



Guidance for  
Mediators and  
Mediation Board  
on the ELA  
Mediation procedure

# Table of Contents

1.	<b>Introduction</b>	3
2.	<b>The core principles and features of mediation before ELA</b>	3
3.	<b>Who can be party to a mediation before ELA?</b>	4
4.	<b>Key functions and roles during mediation</b>	4
	Mediator	4
	The Mediation Board	5
	Experts in an advisory capacity	7
	ELA Mediation Secretariat	8
5.	<b>Preliminary stages of the mediation</b>	8
6.	<b>First stage of the mediation procedure and role mediators</b>	9
	Outcome A: The Member States agree on a non-binding opinion	12
	Outcome B: The Member States do not agree on a non-binding opinion	12
7.	<b>Second stage of the mediation procedure and role Mediation Board</b>	13
	Outcome A: The Member States agree on a non-binding opinion	16
	Outcome B: The Member States do not agree on a non-binding opinion	16
8.	<b>What happens once the mediation is concluded?</b>	16
9.	<b>Annex I: Two mediation approaches for stage 1</b>	17
10.	<b>Annex II: Two mediation approaches for stage 2</b>	21
11.	<b>Annex III: Templates</b>	25
	11.1 Notification of selection, from ELA to the mediator	26
	11.2 Declaration of absence of conflict of interest, from the mediator/Chair to ELA	27
	11.3 Communication on the mediation outline, style and rules from mediator/Chair to ELA	28
	11.4 The Factual report, from the mediator/rapporteur to ELA	29
	11.5 Non-binding opinion, from the mediator/rapporteur to ELA	32
	11.6 Agreement to extend the reporting period, from mediator/Chair to ELA	33
	11.7 Notification of extension of the stage of mediation, from mediator/Chair to ELA	34
	11.8 Agreement to start the second stage of mediation, from mediator/Chair to ELA	35
	11.9 Letter to the Chair, from ELA to the Chair	36
	11.10 Nomination letter, from the Chair to the rapporteur	37
	11.11 Letter to appoint the expert, from the Chair to the expert	38
	11.12 Notification letter to inform the Member States and ELA of the composition of the panel, from the Chair to MS(s) and ELA	39

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# 1. Introduction

Member States may have **disagreements** on the application, implementation or enforcement of the EU labour mobility acquis and social security coordination. Whereas bilateral dialogue between Member States remains the most direct way to resolve such challenges and overcome divergent points of view, this may not always lead to effective outcomes and disputes may remain unresolved.

In order to overcome differences between Member States that cannot be resolved through direct dialogue, a **tailor-made mediation facility** has been set up under the umbrella of the **European Labour Authority** (hereinafter 'ELA') providing Member States a streamlined mechanism to resolve their disputes in a time-bound way and with the necessary professional and logistical support.

ELA's mediation function and role have been established in its founding Regulation<sup>1</sup>. The scope of mediation includes **all areas that fall under ELA's responsibility<sup>2</sup>, namely posting of workers, social security coordination, free movement of workers and social legislation concerned with international road transport**. In case a dispute relates fully or in part to matters of social security coordination, the Administrative Commission will be informed by ELA in accordance with the AC-ELA Cooperation Agreement regulating the interaction between both bodies<sup>3</sup>.

The detailed modalities and procedures of the entire mediation process have been laid out in the **Rules of Procedure** adopted by the ELA Management Board<sup>4</sup>. The **General guidance and workflows on the ELA mediation** procedure describes in detail all the workflows concerned with the ELA mediation. The Guidance to Member States on the ELA mediation procedure<sup>5</sup> describes the steps and most important milestones of the mediation procedure and addresses some key questions Member States may have when considering a mediation. Both documents contain relevant templates for communication and administrative verification purposes.

The mediation process before ELA is construed along two consecutive stages of mediation involving a **single mediator** (first stage of the mediation procedure) or the **Mediation Board** (second stage of the mediation procedure). A mediation ultimately envisages the adoption of a **non-binding opinion** to which the Member States shall adhere in the spirit of sincere administrative cooperation and good faith.

**The present Guidance** for mediators and the Mediation Board is primarily aimed at the mediators, members of Mediation Board and experts in an advisory capacity.

## 2. The core principles and features of mediation before ELA

The mediation before ELA is a **voluntary** free-of-charge dispute resolution mechanism aimed at resolving disputes between Member States on the application and/or enforcement of EU labour mobility and social security coordination legislation. Member States which are party to a particular dispute retain full control while ELA is facilitating the process and is providing professional accompaniment and logistical support through the ELA Mediation Secretariat<sup>6</sup>. The mediation itself

1 ELA's founding (EU) Regulation 2019/1149, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1149>.

2 ELA's mandate is illustrated in Article 1(4) of the founding (EU) Regulation 2019/1149, available at this address: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1149>.

3 Decision 18/2021 approved the AC-ELA Cooperation agreement on 22 December 2021. The Agreement entered into force on 1 June 2022 and it is available at this address: <https://www.ela.europa.eu/sites/default/files/2022-03/ELA-AC-signed-agreement.pdf>.

4 Decision 17/2021 of the ELA Management Board of 10 November 2021, available at: [https://www.ela.europa.eu/sites/default/files/2022-02/Decision%2017\\_2021%20ROPM\\_EN.pdf](https://www.ela.europa.eu/sites/default/files/2022-02/Decision%2017_2021%20ROPM_EN.pdf).

5 The link will be uploaded once agreed at ELA management level.

6 The ELA Mediation Secretariat is part of the Cooperation Support Unit of the ELA.

is based on **the principles of impartiality, confidentiality and flexibility** and is aiming at the adoption of a mutually acceptable solution Member States agree to implement.

The mediation procedure consists of **two possible consecutive stages**, each of which is in principle subject to the indicative deadlines set out in the Rules of Procedure.

The first stage of the mediation procedure is facilitated by a **single mediator, chosen by the Member States** from [the list of appointed mediators](#). The selected mediator facilitates the mediation between the parties.

When Member States do not reach an agreement at the end of the first stage of the mediation procedure, they can decide to proceed to the second stage of the mediation procedure which is run before a panel or the entire **Mediation Board**, composed of experts appointed by the ELA's Management Board ([list of experts of the Mediation Board](#)). In this case, the choice of the composition of the panel (or the entire Mediation Board) does not fall on the Member States involved, but on the Chair of the Mediation Board who is responsible for the facilitation of the second stage of mediation.

### 3. Who can be party to a mediation before ELA?

In principle any national public institution or body that has competences in the areas of employment and 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 will **usually be the lead Ministry responsible for employment and/or social security that will request 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 public institutions or bodies are competent 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.

Member States nominate **one single national representative** who will be the **main contact point** during the mediation on behalf of that Member State. Member States can decide to replace the nominated national representative, at all times, by means of a formal notification to the ELA Mediation Secretariat.

Member States decide themselves **which national public institutions or bodies will be part of their delegation** during the mediation and participate in the exchanges and hearings.

### 4. Key functions and roles during mediation

Whereas a full account of the roles and responsibilities of the different actors involved in the mediation process can be found in the **General guidance and workflows on the ELA mediation procedure**<sup>7</sup>, the focus hereinafter is laid on the role and responsibilities of the Mediators, members of the Mediation Board and experts in an advisory capacity.



#### MEDIATOR

A mediator conducts the first stage of mediation in accordance with Article 13(3)<sup>8</sup> of the founding Regulation. S/he is chosen by the Member States that are party to the dispute from the list of mediators which is approved by the ELA Management

<sup>7</sup> The link will be uploaded once agreed at ELA management level.

<sup>8</sup> Article 13(3) of the founding Regulation: "The first stage of mediation shall be conducted between the Member States that are party to the dispute and a mediator, who shall adopt a non-binding opinion by common agreement. Experts from the Member States, the Commission and the Authority may participate in the first stage of mediation in an advisory capacity".

Board in accordance with Article 7(2) of the Rules of Procedure<sup>9</sup>. The ELA Mediators are selected on the basis of their knowledge, skills and experience in the field of dispute resolution mechanisms including mediation. Professional expertise in the different policy areas that fall within the scope of ELA's mandate is also taken into account but not a requirement.

The list of appointed Mediators can be consulted within [this document](#). It is ELA's intention to regularly update the list of Mediators.

### The functions of the mediator

The mediator conducts the first stage of mediation supporting the parties throughout the mediation process: s/he determines, in consultation with the parties, the calendar to be followed and suggests the best approach for the mediation sessions.

The mediator is responsible for the drafting of the factual report and the non-binding opinion, which s/he sends to ELA and the parties to the dispute for their feed-back and observations, at the end of the first stage of mediation.



## THE MEDIATION BOARD

The Mediation Board is the body composed of experts from Member States and its members are appointed by the ELA Management Board, in accordance with Article 7(2) of the Rules of Procedure<sup>10</sup>. The Mediation Board's current composition is [publicly available here](#).

The Mediation Board can be activated when the first stage of mediation has not resulted in the adoption of a non-binding opinion and an agreement between the parties. In such a case ELA can launch the second stage of mediation before its Mediation Board but the launch is subject to the agreement of all Member States that are party to the dispute.

In accordance with Article 13(6) of the Founding Regulation<sup>11</sup>, the Mediation Board can run the second stage of mediation as a whole or in 'panels'. Panels are composed of minimum nine and maximum twelve members of the Mediation Board<sup>12</sup>. It is the Chair of the Mediation Board who decides on the actual composition of the panel in a particular dispute or to have the mediation done before the entire Mediation Board.

Apart from the Chair, the Mediation Board has furthermore two Deputy Chairs and several experts out of whom one member will act as the rapporteur in a particular dispute.



**The Chair of the Mediation Board** is appointed by the ELA 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 and is thereby supported by the ELA Mediation Secretariat.

9 Article 7(2) of the Rules of Procedure: "The Management Board shall appoint an adequate number of mediators and experts from the Member States who will sit on the Mediation Board.[...]."

10 Article 7(2) of the Rules of Procedure: "The Management Board shall appoint an adequate number of mediators and experts from the Member States who will sit on the Mediation Board.[...]."

11 Article 13(6) of the founding Regulation: "The Management Board shall adopt [...], and the possibility of the Mediation Board to sit in panels composed of several members."

12 Article 8C(6) of the Rules of Procedure: "The panel of the Mediation Board shall consist of the Chair, the Deputy Chairs and at least six other experts of the Mediation Board selected from the list of experts appointed by the Management Board in accordance with Article 7(4). In order to ensure the efficiency and effectiveness of the procedure, the panel of the Mediation Board should indicatively not consist of more than twelve experts of the Mediation Board from Member States other than those that are party to the dispute."

### The functions of the Chair

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



**The Deputy Chairs** are appointed by the Management Board for a term of 36 months. They are involved in the second stage of mediation in support of the Chair.

### The functions of the Deputy Chairs

The main responsibility of the Deputy Chairs is to support the Chair during the second stage of the mediation procedure and to carry out the functions of the Chair when s/he is not allowed or unable to participate.



**The rapporteur** is nominated amongst the experts of the Mediation Board or the panel, depending on the case. The rapporteur is appointed by the Chair according to the following criteria:

- The nature of the dispute and the expertise;
- The competences and experiences of the expert;
- The availability of the expert.

### The functions of the rapporteur

The rapporteur is responsible for preparing the factual report and the 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.).



**The Experts of the Mediation Board** are appointed by the ELA Management Board in accordance with Article 7(2) of the Rules of Procedure as members of the Mediation Board. Persons nominated as experts of the Mediation Board have been selected on the basis of their expertise and competences for dealing with disputes related to the different areas that fall within the scope of the mediation procedure<sup>13</sup>.

### The functions of the experts of the Mediation Board

The role of the expert, who is involved in the Mediation Board or in a panel, during the second stage of mediation, is to provide technical opinions and advice on the concrete case in order to facilitate the mediation process and the adoption of a solution.



## EXPERTS IN AN ADVISORY CAPACITY

The experts in advisory capacity can be identified and involved during both the first and the second stage of mediation. In the former case, it is the mediator who will involve them in the mediation process but always in agreement with the Member States; in the latter case, it is the Chair of the Mediation Board who will call in experts when needed.

The mediator or the Chair can invite as experts in an advisory capacity any individual with particular knowledge on or expertise in the areas that are relevant for the individual dispute and they can be involved on behalf of their organisation or in an individual independent capacity: experts from the European Commission, ELA or other EU agencies, representatives of national or European social partners, representatives from other European or national stakeholders but also individual independent experts (such as academics, former inspectors, etc) in accordance with Article 13(3) and (5) of the founding Regulation and with Article 19(19) and (20) of the Rules of Procedure.

### The functions of the experts in an advisory capacity

The experts in an advisory capacity are available for the parties during the first and second stages of mediation, depending on the case, to answer particular questions on the subject areas under dispute, to submit opinions, make recommendations and propose solutions. Experts in an advisory capacity will always be invited by either the Mediator or the Chair of the Mediation Board and after consultation and agreement of the Member States that are party to the dispute.

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.

<sup>13</sup> ELA's mandate is illustrated in Article 1(4) of the founding (EU) Regulation 2019/1149, available at this address: <https://eur-lex.europa.eu/legal-content/EN/TX-?uri=CELEX%3A32019R1149>.



## ELA MEDIATION SECRETARIAT

Within ELA, it is the ELA Mediation Secretariat, which is part of the Cooperation Support Unit, that supports the mediation procedure.

### The functions of ELA Mediation Secretariat

The ELA Mediation secretariat ensures that the information and communication between all actors involved in a particular dispute for which a mediation before ELA is requested, is running in accordance with the Rules of Procedure from the moment that an initiative is taken (being it by a Member State, SOLVIT or directly on the initiative of ELA itself) until the end of a mediation procedure.

The Mediation secretariat provides technical and logistical 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 a mediation. The ELA secretariat supports the mediation process by making available the necessary tools and instruments including guidance which the actors may need in order to facilitate the mediation process.

The ELA Mediation secretariat performs the administrative admissibility check through which it verifies that all the necessary formalities for the launch of the first stage of mediation have been correctly completed.

The ELA Mediation secretariat verifies that the non-binding opinions which have been adopted in particular mediation cases comply with the European legal framework and monitors whether the Member States report on the implementation of the non-binding opinions in accordance with the Rules of Procedure.



## 5. Preliminary stages of the mediation

Regardless of the way a request or initiative for mediation is brought before ELA, all Member States that are party to the dispute have to explicitly agree that they want to be engaged into a mediation. Mediation cannot be conducted against the will or without the involvement of all Member States concerned. This principle of the voluntary participation remains the cornerstone of the entire mediation procedure.

Before the mediation procedure can be formally launched, the ELA Mediation Secretariat will collect all necessary and relevant information from the Member States. This includes the Detailed Statements in which the Member States present (their views on) the dispute.

The ELA Mediation Secretariat will conduct an administrative admissibility check once all documents have been received from the Member States. Without a completed admissibility check the mediation procedure cannot be launched.





## 6. First stage of the mediation procedure and role mediators

The admissibility check conducted by ELA Mediation Secretariat may eventually lead to the formal **launch of the first stage of the mediation procedure**.

To that end the ELA Mediation Secretariat will send a 'Notification letter about the start of the first stage of mediation' by means of which the Member States are invited to:

- ❶ Select a mediator from the [list of appointed mediators](#) **within 10 working days**.
- ❷ Confirm or appoint a national representative for the first stage of mediation.

Member States will use the 'Letter to reply to the Notification on the start of the first stage of mediation' in which they confirm their willingness to participate in the mediation and their choice on the mediator.

**Member States have different ways to select the mediator and can indicate in their Reply:**

1. Their choice on one or more mediators from the list of appointed mediators;
2. Their agreement with all mediators from the list of appointed mediators;
3. Their disagreement with one or more of the proposed mediators from the [list of appointed mediators](#).

**Member states are encouraged to identify a mediator from the list of appointed mediators through direct bilateral contact in order to seek a common agreement.**

In a situation that Member States agree on a mediator, ELA will formally appoint the selected mediator. When Member States do not find an agreement on the selection of a mediator, ELA will take the initiative and propose the Member States a mediator from the list of appointed mediators, the selection of whom Member States have to agree with.

Once the mediator has been selected, s/he will receive the following templates from the ELA Mediation Secretariat:

TEMPLATES	
Notification of selection, which the Mediator needs to sign and return to the ELA Mediation Secretariat.	<a href="#">Available here</a>
Declaration of absence of conflict of interests, which the mediator needs to sign and return to the ELA Mediation Secretariat.	<a href="#">Available here</a>
Communication on the mediation outline	<a href="#">Available here</a>
Factual report	<a href="#">Available here</a>
Non-binding opinion	<a href="#">Available here</a>
Agreement to extend the reporting period	<a href="#">Available here</a>
Notification of extension of the stage of mediation	<a href="#">Available here</a>
Agreement to start the second stage of mediation	<a href="#">Available here</a>

The templates and forms which are made available to the Mediator are meant to support and facilitate the mediation procedure and the work of the mediator. Not all forms or templates that are being sent to the Mediator will actually be used as this is depending on the the process and result of the mediation itself.

As of the date on which the mediator has returned the signed '**Notification of selection**' to the ELA Mediation Secretariat, an indicative **45 working days** period commences, within which the first stage of the mediation is meant to be implemented with the goal to reach a common agreement on the dispute.

### Fast-track mediation

The Member States that are party to the dispute may commonly agree with the mediator during the first stage of mediation, to shorten the deadlines which are set out in the working arrangements, provided that the quality of the procedure and of the non-binding opinion can be preserved.

The first stage of mediation is thus in principle expected to last for 5 months maximum. However, during the mediation process, the procedure may be suspended or an early closure may occur<sup>14</sup>.

### What does the mediator do in case of closures or early suspensions?

From the moment the mediator is aware that the mediation may become suspended or risks to become interrupted s/he will seek the consent of the Member States about their willingness to continue the process and inform the ELA Mediation Secretariat that the procedure may become subject to suspension or early closure.

The first stage of the mediation procedure essentially aims at overcoming differences in viewpoints between the Member States on the application of the relevant EU labour mobility acquis in a particular case. The mediator facilitates the process with the aim to reconcile the divergent points of view of the Member States involved, which ultimately may result in a mutually acceptable solution. The appointed mediator consults the Member States in order to choose the most appropriate approach for the mediation.

<sup>14</sup> The different hypotheses that may lead to suspension or early closure are described in the General Guidance and Workflows for the ELA mediation procedure.

## How to select the appropriate approach for mediation?

First of all, **the mediator leads the process of the mediation** in terms of setting the agenda, choosing the language of communication and of planning the (physical and/or online) meetings and exchanges between the Member States.

**The mediator is hereby supported by ELA Mediation Secretariat** for the administrative and logistical support including interpretation 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 factual report and the non-binding opinion. Different approaches can be applied, and it is up to the mediator, and the Member States to decide on the most appropriate approach for organising 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:



Once the mediator has decided on the most appropriate approach to organise the proceedings, the mediator is encouraged to draw up what has been agreed with the Member States in the '**Mediation outline**'. This document is the basis on which the parties are engaging themselves for the further steps including time frame and respective commitments.

During the mediation process **professional expertise** in the domains of EU labour mobility and social security coordination can be made available to the Member States through the involvement of **experts in an advisory capacity** (see above).

## How can mediators involve the experts in advisory capacity?

The mediator can invite experts in an advisory capacity when Member States request it or on his/her own initiative, f.i. when s/he considers that the contribution of (an) expert(s) in an advisory capacity could be helpful for the development of the discussions and exchanges.

**The mediator must ensure that all Member States which are party to the dispute, consent to the involvement of the experts in an advisory capacity.**

**Once consent is obtained, mediators will inform by email or other means the ELA Mediation Secretariat about the involvement of the experts in an advisory capacity.** The mediator will then contact the expert in an advisory capacity and invite the expert to one or more sessions or meetings, or the provide a written opinion or advice.

The first stage of the mediation procedure will in principle end at the moment the standard 45 working day period has elapsed<sup>15</sup>. The final procedural step varies depending on the outcome of the mediation.

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

If the parties **agree on a non-binding opinion within the time span of 45 working days**, 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<sup>16</sup>. Member States can **provide feedback within 15 working days** counted as from the date the draft factual report and the non-binding opinion have been sent. The ELA Mediation Secretariat verifies, within the same time frame, whether the non-binding opinion is in its opinion complying with the EU labour mobility acquis. Once the ELA Mediation Secretariat has completed the check on compliance, **the mediator will have 15 working days** to finalise the factual report and the the non-binding opinion and send it to the ELA Mediation Secretariat.

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

If, on the other hand, the Member States have not agreed on a **non-binding opinion within time span of 45 working days**, they can decide to:

1. **Extend the first stage of mediation with an additional 15 working days.** In this case the mediator informs the ELA Mediation Secretariat about the extension through the '[Notification of extension of the stage of mediation](#)';
2. **End the first stage** and close the mediation;
3. **Agree to start a second stage** of mediation. In this case the mediator, with support of the ELA Mediation Secretariat, invites the Member States to sign the '[Agreement to start the second stage of mediation](#)'

In either case, the mediator must draw up the 'Factual report', in the same manner and timeframe described under 'Outcome A' and sent it to the ELA Mediation Secretariat.

<sup>15</sup> Without considering a possible suspension or extension of the mediation procedure.

<sup>16</sup> According to Article 19(10) of the Rules of Procedure the mediator: "[...] may, in agreement with the Member States that are party to the dispute, request an additional 10 working days for completing the report.[...]". The extension can be notified to the ELA Mediation Secretariat through the 'Agreement to extend the reporting period'.



## 7. Second stage of the mediation procedure and role Mediation Board

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

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 experts have been formally appointed by the ELA Management Board as members of the ELA Mediation Board.

The second stage of the mediation procedure can only be launched by the ELA Mediation Secretariat through the 'Notification to inform Member States that the second stage of mediation is about to start', if the following two conditions are simultaneously met:

- No solution was found during the first stage of mediation and the Member States that are party to the dispute did not agree on a non-binding opinion, and
- All Member States that are party to the dispute agree to continue the process and to launch the second stage of the mediation procedure<sup>17</sup>.

If the above conditions are fulfilled, the ELA Mediation Secretariat sends the '**Letter to the Chair**'<sup>18</sup> together with the necessary documents for the second stage of mediation.

TEMPLATES	
Letter to the Chair	<a href="#">Available here</a>
Declaration of absence of conflict of interests, which the Chair needs to sign and return to the ELA Mediation Secretariat.	<a href="#">Available here</a>
Letter to nominate the rapporteur	<a href="#">Available here</a>
Letter to appoint an expert	<a href="#">Available here</a>
Notification letter to inform the MSs and ELA about panel composition	<a href="#">Available here</a>
Factual report	<a href="#">Available here</a>
Non-binding opinion	<a href="#">Available here</a>
Agreement to extend the reporting period	<a href="#">Available here</a>

The Chair has **10 working days**, counted as of the date of notification about the start of the second stage of mediation, 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 in a particular case.

<sup>17</sup> 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 (Agreement to start the second stage of mediation).

<sup>18</sup> Apart from the documents mentioned in the table, which must or may be completed, the parties' detailed statements are also sent with the letter to the Chair.

## Criteria to select a panel or the entire Mediation Board

### THE STANDARD PROCEDURE

In order to ensure a most effective, speedy and efficient second stage of the mediation procedure, ELA suggests to appoint a panel of experts instead of the whole Mediation Board. It is recommended that the Chair ensures that the panel is composed of those experts of the Mediation Board who have relevant knowledge and expertise in relation to the nature and subject area of the dispute while respecting maximally and to the extent possible the necessary geographical and gender balance.

### THE EXCEPTIONAL PROCEDURE

However, in those cases where one or more of the following exceptional conditions occur, ELA recommends the Chair to request the entire Mediation Board to act as the mediating body during the second stage of the mediation.

- ❶ The dispute is of a particular complexity and/or touches on a wide range of areas and/or involves several Member States;
- ❷ The outcome of the dispute resolution may have significant implications for other Member States which are not party to the dispute;
- ❸ The mediation requires such a wide range of different skills which is better represented when involving the entire Mediation Board.

Be this as it may, it remains up to the Chair of the Mediation Board to decide on the composition of the Mediation Board/panel which will act as the mediating body during the second stage of the mediation procedure for a particular dispute/case.

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

1. Appoint and notify the selected experts and confirm their agreement to participate in the second stage of mediation, with the **'Letter to appoint an expert'**<sup>19</sup>;
2. Nominate a rapporteur from among the appointed experts, with the **'Nomination letter'**.
3. Inform, through a **'Notification letter about panel or Mediation Board composition'** 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.

As from the date when the Mediation Board or the panel is appointed, an indicative **45 working days** period commences within which the second stage of the mediation will be implemented with the goal to reach a common agreement on the dispute.

### Fast-track mediation

The Member States that are party to the dispute may commonly agree with the mediator during the first stage of mediation, to shorten the deadlines which are set out in the working arrangements, provided that the quality of the procedure and of the non-binding opinion can be preserved.

The second stage of mediation is in principle expected to last for 5 months maximum. However, during the mediation process, the procedure may be suspended, or an early closure may occur<sup>20</sup>. In addition, also during this second stage of the mediation, it may be necessary for ELA to interact with the AC in order to address social security coordination related matters<sup>21</sup>.

<sup>19</sup> In the letter to the experts and the rapporteur, the Chair includes the Detailed statements, the factual report and the declaration of absence of conflict of interests, which experts must sign and return to the ELA Mediation Secretariat.

<sup>20</sup> The different hypotheses that may lead to suspension or early closure are described in the General Guidance and Workflows for the ELA mediation procedure.

<sup>21</sup> In all cases where it is necessary to involve the AC, the appropriate Workflow guidance for AC-ELA interaction should be consulted and applied.

### What does the Chair do in case of closures or early suspensions?

From the moment the Chair is aware that the mediation may become suspended or risks to become interrupted s/he will seek the consent of the Member States about their willingness to continue the process and inform the ELA Mediation Secretariat that the procedure may become subject to suspension or early closure.

**The Chair of the Mediation Board leads the process of the mediation** in terms of setting the agenda, choosing the language of communication and of the planning of the (physical and/or online) meetings and exchanges between the Member States. The Chair is hereby **supported by ELA Mediation Secretariat** for the administrative and logistical support including interpretation services.

Similar to what is the case during the first stage of the mediation procedure there is **a need to have a predefined approach to mediation**, which must be agreed upon with the Member States and concretised into a plan for the mediation proceedings. The Chair consults the Member States in order to choose the most appropriate approach for the mediation.

### How to select the appropriate approach for mediation?

Different approaches for mediation can be applied, and it is up to the Chair to decide in consultation with the Member States on the most appropriate approach for organising 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:



Once the Chair has decided on the most appropriate approach, s/he is encouraged to draw up what has been agreed with the Member States in the 'Mediation outline'. This document is the basis on which the parties are engaging themselves for the further steps including time frame and respective commitments.

During the mediation process professional expertise in the domains of EU labour mobility and social security coordination can be made available to the Member States through the involvement of experts in an advisory capacity (see above).

### How can the Chair involve the experts in advisory capacity?

The Chair can invite experts in an advisory capacity when Member States request it or on his/her own initiative, f.i. when s/he considers that the contribution of (an) expert(s) in an advisory capacity could be helpful for the development of the discussions and exchanges.

**The Chair must ensure that all Member States** which are party to the dispute, consent to the involvement of the experts in an advisory capacity.

**Once consent is obtained, the Chair will inform** by email or other means the ELA Mediation Secretariat about the involvement of the experts in an advisory capacity. The Chair will then contact the expert in an advisory capacity and invite the expert to one or more sessions or meetings, or to provide a written opinion or advice.

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 elapsed**<sup>22</sup>. The final procedural steps vary depending on the outcome of the mediation.

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

If the parties **agree on a non-binding opinion within the time span of 45 working days** which is foreseen for the second stage of mediation, the Chair will guide the parties towards the end of the process. In that case, the rapporteur draws up a draft **'Final factual report', including the 'Non-binding opinion'**, which -after the approval of the Chair and the Deputy Chairs- is sent to the Member States and to ELA for comments and feedback<sup>23</sup>. Member States can **provide feedback within 15 working days** counted as from the date the draft factual report and the non-binding opinion have been sent. The ELA Mediation Secretariat verifies, in the same time limit, that the non-binding opinion adopted in complying in its opinion with the EU labour mobility acquis. Once the ELA Mediation Secretariat has completed the check on compliance, **the rapporteur will have 15 working days** to finalise the factual report, with the non-binding opinion annexed- and send it to ELA.

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

If, on the other hand, the Member States have **not agreed on a non-binding opinion within time span of 45 working days**, they can decide to:

1. **Extend the second stage of mediation with an additional 15 working days.** In this case the Chair informs the ELA Mediation Secretariat about the extension through the 'Notification of extension of the stage of mediation'.
2. **End the second stage** and close the mediation

At the end of the second stage of the mediation procedure, the rapporteur must always, draw up the **'Factual report'**, share 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 following the same timeframe described under 'Outcome A'.

## **8. What happens once the mediation is concluded?**

Once the mediation process is concluded and a mutually acceptable solution has been reached by the Member States, i.e. at the end of the first or second stage of the mediation procedure, Member States are required to report on the progress of implementation within a period of three months<sup>24</sup>. Member States will send their implementation reports to the ELA Mediation Secretariat.

<sup>22</sup> Without considering possible suspensions of the mediation procedure.

<sup>23</sup> According to Article 19(17) of the Rules of Procedure the rapporteur: "[...] may, in agreement with the Member States that are party to the dispute, request an additional 10 working days for completing the report.[...]". The extension can be notified to the ELA Mediation Secretariat through the 'Agreement to extend the reporting period'.

<sup>24</sup> Article 20 of the Rules of procedure for mediation of the European Labour Authority.



## 9. Annex I: Two mediation approaches for stage 1

### TWO MAIN MEDIATION APPROACHES FOR STAGE 1

#### THE STANDARD MEDIATION

**Key points:** Three sessions: Intake, Negotiation, Closing.

**+ Main advantage:** The process is very linear and allows the mediator to guide the parties, becoming a facilitator.

**- Main risk:** The mediator might discover deadlocks and factors preventing a settlement quite late in the process (probably during the negotiation session). This can result in unnecessary delays.

#### The process:

##### 1. INTAKE SESSION WITH PARTIES SEPARATELY

- Mediator contacts the parties separately;
- Introduces her/himself;
- Mediator explains her/his role and fields questions and concerns from each party;
- Checks to what extent those present at the mediation have authority to negotiate and agree to a mutually acceptable solution;
- Checks who will act as the national representative of the Member State;
- Checks whether there are any other organisations or experts in an advisory capacity in the respective delegations of the parties;
- Requests parties to submit and exchange a brief summary of the nature of the dispute, their respective positions and facts supporting it;
- Deals with exchange of any documents relevant to the dispute (and the level of confidentiality of the exchange);
- Finalises the logistics for, and timing of the process.

#### THE GUIDED MEDIATION

**Key points:** Three sessions: Intake (very thorough), Negotiation, Closing.

**+ Main advantage:** The intake session is very thorough; the mediator lets the parties discuss the approach they would like to follow and invites them to design the process. The focus is on understanding from the beginning why the parties have been unable to settle the dispute and based on that to develop a diagnosis which is then used to propose a more structured negotiation session. This can result in a consistent time saving.

**- Main risk:** Since the parties could be not immediately willing to cooperate, designating the process could turn out difficult.

#### The process:

##### 1. INTAKE, PLANNING & PREPARATION PHASE

The guiding mediator uses the first meeting and possibly further meetings to plan the remainder of the process with the help of the parties. The mediator's central concern here is to investigate the reasons why the parties have been unable to settle the dispute and based on that to develop a diagnosis which is then used to propose a more structured negotiation process (phase 2) aimed at improving the chances of a mutually acceptable result being achieved in an efficient and cost-effective manner. During this phase the merits of the dispute are not discussed, the focus is on process design.

**TWO MAIN MEDIATION APPROACHES FOR STAGE 1**

**THE STANDARD MEDIATION**

**THE GUIDED MEDIATION**

**Intake with parties separately**

- Mediator contacts parties separately & introduces her/himself;
- Explains the guided mediation and how his/her role and fields questions and concerns from each party;
- Obtains parties' consent to it;
- Attends to signature of outstanding documentation if any;
- Checks to what extent those present at the mediation have authority to negotiate and agree to a mutually acceptable solution;
- Checks who will act as the national representative of the Member State;
- Checks whether there are any other organisations or experts in an advisory capacity in the respective delegations of the parties;
- Requests parties to submit and exchange a brief summary of the nature of the dispute, their respective positions and facts supporting it;
- Arranges for a plenary session to plan and prepare for the negotiation phase (phase 2);

## TWO MAIN MEDIATION APPROACHES FOR STAGE 1

## THE STANDARD MEDIATION

## THE GUIDED MEDIATION

**Planning (plenary):**

- Mediator & parties engage in diagnostic process to identify the true nature of the dispute;
- Parties agree on exchange of relevant documentation;
- Identification of who needs to be involved either directly or indirectly to assist in finding an agreed solution, e.g., should the parties' principals be involved as well or meet before mediation? Or are there other entities that need to be consulted? If so, what role should the mediator play in preparing the parties for the meeting so that it is productive for settlement purposes?
- Identifying any legal issues involved and deciding how to deal with those;
- Identifying any other impediments or potential obstacles to reaching an agreed solution;
- Ensuring parties / their representatives have authority to negotiate and reach agreement;
- If multiple parties are involved, should they be broken into groups and meet independently with the mediator?
- What are the roles of the lawyer, other representatives and the experts in the process?
- Agreeing on the format of the negotiation phase, i.e., a mix of plenary and side sessions, side sessions only or only plenary ones?
- What are likely areas of impasse during the negotiations? What are effective methods for overcoming any impasse?
- Is disagreement among experts a potential cause of impasse? If so, how can differences between the experts be identified so that they can be factored into a settlement choice?
- Finalises the logistics for, and timing of the process.

**TWO MAIN MEDIATION APPROACHES FOR STAGE 1**

THE STANDARD MEDIATION	THE GUIDED MEDIATION
<p><b>2. NEGOTIATION PHASE</b></p> <ul style="list-style-type: none"> <li>• Opening statements (normally in plenary);</li> <li>• Deciding on issues to be discussed (agenda setting);</li> <li>• Using plenary and confidential side meetings the mediator                             <ul style="list-style-type: none"> <li>&gt; Gains understanding of party positions and background facts</li> <li>&gt; Explores party concerns, needs &amp; interests (problem identification)</li> <li>&gt; Facilitates option (solution generation)</li> <li>&gt; Facilitates negotiations between the parties</li> <li>&gt; Facilitates exchange of settlement proposals</li> </ul> </li> </ul> <p><b>3. CLOSING PHASE</b></p> <ul style="list-style-type: none"> <li>• Mediator drafts factual report and a non-binding opinion or declares deadlock;</li> <li>• Advises parties of next steps open to them</li> <li>• May assist parties in narrowing down issues in dispute and/or agreeing on a set of facts;</li> <li>• Mediator drafts &amp; sends factual report and non-binding opinion to ELA.</li> </ul>	<p><b>2. NEGOTIATION PHASE</b></p> <ul style="list-style-type: none"> <li>• Opening statements (normally in plenary);</li> <li>• Deciding on issues to be discussed (agenda setting);</li> <li>• Using plenary and confidential side meetings the mediator                             <ul style="list-style-type: none"> <li>&gt; Gains understanding of party positions and background facts</li> <li>&gt; Explores party concerns, needs &amp; interests (problem identification)</li> <li>&gt; Facilitates option (solution generation)</li> <li>&gt; Facilitates negotiations between the parties</li> <li>&gt; Facilitates exchange of settlement proposals</li> </ul> </li> </ul> <p><b>3. CLOSING PHASE</b></p> <ul style="list-style-type: none"> <li>• Mediator drafts factual report and a non-binding opinion or declares deadlock;</li> <li>• Advises parties of next steps open to them</li> <li>• May assist parties in narrowing down issues in dispute and/or agreeing on a set of facts;</li> <li>• Mediator drafts &amp; sends factual report and non-binding opinion to ELA.</li> </ul>

## 10. Annex II: Two mediation approaches for stage 2

### TWO MAIN MEDIATION APPROACHES FOR STAGE 2

#### THE STANDARD MEDIATION

**Key points:** Three sessions: Intake, Negotiation, Closing.

**Main advantage:** The process is very linear and allows the mediator to guide the parties, becoming a facilitator.

**Main risk:** The mediator might discover deadlocks and factors preventing a settlement quite late in the process (probably during the negotiation session). This can result in unnecessary delays.

#### The process:

##### 1. INTAKE SESSION WITH PARTIES SEPARATELY

- The Chair contacts the parties separately;
- Introduces her/himself;
- The Chair explains her/his role and fields questions and concerns from each party;
- Checks to what extent those present at the mediation have authority to negotiate and agree to a mutually acceptable solution;
- Checks who will act as the national representative of the Member State;
- Checks whether there are any other organisations or experts in an advisory capacity in the respective delegations of the parties;
- Requests parties to submit and exchange a brief summary of the nature of the dispute, their respective positions and facts supporting it;
- Deals with exchange of any documents relevant to the dispute (and the level of confidentiality of the exchange);
- Finalises the logistics for, and timing of the process.

#### THE GUIDED MEDIATION

**Key points:** Three sessions: Intake (very thorough), Negotiation, Closing.

**Main advantage:** The intake session is very thorough; the mediator lets the parties discuss the approach they would like to follow and invites them to design the process. The focus is on understanding from the beginning why the parties have been unable to settle the dispute and based on that to develop a diagnosis which is then used to propose a more structured negotiation session. This can result in a consistent time saving.

**Main risk:** Since the parties could be not immediately willing to cooperate, designating the process could turn out difficult.

#### The process:

##### 1. INTAKE, PLANNING & PREPARATION PHASE

The guiding Chair/Mediation Board uses the first meeting and possibly further meetings to plan the remainder of the process with the help of the parties. The Chair's central concern here is to investigate the reasons why the parties have been unable to settle the dispute and based on that to develop a diagnosis which is then used to propose a more structured negotiation process (phase 2) aimed at improving the chances of a mutually acceptable result being achieved in an efficient and cost-effective manner. During this phase the merits of the dispute are not discussed, the focus is on process design.

**TWO MAIN MEDIATION APPROACHES FOR STAGE 2**

THE STANDARD MEDIATION	THE GUIDED MEDIATION
	<ul style="list-style-type: none"> <li>• Intake with parties separately</li> <li>• The Chair contacts parties separately and introduces her/himself;</li> <li>• Explains the guided mediation and how his/her role, together with the Mediation Board can help during the process;</li> <li>• Obtains parties' consent to it;</li> <li>• Attends to signature of outstanding documentation if any;</li> <li>• Checks to what extent those present at the mediation have authority to negotiate and agree to a mutually acceptable solution;</li> <li>• Checks who will act as the national representative of the Member State;</li> <li>• Checks whether there are any other organisations or experts in an advisory capacity in the respective delegations of the parties;</li> <li>• Requests parties to submit and exchange a brief summary of the nature of the dispute, their respective positions and facts supporting it;</li> <li>• Arranges for a plenary session to plan and prepare for the negotiation phase (phase 2);</li> </ul>

**TWO MAIN MEDIATION APPROACHES FOR STAGE 2**
**THE STANDARD MEDIATION**
**THE GUIDED MEDIATION**
**Planning (plenary):**

- The Chair/Mediation Board & parties engage in diagnostic process to identify the true nature of the dispute;
- Parties agree on exchange of relevant documentation;
- Identification of who needs to be involved either directly or indirectly to assist in finding an agreed solution, e.g., should the parties' principals be involved as well or meet before mediation? Or are there other entities that need to be consulted? If so, what role should the Chair/Mediation Board play in preparing the parties for the meeting so that it is productive for settlement purposes?
- Identifying any legal issues involved and deciding how to deal with those;
- Identifying any other impediments or potential obstacles to reaching an agreed solution;
- Ensuring parties / their representatives have authority to negotiate and reach agreement;
- If multiple parties are involved, should they be broken into groups and meet independently with the Mediation Board?
- What are the roles of the lawyer, other representatives and the experts in the process?
- Agreeing on the format of the negotiation phase, i.e., a mix of plenary and side sessions, side sessions only or only plenary ones?
- What are likely areas of impasse during the negotiations? What are effective methods for overcoming any impasse?
- Is disagreement among experts a potential cause of impasse? If so, how can differences between the experts be identified so that they can be factored into a settlement choice?
- Finalises the logistics for, and timing of the process.

**TWO MAIN MEDIATION APPROACHES FOR STAGE 2**
**THE STANDARD MEDIATION**
**2. NEGOTIATION PHASE**

- Opening statements (normally in plenary);
- Deciding on issues to be discussed (agenda setting);
- Using plenary and confidential side meetings the mediator
  - > Gains understanding of party positions and background facts
  - > Explores party concerns, needs & interests (problem identification)
  - > Facilitates option (solution generation)
  - > Facilitates negotiations between the parties
  - > Facilitates exchange of settlement proposals
  - > Proposes hearings

**3. CLOSING PHASE**

- The rapporteur drafts factual report and a non-binding opinion or declares deadlock;
- The Chair advises parties of next steps open to them
- he Chair may assist parties in narrowing down issues in dispute and/or agreeing on a set of facts;
- The rapporteur finalises and sends factual report and non-binding opinion (if any) to ELA.

**THE GUIDED MEDIATION**
**2. NEGOTIATION PHASE**

- Opening statements (normally in plenary);
- Deciding on issues to be discussed (agenda setting);
- Using plenary and confidential side meetings the mediator
  - > Gains understanding of party positions and background facts
  - > Explores party concerns, needs & interests (problem identification)
  - > Facilitates option (solution generation)
  - > Facilitates negotiations between the parties
  - > Facilitates exchange of settlement proposals
  - > Proposes hearings

**3. CLOSING PHASE**

- The rapporteur drafts factual report and a non-binding opinion or declares deadlock;
- The Chair advises parties of next steps open to them
- he Chair may assist parties in narrowing down issues in dispute and/or agreeing on a set of facts;
- The rapporteur finalises and sends factual report and non-binding opinion (if any) to ELA.



## **11. Annex III: Templates**

## 11.1 NOTIFICATION OF SELECTION, FROM ELA TO THE MEDIATOR

---

[Mr/Ms Insert name and last name of the addressee]  
[Organisation/entity/department]  
[Address]  
[City]  
[Postal code]  
[Email]

**Subject: Notification of selection of the mediator, case No [ ]**

**Ref.: [Please write here the reference number]**

Dear [Mr/Ms first and last name of mediator],

Please be informed that you have been selected by [Member State No 1 and Member State No 2 OR the European Labour Authority (hereafter 'ELA')] to act as mediator in the mediation procedure No [ ], between:

[Member State No 1], represented by [name of the national representative No 1], and

[Member State No 2], represented by [name of the national representative No 2],

The mediation is to be conducted in accordance with the procedures set forth in the Rules of Procedure for mediation of the European Labour Authority, adopted on 10 November 2021, available at this website.

Please find hereby attached the following documents:

1. The detailed statements of [Member State No 1] and [Member State No 2], parties to mediation procedure No [ ];
2. The declaration of absence of conflict of interests, which must be signed and returned to the sender, as it contains the declaration of absence of conflicts of interest;
3. The factual report, which is the template to be used to draw up the final factual report.

If there is any reason why you cannot conduct this particular dispute, please notify [Mr/Ms first name and last name] of the ELA secretariat immediately.

Should you have any questions regarding this assignment, please do not hesitate to contact [Mr/Ms first name and last name] of the ELA secretariat at [phone and/or email].

At the conclusion of the mediation, please submit to notify [Mr/Ms first name and last name] of the ELA secretariat the final factual report foreseen by article 19(10) of the Rules of Procedure.

Thank you for your service.

Respectfully yours,

**Name and Last name:**  
**Organisation/Entity/Department:**  
**Function:**  
**Place and date of signature:**  
**Signature:**


*Documents attached to the notification of selection:*

- Declaration of absence of conflict of interests.
- Factual report template.
- The detailed statements of the Member States party to the dispute.

## 11.2 DECLARATION OF ABSENCE OF CONFLICT OF INTEREST, FROM THE MEDIATOR/ CHAIR TO ELA

---

[Mr/Ms Insert the name of the addressee]  
Executive Director/Head of the Cooperation  
Support Unit  
the European Labour Authority  
Landererova 12  
81109 Bratislava Slovakia  
[mediation@ela.europa.eu](mailto:mediation@ela.europa.eu)

**Subject: Declaration of absence of conflict of interests**

**Ref.: [Please write here the reference number]**

[To whom it may concern/Dear Sir/Dear Madam],

As required by Article 4(4) of the Rules of Procedure for mediation of the European Labour Authority, on 10 November 2021, I [First name and last name], the undersigned, hereby declare that I have no actual or potential conflict of interest that may negatively affect the performance of the duties that I have committed to duly and appropriately serve as a:

- Mediator
- Expert of the Mediation Board
- Chair of the Mediation Board
- Deputy Chair of the Mediation Board
- Expert participating in an advisory capacity

in mediation procedure No [ ], to which I have been appointed or in which I have been invited to participate by the European Labour Authority (hereafter 'ELA') by the letter of appointment received on the [ ] day of the month of [ ], in the year [ ].

I am aware that a conflict of interest is a situation whereby my private interests and affiliations could actually or potentially be perceived as to negatively influence my independence or impartiality in this particular dispute or loyalty to ELA, and includes:

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

If such a situation arises, I understand that ELA shall assess my perceived situation of conflict of interest and shall take any appropriate measure in order to ensure the independence and impartiality of the mediation procedure. ELA shall thus reach a duly reasoned decision with respect to my perceived situation of conflict of interest and the performance of my duties.

I undertake to abide by the decision of ELA.

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

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

Yours respectfully,

**Name and Last name:**  
**Organisation/Entity/Department:**  
**Function:**  
**Place and date of signature:**  
**Signature:**


## 11.3 COMMUNICATION ON THE MEDIATION OUTLINE, STYLE AND RULES FROM MEDIATOR/CHAIR TO ELA

---

[Mr/Ms Insert the name of the addressee]  
Executive Director/Head of the Cooperation  
Support Unit  
the European Labour Authority  
Landererova 12  
81109 Bratislava Slovakia  
[mediation@ela.europa.eu](mailto:mediation@ela.europa.eu)

**Subject: Communication on the mediation outline for case No [ ]**

**Ref.: [Please write here the reference number]**

[To whom it may concern/Dear Sir/Dear Madam],

I [First name and last name], the undersigned, in my capacity as [mediator/Chair] for mediation procedure No [\_\_\_\_], hereby inform the European Labour Authority, (hereafter 'ELA'), that following review of the materials received, consultation with the parties and a full evaluation of the dispute, I propose to pursue the following approach:

Please indicate whether you propose a:

- Standard mediation procedure
- Guided mediation procedure
- Other procedure (please specify in the box below).

Please provide further details about your choice:

Please list all elements related to technical organisation of which you would like to inform ELA before the launch of the:

- first stage of mediation
- second stage of mediation

(e.g. timeline, meetings, etc.)

**Name and Last name:**

**Organisation/Entity/Department:**

**Function:**

**Place and date of signature:**

**Signature:**

## 11.4 THE FACTUAL REPORT, FROM THE MEDIATOR/RAPPORTEUR TO ELA

---

[Mr/Ms Insert the name of the addressee]  
Executive Director/Head of the Cooperation  
Support Unit  
the European Labour Authority  
Landererova 12  
81109 Bratislava Slovakia  
[mediation@ela.europa.eu](mailto:mediation@ela.europa.eu)

**Subject: Factual report, case No [ ]**

**Ref.: [Please write here the reference number]**

[To whom it may concern/Dear Sir/Dear Madam],

Case No [ ] started on the [ ] day of the month of [ ], in the year [ ].

- First stage of mediation
- Second stage of mediation

Member State No 1 involved [ ]

Member State No 2 involved [ ]

Member State No 3 involved [ ]

First name and last name of the mediator/rapporteur [ ]

### Introduction

Please indicate:

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

Write the introduction here:

### Legal context

Please indicate:

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

Write the legal context here:

## Problem determination

Please indicate:

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

Write the determination of the problem here:

## Issue identification

Please indicate:

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

Write the identification of the issue here:

## Generation and evaluation of explored solutions

Please indicate:

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

Write your evaluation here:

## Non-binding opinion (if any)

Have parties agreed on a non-binding opinion?

YES

NO

Write your observations about the non-binding opinion here:

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

## Conclusion

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

Write your conclusion here:

**Name and Last name:**

**Organisation/Entity/Department:**

**Function:**

**Place and date of signature:**

**Signature:**


*Documents attached to the factual report:*

-  The non-binding opinion (if any).

## 11.5 NON-BINDING OPINION, FROM THE MEDIATOR/RAPPORTEUR TO ELA

---

**Subject: Non-binding opinion, case No [ ]**

**Ref.: [Please write here the reference number]**

Between

[First name and surname], in his/her capacity of [Please specify the role covered], representing [Name of Member State No 1]

And

[First name and surname], in his/her capacity of [Please specify the role covered], representing [Name of Member State No 2]

for the mediation procedure No [ ], currently at its

First stage

Second stage

the following is agreed, in the presence of [First name and surname], in his/her capacity of [mediator/rapporteur] :

Please provide below a description of the

- Mutually acceptable solution
- Timeline for implementing the solution
- Agreed follow-up
- Recommendations

Describe the content of the non-binding opinion here:

([Member State No 1])

**Name and Last name:**

**Organisation/Entity/Department:**

**Function:**

**Place and date of signature:**

**Signature:**

([Member State No 1])

**Name and Last name:**

**Organisation/Entity/Department:**

**Function:**

**Place and date of signature:**

**Signature:**



## 11.6 AGREEMENT TO EXTEND THE REPORTING PERIOD, FROM MEDIATOR/CHAIR TO ELA

---

[Mr/Ms Insert the name of the addressee]  
Executive Director/Head of the Cooperation  
Support Unit  
the European Labour Authority  
Landererova 12  
81109 Bratislava Slovakia  
[mediation@ela.europa.eu](mailto:mediation@ela.europa.eu)

**Subject: Communication on the mediation outline for case No [ ]**

**Ref.: [Please write here the reference number]**

[To whom it may concern/Dear Sir/Dear Madam],

I, the undersigned, [First name and last name], appointed as [mediator/Chair/rapporteur], for mediation procedure No [ ], hereby inform the European Labour Authority, hereafter 'ELA', that

[Member State No 1], represented by [name of national representative No 1],

and

[Member State No 2], represented by [name of national representative No 2]

parties to the

first

second

stage of the above-mentioned mediation procedure, have agreed with the [mediator/rapporteur] for an extension of the time given to the latter for the drafting of the factual report on this [ ] day of the month of [ ], in the year [ ].

The [mediator/rapporteur] will have until the [ ] day of the month of [ ], in the year [ ] to draft the factual report and send it to the Member States and to ELA, and to the Mediation Board (or the panel), in case of second stage of mediation.

([Mediator/Chair/rapporteur])

**Name and Last name:**

**Organisation/Entity/Department:**

**Function:**

**Place and date of signature:**

**Signature:**

([Member State No 1])

**Name and Last name of  
national representative:**

**Organisation/Entity/Department:**

**Function:**

**Place and date of signature:**

**Signature:**

([Member State No 2])

**Name and Last name of  
national representative:**

**Organisation/Entity/Department:**

**Function:**

**Place and date of signature:**

**Signature:**

## 11.7 NOTIFICATION OF EXTENSION OF THE STAGE OF MEDIATION, FROM MEDIATOR/ CHAIR TO ELA

---

[Mr/Ms Insert the name of the addressee]  
Executive Director/Head of the Cooperation  
Support Unit  
the European Labour Authority  
Landererova 12  
81109 Bratislava Slovakia  
[mediation@ela.europa.eu](mailto:mediation@ela.europa.eu)

**Subject: Notification of extension of the [first/second] stage of mediation, case No [ ]**

**Ref.: [Please write here the reference number]**

[To whom it may concern/Dear Sir/Dear Madam],

I, I, the undersigned [first name and surname], in my capacity as [mediator/Chair] for mediation procedure No [ ], hereby inform the European Labour Authority, hereafter 'ELA', that

[Member State No 1], represented by [name of national representative No 1],

and

[Member State No 2], represented by [name of national representative No 2]

as parties to the

- First
- Second

stage of the above-mentioned mediation procedure, on the [ ] day of the month of [ ], in the year [ ], agreed to extend the

- First stage of mediation.
- Second stage of mediation.

Therefore, following the 15 working days extension, the date on which the stage will end will be on the [ ] day of the month of [ ], in the year [ ].

**Name and Last name:**  
**Organisation/Entity/Department:**  
**Function:**  
**Place and date of signature:**  
**Signature:**


## 11.8 AGREEMENT TO START THE SECOND STAGE OF MEDIATION, FROM MEDIATOR/ CHAIR TO ELA

---

[Mr/Ms Insert the name of the addressee]  
Executive Director/Head of the Cooperation  
Support Unit  
the European Labour Authority  
Landererova 12  
81109 Bratislava Slovakia  
[mediation@ela.europa.eu](mailto:mediation@ela.europa.eu)

**Subject:** Agreement to start the second stage of mediation, case No [ ]

**Ref.:** [Please write here the reference number]

[To whom it may concern/Dear Sir/Dear Madam],

I, the undersigned [First name and Last name], in my capacity as mediator for mediation procedure No [ ], hereby inform the European Labour Authority, hereafter 'ELA', that

[Member State No 1], represented by [name of national representative No 1],

and

[Member State No 2], represented by [name of national representative No 2],

parties to the first stage of the above-mentioned mediation procedure, on the [ ] day of the month of [ ], in the year [ ], jointly agreed to continue the mediation procedure to a second stage. The first stage of mediation, which ended on the [ ] day of the month of [ ], in the year [ ], did not result in a non-binding opinion.

By virtue of this agreement, the above-mentioned Member States therefore undertake to conclude the first stage of mediation and subsequently receive notification of commencement of the second stage from ELA no later than 10 working days from submission of the final factual report of the mediator, as stipulated in Article 16(2) of the Rules of procedure for mediation of the European Labour Authority.

([Mediator])

**Name and Last name:**

**Organisation/Entity/Department:**

**Function:**

**Place and date of signature:**

**Signature:**

([Member State No 1])

**Name and Last name of national representative:**

**Organisation/Entity/Department:**

**Function:**

**Place and date of signature:**

**Signature:**

([Member State No 2])

**Name and Last name of national representative:**

**Organisation/Entity/Department:**

**Function:**

**Place and date of signature:**

**Signature:**

## 11.9 LETTER TO THE CHAIR, FROM ELA TO THE CHAIR

---

[Mr/Ms Insert the name of the addressee]  
Executive Director/Head of the Cooperation  
Support Unit  
the European Labour Authority  
Landererova 12  
81109 Bratislava Slovakia  
[mediation@ela.europa.eu](mailto:mediation@ela.europa.eu)

**Subject: Letter to the Chair of the Mediation Board, case No [ ]**

**Ref.: [Please write here the reference number]**

[To whom it may concern/Dear Sir/Dear Madam],

This letter is to inform you as Chair of the Mediation Board until the [ ] day of the month of [ ], in the year [ ], that [Member State No 1], represented by [name of national representative No 1], and [Member State No 2], represented by [name of national representative No 2], parties to mediation procedure No [ ] before the European Labour Authority (hereafter 'ELA'), on the [ ] day of the month of [ ], in the year [ ], agreed to start a second stage of mediation before ELA.

The mediation is to be conducted in accordance with the procedures set forth in the Rules of Procedure for mediation of the European Labour Authority adopted on 10 November 20, available at this website.

Please find attached the following documents for your information and preparation:

1. The detailed statements of [Member State No 1] and [Member State No 2], parties to mediation procedure No [ ];
2. The declaration of absence of conflict of interests, which must be signed and returned to the sender;
3. The factual report, which is the template to be used to draw up the final factual report and which needs to be sent to the rapporteur (by using the letter to appoint the rapporteur);
4. The letter to appoint the rapporteur.

If there is any reason why you cannot conduct this mediation, please notify [Mr/Ms first name and last name] of the ELA secretariat immediately at [email].

Should you have any questions regarding this assignment, please do not hesitate to contact [Mr/Ms First name and last name] of the ELA secretariat at [phone and/or email].

At the conclusion of the mediation, please submit the final factual report foreseen by article 19(17) of the Rules of Procedure to [Mr/Ms First name and last name] of the ELA secretariat at [email].

Thank you for your service.

Respectfully yours,

**Name and Last name:**  
**Organisation/Entity/Department:**  
**Function:**  
**Place and date of signature:**  
**Signature:**


*Documents attached to the letter to the Chair:*

- The detailed statements of the Member States party to the dispute.
- Declaration of absence of conflict of interests.
- Factual report template.
- Letter to nominate the rapporteur.

## 11.10 NOMINATION LETTER, FROM THE CHAIR TO THE RAPPORTEUR

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[Mr/Ms Insert name and last name of the addressee]  
[Organisation/entity/department]  
[Address]  
[City]  
[Postal code]  
[Email]

**Subject: Letter to nominate the rapporteur of the mediation board/panel, case No [ ]**

**Ref.: [Please write here the reference number]**

[Dear Sir/Dear Madam] [ First name and last name of the Rapporteur],

I, the undersigned, [first name and last name], in my capacity as Chair for the mediation procedure No [\_\_\_\_], currently at its second stage, have selected you to act as the rapporteur, for the mediation procedure No [\_\_\_\_].

As an expert on the Mediation Board/Panel, you have been appointed to be the rapporteur for the following reasons:

Write your answer here:

The tasks of the rapporteur are set out in the Rules of Procedure for mediation of the European Labour Authority (hereafter 'ELA') adopted on 10 November 2021, available at this website.

Please find attached the following documents:

1. The detailed statements of [Member State No 1] and [Member State No 2], parties to mediation procedure No [\_\_\_\_];
2. The factual report, which is the template to be used to draw up the final factual report.
3. The declaration of absence of conflict of interests, which must be signed and returned to the sender, as it contains the declaration of absence of conflicts of interest;

If there is any reason why you cannot conduct this mediation, please notify [Mr/Ms first name and last name] of the ELA secretariat immediately at [email]

Should you have any questions about this assignment, please do not hesitate to contact [Mr/Ms first name and last name], of the ELA secretariat at [phone and/or email].

At the conclusion of the mediation, please submit the final factual report foreseen by article 19(17) of the Rules of procedure to [Mr/Ms first name and surname] of the ELA secretariat at [email], to the Member States party to the dispute and to ELA.

Thank you for your service.

Respectfully yours,

**Name and Last name:**  
**Organisation/Entity/Department:**  
**Function:**  
**Place and date of signature:**  
**Signature:**

*Documents attached to the letter to the expert:*

- The detailed statements of the Member States party to the dispute.
- The factual report.
- Declaration of absence of conflict of interests.

## 11.11 LETTER TO APPOINT THE EXPERT, FROM THE CHAIR TO THE EXPERT

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[Mr/Ms Insert name and last name of the addressee]  
[Organisation/entity/department]  
[Address]  
[City]  
[Postal code]  
[Email]

**Subject:** Letter to appoint the expert of the mediation board/panel, case No [ ]

**Ref.:** [Please write here the reference number]

Dear [Mr/Ms Expert first name and last name],

I, the undersigned, [ first name and last name] have selected you to act as an expert, part of the Mediation Board, in the dispute between:

[Member State No 1], represented by [name of the national representative No 1], and

[Member State No 2], represented by [name of the national representative No 2].

The mediation is to be conducted in accordance with the procedures set forth in the Rules of Procedure for mediation of the European Labour Authority, adopted on 10 November 2021, available at this website.

Please find attached the following documents:

1. The detailed statements of [Member State No 1][Member State No 1] and [Member State No 2][Member State No 2], parties to mediation procedure No [ ]
2. The declaration of absence of conflict of interests, which must be signed and returned to the sender, as it contains the declaration of absence of conflicts of interest;

If there is any reason why you cannot participate as an expert in this mediation, please notify [Mr/Ms first name and last name] of the ELA secretariat, or the undersigned immediately.

Should you have any questions regarding this assignment, please do not hesitate to contact [ Mr/Ms first name and last name], of the ELA secretariat at [Please indicate your phone and/or email].

Thank you for your service.

Respectfully yours,

**Name and Last name:**  
**Organisation/Entity/Department:**  
**Function:**  
**Place and date of signature:**  
**Signature:**


*Documents attached to the letter to the expert:*

- The detailed statements of the Member States party to the dispute.
- Declaration of absence of conflict of interests.

## 11.12 NOTIFICATION LETTER TO INFORM THE MEMBER STATES AND ELA OF THE COMPOSITION OF THE PANEL, FROM THE CHAIR TO MS(S) AND ELA

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[Mr/Ms Insert name and last name of the addressee]  
[Organisation/entity/department]  
[Address]  
[City]  
[Postal code]  
[Email]

**Subject: Notification about [panel/Mediation Board] composition, case No [ ]**

**Ref.: [Please write here the reference number]**

[To whom it may concern/Dear Sir/Dear Madam],

I, the undersigned, [First name and last name], in my capacity as Chair for mediation procedure No [ ], hereby inform

[Member State No 1], represented by [name of national representative No 1]

[Member State No 2], represented by [name of national representative No 2]

and

the European Labour Authority (hereafter 'ELA'),

that in accordance with Article 8 C of the Rules of Procedure for mediation of the European Labour Authority, the Chair for mediation procedure No [ ], has appointed:

- The entire Mediation Board
- A panel of experts

to act in the second stage of the aforementioned procedure.

The Chair is therefore pleased to inform you that the composition of the [Mediation Board/panel] will be:

Name and Surname	Role
[ ]	Chair
[ ]	Deputy Chair
[ ]	Rapporteur
[ ]	Expert
[ ]	Expert
[ ]	...

The second stage of mediation will be handled in compliance with the rules set out in the Rules of Procedure for mediation of the European Labour Authority adopted on 10 November 2021, available at [this website](#).

**Name and Last name:** [ ]  
**Organisation/Entity/Department:** [ ]  
**Function:** [ ]  
**Place and date of signature:** [ ]  
**Signature:** [ ]

