start the first stage of the mediation procedure. In contrast to the initiation phase of the mediation process (see Section 2) which follows different pathways depending on the initiating actor, the first stage of the mediation procedure follows in principle a rather linear and straightforward process.

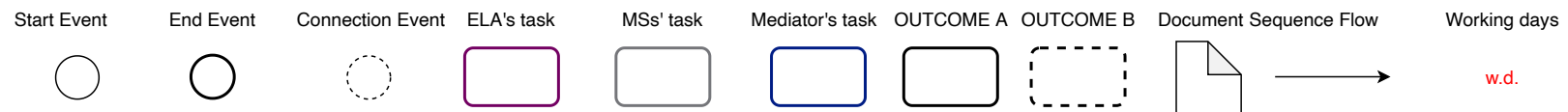
The first stage of mediation is in principle expected to last for 5 months maximum. However, during the mediation process, the procedure may be suspended or early closures may occur. The different hypotheses that may lead

to suspension or early closure are described in Section 6. In addition, during the mediation, it may be necessary for ELA to interact with the AC, in order to address social security coordination related matters. In all cases where it is necessary to involve the AC, the appropriate **Workflow guidance for AC-ELA interaction** should be consulted and applied (●).

As referenced to in the Introduction, the first stage of the mediation procedure essentially aims to overcome differences in viewpoints between the parties on the application of the relevant EU labour mobility acquis in a particular case, with the support of a mediator. The mediator facilitates the process with the aim to reconcile the divergent points of view of the Member States involved, which ultimately may (or not) result in **'a non-binding opinion by common agreement'**.



*The numbering of the individual steps in the workflow guidance is in accordance with the detailed description below.



3.1 ELA informs the Member States about the start of the first stage of the mediation procedure and a mediator must be appointed

Once ELA has decided that it will launch the first stage of the mediation procedure, it must first notify the Member States involved in the dispute. ELA Mediation Secretariat uses the '**Notification on the start of the first stage of mediation**' (Doc. XIII) for that purpose. The Notification Letter is addressed to all Member States involved in the dispute and sent electronically on the same date to all Member States concerned. The date on which the Notification Letter is sent is considered as the formal date of the launch of the first stage of the mediation procedure.

The '**Notification on the start of the first stage of mediation**' (Doc. XIII) includes two important requests for action to be taken by the Member States:

- (1) A request to the Member States concerned to appoint a national representative who will follow the first stage of the mediation procedure from the beginning to the end (in case this appointment has not already taken place together with the request for mediation or when a change has occurred between the time the Request for mediation and/or the Detailed Statement have been submitted). The national representative will be the main contact person for the Member State concerned in all communication related to the first stage of the mediation procedure. The national representative will also be the main contact point on behalf of the Member State for the mediator who is appointed for the mediation procedure concerned.
- (2) An invitation to the Member States concerned to appoint a mediator from the list of mediators approved by ELA's Management Board, **within 10 working days** from the receipt of the Notification letter.

How is a mediator appointed for a specific mediation procedure under ELA's mediation procedure?

Under ELA's mediation procedure, the mediation on a particular dispute between Member States is, during the first stage of the mediation procedure, conducted by one mediator who will facilitate the process by setting the agenda and scope of the mediation, facilitating the debates and negotiations and by drafting the report as a result of the mediation. ELA's mediators are appointed by ELA's Management Board. All mediators who have been appointed by ELA's Management Board have been trained in the ELA mediation procedure.

The Notification on the start of the first stage of mediation (Doc. XIII) includes a selection of mediators which ELA Mediation Secretariat proposes to the Member States for the specific mediation procedure, depending on the availability of mediators.



Member States party in a particular dispute which have been notified by ELA that the first stage of the mediation has started, will reply to ELA within **maximum 10 working days**, using thereby the form '**Reply to the Notification on the start of the first stage of mediation**' (Doc. XIV). The form specifically states that the Member States agree to mediate and contains sections allowing Member States to indicate the nominated national representative (including the contact details) and their choice on the mediator(s) of preference and/or refusal of (some of) the proposed individual mediators.

How do Member States contribute to the appointment of the mediator?

Under Member States that have been notified about the proposed mediators by ELA can:

- contact each other to seek a common agreement on the mediator who they jointly propose for the mediation.
- choose at least one out of the selected proposed mediators.
- indicate that they agree with all of the proposed mediators.
- Finally, Member States can in their reply also indicate they do not agree with one or more of the proposed mediators.

The replies from the Member States on the Notification letter are submitted electronically **within 10 working days**. ELA Mediation Secretariat has at that point received the names of the nominated national representatives from the respective Member States. ELA will also have the information to assess whether the Member States have a common agreement on one of the proposed mediators or not. In the former case, ELA can proceed with the subsequent steps and formally appoint the selected mediator. In the latter case, ELA will initiate the appointment of the mediator on its own initiative (see paragraph B.1).

OUTCOME A: MEMBER STATES AGREE ON A MEDIATOR

Based on the replies received from the Member States, ELA Mediation Secretariat can assess whether there is a common agreement on the selection of the mediator who will facilitate the first stage of mediation for the case concerned. In such an instance ELA will be able to proceed with the appointment of the mediator.

A.1 ELA APPOINTS THE MEDIATOR

ELA Mediation Secretariat will send the '**Notification of selection**' to the selected mediator (Doc. XV).

The notification of selection for the particular case includes two annexes:

- (1) The **Detailed statements** submitted by the Member States involved in the dispute during the initiation phase, as well as all relevant and **useful documentation or information**, which

ELA has obtained from the Member States.

- (2) The form '**Declaration of absence of conflict of interests**' (Doc. XVI), which the selected mediator must sign and return to ELA Mediation Secretariat by email. The form includes a statement of confidentiality to be agreed to by the mediator.

OUTCOME B: MEMBER STATES DO NOT AGREE ON A MEDIATOR

Based on the information contained in the replies from Member States to the notification letter regarding their preferred choice and/or refusal of (some) proposed mediators and/or when it is clear that Member states do not agree on any of the proposed mediators, ELA can on its own initiative try to broker a common agreement between the Member States on the selection of the mediator for the dispute.

Possibility of early closure

If the Member States do not agree on a mediator and do not allow ELA to facilitate the selection, the mediation procedure ends.

ELA shall send the **notification of early closure** to the Member States involved (Doc. VII)

B.1 ELA SELECTS AND APPOINTS A MEDIATOR

ELA Mediation Secretariat will seek Member States' agreement that it can on their behalf select the mediator for the dispute in which the Member States are involved. When Member states agree that ELA will select the mediator on their behalf, Member States should in principle accept the mediator selected by ELA. However, as the whole mediation procedure at ELA is based on voluntary participation, Member States can always refuse that ELA will select the mediator on their behalf and/or reject the mediator who has been selected by ELA.

When Member States agree that ELA can appoint the mediator on their behalf, ELA Mediation Secretariat will make the selection based on the list of appointed mediators and considering the outcome of the previously proposed mediators.

ELA Mediation Secretariat will base its selection on objective criteria while ensuring the avoidance absence of a possible conflict of interest between the selected media-

tors and the Member States concerned. Selected mediators will in principle:

- not have the citizenship of any of the Member States that are involved in the dispute nor have had any past or current professional experience with the institutions concerned.
- have adequate language skills for the specific case;
- have adequate experience with mediation and conflict resolution mechanisms.

ELA Mediation Secretariat will send the signed '**Notification of selection**' to the selected mediator (Doc. XV).

The letter of appointment of the mediator for the particular case includes two annexes:

- (1) The **Detailed statements** of the dispute submitted by the Member States involved in the dispute during the initiation phase, as well as all relevant and **useful documentation or information** of the dispute, which ELA obtained from the Member States.
- (2) The form '**Declaration of absence of conflict of interests**' (Doc. XVI) which the selected mediator must sign and return to ELA Mediation Secretariat by email. The form includes a statement of confidentiality to be agreed to by the mediator.

3.2 The mediator accepts or declines the appointment

The mediator decides whether to agree to mediate (or not), after getting acquainted with the subject of the dispute as described in the Detailed Statements (and other useful documentation). He/she will sign the declaration of absence of any conflict of interests and the confidentiality form and send them by email to ELA Mediation Secretariat.

A OUTCOME A: THE MEDIATOR DECLINES TO MEDIATE THE DISPUTE

If the mediator decides not to mediate, for reasons relating to a conflict of interest, unavailability or any other motivated reason, the mediator selection process starts all over again (3.1).

The mediator will send his/her refusal to ELA Mediation Secretariat without delay after the receipt of the letter of appointment.

B OUTCOME B: THE MEDIATOR ACCEPTS TO MEDIATE THE DISPUTE

When the appointed mediator agrees to mediate the dispute s/he shall:

- Send the signed declaration of absence of conflict of interests to the ELA Mediation Secretariat;
- Contact the Member States party to the dispute in order to consult them for introductory purposes.
- Decide on the most appropriate approach to organise the proceedings, after consulting the Member States involved in the dispute

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.**

The ELA Rules of Procedure for mediation define some general working arrangements and ethical principles which are to be followed by the mediator and other actors throughout the course of the first stage of the mediation procedure. However, **it is the mediator who ultimately decides on the appropriate approach of the mediation proceedings, its planning and way of interaction, in consultation with the Member States that are party to the dispute.**

The approach of the mediator

Mediators are free to choose their own approach in a particular mediation case. **They can decide to only support and facilitate the negotiations and give priority to the planning and communication of the mediation process, but they can also take a more active position and formulate advice to either of the parties or to both parties together.** Such advice can relate to the process of the mediation, including type of actions to be taken, periodicity of these actions, ways of communication, locations of the meetings, etc. Advice can also concern the subject matter that is under dispute. Mediators are allowed, if they consider this appropriate, to express their viewpoints on the subject matter and/or formulate opinions and/or provide specific advice relating to the subject matter that has given rise to the dispute between the parties. Mediators can furthermore rely on external expertise and invite experts from Member States, representatives from the European Commission or from ELA, or other third parties which the mediator considers necessary such as (EU or national) social partners or independent experts. These experts from third parties will then be engaged as an expert in an advisory capacity in the mediation procedure.

Mediators have hence a **wide array of instruments and possibilities to design and organize the mediation process during the first stage of the mediation in the best way possible.** Mediators will customize the approach based on the characteristics of the dispute and on the Member States involved while **seeking continuously the consent from the Member States on the actions that will be taken.**

The first stage of the mediation procedure lasts in principle **45 working days.** A duration of **45 working days amounts to approximately (just over) two months** which is a straightforward but tight time frame requiring full participation from and cooperation between the parties and a careful planning. This points at the importance of the introductory and planning sessions and exchanges between the Member States right at the start of the process, one of the key challenges for the mediator.

The table below illustrates in its **left column the ethical and behavioural requirements that the mediator has to adhere to throughout the entire process** when engaging with the Member States that are party to the dispute. Mediators always need to respect the fundamental principles of confidentiality and impartiality while a sincere cooperation will be instrumental in producing effective outcomes for the mediation process.

The **right column of the table presents the general organisational framework within which the mediator can act during the facilitation,** offering a set of possible actions which the mediator can consider. The Rules of procedure has left the greatest freedom and flexibility to the mediator in order to propose and organize the different steps and actions of the mediation, always in consultation with the Member States in line with the international standards on mediation. ELA's Rules of procedure allows the mediator not only to support and facilitate the negotiations between the Member States that are party to the dispute but also to provide advice to the Member States (individually and jointly) and to propose solutions with a view to reconcile the divergent viewpoints of the Member States.

THE BEHAVIOURAL AND ORGANISATIONAL FRAMEWORK FOR MEDIATORS DURING THE FIRST STAGE OF THE MEDIATION PROCEDURE

ETHICAL AND BEHAVIOURAL REQUIREMENTS FOR MEDIATORS (AND EXPERTS OF THE MEDIATION BOARD)

- The mediation procedure shall be based on the **principles of neutrality, impartiality, sincere cooperation and inclusivity**.
- 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.
- 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**.

ORGANISATIONAL FRAMEWORK FOR THE MEDIATORS DURING THE FIRST STAGE OF THE MEDIATION PROCEDURE

- 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.
- 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.
- 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 mediator 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.
- The mediator **may request the assistance of the Authority** in cases which require the clarification of questions related to the application of specific legislation, to be in a position to assist the Member States to agree on a non-binding opinion.



Experts in advisory capacity during the first stage of mediation

The mediator shall invite experts from the Member States, the Commission and the Authority to participate in an advisory capacity, if two conditions are met:

- Upon request of a Member State party to the dispute
- Upon agreement of all the Member States that are party to the dispute

These experts shall contribute to the mediation procedure by submitting opinions, making recommendations and proposing solutions. The mediator shall take into account the opinions, recommendations and proposed solutions submitted by the experts participating in an advisory capacity, 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.

The 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.



Including social partners in the first stage of ELA's mediation procedure

'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.'(Article 19(20) of the Rules of procedure).

Social Partners operating within Member States as well as EU umbrella social partner organisations can be involved in different ways during ELA's mediation procedure.

Article 19(20) quoted above refers in general terms to a situation in which the application of collective agreements in one or more Member States that are party to the dispute on the cross-border case is concerned and the national social partners in these Member States are entrusted with the 'application, supervision, interpretation and/or enforcement of these collective agreements. In such instances, the mediator is obliged to consult the national social partners concerned during the mediation. When social partners of a Member State are invited to participate in an ELA mediation procedure they are involved as an expert in an advisory capacity of the Member State.

However, a situation may occur in which a national collective agreement that is universally applicable in a given Member State has not been respected in a particular case that is characterised by an EU cross-border labour mobility dimension and the social partners are themselves the parties that adopt such universally applicable collective agreements. In such situations (and depending on the Member State's context of collective bargaining and representation), social partners may even be the lead party on behalf of their Member State in a particular dispute on relevant cross-border issues. In such a case, they will be the national representative(s) for the Member State in ELA's mediation procedures.

EU social partners can also be invited and consulted during the first stage of mediation by the mediator. In such instances they will participate as experts in an advisory capacity on behalf of the EU social partners. EU social partners' representatives participate in a more independent advisory capacity and are not part of the delegations from the Member States that are party to the dispute.

B.1 THE MEMBER STATES ARE CONSULTED BY THE MEDIATOR TO CHOOSE THE MOST APPROPRIATE APPROACH

The appointed mediator leads the process of the mediation in terms of setting the agenda and of the planning of the meetings and exchanges between the Member States. The mediator is hereby supported by ELA Mediation Secretariat for the administrative and logistical support services. The mediator actively involves and consults with the Member States from the beginning of the process and throughout, up until the drafting of the final report and the non-binding opinion.

A mediator can apply different approaches and styles when embarking upon a mediation process, while during the process the approach and style can evolve depending on the actual context and development of the mediation concerned.

Different approaches can be applied and it is up to the mediator to decide on the most appropriate approach to organise the mediation proceedings. Two main possible mediation approaches are suggested while in practice a mediation often becomes a variant taking aspects from both mediation approaches:

- **the standard mediation**
- **the guided mediation**
- **a combination thereof**

It is important to emphasize that, once the mediator has decided on the most appropriate approach to organise the proceedings (whether standard or guided, or a combination), the mediator is encouraged to draw up what has been agreed with the Member States in writing as it is the basis on which the parties are engaging themselves for the further steps including time frame and respective commitments. A template for such a '**Communication on the Mediation Outline**' for a specific mediation case is provided (Doc. XVII). The mediator is however free to use it or not, and can opt to use a different model. The importance is that the Member States and everyone involved in the process have a written framework and time planning for the first stage of the mediation.

Fast-track mediation

The Member States that are party to the dispute may commonly agree, together with the mediator during the first 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.

The first stage of the mediation procedure will in principle end at the moment the standard **45-day** period has elapsed⁹. The final procedural step varies depending on the outcome of the mediation. **If the parties agree on a Non-binding opinion (OUTCOME A)**, the mediator will guide the parties towards the end of the process. In that case, the mediator draws up a final factual report, including the **Non-binding opinion**, which is sent to the Member States and to ELA for comments and feedback. ELA is also in charge of verifying that the **Non-binding opinion** adopted complies with the EU acquis.

If, on the other hand, the Member States do not agree on **a Non-binding opinion (OUTCOME B)**, the Member States decide:

- whether or not to continue the first stage of mediation and to close down the mediation;
- whether or not proceed with the second stage of mediation.

Regardless of these choices, the mediator will always draw up the final factual report reporting on the mediation and its process. The difference is that when no opinion has been agreed to by the Member States it will not be necessary for ELA to verify its conformity with the EU labour mobility acquis.

⁹ Without considering suspensions of the mediation procedure (see section 6 in this regard).

A OUTCOME A: THE MEMBER STATES AGREE ON A NON-BINDING OPINION

If the parties agree on a **Non-binding opinion** within the (indicative) **45-days'** time frame for the first stage of mediation, the mediator will guide the parties towards the end of the process.

A.1 SUBMISSION OF THE DRAFT FACTUAL REPORT TO THE MEMBER STATES AND TO ELA

The mediator will draft the factual report and sends it to the Member States and to ELA (with the **Non-binding opinion** included). A template for the '**factual report**' of the first stage of mediation is attached (Doc. XVIII).

The '**Non-binding opinion**' is a separate document (Doc. XIX) that is attached to the factual report. Whereas the drafting of the opinion is the task of the mediator, it contains the description of the solution, commitments from the Member States and timeline for the implementation of the solution. It is hence the **Non-binding opinion** which is the basis and reference for the effective implementation of the solution in practice.

The mediator may however come to an agreement with the Member States to have an extra **10 working days** to write the draft factual report and **Non-binding opinion**. This agreement will be formalised through an ad hoc document '**Agreement to extend the reporting period**' (Doc. XX).

A.2 PROVISION OF FEEDBACK AND COMMENTS TO THE DRAFT FACTUAL REPORT

The Member States and ELA can provide the mediator with feedback and comments to the draft factual report and to the **Non-binding opinion**), **within 15 working days**, counted as from the date that the draft factual report and **Non-binding opinion** was sent.

A.3 ELA ENSURES THAT THE NON-BINDING OPINION CONFORMS TO THE EU ACQUIS

Upon receipt of the **Non-binding opinion** in draft form, ELA Mediation Secretariat checks whether the **Non-binding opinion** conforms to the EU acquis. ELA will confirm its findings to the mediator and to the Member States.

Reporting duties following the adoption of a non-binding opinion

Pursuant to Article 13(12) of the founding Regulation, Member States that are party to a dispute shall report to ELA, within three months of the adoption of the non-binding opinion, on the measures that they have taken to follow-up on the opinion.

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 ELA, within three months of its adoption, with regards to the reasons for not having followed up the non-binding opinion.

B OUTCOME B: THE MEMBER STATES DO NOT AGREE ON A NON-BINDING OPINION

If the parties do not agree on a **Non-binding opinion** at the end of the first stage of mediation, three options are available. Depending on the decision of the Member States, the mediator will act accordingly.

(OPTION 1) Extension of the first stage of the mediation procedure with 15 additional working days

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 of the first stage of the mediation procedure with **15 additional working days** for the purpose of undertaking further discussions. The mediator shall immediately inform ELA about the agreement of such an extension through a '**Notification of extension**' (Doc. XXII).

(OPTION 2) Decision to close the first stage of the mediation procedure and stop the mediation

Member States can agree to terminate the mediation. The mediator concludes the first stage of mediation once the final factual report is finalised.

(OPTION 3) Agreement to start the second stage of the mediation procedure

When Member States decide to close the first stage without a solution and agree to start a second stage of mediation, the mediator lets the Member States sign an **agreement** proving their willingness to **start the second stage of the mediation procedure** (Doc. XXIII). This document is then shared with ELA.

B.1 DEVELOPMENT AND SUBMISSION DRAFT FACTUAL REPORT

In all three cases, the mediator will have to draft the **factual report** and submit it for comments and feedback to the Member States and of ELA (Doc. XVIII). The mediator might come to an agreement with the Member States to have an **extra 10 working days** to write the draft factual report. This agreement will be finalised by an ad hoc document, '**Agreement to extend the reporting period**' (Doc. XX).

B.2 MEMBER STATES/ELA MAY MAKE ADDITIONS OR COMMENTS

The Member States/ELA may make additions or comments to the draft factual report, which are then send back to the mediator, **within 15 working days**.

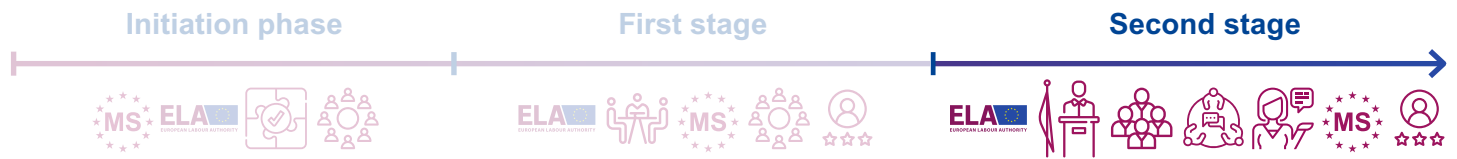
B.3 THE MEDIATOR FINALIZES THE FINAL FACTUAL REPORT AND SEND IT TO ELA

The mediator has **15 working days** (starting from the moment the comments were received) to submit to ELA and to the Member States the final factual report.

Where Member States have agreed to continue the mediation into the second stage of the mediation procedure (Option 2), ELA has **10 working days** from the receipt of the final factual report to send to the Member States involved the '**Notification of the start of the second stage of mediation**' (Doc.XXIV). The date of that notification shall be considered as the date of the launch of the second stage of the mediation procedure.

B.4 ELA CLOSES THE FIRST STAGE OF MEDIATION

When the first stage of mediation is concluded, ELA sends a '**Notification of closure of the mediation**' (Doc. XXVI-II) to all Member States involved.



4. Workflow guidance for the second stage of the mediation procedure

The objective of the second stage of the mediation procedure is to give Member States an additional opportunity to resolve their dispute if no solution was found during the first stage of the mediation procedure and hence no agreement reached on a **Non-binding opinion**.

The second stage of the mediation procedure can only be launched if the following two conditions are simultaneously met:

- No solution was found during the first stage of mediation. The Member States that are party to the dispute did not agree on a **Non-binding opinion**.
- All Member States that are party to the dispute agree to continue the process and to launch the second stage of the mediation procedure¹⁰.

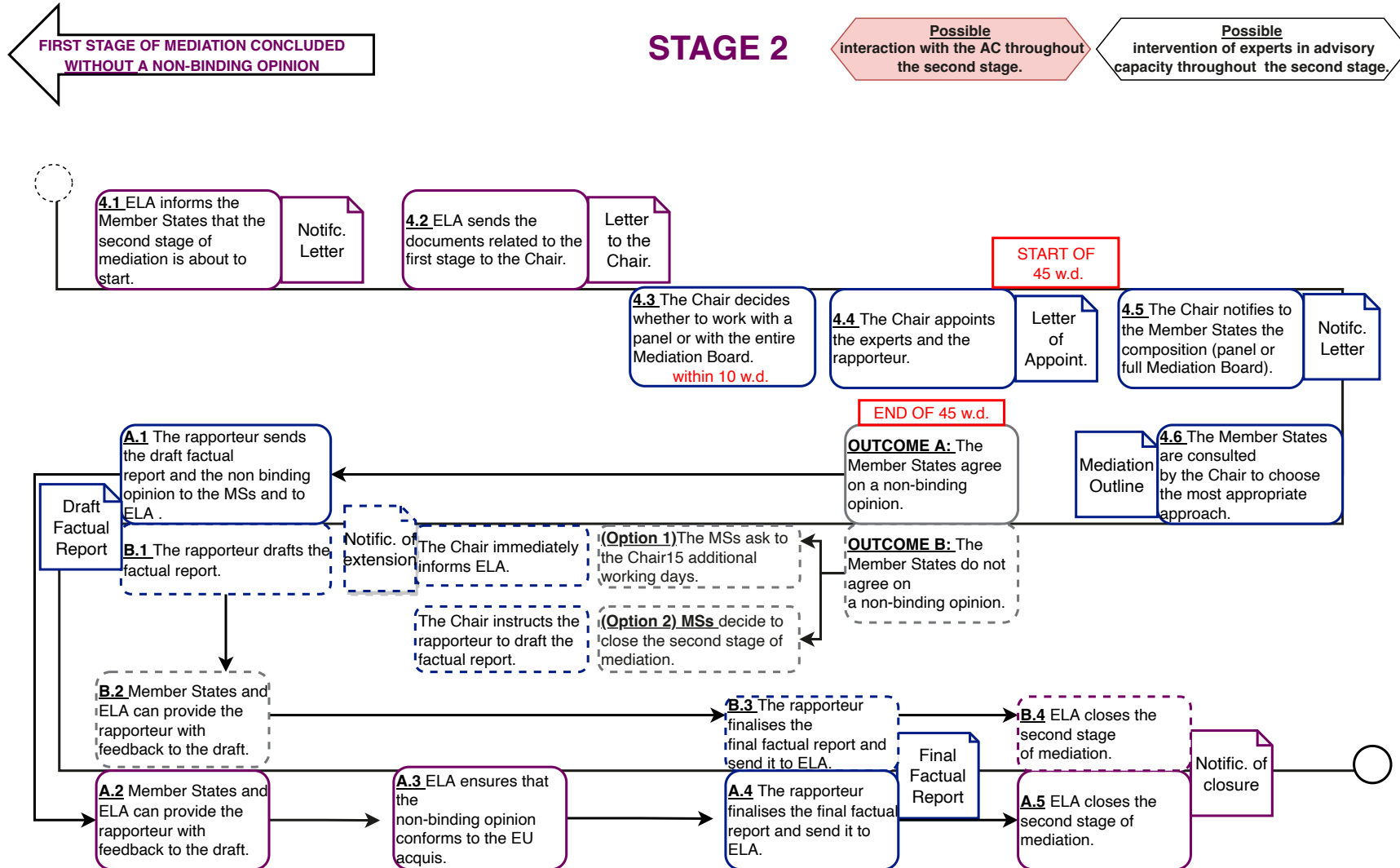
Whereas during the first stage of the mediation one mediator is facilitating the process, the mediation during the second stage is conducted before the Mediation Board (or panel), which is composed of experts from the Member States other than those that are party to the dispute. The Chair of the Mediation Board has an active role during the second stage of the mediation procedure¹¹. Additionally, a rapporteur is involved as well. She is responsible for preparing the factual report and the **Non-binding opinion**, taking into account all the views of the members of the Mediation Board or the panel.

The second stage of mediation is in principle expected to last 5 months maximum. However, during the mediation process, the procedure may be suspended or early closures may occur (see Section 6). In addition, it may be necessary to interact with the AC during the second stage of the mediation procedure. This is the case where

the dispute concerns social security coordination related matters, for which both ELA and the Administrative Commission are competent in principle. Where it is deemed necessary to involve the AC, the appropriate **Workflow guidance for AC-ELA interaction** should be consulted (●).

¹⁰ In this case, consent is formalised by the document that the Member States signed with the support of the mediator, during the first stage of mediation (Doc. XXIII).

¹¹ See Article 8 (5) RoP for an overview of the different functions of the Chair during the second stage of mediation.



*The numbering of the individual steps in the workflow guidance is in accordance with the detailed description below.1 below.



4.1 Notification of the start of the second stage of the mediation procedure

When the Member States agree on a second stage of mediation, ELA Mediation Secretariat has **10 working days** to launch the second stage of the mediation procedure through the '**Notification of the start of the second stage of mediation**', which is sent to the Member States by email (Doc. XXIV). The date of the notification shall be considered as the formal date of the launch of the second stage of the mediation procedure.

4.2 ELA sends the documents concerning the first stage to the Chair of the Mediation Board

As soon as ELA has notified the Member States that the second stage of the mediation procedure is about to start, the Chair should be provided with all documents to make the necessary arrangements for the second stage of the mediation procedure. Therefore, ELA Mediation Secretariat will send the '**Letter to the Chair of the Mediation Board**' (Doc. XXV), together with the following documents: available to the Chair of the Mediation Board:

The final factual report prepared by the mediator at the end of the first stage of mediation;

The Detailed Statements the Member States parties to the dispute have sent to ELA during the initiation phase;

Any other additional relevant information that may have been shared during the first stage of mediation which might help understand the facts and nature of the dispute;

The letter to nominate the rapporteur (Doc. XXVI).

The form '**Declaration of absence of conflict of interests**' (Doc. XVI) for the Chair and for the other members of the Mediation Board and experts in an advisory capacity.



RESPONSIBILITIES OF THE CHAIR OF THE MEDIATION BOARD

SECOND STAGE OF THE MEDIATION PROCEDURE

- Invite appointed experts of the Mediation Board who have relevant expertise in the field of the dispute to participate in the Mediation Board and/or panel that will be appointed for the specific case during the second stage of the mediation procedure;
- **Decide on the composition of the Mediation Board or panel and appoint the members of the Mediation Board or panel, that will function as the mediating body during the second stage of the mediation procedure;**
- Inform the Member States that are party to the dispute including their respective NLOs and the ELA Mediation Secretariat about the composition of the Mediation Board or panel;
- **Nominate the rapporteur amongst the experts of the Mediation Board or the panel, taking into account the nature of the dispute;**
- Consult with the Member States on the composition of the respective Member States' delegations, reconfirm the national representatives of the Member States and any (national) experts in an advisory capacity who are member of the Member States' delegations;
- **Select and invite experts in an advisory capacity who are independent from the Member States and are members in an advisory capacity of the Mediation Board or panel for the specific case and during the second stage of the mediation procedure;**
- Preside over all meetings of the Mediation Board or the panel during the entire second stage of the mediation procedure;
- **Act as the representative and main point of reference for the Mediation Board in the communications and relations with the ELA Management Board, Member States that are party to the dispute including their respective NLOs, the AC and ELA Mediation Secretariat;**
- Coordinate the work of the Mediation Board in general and the Mediation Board or panel that is appointed for a specific case during the second stage of the mediation procedure;
- **Ensure that the principles of neutrality, impartiality, sincere cooperation and inclusivity are observed by the Mediation Board or panel and by each of its members.**
- Ensure that the working arrangements established in the Rules of procedure are followed during the second stage of the mediation procedure.
- **Ensure high quality of the mediation proceedings and the non-binding opinion with regard to the second stage of the mediation procedure.**
- Decide on the most effective working arrangements to conduct the second stage of the mediation procedure, in consultation with the Member States party to the dispute and in accordance with the Rules of procedure.

4.3 Decision on the composition of (the panel of) the Mediation Board for the second stage of the mediation procedure

The Chair has **10 working days**, counted as of the date of notification, to appoint a panel of experts or the entire Mediation Board as the body that is entrusted with the mediation tasks during the second stage of the mediation procedure. The experts selected to be part of the panel/Board are all appointed as experts of the Mediation Board by ELA's Management Board and the list of experts of the Mediation Board is periodically updated.

The Chair is free to decide whether a selected panel or the entire Mediation Board will be entrusted with the mediation tasks during the second stage of the mediation and how the final composition is determined.

When the Chair decides to appoint a panel as the mediating body during the second stage of the mediation procedure, the Rules of procedure require that such a panel is composed of at least six members next to the involvement of the Chair and the two Deputy Chairs. **The mediating body or panel during the second stage of the mediation is hence composed of at least nine person, who are all appointed experts of the Mediation Board.**

4.4 Appointment of the experts and the rapporteur

Once the Chair has decided to opt for a panel of experts or alternatively for the entire Mediation Board, the Chair will:

- appoint and notify the nominees of the Chair's decision and confirm their agreement to participate in the second stage of mediation;
- nominate a rapporteur from among the appointed experts.



ROLE OF THE RAPPORTEUR SECOND STAGE OF THE MEDIATION PROCEDURE

The rapporteur is selected amongst the experts of the Mediation Board or the panel which has been composed by the Chair. The following criteria can be considered when selecting a Rapporteur:

- The nature of the dispute and the expertise;
- The competence of the expert;
- Language skills of the expert;
- The availability of the expert.

The rapporteur is 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, the Member States that are party to the dispute, and other experts participating in an advisory capacity (e.g. social partners, members from the European Commission, etc.)



EXPERTS OF THE MEDIATION BOARD OR PANEL SECOND STAGE OF THE MEDIATION PROCEDURE

Persons nominated as experts of the Mediation Board or panel involved in the second stage of the mediation procedure are selected from the list of experts of the Mediation Board which is adopted by the Management Board of ELA. They have been recruited on the basis of their expertise and competence for dealing with disputes related to any of the different areas within the scope of the mediation procedure.

When composing a panel instead of requesting the entire Mediation Board to be entrusted with the mediation tasks under the second stage of the mediation procedure objective criteria will be used taking into account the nature and scope of the dispute and the experience of the experts of the Mediation Board concerned.

After consultation with the candidate rapporteur on his/her interest to take up the role as rapporteur, his/her availability and absence of any conflict of interest the Chair will send a '**Letter to nominate the rapporteur**' (Doc. XXVI), and a '**Letter of appointment of the expert**' (Doc. XXVII).

The letter of appointment for the experts and for the rapporteur includes two annexes:

- The Detailed Statements of the dispute, received by the Member States involved in the dispute during the first stage of the mediation procedure with all the documents that could turn out useful.
- The declaration of **absence of conflict of interests and a confidentiality form** (Doc. XVI) which the selected experts must sign and then return to the ELA Mediation Secretariat.

4.5 Notification to the Member States on the panel composition/appointment of the entire Mediation Board

Finally, the Chair informs, through a **'Notification letter about panel or Mediation Board composition'** (Doc. XXVIII), the Member States that are party to the dispute on whether the second stage of the mediation procedure will take place in a panel composition or held before the entire Mediation Board. The Chair will communicate this without delay.

4.6 Consultation of the Member States on the approach for mediation

The Chair will contact the national representative of the Member States that are party to the dispute on the approach and planning of the mediation process. Based on the consultation, the Chair decides on which approach is most appropriate to be followed during the second stage of the mediation.

The main approaches to mediation are similar to those described for stage one of the mediation procedure with the main (organisational) difference being that under the second stage, the planning would need to take into account the availability of all experts of the panel or Mediation Board that has been appointed as the mediating body during the second stage of the mediation.

The following main approaches can be considered:

- **The standard mediation;**
- **The guided mediation;**
- **Combination of both.**

Once the Chair has chosen the most appropriate approach to organise the proceedings, s/he is encouraged to draw up what has been agreed with the parties in the **'Communication on the Mediation Outline'** (Doc. XVII).

Fast-track mediation

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

4.6.1 THE WORKING ARRANGEMENTS DURING THE SECOND STAGE OF THE MEDIATION PROCEDURE

Similar to the first stage of the mediation procedure, the Rules of Procedure provide for certain ethical and behavioural rules all experts of the Mediation Board or panel have to respect throughout the full second stage of the mediation procedure. **The ethical and organisational framework for the individual experts who are involved in the second stage of the mediation procedure are presented in the table below.**

Furthermore, the Rules of procedure provides also for an organisational framework for the mediation itself to be adhered to during the second stage of the mediation procedure. The procedural rules provided in Article 19(12,14) of the Rules of procedure detail the arrangements in cases 'hearings' are envisaged. The hearings referred to in the mentioned articles of the Rules of procedure refer to the first online or in-person presentation of the different positions and viewpoints of the Member States that are party to the dispute. This presentation of the respective positions will be done in the presence of the entire panel or Mediation Board depending on the case. In line with the possible approaches (standard mediation or guided mediation) such a first hearing can be organized at the first plenary meeting of the parties (standard approach) or at a later stage (guided approach), once the detailed agenda and planning for the mediation proceedings have been established and agreed to by all parties.

THE BEHAVIOURAL AND ORGANISATIONAL FRAMEWORK FOR MEDIATION DURING THE SECOND STAGE OF THE MEDIATION PROCEDURE

ETHICAL AND BEHAVIOURAL REQUIREMENTS FOR EXPERTS OF THE MEDIATION BOARD OR PANEL

- The mediation procedure shall be based on the **principles of neutrality, impartiality, sincere cooperation and inclusivity**.
- 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.
- 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**.
- **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, to be in a position to assist the Member States to agree on a **Non-binding opinion**.
- The mediator and 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.

ORGANISATIONAL FRAMEWORK FOR MEDIATION DURING THE SECOND STAGE OF THE MEDIATION PROCEDURE

- 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.
- 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.
- 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 during the second stage of mediation shall not affect the running of the overall timelines for concluding the second stage of mediation.*



Experts in advisory capacity during the second stage of mediation

The Chair shall invite experts from the Member States, the Commission and the Authority to participate in an advisory capacity, if two conditions are met:

- Upon request of a Member State party to the dispute
- Upon agreement of all the Member States that are party to the dispute

These experts shall contribute to the mediation procedure by submitting opinions, making recommendations and proposing solutions. The Chair shall take into account the opinions, recommendations and proposed solutions submitted by the experts participating in an advisory capacity, 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.

The 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.



Including social partners in the second stage of ELA's mediation procedure

'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.'(Article 19(20) of the Rules of procedure).

Social Partners operating within Member States as well as EU umbrella social partner organisations can be involved in different ways during ELA's mediation procedure.

Article 19(20) quoted above refers in general terms to a situation in which the application of collective agreements in one or more Member States that are party to the dispute on the cross-border case is concerned and the national social partners in these Member States are entrusted with the 'application, supervision, interpretation and/or enforcement of these collective agreements. In such instances, the Chair of the Mediation Board is obliged to consult the national social partners concerned during the mediation. When social partners of a Member State are invited to participate in an ELA mediation procedure they are involved as an expert in an advisory capacity of the Member State.

However, a situation may occur in which a national collective agreement that is universally applicable in a given Member State has not been respected in a particular case that is characterised by an EU cross-border labour mobility dimension and the social partners are themselves the parties that adopt such universally applicable collective agreements. In such situations (and depending on the Member State's context of collective bargaining and representation), social partners may even be the lead party on behalf of their Member State in a particular dispute on relevant cross-border issues. In such a case, they will be the national representative(s) for the Member State in ELA's mediation procedures.

EU social partners can also be invited and consulted during the second stage of mediation by the mediator. In such instances they will participate as experts in an advisory capacity on behalf of the EU social partners. EU social partners' representatives participate in an independent advisory capacity and are not part of the delegations from the Member States that are party to the dispute.

The second stage of the mediation procedure will in principle end once the standard **45-day** period (counted as from the date of the appointment of the Mediation Board or the panel) has elapsed¹². The final procedural steps vary depending on the outcome of the mediation. If the parties agree on a **Non-binding opinion** (OUTCOME A), the Chair will guide the parties towards the end of the process. In this case, the rapporteur draws up a final factual report, including the **Non-binding opinion**, which is sent to the ELA Mediation Secretariat and the Member States for comments and feedback. The ELA Mediation Secretariat is also in charge of verifying that the **Non-binding opinion** adopted complies with the EU labour mobility acquis.

If, on the other hand, the **Non-binding opinion** is not agreed to by the Member States within the (indicative) time frame of **45 working days** (OUTCOME B), the Member States may choose to:

- Extend the second stage of the mediation procedure with an additional **15 working days**;
- Close the mediation procedure definitively.

In both options, the rapporteur will always draw up the final report of the second stage of the mediation procedure. The difference between the two options is that it will not be necessary for the ELA Mediation Secretariat to verify the conformity of the **Non-binding opinion** with the EU labour mobility acquis.

OUTCOME A: THE MEMBER STATES AGREE ON A NON-BINDING OPINION

When the Member States that are party to the dispute agree on a **Non-binding opinion** within the (indicative) time frame of **45 working days**, the Chair will guide the parties towards the end of the mediation process.

The following steps and actions are taken.

A.1 PRODUCTION AND SENDING OF THE DRAFT FACTUAL REPORT TO THE MEMBER STATES AND TO ELA

The rapporteur writes the draft factual report and proposal for a **Non-binding opinion** which are both first shared with the Chair and Deputy Chairs for their comments and feedback. The Chair can decide whether the draft factual report is shared with the other members of the Mediation board or panel for their comments and feedback.

Once the observations have been incorporated, the draft **factual report** (Doc. XVIII) is sent to the Member States by the Chair (or by the rapporteur when approved by the Chair) and to the ELA Mediation Secretariat together with the **Non-binding opinion** (Doc. XIX). The rapporteur and/or Chair may come to an agreement with the Member States to have an extra **10 working days** to write the draft factual report. This agreement will be evidenced by an ad hoc document in which the Member States confirm their **'Agreement to extend the reporting period'**(Doc. XX).

A.2 FEEDBACK FROM MEMBER STATES AND ELA ON THE DRAFT FACTUAL REPORT AND NON-BINDING OPINION

Within 15 working days, counted as from the date the draft factual report and the **Non-binding opinion** have been sent, the Member States and the ELA Mediation Secretariat can provide the rapporteur with feedback and comments.

A.3 VERIFICATION ON CONFORMITY WITH EU LABOUR MOBILITY ACQUIS

The ELA Mediation Secretariat is in charge of verifying that the **Non-binding opinion** (if any) conforms to the EU acquis on labour mobility and social security coordination.

A.4 FINALISATION AND SUBMISSION OF THE FACTUAL REPORT AND AGREEMENT ON THE NON-BINDING OPINION

The rapporteur collects the feedback and the comments from the Member States and from the ELA Mediation Secretariat (and eventually also from the experts of the panel or Mediation Board when the Chair has decided so) and finalises the factual report together with the **Non-binding opinion**, **within 15 working days**, counted as from the date that the last feedback was received. The final factual report and **Non-binding opinion** are shared with the Chair and Deputy Chairs for a last feed back, before they are adopted.

A.5 CLOSURE OF THE SECOND STAGE OF THE MEDIATION PROCEDURE

When the process is concluded, the ELA Mediation Secretariat sends a **notification of closure** (Doc. XXI) to all Member States involved.

¹² Without considering possible suspensions of the mediation procedure.

Reporting duties following the adoption of a non-binding opinion

Pursuant to Article 13(12) of the founding Regulation, Member States that are party to a dispute shall report to ELA, within three months of the adoption of the non-binding opinion, on the measures that they have taken to follow-up on the opinion.

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 ELA, within three months of its adoption, with regards to the reasons for not having followed up the non-binding opinion.

The reporting will in principle be done by the national representative who had been appointed on behalf of the Member State during the (first and/or second stage of the) mediation procedure. Member States are free to choose the preferred form for reporting while the report should be sent to the functional email address of the ELA Mediation Secretariat. The ELA Mediation Secretariat will confirm the receipt of the report.

OUTCOME B: THE MEMBER STATES DO NOT AGREE ON A NON-BINDING OPINION

If the parties do not agree on a **Non-binding opinion**, at the end of the (indicative) **45-working days** period, two options are possible.

OPTION 1: Extension with an additional 15 working days

In some cases such as highly complex disputes, the Chair may, in agreement with the Member States that are party to the dispute, extend the timeframe by an **15 additional working days** for the purpose of undertaking further negotiations. In such instances the Chair shall immediately inform the ELA Mediation Secretariat about the agreement of such an extension through a '**Notification of extension**' (Doc. XXII), which shall also be shared with the Member States that are party to the dispute.

OPTION 2: Closure of the second stage of the mediation procedure

When the parties do not agree on a **Non-binding opinion** within the (indicative) **45-working days** period and when

the Chair and Member States do not reach an agreement on an extension, the Chair starts the conclusive activities and requests the rapporteur to draft the factual report of the second stage of the mediation procedure.

B.1 PRODUCTION AND SENDING OF THE DRAFT FACTUAL REPORT

The rapporteur drafts the **factual report** (Doc. XVIII) and shares it with the Chair and Deputy Chairs for their observations and feedback. The Chair can decide whether the draft factual report is shared with the other members of the Mediation board or panel for their comments and feedback.

Once the observations have been incorporated, the draft factual report is sent to the Member States by the Chair (or by the rapporteur when approved so by the Chair) and to the ELA Mediation Secretariat. The rapporteur and/or Chair may come to an agreement with the Member States to have an extra **10 working days** to write the draft factual report. This agreement will be evidenced by an ad hoc document in which the Member States confirm their '**Agreement to extend the reporting period**' (Doc. XX).

B.2 FEEDBACK FROM MEMBER STATES AND ELA ON THE DRAFT FACTUAL REPORT

Within 15 working days counted as from the date of sending the draft factual report, the Member States and/or ELA (and eventually the members of the panel or Mediation Board as the case may be) may make additions or comments to the draft factual report.

B.3 FINAL FACTUAL REPORT

The rapporteur has **15 working days counted as from the date that the last observations have been received**, to submit to ELA and to the Member States the final factual report. Within that period, the final factual report will be shared with the Chair and the Deputy Chairs for their last observations.

B.4 CLOSURE OF THE SECOND STAGE OF THE MEDIATION PROCEDURE

When the second stage of mediation is concluded, the ELA Mediation Secretariat will send a '**Notification of closure**' (Doc. XXI) to all Member States involved. The panel or the whole Mediation Board shall dissolve at the end of the second stage of mediation.

5. Working arrangements applicable to both stages of the mediation procedure

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 Authority¹³.

All communications between ELA and other actors shall be registered on an internal registering system. This system could allow ELA to easily keep track of documents received, and Member States to consult the progress of the procedure concerning them.

The Rules of procedure mention two specific situations which may occur during the first or the second stage of the mediation procedure and which may trigger a suspension of the procedure.

Possible causes for a suspension of the mediation procedure

The initiation of a **concerted or joint inspection**, which is necessary for the resolution of the dispute, implies that all the actors have to wait for its result.

The request of the **mediator or the Chair of the Mediation Board for assistance by 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 procedure and of the non-binding opinion can be preserved.

¹³ Article 19 E(25) of the Rules of procedure for mediation of the European Labour Authority.

6. Cases of suspensions and early closure

All actors involved in the mediation process should be aware that the procedure **may become subject to permanent or temporary setbacks**.

Article 18 of the Rules of Procedure for mediation provides for certain hypotheses of early closure (○) or suspension (●) of the mediation procedure; a list of the hypotheses that could cause an early closure or suspension is discussed below, according to the mediation timeline.

INITIATION PHASE	FIRST STAGE	SECOND STAGE
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6.1 Initiation phase

The mediation process is strictly voluntary, therefore in case **one (or more) Member States do not agree to launch the mediation or when one (or more) Member States withdraw** their agreement, ELA will not be in a position to launch the first stage of mediation.

The ELA Mediation Secretariat notifies the Member States involved about the closure of the mediation process by sending a '**Notification of early closure**' (Doc. VII), explaining the reasons for the closure, to all Member States involved up to that point.

! This does not exclude that the Member States involved could, at a later stage, collect the missing consent and re-submit the request to ELA.

HYPOTHESES OF EARLY CLOSURE (○)

THE MEMBER STATE MAY NOT ALL AGREE TO MEDIATION.

The list provided by Article 18 of the Rules of Procedure is not exhaustive. Therefore, in exceptional and unforeseen cases of suspension or early closure, it could always be possible to use the document '**Notification of early closure/ suspension**' (Doc. VII).

THE DISPUTE REFERRED TO ELA CONCERNS MATTERS OF UNION LAW THAT REQUIRE A LEGAL OPINION AT UNION LEVEL.

The procedure is ended by ELA when, **during the admissibility check, the ELA Mediation Secretariat finds that the matter is requiring a legal opinion at EU level and it is not possible to separate** that part of the dispute from the part that does not require such a legal opinion.

The ELA Mediation Secretariat notifies the Member States involved about the closure of the mediation process by sending a '**Notification of early closure**' (Doc. VII), explaining the reasons for the closure, to all Member States involved up to that point.

THE ADMINISTRATIVE COMMISSION ASKS THE REFERRAL OF THE DISPUTE TO ELA AND THE MEMBER STATES INVOLVED AGREE.

In the event that the dispute that has come before ELA has one (or more) social security elements, ELA has the duty to inform the Administrative Commission (according to the Workflow guidance for AC-ELA interaction) (●). At that point, the Administrative Commission, by means of a **written request** (Doc. XXIX), may ask for the referral of the part of the dispute relating to social security.

If the Member States consent, ELA will close the procedure (for the part referred to the the Administrative Commission) by sending a **'Notification of early closure'** (Doc. VII), explaining the reasons for the closure, to all Member States involved up to that point, on the date of the Administrative Commission's request.

! The **consent of all Member States involved is indispensable** to refer the social security coordination matter to the Administrative Commission.

HYPOTHESES OF SUSPENSIONS (●)

THE MEMBER STATES MAY NOT HAVE HAD DIRECT CONTACT OR DIALOGUE BEFORE REFERRING TO ELA.

In the event that ELA finds that the **Member States that are parties to the dispute have not been in contact with each other or have not had a dialogue with a view to solve the dispute**, ELA is obliged to suspend the procedure immediately and invite the parties to enter into a dialogue with each other with a view to solve the dispute.

The ELA Mediation Secretariat notifies the Member States involved about the suspension of the mediation process by sending a **'Notification of suspension'** (Doc. VII).

! Only when such a dialogue proves unsuccessful the mediation procedure can be resumed.

THE DISPUTE REFERRED TO ELA (ONLY PARTLY) CONCERNS MATTERS OF UNION LAW THAT REQUIRE A LEGAL OPINION AT UNION LEVEL.

The procedure is suspended by ELA when, **during the admissibility check, ELA Mediation Secretariat finds that part of the matter requires a legal opinion at EU level** and it is possible to separate that part of the dispute from the part that does not require such a legal opinion.

In this case, the parties, together with ELA, are encouraged to decide whether to suspend the procedure with regard to the part of the problem requiring an interpretation by a court (national court or CJEU), and continue with the rest, or to close the entire procedure and reopen it only at a later stage (see point 2 above).

ELA Mediation Secretariat notifies the Member States involved about the suspension of the mediation process (Doc. VII).

THERE IS AN ONGOING COURT PROCEEDING ON THE DISPUTE REFERRED TO ELA.

In the event that the admissibility check of the dispute reveals that the **Member States involved are already party to an ongoing legal proceeding**, ELA Mediation Secretariat shall suspend the mediation process.

ELA Mediation Secretariat notifies the Member States through a **'Request to suspend the mediation procedure'** (Doc. XXX) that the proceeding is suspended until that legal proceeding (national or European) has been concluded.

INITIATION PHASE

FIRST STAGE

SECOND STAGE

6.2 Stage 1 of the mediation procedure

HYPOTHESES OF EARLY CLOSURE (○)

BY A WRITTEN DECLARATION OF THE MEDIATOR, AFTER CONSULTATION WITH THE MEMBER STATES: NO AGREEMENT WITHIN THE ESTABLISHED TIMEFRAME.

The mediation process could be terminated early if the parties and the mediator find that:

- further **efforts** at mediation would be to **no avail**, or
- there is **no common agreement** on the adoption of a **Non-binding opinion by the end of the time period of 45 working days**, and one or more of the Member States concerned does not agree that ELA will launch the second stage of the mediation procedure, on the date of that declaration.

In this case, ELA Mediation Secretariat will receive a '**Request to close the mediation procedure**' (Doc. XXX), from the mediator. Once the request has been examined, and when approved, ELA Mediation Secretariat notifies the Member States involved about the closure of the mediation process through the '**Notification of early closure**' (Doc. VII).

BY A WRITTEN DECLARATION OF THE MEDIATOR, AFTER CONSULTATION WITH THE MEMBER STATES: FURTHER INFORMATION NEEDED OR VERIFICATION REQUIRED.

The mediation process could be terminated early if the parties and the mediator find 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**.

In this case, the procedure is closed because there is no agreement by the Member States concerned on the suggestion by the mediator or the Chair of the Mediation Board to start a concerted or joint inspection, with ELA's support, to gather the missing information.

In this case, ELA will receive a '**Request to close the mediation procedure**' (Doc. XXX), from the mediator. Once the request has been examined, and when approved, ELA Mediation Secretariat notifies the Member States involved the '**Notification of early closure**' (Doc. VII).

BY A WRITTEN REQUEST OF ONE OR MORE MEMBER STATES.

The mediation process is strictly voluntary, so if Member States decide to terminate it or express that they are no longer willing to continue it, they are encouraged to notify ELA Mediation Secretariat.

In this case, ELA will receive a '**Request from one or more Member State to close the mediation procedure**' (Doc. XXX). Once the request has been received ELA Mediation Secretariat notifies the Member States involved the '**Notification of early closure**' (Doc. VII).

THE ADMINISTRATIVE COMMISSION ASKS THE REFERRAL OF THE DISPUTE TO ELA AND THE MEMBER STATES INVOLVED AGREE.

If during the first stage of the mediation procedure ELA comes across **elements of new interpretation** of Regulations (EC) No 883/2004 and 987/2009, the Administrative Commission shall be informed (according to the [Workflow guidance for AC-ELA interaction](#)) (●).

At that point, the Administrative Commission, by means of a **'Written request'** (Doc. XXIX), may ask for the referral of the part of the dispute relating to social security.

If the Member States consent, ELA will close the procedure (for the part referred to the the Administrative Commission) by sending a **'Notification of early closure'** (Doc. VII), explaining the reasons for the closure, to all Member States involved up to that point, on the date of the Administrative Commission's request.

! The consent of all Member States involved is indispensable to refer the social security coordination matter to the Administrative Commission.

MEMBER STATES INVOLVED IN THE MEDIATION, DECIDE TO REFER THE PART OF THE DISPUTE RELATED TO SSC TO THE ADMINISTRATIVE COMMISSION.

The Member States involved in the dispute might decide to refer the social security coordination part of the dispute to the Administrative Commission, at any stage of the mediation process.

In this case, ELA Mediation Secretariat will receive a request from **all Member States** to refer the part of the dispute related to social security coordination to the Administrative Commission on the date of that request (Doc. XXXI).

Once the request has been received ELA Mediation Secretariat notifies the Member States involved about the closure of the mediation process, by sending a **'Notification of early closure'** (Doc. VII).

HYPOTHESES OF SUSPENSIONS (●)

THE DISPUTE REFERRED TO ELA (ONLY PARTLY) CONCERNS MATTERS OF UNION LAW THAT REQUIRE A LEGAL OPINION AT UNION LEVEL.

The procedure is suspended by ELA when, during the first stage of the mediation procedure, the mediator finds that **part of the matter requires a legal opinion** at EU level and **it could be possible to separate that part of the dispute** from the part that does not require such a legal opinion.

In this case, the parties, together with the mediator, decide whether to suspend the procedure with regard to the part of the problem requiring an interpretation by the CJEU, and continue with the rest, or to close the entire procedure and reopen it only at a later stage.

In this case, ELA Mediation Secretariat will receive a **'Request to suspend/close the mediation procedure'** (Doc. XXX) from the mediator. Once the request has been received, ELA Mediation Secretariat notifies the Member States involved of the suspension/closure of the mediation process, by sending a **'Notification of suspension/early closure'** (Doc. VII).

THERE IS AN ONGOING COURT PROCEEDING ON THE DISPUTE REFERRED TO ELA.

In the event that **during the first stage of the mediation procedure the Member States involved start a legal proceeding before a national or the CJEU, ELA suspends the mediation process** (Doc. XXX) until the legal proceedings (national or European) have been concluded.

In this case, ELA Mediation Secretariat will be informed of the ongoing legal proceeding by the Member States involved, or by the mediator. Once the request has been received ELA Mediation Secretariat notifies the Member States involved about the suspension of the mediation process, by sending a **'Notification of suspension'** (Doc. VII).

INITIATION PHASE

FIRST STAGE

SECOND STAGE

6.3 Stage 2 of the mediation procedure

HYPOTHESES OF EARLY CLOSURE (○)

BY A WRITTEN DECLARATION OF THE CHAIR, AFTER CONSULTATION WITH THE MEMBER STATES: NO AGREEMENT.

The mediation process could be terminated early if the parties and the Chair find that:

- further **efforts** at mediation would be to **no avail**, or
- there is **no common agreement** on the adoption of a non-binding opinion **by the end of the time period of 45 working days**, and one or more of the Member States concerned does not agree that ELA is launching the second stage of the mediation procedure, on the date of that declaration.

In this case, ELA Mediation Secretariat will receive a '**Request to close the mediation procedure**' (Doc. XXX) from the Chair. Once the request has been examined, and when approved, ELA Mediation Secretariat notifies the Member States involved about the closure of the mediation process, by sending a '**Notification of early closure**' (Doc. VII).

BY A WRITTEN DECLARATION OF THE CHAIR, AFTER CONSULTATION WITH THE MEMBER STATES: FURTHER INFORMATION NEEDED OR VERIFICATION REQUIRED.

The mediation process could be terminated early if the parties and the Chair find that:

- the **information, evidence, facts and circumstances** presented by the Member States that are party to a dispute require verification, or
- further **information is necessary**.

In this case, the procedure is closed because there is no agreement by the Member States concerned on the suggestion by the Chair of the Mediation Board to start a concerted or joint inspection, with ELA's support, to gather the missing information.

In this case, ELA Mediation Secretariat will receive a '**Request to close the mediation procedure**' (Doc. XXX) from the Chair. Once the request has been examined, if approved, ELA Mediation Secretariat notifies the Member States involved about the closure of the mediation process, by sending a '**Notification of early closure**' (Doc. VII).

BY A WRITTEN REQUEST OF ONE OR MORE MEMBER STATES.

The mediation process is strictly voluntary, so if Member States decide to terminate it or no longer continue it, they have to notify ELA Mediation Secretariat.

In this case, ELA Mediation Secretariat will receive a request from one or more Member State to close the mediation procedure. Once the request has been received ELA Mediation Secretariat notifies the Member States involved about the closure of the mediation process, by sending a '**Notification of early closure**' (Doc. VII).

THE ADMINISTRATIVE COMMISSION ASKS THE REFERRAL OF THE DISPUTE TO ELA AND THE MEMBER STATES INVOLVED AGREE.

If during the second stage of mediation ELA comes across **elements of new interpretation** of Regulations (EC) No 883/2004 and 987/2009, the Administrative Commission shall be informed (according to the [Workflow guidance for AC-ELA interaction](#)) (●).

At that point, the Administrative Commission, by means of a **'Written request'** (Doc. XXIX), may ask for the referral of the part of the dispute relating to social security.

If the Member States consent, ELA will close the procedure (for the part referred to the Administrative Commission) by sending a **'Notification of early closure'** (Doc. VII), explaining the reasons for the closure, to all Member States involved up to that point, on the date of the Administrative Commission's request.

! The consent of all Member States involved is indispensable to refer the social security coordination matter to the Administrative Commission.

MEMBER STATES INVOLVED IN THE MEDIATION, DECIDE TO REFER THE PART OF THE DISPUTE RELATED TO SSC TO THE ADMINISTRATIVE COMMISSION.

The Member States involved in the dispute might decide to refer the social security coordination part of the dispute to the Administrative Commission, at any stage of the mediation process.

In this case, ELA Mediation Secretariat will receive a **'Request from all Member States to refer the part of the dispute related to social security coordination to the Administrative Commission'** on the date of that request (Doc. XXXI).

Once the request has been received ELA Mediation Secretariat notifies the Member States involved about the closure of the mediation process by sending a **'Notification of early closure'** (Doc. VII).

HYPOTHESES OF SUSPENSIONS (●)

THE DISPUTE REFERRED TO ELA (ONLY PARTLY) CONCERNS MATTERS OF UNION LAW THAT REQUIRE A LEGAL OPINION AT UNION LEVEL.

The procedure is suspended by ELA when, during the second stage of mediation, the Chair or one of the experts of the panel/Mediation Board, find that part of the matter requires a legal opinion at EU level and it is possible to separate that part of the dispute from the part that does not require such a legal opinion.

In this case, the parties, together with the Chair, decide whether to suspend the procedure with regard to the part of the problem requiring an interpretation by the CJEU, and continue with the rest, or to close the entire procedure and reopen it only at a later stage.

In this case, ELA Mediation Secretariat will receive a **'Request to suspend/close the mediation procedure'** (Doc. XXX) from the Chair. Once the request has been received, ELA Mediation Secretariat notifies the Member States involved of the suspension/closure of the mediation process, by sending a **'Notification of suspension/early closure'** (Doc. VII).

THERE IS AN ONGOING COURT PROCEEDING ON THE DISPUTE REFERRED TO ELA.

In the event that **during the second stage of the mediation procedure the Member States involved start a legal proceeding before a national or the CJEU, ELA suspends the mediation process** (Doc. XXX) until the legal proceedings (national or European) have been concluded.

In this case, ELA Mediation Secretariat will be informed of the ongoing legal proceeding by the Member States involved, or by the Chair. Once the request has been received ELA Mediation Secretariat notifies the Member States involved about the suspension of the mediation process, by sending a '**Notification of suspension**' (Doc. VII).

Overview for templates for

ELA MEDIATION PROCEDURE: GENERAL GUIDELINES AND WORKFLOWS

STAGE	DOCUMENT NAME	DOCUMENT NUMBER	ACTOR
INITIATION PHASE			
0	Letter of request for mediation	I	MS(s)>ELA
0	Detailed statement	II	MS(s)>ELA
0	Letter of receipt	III	ELA>MS(s)
0	Request for additional information	IV	ELA>MS(s)
0	Invitation to mediation	V	ELA> MS(s)
0	Acceptance/Refusal letter	VI	MS(s)>ELA
0	Notification of early closure/ suspension	VII	ELA> MS(s)
0	Letter to provide additional information	VIII	MS(s)>ELA
0	Admissibility Check	IX	ELA
0	Letter of acknowledgment receipt of referral	X	ELA>SOLVIT
0	Checklist on ELA's mandate	XI	ELA
0	Acceptance/Refusal letter	XII	ELA>SOLVIT
STAGE 1			
1	Notification Letter to inform MSs that the first stage is about to start	XIII	ELA>MS(s)
1	Letter to reply to the notification that the first stage is about to start	XIV	MSs>ELA
1	Notification of selection	XV	ELA>mediator
1	Declaration of absence of conflict of interests	XVI	Mediator/Chair>ELA
1	Communication on the mediation outline	XVII	Mediator/Chair>ELA
1	Factual report	XVIII	Mediator/Chair>ELA
1	Non-binding opinion	XIX	Mediator/Chair>ELA

STAGE	DOCUMENT NAME	DOCUMENT NUMBER	ACTOR
1	Agreement to extend the reporting period	XX	Mediator/Chair>ELA
1	Notification that the mediation procedure has been closed	XXI	ELA>MSs
1	Notification of extension of the stage of mediation	XXII	Mediator/Chair>ELA
1	Agreement to start the second stage of mediation	XXIII	Mediator/Chair>ELA
STAGE 2			
2	Notification Letter to inform MSs that the first stage is about to start	XXIV	ELA>MSs
2	Letter to the Chair	XXV	ELA>Chair
2	Nomination letter	XXVI	Chair>Rapporteur
2	Letter to appoint an expert	XXVII	Chair>Expert
2	Notification letter to inform the MSs and ELA about panel composition	XXVIII	Chair>ELA/MSs
INTERACTION WITH THE AC			
ALL	Written request	XXIX	AC>ELA
ALL	Request to refer the issue concerning SSC to the AC	XXXI	MSs>ELA
ALL	Letter of information	XXXII	ELA>AC
ALL	Notification letter to inform MSs that the Detailed Statement has been sent	XXXIII	ELA>MSs
ALL	Letter of referral to the AC	XXXIV	ELA>AC
ALL	Notification letter to inform MSs about the possibility to refer the dispute to the AC	XXXV	ELA>MSs
ALL	Notification of suspension	XXXVI	ELA>MSs
SUSPENSION OR EARLY CLOSURE			
ALL	Declaration/Request for early closure/suspension	XXX	MSs>ELA

