



DRAFT AGENDA

6th meeting of the Working Group on Mediation

Subject: Guidance on the ELA Mediation procedure

25 October 2022

Videoconference meeting: <https://ela.webex.com/meet/webex3>

No.	Indicative timing ¹	Agenda item
	12.30 - 13.00	<i>Connection</i>
1	13.00 - 13.15	Welcome and introduction Adoption of agenda
2	13.15 - 14.15	Guidance on the ELA Mediation procedure (part 1)
3	14.15 - 14.30	Break
4	14.30 - 15.30	Guidance on the ELA Mediation procedure (part 2)
5	15.30 - 16.00	Concluding remarks
<i>End of meeting</i>		

¹ Timings are indicative and may vary depending on the progress on the agenda.



Sixth meeting of the European Labour Authority Working Group on Mediation

25 October 2022

- Summary of deliberations -

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

Welcome and Introduction

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

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

Guidance on the ELA Mediation Procedure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Concluding remarks

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

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

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



DRAFT AGENDA

5th meeting of the Working Group on Mediation

Subject: Cooperation Agreement between ELA and the Administrative Commission

3 December 2021

Videoconference meeting: <https://ela.webex.com/meet/webex3>

No.	Indicative timing ¹	Agenda item
	10.00-10.30	Connection
1	10.30-10.45	Welcome and introduction Adoption of agenda
2	10.45-12.15	Draft Cooperation agreement between the Administrative Commission and European Labour Authority Ref: Working document WD 6.0
3	12.15-12.30	Conclusion and next steps for the adoption of the text both by ELA and by the AC
End of meeting		

¹ Timings are indicative and may vary depending on the progress on the agenda.



Fifth meeting of the European Labour Authority Working Group on Mediation

03 December 2021

- Summary of deliberations -

The European Labour Authority (hereafter 'ELA') Working Group on Mediation (hereafter 'the Group') held its fifth meeting on 3rd of December 2021, by video conference, with a view to discuss and approve the draft Cooperation Agreement between the ELA and the Administrative Commission (hereafter 'AC').

The agenda of the meeting comprised three items: (1) Welcome and introduction, (2) Presentation of the draft Cooperation Agreement between the ELA and the AC (Ref. Working Document WD 6.0), Discussion, and (3) Conclusion and next steps for the adoption of the text both by ELA and the AC.

Welcome and Introduction

The Chair welcomed the participants, and proceeded to present the points on the agenda. The agenda was subsequently adopted.

In the introductory remarks, the Chair gave an update on the latest developments since the last meeting of the Group on the 30th of September and 01st of October 2021. The Chair informed that the Rules of Procedure (RoP) for Mediation as well as the ELA – SOLVIT agreement were adopted by the Management Board during the last meeting on the 10th of November. Furthermore, the ELA and the Leading Delegations of the AC reached an agreement on the text of the Cooperation Agreement during the last meeting which took place on the 18th of November (which text was circulated with the experts of the Group on the same day).

In conclusion, the Chair informed that the summary of the 4th meeting of the Group was circulated by the Secretariat on the 25th of October, and is available on the ELA's website in a dedicated page to mediation (www.ela.europa.eu/mediation).

Presentation of the draft Cooperation Agreement between the ELA and the AC (Ref. Working Document - WD 6.0)

The Chair introduced the draft Cooperation Agreement between the ELA and the AC by giving a short overview of the written positions exchanged and advancements that occurred since the last meeting with the ELA and the AC on the 29th of June. The ELA received the first draft prepared by the Leading Delegations on the 15th of September, in which the ELA provided comments and suggestions sent on the 19th of October; followed by an exchange of comments by the AC, sent to the ELA on the 5th of November. On the basis of the substantial progress made, the written draft was finalised at a meeting on the 18th of November.

The Chair invited the Chair of the AC to take the floor for an introductory message. The Chair of the AC congratulated the ELA Mediation Team and the Leading Delegations of the AC for the good collaboration and finalisation of the agreement in one year. The Chair of the AC revealed that the draft of the Cooperation Agreement will be presented to the AC by the Leading Delegations of the AC at the next AC meeting, on the 15th and 16th of December with the aim to be approved by the AC.

There was a question raised by a member if the draft Cooperation Agreement between the ELA and the AC is going to be on AC agenda for approval on its meeting since the member has information it is now on the agenda at the 15th of December for presentation and discussion only. The Chair of the AC answered that the agenda will be updated and sent again and there will be no delay in this regard.

The Chair invited two members of the ELA Mediation Team to present the draft Cooperation Agreement (WD 6.0.).

Discussion

After the presentation, the Chair opened the discussion.

In general, the experts fully supported the draft Cooperation Agreement between the ELA and the AC, and congratulated both bodies for the quality of the agreement presented. Some questions and comments were raised as follows.

The experts requested clarification for the subjectivity of the expression “within a reasonable period of time” (Article 1(4)) for the request of information between the ELA and the AC instead of a more detailed deadline. The Chair and the AC representatives stressed that any fixed deadline could be too short, and depending on the situation and its own challenges, it would be reasonable to allow for more time until the exchange of information.

Experts highlighted concerns about the access to information, specifically, containing confidential or sensitive information (Article 3(j)); and expressed interest to receive more details about the purpose of the repository of information between the ELA and the AC (Article 4(1)). The Chair explained that in the case of the ELA, even in the context of mediation, no type of confidential or sensitive information will be considered, as ELA will receive only anonymised information, but if still such information appears in the exchange, it will be removed. Regarding the repository, the Chair pointed out that ELA plans to work together with the AC on the creation of a common repository of documents from the joint cases to facilitate the exchange of data, instead of by email. . The Chair emphasised that the access to the repository will be possible only for persons in charge of the implementation of the agreement.

Some experts requested clarification on the interpretation about the share of competences between the ELA and the AC, particularly on the referral of a dispute to the AC or/and ELA (Article 8(2)) agreed by Member State/s; and the reason of the 6 months’ timeframe given to the AC to commit to deal with the legal issues referred by the Member State/s (Article 8(7)). The Chair clarified that the AC could request the ELA to refer a dispute concerning social security in every case not only when the dispute requires new interpretation. If labour issues are at stake in the dispute, it will continue before ELA for these aspects even when the social security part is referred to the AC. The AC representatives also clarified that if a new question of interpretation is engaged in the dispute, and as the referral is voluntary from the MSs, again it will not be referred to the AC if MSs do not agree. But AC, according to R 883/2004, is competent for any question of interpretation, therefore in such instances a recommendation will be issued from ELA the dispute to be referred to the AC. It was reminded that AC can deal with the case under a point in the agenda for discussion (outside the conciliation board) and this entry of a point in the agenda of the AC can be done following the suggestion of one MS. Moreover, the Chair declared that since the AC would be the entity looking at the information provided by the ELA, it should be the AC to seek to receive the consent from Member States for the ELA to accept the dispute, as stated at ELA’s Regulation (Article 13(11)). Furthermore, the AC representatives explained that the timeframe of 6 months of entry into force of the agreement (Article 16) was given to allow the AC ample time so as to be operational, to follow the mediation procedure, and amend or propose changes to its rules of procedure.

Finally, the experts exchanged views with the Chair and the AC about the existence of any institution or specialised body entrusted by Union law besides the AC and/or the Court of Justice of the European Union, to provide interpretations whether the dispute concerns as issue of new interpretation of the Coordination Regulation (Article 8(2)). The Chair and the AC clarified that this provision was meant to cover the AC and the Court of Justice, but also any other body, including one that does not exist presently but could be available in the future.

Conclusion and next steps for the adoption of the text both by ELA and the AC.

In accordance with the RoP of the Group, the Chair invited the Group to confirm whether a consensus could be reached on the text of the Cooperation Agreement. The experts of the Group reached a consensus.

In response to the Chair request, the Chair of the AC intervened to confirm that in case of amendment to any provision on the Agreement in the AC meeting on the 15th and 16th of December, the written procedure of the ELA Management Board must be suspended and a new one would be launched with a revised version. Nevertheless, the AC mentioned that discussions were held with interested delegations who provided comments and changes that were addressed in the meetings with the ELA.

Since the consensus was reached, the Chair proceeded to inform that ELA Secretariat will prepare a draft recommendation from the Group to the Management Board of ELA to adopt the draft Cooperation Agreement which will be sent to the Management Board, together with the draft agreement to start a written procedure for adoption. If the adoption by written procedure is successful, the cooperation agreement between the ELA and the AC will be adopted on the 17th of December. In addition to the Written procedure, an invitation will be sent to the Management Board members to launch a call with a view to receive nominations of persons to act as mediators, Chair, Deputy Chair and experts of the Mediation Board from Management Board members from the Member States. The deadline, after proposal from the WG experts, was prolonged to 31st of January 2022. The Chair called for the Group experts' assistance to help disseminate the information to all relevant national authorities and to fill the positions in all areas within the scope of the mediation procedure. The Chair highlighted that the Management Board must also ensure that the list of appointed mediators and experts of the Mediation Board, as well as Chair, the first and second Deputy Chairs, achieved the necessary geographical, professional and gender balance.

The Chair invited the Chair of the AC to take the floor and share the next steps from the AC side. The Chair of the AC revealed that the draft of the Cooperation Agreement will be presented to the AC by the Leading Delegations of the AC at the next AC meeting, on the 15-16 of December with the aim to be approved by the AC. That approval will empower the Chair of the AC to sign the Decision to give effect to the Cooperation Agreement on behalf of the AC.

The Chair informed the Working Group on the position the Secretariat has taken on the question should the group already cease or not cease its activities. Despite the RoP, the work on the agreements with SOLVIT and the AC being finalised, the Chair stressed the willingness to maintain the Group in case any issues arise which may need joint discussion and the expertise of the members, for example on the results of the deliverables of the project ELA currently manages on legal services for the establishment of the mediation procedure, such as workflows, checklists, and guidance documents in relation to mediation. The EP representative maintained the position that the WG should continue its work and suggested to be recommended to the Management Board to assess the WG's Rules of Procedure and to decide on this issue – to amend and prolong its mandate.

Finally, the Chair thanked all experts for their participation in the meeting, and all colleagues from the AC, the ELA and the European Commission who helped in the drafting of the documents and the preparation of this meeting. The Chair also congratulated each and every one for the work carried out during the year in order to set-up the mediation procedure, and the meeting was closed.



AGENDA

4th meeting of the Working Group on Mediation

30 September – 1 October 2021

10.00hrs – 17.00hrs^{1 2 3}

Falkensteiner Hotel, Pilárikova 7372/5, 811 03 Bratislava

Meeting link: <https://ela.webex.com/meet/webex3>

Welcome and introduction

1. Adoption of the agenda

2. Examples of cases which may be referred for ELA mediation – discussion on written comments received

Ref: Working document WD3.0 REV

3. Update on negotiations with the Administrative Commission with regards to the establishment of a cooperation agreement, pursuant to Article 13(11) of the Reg. 2019/1149

4. Draft Cooperation Agreement between ELA-SOLVIT

Ref: Working document WD4.0 REV

¹ It is envisaged that the meeting will start at 10.00hrs and end at 17.00hrs on both days. However, precise timings may vary depending on progress on the agenda. Registration will open at 09.30hrs.

² Morning and afternoon coffee breaks and lunch will be served during the day.

³ Working documents will be sent at least 14 calendar days prior to the meeting date.

5. Draft rules of procedure for mediation of the European Labour Authority

Continuation of discussion from Article 14 – 23 including Annexes

Ref: Working document WD5.0

6. Compromise text - rules of procedure for mediation of the European Labour Authority

Ref: Working document WD5.1: *Compromise text Articles 1-13 circulated before the meeting*

Compromise text Articles 14-23 including Annexes to be prepared during the meeting after the end of point 5.

7. AOB

8. Concluding remarks



Fourth meeting of the European Labour Authority Working Group on Mediation

30 September and 01 October 2021

- Summary of deliberations -

The ELA Working Group on Mediation (hereafter ‘the Group’) held its fourth meeting in a two-day event on 30 September and 01 October 2021 in hybrid format. 24 experts from the Member States, the European Commission, the European Parliament and ELA were present in Bratislava and another 14 participated via WebEx. The agenda of the meeting comprised five items: (1) presenting examples of cases which may be referred for ELA mediation; (2) update on negotiations with the Administrative Commission (AC) with regards to the establishment of a cooperation agreement, pursuant to Article 13(11) of the Reg. 2019/1149; (3) presenting draft Cooperation Agreement between ELA-SOLVIT; (4) presenting draft rules of procedure (RoP) for mediation of the ELA (first reading of Articles 14-23 and Annexes); and (5) presenting the compromise text on the RoP for mediation of ELA (full text).

In his introductory remarks, the Chair gave an update on the latest developments since the last meeting of the Group on 25 June 2021. He mentioned that comments on the summary of the third meeting of the Group were received and taken into consideration, and the final summary is now available on www.ela.europa.eu/mediation.

The Chair then went on to present the items on the Agenda for the meeting, and the Agenda was adopted.

Examples of cases which may be referred for ELA mediation (ref: WD3.0 REV)

In his introduction, the Chair recalled the main discussions held during the last meeting of the ELA Working Group on Mediation, before giving the floor to a representative from ELA to present in more detail this topic. The representative from ELA, then, presented a revised version of the WD3.0 which includes indicative examples of disputes in the area of social security coordination, in relation to the Posting of workers Directive, concerning free movement of workers, and on social legislation in road transport.

After the presentation, many experts noted that the document was improved when compared to the previous version, and also its balanced nature in the list of examples presented. Some experts asked for clarifications about some examples related to social security coordination which were considered as too broad and generic and suggested to add further examples. Others pointed out the importance of having public administration representatives involved in the dispute or to consider more examples. Other representatives expressed the views that the document is fine, while considering its status as being a working document which contains a non-exhaustive list of potential examples.

As a conclusion, the Chair agreed with this last view, emphasising the fact that these are only predicted examples, and more concrete examples of cases will be made available once the mediation procedure becomes active. Such document is not meant to be neither public nor exhaustive. Consequently, the Group considered the general discussion about the examples closed.

Update on negotiations with the AC

The Chair introduced this point of the agenda and gave the floor to a representative of ELA who provided the experts with an overview on negotiations with the AC with regards to the establishment of a cooperation agreement, pursuant to Article 13(11) of the Reg. 2019/1149.

After that, the Chair invited the current Chair of the AC who continued to report on the main conclusions and the next steps of this negotiation. It has been previously decided that the AC leading delegations would prepare the first draft of the cooperation agreement. The AC provided the first draft of the agreement on the 15th of September. It consists of 19 articles divided into 4 titles. ELA will reflect on the text and present its comments and feedback back to the AC. After the AC and ELA agrees on a final version, the cooperation agreement will be sent to the respective decision making bodies of the two entities for adoption. The Chair of the AC reiterated that it stands ready to discuss the remaining details of the cooperation agreement with ELA, once the final comments will be received.

Draft Cooperation Agreement between ELA and SOLVIT (ref: WD4.0 REV)

The Chair introduced the draft of cooperation agreement about the referral of cases between ELA and SOLVIT and representatives from ELA and DG GROW presented the main outlines of the mutual cooperation, on the basis of the WD4.0 REV.

The presentation covered both the legal framework and the communication channels for this cooperation. Then, the representatives discussed the role of ELA and SOLVIT and their responsibilities. Finally, the presentation covered the shared roles of the two bodies involved in the cooperation as well as the proposed amendments to the cooperation agreement provided by the ELA legal service regarding Articles 2(2), 2(3) and 9.

In general, the experts fully supported the cooperation between ELA and SOLVIT, the proposed amendments provided by ELA legal service, as well as the quality of the agreement presented. A question was also raised whether the national SOLVIT centre's efforts on the case may be considered as fulfilling the direct contact and dialogue stage prior to launching the mediation procedure. The Chair provided explanation that, in accordance with Article 14 of the ROP for mediation, the Authority will invite Member States to inform whether direct contact and dialogue was conducted in order to resolve dispute before launching the first stage of mediation. Therefore it will be up to the Member States to inform ELA on whether they consider the direct contact and dialogue stage was completed.

Some experts proposed that the national SOLVIT centres should notify to the national administration the cases to be referred to ELA in advance, specifically before SOLVIT centres reach mutual agreement to refer the case. Others focused on the importance for National Liaison Officers (NLOs) to be informed of the referral and some other experts underlined the need to have a formalized way of communications and approvals of relevant institutions and authorities at a national level before referral takes place. Questions were also raised as regards the process by which ELA will ensure whether the case is within the scope of the mediation procedure, and what is the role of the applicant in the procedure. Given that the mediation procedure aims at resolving disputes between Member States, the Chair explained that the applicant will have no role in this procedure as the content of the referral is, as proposed in the cooperation agreement, anonymized. One expert highlighted the non-mandatory role for the legal advice, to which representatives of ELA and DG GROW replied that legal advice is informal only, optional, and not binding on the Commission and that SOLVIT centres are encourage to obtain it. Representatives from ELA and DG GROW stated that the mediation procedure should not replace the SOLVIT procedure, but rather that ELA mediation should be seen as extension

of the SOLVIT procedure. Both representatives confirmed that ELA will not launch automatically the procedure and it has been confirmed that the national SOLVIT centre is not the main actor in the mediation procedure since it has to inform its national authority and EC SOLVIT before the launch of the mediation procedure. Therefore, safeguards have been included in the procedure, but when it comes to internal processes between the national SOLVIT centre and the national authority, it will be up to the Member States to decide which national communication channel is more appropriate. In addition, after receiving a referral from the national SOLVIT centres, ELA will assess the cases received and decide whether it will launch a mediation procedure on its own initiative, notifying relevant Member States accordingly.

Finally, regarding comments received about the language to be used, the representative from ELA confirmed the language issue will be discussed bilaterally between ELA and SOLVIT but that in any case, the mediation procedure will include also translation and interpretation services to allow a complete understanding of the issue for Member States.

Rules of procedure (RoP) for mediation of ELA (ref: WD5.0 and WD 5.1.)

The afternoon of the first day of the meeting was dedicated to the analysis of Articles 14-23 and the Annexes, while the second day of the meeting focused on a revised version of the text as a whole (namely the compromise text on the RoP, based on WD5.1 and the outcome of the discussion on the first day). Taking into account the comments of the first day as regards Article 14-23 and any remaining comments and feedback on Articles 1-13, the discussion was very detailed and allowed for all positions to be presented in detail and deliberated. A revised text of the RoP was sent on Monday, 4 October, to the experts of the WG for final editorial comments.

Below is a summary of the changes agreed during the meeting which were reflected in the revised text of the RoP.

Article 1

The proposals for amendments according to the comments received in advance and during the previous WG were presented by ELA. These were as follows: deleted the definition of ‘Eligible members of the Management Board’, agreed on definitions for “Individual case of application of Union law”, adding the word “institutions”. The definitions of “Mediators and experts of the Mediation Board” and of “Experts participating in an advisory capacity” were redrafted according to comments received by the experts and are now more detailed and in line with the founding Regulation.

On **articles 2 and 3** there were no comments received neither in advance, nor during the meeting.

Article 4

ELA explained the changes to the provision made on the basis of the comments received in advance in relation to Article 4(1), the last sentence has been deleted; on Article 4(2) “neutrality” has been added to the principles of mediation procedure. During the meeting also the cooperation is defined as “sincere” in order to have consistency in the text of the RoP.

On Article 4(3) experts discussed whether or not to include explicitly the social partners in the text of the Article. It was agreed that since experts from social partners organizations will act in an advisory capacity, no specific mention was necessary, since this term is included in Article 1 – definitions, which includes the experts from social partner organisations. On Article 4(4) it was agreed that the word “personal” will be deleted and replaced by the word “professional”.

Article 5

On Article 5(2) the paragraph has been reworded following the experts' proposal for consistency with Article 13(9) of the founding Regulation. The mediation procedure is suspended in cases in which there are ongoing court proceedings at national or Union level. On Article 5(3) the processing and anonymization of all personal data related to the case shall ensure also by the national SOLVIT centres.

Article 6

ELA explained that an amendment to Article 6 was made in order to align the RoP with Article 36(1) of the founding Regulation. The applications for access to EEA countries and Switzerland documents need to be consider in line with the principles of sincere cooperation from the side of these countries.

Article 7

The changes to this provision, proposed by the Secretariat on the basis of all comments received before the meeting, were explained. The aim of these changes were to simplify and also to accommodate the proposals of the some MSs and of the Legal service of ELA.

On Article 7(1), experts agreed, further to the ELA's proposals, to have a more detailed text adding "other than those that are party to the dispute".

On Article 7(2) there were discussions on the proposed simplified text concerning the appointment process of mediators and experts. One expert expressed preference for the version presented during WG 3 (WD 5.0). This expert made a proposal in writing during the meeting. The Chair gave the opportunity to the expert to present the proposal, however another expert raised a point of order, since the proposal was too detailed and came too late for him to express any views on it. Nevertheless, the Chair stated that these proposals will be taken into consideration when finalising the text.

On Article 7(3) experts discussed the level of experience and knowledge that mediators should have with regards to the area under scrutiny. Some experts asked for more flexibility in the required qualifications mediators should have; others sustained that mediators should have a basic knowledge of the European legal framework related to EU labour mobility. The Chair explained that mediators need to have experience in mediation before they are appointed while the experts on the mediation Board should possess professional expertise within the remit of the ELA and that has been the idea behind the proposed redrafting, also taking into account the comments of the ELA Legal officer. The text of Article 7(3) was further amended accordingly, taking into account that mediator will preferably have "basic knowledge related to any of the different areas within the scope of the mediation procedure", while the experts shall have expertise in the fields of competence of ELA. It was agreed that the wording which refers to training shall be compulsory for both the mediators and the experts.

Concerning Article 7(4) rewording aiming at clarity and simplification and also accommodating experts' remarks has been made already before the meeting. During the meeting one expert raised a point about the selection and nomination process of the mediators, concerning the extent of the role of the Management Board in this process. Some experts pointed out that it is important to maintain sense and consistency of the text. Since a lot of supplementary proposals were put forward during the meeting they asked for more time after the meeting to have a look at the revised texts. As a consequence, ELA reworded the paragraph inserting to the extent appropriate for consistency with the rest of the provisions. The latest version sent to the experts addressed this issue with the insertion of "The Authority shall establish a list of all applications received, including all the details specified in the call, and an assessment on whether, in the Authority's view, the persons nominated for mediators and experts satisfy the requirements in paragraph 3. The list shall be sent to the Management Board who shall appoint [...]".

In paragraphs 5-7 only editorial changes were made during the discussions.

Article 8

That provision was reworded by the Secretariat (WD 5.1.) in order to include all the comments and suggestions made prior to the meeting by the members of the WG.

During the meeting, on Article 8(2), there were comments from the experts considering necessary to ensure continuity to the Mediation Board and it was proposed to follow the rules that are applied in the RoP of the undeclared work platform (UDW Platform). Finally, it was agreed that the sentence “Exceptionally, the initial term of one of the Deputy Chairs shall be 48 months” will be inserted to reflect the concerns raised.

Article 8(5)(g) was also modified so that the Chair of the Mediation Board would decide on the most effective working arrangements for conducting the second stage of mediation in consultation with both the Member States party to the dispute and the Deputy Chairs, as suggested by the experts.

Article 9 – no comments

Article 10

On Article 10, a revised text was presented in advance of the meeting in writing by one of the experts which has been discussed and accepted by the other experts during the meeting. The new text has been included in the RoP, with some amendments by the Secretariat made in order to ensure consistency with the rest of the texts.

Article 11 – no comments

Article 12

On Article 12 ELA made in advance of the meeting some changes to align the text with the changed ELA-SOLVIT Agreement. During the meeting a proposal came for a slight editorial change with a legal context and it was adopted.

Article 13 – no comments

Article 14

On Article 14(1), some experts raised an issue which was accepted, regarding the non-consistency of “shall” in the voluntary mediation procedure. As the RoP has a non-binding nature, the word “shall” was replaced with “may”. On Article 14(2) a few experts requested to increase the deadline from 10 to 15 working days for Member States to confirm in writing their agreement to participate in the mediation procedure. The proposal was accepted and the text was revised accordingly. On the same paragraph and the next one the experts requested to insert the following text “after verifying that the dispute falls within the scope of the mediation procedure” as a safeguard that ELA will review the dispute and confirm that it is under its mandate prior to launching the mediation procedure.

Article 15

On Article 15(2), it was agreed to keep the original text and maintain the wording “shall adopt” for consistency with the Regulation. On Article 15(3), experts proposed to add “requirement of anonymisation” for any other relevant information concerning the case under review. After the first-day meeting, the proposed amendment was considered redundant since the basic principles already provide for the anonymisation of all data prior to sending them to the Authority. On the same Article, it was also proposed and accepted to add a reference to Article 9(2). The last sentence of Article 15(4) was deleted since the objective of the mediation procedure is reflected in Article 2.

Article 16

On Article 16, experts proposed and it was agreed to use unified wording “divergent points of view” for consistency reasons. On para 2 there was an editorial change. Regarding the last sentence of Article 16(4), it was agreed to delete it to be consistent with Article 15(4).

Article 17

On Article 17(2), some experts requested to change the use of “any steps” with something more appropriate and in line with the Regulation text. A discussion about the change of “shall take” into “are strongly invited to” or “should take” took place. Given the non-binding nature of the agreement reached by Member States on the dispute, “should” was considered more appropriate.

On Article 17(3), some experts asked for clarifications regarding the content of “record of disputes” and who will have access to it. The Chair explained that the experts requested for a record of disputes to be maintained by the Authority in electronic format but there were no further discussions on this matter. He explained further that information such as the parties in the dispute, the mediator and the outcome, could be included, among other pertinent information. He also stated that ELA will reflect further on who will be able to access this record. An expert raised concerns on this issue that more specific information should be received about the information to be included and who will have access to it.

Article 18

On Article 18, the experts agreed that Article 18(2)(h) should be deleted as the mediation procedure is suspended in that case, not terminated. In this regard, experts stated it is necessary to have a separate paragraph or Article concerning the suspension of the procedure. The Chair explained a provision relating to the suspension of the mediation procedure was inserted in Article 5(2).

On Article 18(2)(f), it was proposed to delete “which were not evident or documented when it was informed before the launch of the first stage of the mediation procedure”, because it appears as an redundant addition.

Article 19

On Article 19(1), experts raised the importance of respecting the confidentiality of data when the working methods relied on online platforms and events -an issue which is already covered by the Basic Principles. On article 19(2), some experts stated that NLOs should not be in every instance the main communication channel between the Member States concerned but only when necessary. Also, some experts wanted the NLOs be informed about the procedure . Thus, it was asked to consider NLOs as contact points “where necessary”. Both these proposals are adopted in the final text.

On Article 19(3) there was discussion about the possible location of physical proceedings. The Chair explained that whereas proceedings during the mediation procedure could take place at ELA’s headquarters in Bratislava, or in any other place if there is agreement between the Member States party to the dispute and the mediator/Chair of the Mediation Board, physical hearings should only take place at ELA’s headquarters. This is because ELA will have the facilities to host such hearings which will lead to financial costs savings and also to better organisation.

On Article 19(4), some experts requested to extend the deadline in relation to the possibility to provide written comments on the other Member State’s reply, especially if there is need for translation and interpretation. The Chair reminded those deadlines are indicative and already take into account several issues, including translation.

On Article 19(5), clarifications were asked about how long it would take for a Mediator to be appointed. The Chair explained that if there is no agreement among Member States within the first 10 working days after the launch of the first stage, ELA will appoint a mediator on their behalf within the following 10 working days.

On Article 19(7) some experts considered that “shall control” is a too strong obligation for the mediator, and it has been replaced by “shall ensure” and it was accepted.

On Article 19(8), the basis on which the solution is reached should be in line with the EU acquis and therefore the sentence was redrafted to reflect that with inserting “taking into account the EU acquis and other interpretative documents provided by specialised bodies entrusted by Union law”.

On Article 19(10) and (17) some experts suggested that a deadline be inserted in the text for the mediator and the rapporteur to present the final report. The paragraphs were amended accordingly.

A suggestion was made to delete the last part of the sentence of Article 19(12) as it is self-evident, while on Article 19(13), the deadline was shortened to 15 “working days”, rather than “calendar days”. Both suggestions were implemented in the final text. On the same paragraph, a clarification was asked if the national representatives appointed by Member States could include experts from social partner organizations. The Chair explained that it is up to the Member States to decide which representatives will best represent their interest in the dispute and therefore “national” is deleted from 19(13)(c).

On Article 19(19)(b), “consult the social partners” was replaced with “ask for the opinion of experts from social partner organisations”. On the same sub-paragraph of this Article, the word “single” has been replaced by “first”. The idea of these amendments is to give possibility for different types of experts to be involved in the mediation procedure in advisory capacity, including experts from social partner organizations.

On Article 19(20) and also on Article 18(2)(c) one expert proposed to delete “evidence, facts” but ELA preserved the original version as being consistent with role of the concerted or joint inspections to reach common agreement on all the elements under scrutiny in relation to the dispute.

On Articles 19(24), it has been added “including during hearings” at the end of the paragraph, as proposed by experts.

Article 20 – no changes

Article 21

ELA explained that it will be further agreed with the Commission on the format of the report.

Article 22

Article 22(3) appeared redundant and it was deleted. Also in paragraph 1 the reference to the ELA-AC agreement was deleted as this is outside of the scope of assessment of the RoP and consulting the MSs was envisaged as regards the improvement of the instruments.

Article 23 – no comments

The Chair explained that even though the RoP enter into force on the day following their approval by the Management Board, it may take some time for ELA to start accepting cases as it will need to put the structure in place, such as issuing the calls for mediators and experts of the mediation board.

Annex 1

In point 1, bullet on current job it was added “details of employer”

Annex 2

In the first paragraph it was added “and by experts participating in an advisory capacity”, then some references to other provisions in the RoP were corrected, also a new bullet point was added specifically referring to “Expert participating in an advisory capacity”.

Annex 3

In point 4 the title was changed and “organizations” was added after “social partners” in line with Article 1. On point 6 “Lessons learnt” was deleted.

Annex 4

Replaced the abbreviation AC with “Administrative Commission”.

Concluding remarks

The Chair reminded the next step to be followed:

On 4 October, the RoP for ELA mediation will be sent to the experts for editorial comments/quality check. The experts were notified about the possibility to send written comments following the meeting. The deadline for sending the comments in writing will be 15 October.

On 18 October, the version of the Rules of Procedure that will be sent to Management Board, will be sent to the experts. If an expert does not agree, the expert must send to the Mediation Secretariat a dissenting opinion to be included in the summary of proceedings which will be sent to the Management Board. The deadline for sending a dissenting opinion will be 20 October.

On 27 October, the Decision on the adoption of the Rules of Procedure for ELA mediation, together with the summary of proceedings will be sent to the Management Board for adoption, together with the ELA-SOLVIT agreement for referring cases for mediation, for information.

Finally, the Chair thanked all participants in the event for their active participation and on behalf of the Executive Director of ELA concluded the meeting.



AGENDA

3rd meeting of the Working Group on Mediation

25 June 2021

Videoconference meeting: <https://ela.webex.com/meet/webex3>

No.	Indicative timing ¹	Agenda item
	9.00-09.30	<i>Connection</i>
1	09.30-09.45	Welcome and introduction Adoption of agenda
2	09.45-10.00	Update on negotiations with the Administrative Commission with regards to the establishment of a cooperation agreement, pursuant to Article 13(11) of the Reg. 2019/1149
3	10.00-10.15	Examples of cases which may be referred for ELA mediation Ref: Working document WD 3.0*
4	10.15-11.00	Proposed procedure for the referral of cases from SOLVIT to ELA Ref: Working document WD 4.0*
	11.00-11.15	<i>Coffee break</i>
5	11.15-12.45	Draft rules of procedure for mediation of the European Labour Authority Ref: Working document WD 5.0*
	12.45-14.00	<i>Lunch break</i>
	14.00-15.30	Continuation of point 5
6	15.30-15.35	AOB
7	15.35-15.45	Conclusion
<i>End of meeting</i>		

* Working documents will be sent at least 14 calendar days prior to the meeting date.

¹ Timings are indicative and may vary depending on the progress on the agenda.



Third meeting of the European Labour Authority Working Group on Mediation

25 June 2021

- Summary of deliberations -

The ELA Working Group on Mediation (hereafter ‘the Group’) held its third meeting on 25 June 2021 by video conference. The agenda of the meeting comprised four items: (1) updating the Group on negotiations with the Administrative Commission (AC) with regards to the establishment of a cooperation agreement, pursuant to Article 13(11) of the Reg. 2019/1149; (2) presenting examples of cases which may be referred for ELA mediation; (3) presenting the proposed procedure for the referral of cases from SOLVIT to ELA; and (4) presenting the draft rules of procedure for mediation of the European Labour Authority (ELA).

In its introductory remarks, the Chair gave an update on the latest developments since the last meeting of the Group on 23 April 2021. He mentioned that comments on the summary of the second meeting of the Group had been received and taken into consideration, and the final summary is now available on www.ela.europa.eu/mediation.

The Chair then went on to present the items in the Agenda for the meeting, and the Agenda was adopted.

Update on negotiations between ELA and the AC

Before giving an update on negotiations held between ELA and the AC, the Chair of the AC Ms Elisabete Silveira took the opportunity to address the Group. She mentioned that the AC delegations were consulted on a document prepared from the Leading Delegations of the AC, a revised version of which was discussed in the Working Party on 1 June. A final document was prepared after the Working Party to be used as a basis for the second meeting on the ELA – AC cooperation on 29 June. The Chair also mentioned that the incoming Slovenian Presidency will participate in the future Group to ensure continuity, as Slovenia’s mandate of the EU Presidency starts on 1 July. She further added that, in addition to the ELA-AC cooperation, the AC is currently assessing its internal rules of procedures in order to ensure that the AC will be ready to cooperate with ELA.

Examples of cases which may be referred for ELA mediation (ref: WD3.0)

In his introduction, the Chair stated that one of the main innovations of the ELA mediation procedure is that it extends over several areas of EU labour mobility law where currently there is no dispute settlement mechanism among national authorities. He also clarified that in WD3.0, some examples were being provided of potential disputes which may arise between national authorities and which may be referred to ELA for mediation. One has to keep in view that these are only predicted examples from a theoretical approach, and more concrete examples of cases will be made available once the mediation procedure becomes active.

A representative of ELA then provided indicative examples of disputes in the area of social security coordination, in relation to the Posting of workers Directive, concerning free movement of workers, and on social legislation in road transport.

After the presentation, some experts mentioned that the list was unbalanced, since a significant number of examples of cases concerned social security. Some members also asked for clarifications on the referral of individuals cases since it was not clear to them if the ELA mediation procedure would deal only with one case of a single person or if it could also accept a group of individual cases that raise the same (or a similar) issue of application of Union law. Another point was made to underline the need to ensure the facts of cases referred were as clear as possible.

More information was asked on some of the cases presented, whilst some other experts proposed some other examples of cases which were not included in the list. As a conclusion, the Chair invited all experts concerned to send further examples in writing, with the aim of adding more potential examples to WD3.0.

Proposed procedure for the referral of cases from SOLVIT to ELA (ref: WD4.0)

Representatives of ELA and the Commission (DG GROW) provided the experts with an outline of the process to be followed by SOLVIT on the cases which could be referred to ELA for mediation, on the basis of WD4.0.

The proposed process for referral of SOLVIT cases to ELA started by identifying which cases may be referred to ELA, being unresolved cases within the legal scope of the ELA Regulation. SOLVIT cases are generally handled by two SOLVIT Centres (“home” and “lead”): both the home and lead national SOLVIT Centres concerned should mutually agree to refer the case to ELA for mediation within a specified deadline. Those centres should, within the scope of the usual SOLVIT case-handling procedures, also be encouraged to obtain informal legal advice from the Commission’s services before reaching agreement to refer the case to ELA for mediation. If agreement is reached to refer, the national SOLVIT centres concerned should notify the national authorities concerned about the agreement to refer the case to ELA and shall also inform the SOLVIT Coordination Team of the SOLVIT Centres’ agreement to refer the case to ELA.

When referring the case to ELA, the national SOLVIT Centres concerned shall send a case summary, including any necessary documentation. Upon receipt, ELA will assess whether the case in question falls within the scope of mediation and will inform the SOLVIT Coordination Team and referring national SOLVIT Centre/s accordingly. Finally, ELA should inform the national SOLVIT Centres concerned and the SOLVIT Coordination Team on its decision and on the consent of the national authorities to accept the case for mediation. If the case is accepted, ELA will inform the SOLVIT Network about other activities carried out during the ongoing mediation procedure. This may be done via a specified communication channel, to be set out in future working arrangements between ELA and the SOLVIT Network.

After the presentation, some experts made clear that the proposal for SOLVIT to refer cases to ELA was welcomed. One expert underlined how, since some unresolved SOLVIT cases progress to court or to infringement proceedings by the Commission, it was a positive step to be able to offer further mediation opportunities via ELA. Some experts expressed the view that the mutual agreement between SOLVIT Centres to refer a case to ELA is an internal matter of the SOLVIT Network, falling outside the scope of the ELA mediation procedure. Another expert was of the view that consent of both SOLVIT Centres should not be necessary.

Questions were also raised as regards the number of cases which the SOLVIT Network may potentially refer to ELA; and whether the SOLVIT Centres will be acting as representatives of the Member States during the mediation procedure, or if this will be done by national administrations. A representative from DG GROW clarified that the national administrations will be in charge of the mediation; it will

however be the SOLVIT Network that receives the complaint from citizens or business, in which the difference of opinion on the application of EU law becomes apparent. The number of cases referred by SOLVIT is expected to be low.

Some experts also asked whether the SOLVIT Centres will seek and receive the consent of the individual/s involved in the case prior to referring the case to ELA. The Chair responded that this is an issue that SOLVIT will need to examine.

Concerning a number of questions about the “legal advice” provided by the Commission’s service, the representative from DG GROW stated that obtaining informal legal advice in certain cases is already an integral part of the SOLVIT case-handling system: such advice is not binding on the Commission.

On the question of notification of the national authority, one expert was of the view that this notification could be done by ELA and there was no need to require the national SOLVIT Centres to do this. This expert and others underlined the need to reduce administrative burden. However, a large number of experts expressed the opinion that SOLVIT Centres should notify their national administrations before the SOLVIT Centres refer a case to ELA. Some experts underlined that such notification did not remove the need for the national administrations subsequently to agree mutually to the referral to mediation.

Thus, ELA and the SOLVIT Network should continue working together to ensure that the procedure both before and after the case reached ELA reflects the position expressed during the Group. A document drawing up proposed working arrangements will be prepared.

Rules of procedure for mediation of ELA (ref: WD5.0)

The Chair started presenting the proposed rules of procedure (ROP) for mediation of ELA, on the basis of WD5.0. The ROP include the general provisions (Articles 1-6), the structure and organization (Articles 7-8), the launch of the mediation procedure (Articles 9-13), the stages of the mediation procedure (Articles 14-18). He then moved on to the working arrangements as those are described in Article 19 and lastly the final provisions (Articles 20-23) and the Annexes. By the end of the meeting, the discussions reached until Article 13. The remaining articles will be covered in the next WG meeting. Note was taken of all the comments made with a view to provide a revised text for the next meeting of the Group.

Article 1

On Article 1, clarifications regarding who are the ‘eligible members of the Management Board’ were raised, with a recommendation to delete this term. The Chair clarified that the Management Board will be asked to nominate experts as mediators and experts for the Mediation Board, and the Management Board members who will be eligible to nominate experts are those members coming from the Member States. Nevertheless, this term will be reflected upon in order to find a better description.

Other comments concerned the social partners who may participate in an advisory capacity during the mediation procedure, and whether they will be national or sectoral, and the definition “national SOLVIT Centre” since this is not in use in the ROP.

Article 2

On Article 2, there were no comments.

Article 3

On Article 3, it was mentioned that the term ‘individual cases’ as provided in Article 3(1) of the ROP, as well as in Article 13(1) of the founding Regulation needs to be analysed further, and that the ROP could be streamlined with the inspection guidelines. The Chair clarified that ELA had looked at the inspections guidelines, and not many similarities have been found. He added that a reference to individual cases was included in the Working Document 5.0 as so it is stated in Article 13 (1) of the ELA Regulation. Nevertheless, this will be reflected upon with a view to define what is meant by ‘individual cases’. Concerns were also raised as regards the term „disputes admissible for mediation”.

With regards to Article 3(2), the question was raised on whether the outcome of the mediation procedure will be binding. The Chair clarified that the outcome of the mediation procedure is a non-binding opinion, as provided in the founding Regulation.

Article 4

On Article 4 (2), a request was made to add the principles of ‘neutrality’ and ‘impartiality’. With regards to Article 4 (3), a clarification was asked on whether the ROP should include a reference to social partners in this paragraph.

Article 5

On Article 5(2), a discrepancy was highlighted between Article 13(9) of the founding Regulation, which states that stating that the mediation shall be suspended in case court proceedings are initiated, and not that the procedure shall end as stated in the ROP. It was pointed out that the two text should be aligned.

With regards to the anonymisation of personal data foreseen in Article 5(3), it was asked how the Member State receiving anonymised data will be able to recognize the case or the persons concerned to be referred to ELA for mediation. The Chair clarified that the anonymisation of personal data is provided in Article 13(8) of the founding Regulation.

Clarifications regarding who will organise the discussions between the Member States during the direct contact and dialogue stage were raised. The Chair explained that during this stage, no involvement is foreseen for ELA, pursuant to the majority views expressed on this point by the experts in their written views following the first meeting of the Group.

A suggestion was made to include in Article 5(3) that all other actors who will send cases to ELA should anonymise data. The Chair clarified that the text could be indeed modified to state that all other actors, such as SOLVIT and the AC, should anonymise data prior to sending it to ELA.

Article 6

On Article 6, clarifications were asked on the practical meaning of this article, and on who will have access to the relevant documents. The Chair explained that any requests for access to documents in relation to the mediation procedure shall be handled in accordance with the applicable rules, i.e. Regulation (EC) No 1049/2001.

Article 7

A recommendation was made that Article 7(1) should mention the consent from the Member State as a requisite to engage in the second stage of mediation, and that Article 7 (3) should state that mediators and experts ‘shall’ receive training, rather than ‘may’. It was also suggested that the social partners should have a role in providing training to experts on matters pertaining to topics such as

industrial relations and collective agreements. Lastly, a request was made to make a distinction between ‘nomination’ and ‘appointment’ of the members of the Mediation Board.

Article 8

Clarifications were raised *inter alia* on Article 8(1), that the ROP do not need to state that one panel of the Mediation Board shall be established; on Article 8(2), to clarify the voting rules in the appointment of the Chair and Deputy Chairs, and on Article 8(5), to clarify whether the rapporteur will be chosen from among the experts of the Mediation Board, whom to inform in case the situation of an expert changes as regards the issue of conflict of interest – with obligation on experts not on the Chair, and whether the Chair should consult the Deputy Chair in performing the functions specified in Article 8(5).

Article 9

On Article 9, there were no comments.

Article 10

A suggestion was made to swap the first and second paragraphs of Article 10. ELA should inform the Member State that it intends to launch a mediation procedure, and then ask the Member State if they plan to engage (or have been engaged) in direct contact and dialogue. If the Member States engage in direct contact and dialogue, they will inform ELA of the outcome, so ELA can then launch its mediation procedure on its own initiative if the dispute cannot be solved bilaterally.

The Chair clarified that the way the ROP have been proposed, in case ELA would like to launch a mediation on its own initiative, it will first ask the Member States concerned whether they want to take part in this mediation, and if all Member States confirm, then ELA will invite them to start the direct contact and dialogue procedure, if they have not yet engaged in such a procedure. If from the outset the Member States concerned are not willing to take part in the mediation procedure, then there would be no point in pursuing the procedure further.

Another suggestion was made that the confirmation period provided for in Article 10 (1) should be extended from 10 to 15 working days. Lastly, clarifications were asked on why the text does not foresee the possibility of the submission of cases by social partners to ELA for mediation. The Chair clarified that the founding Regulation does not foresee a role for social partners in sending cases to ELA. Nevertheless, ELA may take any input from the social partners into consideration, and decide to start a mediation on its own initiative.

Article 11

On Article 11, there were no comments.

Article 12

On Article 12 (1), it was pointed out that the text ‘shall’ should be replaced by ‘may’, with regards to the SOLVIT Network’s referral to ELA. The possibility of a reverse referral whereby ELA would be able to send a case to SOLVIT was also mentioned.

Article 13

On Article 13, it was suggested that the deadline for a Member State who decides not to participate in mediation to inform ELA and the other Member States that are party to the dispute should be extended from 10 to 15 working days from receipt of request.

Conclusions and next steps

The Chair concluded by informing the experts that the summary of the deliberations will be drafted by the Secretariat and submitted to the experts via written procedure within 21 calendar days. The experts may provide their comments, if any, within 14 calendar days after receiving the summary. They may submit suggestions, contributions and questions through the new functional mailbox mediation@ela.europa.eu, which, since 7 June 2021, replaces the mailbox formerly in use.

As regards the next steps, the Chair informed that on 29 June ELA will participate in the second technical meeting between **ELA – Leading Delegations of the AC** to present to each other the views exchanged in writing and to have a discussion and exchange views on the way forward. According to the initial planning, following this meeting the first draft of the cooperation agreement will start being drafted.

With regards to relations with the **SOLVIT Network**, a first draft of the Memorandum of Understanding between ELA and the SOLVIT Network will also start being prepared, on the basis of WD4.0, and also taking into account the comments expressed by the experts.

Finally, the Chair informed that the **next Group meeting will take place in the beginning of October 2021**. ELA is also looking at the possibility to hold this meeting in a physical format in Bratislava, and more details will be sent in due course, and as soon as the decision is taken, in particular as regards the COVID-19 situation and measures taken by the Slovak government with regards to the organisation of meetings.

On behalf of ELA's Executive Director, the Chair thanked all the experts for their participation and closed the meeting.

DRAFT AGENDA

2nd meeting of the Working Group on Mediation

23 April 2021

Videoconference meeting: [Join Microsoft Teams meeting here](#)

No.	Indicative timing¹	Agenda item
	9.30-10.00	<i>Connection</i>
1	10.00-10.15	Welcome and introduction Adoption of agenda
2	10.15-10.30	Update on negotiations with the Administrative Commission with regards to the establishment of a cooperation agreement, pursuant to Article 13(11) of the Reg. 2019/1149
3	10.30-11.00	Overview of the views from the experts as a follow up to the 1 st meeting of the WG
	11.00-11.15	<i>Coffee break</i>
4	11.15-12.30	Presentation of the proposed key features of the ELA mediation procedure followed by discussion <ul style="list-style-type: none"> • Ref: Working document 2.0²
	12.30-13.30	<i>Lunch break</i>
5	13.30-15.00	Continuation of point 4
6	15.00-15.05	AOB
7	15.05-15.15	Conclusions Next steps
<i>End of meeting</i>		

¹ Timings are indicative and may vary depending on the progress on the agenda.

² Continuation of discussion on basis of working document 2.0 point D p.12



Second meeting of the European Labour Authority Working Group on Mediation

23 April 2021

- Summary of deliberations -

The ELA Working Group on Mediation (hereafter 'the Group') held its second meeting on 23 April 2021 by video conference. The agenda of the meeting comprised three items: (1) updating the Group on negotiations with the Leading Delegations of the Administrative Commission (LD-AC) with regards to the establishment of cooperation agreement. (2) presenting an overview of the views from the experts as a follow up to the 1st meeting of the WG. (3) continuing the presentation and discussion of the proposed key features of the ELA mediation procedure based on the Working Document 2.0 (WD2.0).

In its introductory remarks, the Chair gave an update on the latest developments since the last meeting of the Group on 25-26 February. This includes one comment to the summary of the first meeting of the Working Group which was adopted in the amended version and is now available on www.ela.europa.eu/mediation Following the first meeting, a request for written views from the experts on 12 issues identified during the discussion was sent to the appointed members. The Chair informed that ELA received 23 replies from the experts from the Member States, the European Parliament and the Social Partner Organisations. The Group received an update on the first round of discussions between representatives from ELA and the LD-AC in relation to the cooperation agreement which took place on the 8 March. The delegations agreed on a non-exhaustive list of open questions. Finally, the Chair welcomed four new experts who joined the Group for their first meeting.

ELA/AC negotiations - update on the discussions

Before giving an update on negotiations held between ELA and the LD-AC, Ms Elisabete Silveira (currently the Chair of the AC) took the opportunity to address the Group. She clarified that after an introductory meeting between the ELA and the AC which took place on 26 January 2021, ELA invited the AC to nominate a limited number of experts to start the discussions with the aim of concluding a cooperation agreement before the end of 2021. A technical group of LD-AC was formed to take the lead on this action, and to be responsible for taking all necessary steps in this direction.

The first meeting between the ELA and the LD-AC took place on 8 March 2021, and the report circulated after the meeting. Ms Silveira clarified that the report which was prepared by ELA doesn't express the position of the AC and, furthermore, the report was drafted by ELA representatives. She informed the Group that a dedicated Working Party will be organized by the AC in June to discuss cooperation with ELA, including in the area of mediation, followed up by a meeting of the AC on 16-17 June. She highlighted that important work is still ahead and expressed her confidence that the negotiating parties will reach a common goal and formalize their cooperation through an agreement.

The Chair also addressed the Group with a view to bring more clarity on the competences of ELA in the area of mediation. The Chair stated that ELA fully respects the competences of the AC as provided in Reg. 883/2004 on the coordination of social security systems. Also, ELA cannot do the same tasks or take over any of the tasks from the AC as provided in Art 72 of Reg. 883/2004, including the task of dealing with all administrative questions and questions of interpretation arising from Reg. 883/2004 and 987/2009. This is not within ELA's mandate. The Chair clarified that ELA's tasks, as laid down in Reg. 2019/1149, are different

than those of the AC, and are more focused on the application and enforcement of EU labour mobility law. This includes social security coordination.

Specifically to the area of mediation, the aim of the mediation procedure is not to come up with a new interpretation of EU labour mobility law within the legal scope of ELA, but to reconcile divergent points of view between Member States who, upon request and subject to their agreement, decide to refer the case for mediation. The result will be a non-binding opinion, which may be adopted with the help of the stakeholders included in the mediation process. However, in view that both the conciliation procedure and the mediation procedure are voluntary in nature, the Chair stated that the decisive factor will be the choice of the Member States party to the dispute. ELA and the LD-AC are looking at various possible scenarios which could come up during the course of mediation, with a view to respect both the choice of the Member States and the division of competences between ELA and the AC.

Following those introductory remarks by the Chair of the AC and the Chair of the Group, ELA provided information on the 1st technical meeting between ELA and the LD-AC held on 8 March. The first discussion was an opportunity for both sides to express their views regarding mediation in relation to their competences and horizontal cooperation. It was agreed that open questions identified during this meeting need a period of reflection and exchange of written position before the next meeting planned in May.

Overview of the views of experts – presentation of the trends

ELA then presented the main trends based on the opinions given by experts on 12 issues identified during the discussion at the 1st Working Group. These inputs will be taken into account when drafting Rules of Procedure and discussing the cooperation agreement with the AC. Upon request of the experts, ELA agreed to circulate a compilation of replies to experts of the Group, excluding the ones who express their written objection by 30 April.

The discussion followed by focusing on the role of NLOs. Although their role is dominantly seen as a facilitator and point of contact, it was highlighted that their involvement might be useful during the contact and dialogue stage, and during the procedure as point of reference for any clarifications. Several experts underlined that some issues remain questionable for them such as the number of mediation panels and their subject, the need for flexible deadlines, or the role and possible competences of independent assessors.

A representative from the European Commission (DG GROW, SOLVIT) presented to the Group a compilation of views collected from national SOLVIT centres regarding cooperation with ELA and the mediation procedure. Based on 17 replies, the majority expressed the view that the procedure should be as short as possible, effective and deprived of unnecessary administrative burden. Most of the centres agreed to inform the national authorities and, if appropriate, relevant NLOs before bringing the unsolved case to the attention of ELA. It was also added that the conclusion of an MoU is needed in order to facilitate the cooperation and define referral procedure. In that sense, ELA confirmed the latter will be discussed and presented to the Group at a later stage.

Key features of the ELA mediation procedure – presentation and discussion

The Chair presented to the Group the remaining key features of the ELA mediation procedure based on a working document, specifically from sections D – H. After the presentation of each part, the experts took the opportunity to ask for clarifications, express their views and comments.

In particular, in relation to **section D ‘Launch of the mediation procedure’**, ELA reminded the Group about the ongoing negotiations between ELA and LD-AC, the necessity to clarify the competences and coordination between the two entities. From a practical point of view, the experts shared their opinion on the AC’s request for the transfer of the dispute, preferably at the earliest possible stage, however there were also opinions that the AC should be able

to make necessary request both before the first and the second stage of the mediation procedure. Most participants insisted on the need for clarifying the competence issue and also emphasised the need for the AC to adapt its rules of procedure as well as the deadlines. In that regard, the AC representatives informed the Group that this is a very important issue which is currently under assessment.

Concerning **section E ‘Stages of the mediation procedure’**, experts raised several issues concerning the impartiality of mediators and experts of the mediation board in relation to their professional background and nationality. In particular, one expert asked whether volunteers nominated by Member States as mediators or experts of the mediation board, could possibly represent that Member State during the mediation procedure as a national representative, when that Member State is party to the dispute, since they would be abstaining from participating in disputes concerning the Member State that nominated them. Other experts had the view that in such a case, mediators and experts of the Mediation Board may represent their Member State as a national representatives.

On the issue of persons who may be appointed as mediators/experts from Member States, two experts were of the view that they should be civil servants from the nominating Member State, and not from the private sector. In addition, they were of the view that disputes may have political implications, and Member States may avoid referring the case for mediation if the mediators/experts are not civil servants. The representative from the European Commission (DG GROW, SOLVIT) disagreed stating that the basic principles established for the mediation procedures provide sufficient safeguards. One expert asked if the dialogue procedure which may take place in accordance with Decision A1 of the AC, may be considered by ELA as a direct contact and dialogue between the Member States before launching the mediation procedure.

On **Section F ‘Reporting’**, there were no comments from the experts, and on **Section G ‘Final provisions’**, an expert expressed the opinion that Member States should also be involved in the evaluation of the rules of procedure. The experiences gained along the way could provide valuable input and make the mediation procedure more effective. One other expert suggested that the indicative period (3 years) for the evaluation proposed in WD2.0 should be shorter, i.e. 2 years. This would therefore not coincide with the appointment of new mediators/experts of the mediation board which is also set at 3 years. The Chair noted that the initial period was set at 3 years in view that during the first years, the use of the mediation procedure could possibly be low and thus would not provide a sufficient basis to carry out a proper evaluation.

On the last point, **Section H ‘Annexes’**, there were no comments. The Chair invited the experts to submit proposals in writing for inclusion into the model forms or templates to be annexed to the rules of procedure.

Conclusions and next steps

The Chair concluded by informing the experts that the summary of the deliberations will be drafted by the Secretariat and submitted to the experts via written procedure within 21 calendar days. The experts may provide their comments, if any, within 14 calendar days after receiving the Summary. They may submit suggestions, contributions and questions through the functional mailbox EMPL-ELA-MEDIATION@ec.europa.eu.

As regards next steps, ELA will exchange positions in writing with the AC and a 2nd technical meeting should take place in May. ELA will start preparing a first draft of the Rules of Procedure, based on the suggestions in the WD 2.0, the discussions during the meetings and the views expressed in writing. The Chair stated that it will be ensured to take all comments into account and as much as possible, everyone’s views into consideration.

On behalf of ELA's Executive Director, the Chair thanked all the experts for their participation and closed the meeting.

Date of the next meeting: to be announced



DRAFT AGENDA

1st meeting of the Working Group on Mediation

25 - 26 February 2021

DAY 1 – 25 February 2021

No.	Indicative timing (CET)	Agenda item
	8.30-9.00	<i>Connection</i>
1	9.00-9.30	Welcome and introduction <ul style="list-style-type: none"> - Introduction of ELA mediation team - Introductory round-table of members of the WG
2	9.30-9.40	Presentation of the tasks and work of the WG, including the purpose and goals of the 1 st meeting of the WG
3	9.40-9.45	Adoption of the agenda
4	9.45-10.30	Presentation by a representative of ELA on the mediation procedure as provided in the founding Regulation, and open issues to be addressed in the rules of procedure
	10.30-10.45	<i>Coffee break</i>
5	10.45-11.15	Presentation by a representative of the Administrative Commission on the dialogue and conciliation procedure
6	11.15-11.45	Presentation by a representative of the European Commission on the SOLVIT procedure
7	11.45-12.00	Update on negotiations with the Administrative Commission with regards to the establishment of a cooperation agreement, pursuant to Article 13(11) of the Reg. 2019/1149
	12.00-13.00	<i>Lunch break</i>
8	13.00-14.45	Presentation of the proposed key features of the ELA mediation procedure followed by discussion <ul style="list-style-type: none"> - Ref: Working document¹
	14.45-15.00	<i>Coffee break</i>
	15.00-16.30	Continuation of point 8
<i>End of day 1</i>		

¹ The working document will be sent at least 14 calendar days prior the meeting date.

DAY 2 – 26 February 2021

No.	Indicative timing (CET)	Agenda item
	8.30-9.00	<i>Connection</i>
9	9.00-11.00	(continued) Presentation of the proposed key features of the ELA mediation procedure followed by discussion - Ref: Working document ²
	11.00-11.15	<i>Coffee break</i>
	11.15-12.15	Continuation of point 9
10	12.15-12.20	AOB
11	12.20-12.30	Conclusions Next steps Preview of next WG meeting purpose and goals
<i>End of day 2</i>		

² The working document will be sent at least 14 calendar days prior the meeting date.



1st meeting of the European Labour Authority - Working Group on Mediation

25 – 26 February 2021

- Summary of the deliberations –

The experts appointed by the ELA Management Board met via video conference on the 25-26 February 2021 for the first meeting of the ELA Working Group (WG) on Mediation. The meeting's main goal was to start the discussions on how ELA can effectively apply the founding Regulation and establish the necessary rules of procedure and working arrangements in the area of mediation.

Tasks and work of the WG on mediation

The WG will be proposing and laying the foundations of one of ELA's seven core tasks, providing their expertise with the aim of developing the tools and modalities to be used in the actions of ELA related to mediation. In addition, the WG will be providing expertise on matters pertaining to the legal and practical aspects of organising and conducting mediation, and finally, will be exchanging views on and identifying best practices and examples of good cooperation in the field of mediation in view of developing the activities of the Authority.

Purpose and goals of the first meeting of the WG on mediation

The purpose and goals of the first meeting are first and foremost, for the experts to get an overview on ELA's mediation procedure as provided in the founding Regulation, and open issues to be addressed in the rules of procedure. The experts will also be presented with other dispute resolution mechanisms which exist in the area of labour mobility, as well as be updated on negotiations with the Administrative Commission with regards to the establishment of a cooperation agreement. Finally, the WG will start discussing the proposed key features of ELA mediation procedure.

Presentations by ELA, the Chair of the Conciliation Board, and the European Commission

During the first part of the first day, ELA presented the mediation procedure as provided in the founding Regulation, and highlighted several open issues that need to be addressed in the rules of procedure and the working arrangement. Afterwards, the Chair of the Conciliation Board, being one of the two representatives of the Administrative Commission (AC) for the coordination of social security systems who attended the WG presented the dialogue and conciliation procedure which exists in the area of social security coordination. A representative of the European Commission (DG GROW) presented the SOLVIT procedure. A representative from ELA informed the experts of the WG on the negotiations with the AC with regards to the establishment of a cooperation agreement, pursuant to Article 13(11) of the Reg. 2019/1149.

Discussion on proposed key features of the ELA mediation procedure

The meeting proceeded with a presentation by a representative of ELA on the proposed key features of the ELA mediation procedure. This was based on a working document which was circulated 2 weeks in advance to all the experts of the WG. ELA underlined that the working document was drafted to provide guidance and assist the experts of the WG during their discussions. The structure of the discussion included the presentation of the legal provisions in the Regulation, suggested way forward in implementing those provisions, and discussion questions.

The working document was presented in sections. The experts had the opportunity to express their comments and ask questions on each section, with some requesting clarifications on certain points and expressing their opinions on others. ELA provided explanations wherever possible and took note of the issues raised by the experts with the aim to provide possible clarifications during the next meeting of the WG.

During the meeting, the role of the NLOs within the mediation procedure was discussed, and this was identified as one of the issues on which the experts will be asked to provide their views in writing. To this regard, the workflow guidance in the field of inspection, adopted by the Management Board in December 2020, could be used as an example.

Open issues identified during the discussion

By the end of the discussions, a number of open issues were identified, on which the experts will be asked to provide their views. These are:

- The number of panels of the mediation board, and the subject of those panels.
- The involvement of social partners in the mediation procedure within the limits of the ELA Regulation.
- The participation by experts from Member States in an advisory capacity during the first stage of mediation.
- The deadlines for each step of the mediation procedure.
- The working language for the mediation procedure.
- The role for ELA during the initial contact and dialogue stage.
- The minimum number of mediators and experts on mediation board to be appointed.
- The issues on cooperation with the Administrative Commission in relation to disputes concerning social security.
- The term of appointment of mediators/experts and dealing with cases started but not concluded before the end of term.
- The role of NLOs within the mediation procedure.
- Disputes where conflicting facts are presented – the role of external experts.
- Referral of cases by the SOLVIT network.

Conclusions and next steps

During the closing remarks ELA asked the experts of the WG were asked to reflect on what was discussed and to reach out to ELA should they have any further questions or comments in relation to the

identified open issues. The Chair informed that a follow-up note requesting the views of the experts on these issues will be sent after the meeting.

The meeting participants included experts from ELA, experts from the Member States, experts from the Administrative Commission, and representatives from the European Commission, the European Parliament, and the Social Partners.

Date of next meeting

The next meeting of the WG on mediation will be held on 23 April 2021. More details, including the agenda, will follow at a later stage.