

European Labour Authority

Tools & processes of Concerted and Joint Inspections

Please, note that ELA documents and templates mentioned in this presentation are still drafts.
Final versions will be available following ELA Management Board's approval.

Introduction of the trainer



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Senior Manager | PwC

Zuzana has **more than 20 years of professional experience** as the **leader of Global Mobility practice** which also specializes in advisory services in the area of **employee mobility** (Posted Workers Directive) and related **employment law issues**. She actively presents at professional conferences on the various topics relating to global mobility issues.

Agenda

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Introduction by Jordi Curell, Interim Executive Director of ELA

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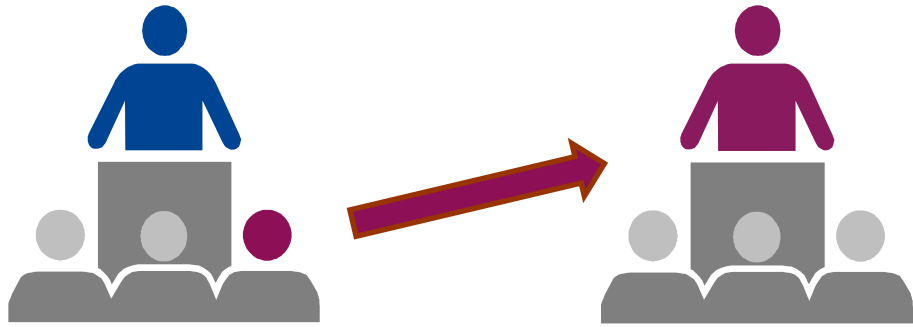
Training model

Train the Trainer Model

- ✓ The Train the trainer model is **widely used training strategy**
- ✓ Subject-matter expert is trained to **become a training instructor**
- ✓ The method offers distinct **advantages** over other training models because trainees typically **learn faster and retain the information better** than in other teaching models
- ✓ **Spillover effect** of training - it's enable the education of a larger number of participants



Train the Trainer Model



The **trainer**, a subject-matter expert, **trains other participants** from Member States and simultaneously **teaches them how to train others** in the use of tools and processes of CJIs.

All participants will be encouraged to **conduct similar trainings** for other stakeholders (**Inspectors and Social partners**) in their respective Member States.

HOW?

- The participant will **receive materials** that will use during the presentation in Member State.
- The participant will use **own remarks** from today's training.

WHAT materials?

1. **Presentation with notes** for the trainer and slides which are not visible for participants.
2. **Links** to necessary documents

The role of ELA and its objectives 

ELA is the **Union body** established by **Regulation (EU) 2019/1149** with the objective of **ensuring fairness in the single market**. To that end, the Authority shall:

-  Facilitate access to information on rights and obligations regarding labour mobility across the Union as well as to relevant services.
-  Facilitate and enhance cooperation between Member States in the enforcement of relevant Union law across the Union, including **facilitating concerted and joint inspections**.
-  Mediate and facilitate a solution in cases of cross-border disputes between Member States.
-  Support cooperation between Member States in tackling undeclared work.

In September 2017, European Commission President Jean-Claude Juncker announced the creation of a European Labour Authority in his State of the European Union address to the European Parliament. Subsequently, ELA was established by Regulation (EU) 2019/1149 of the European Parliament and of the Council, which entered into force on 31 July 2019.

The objective of the Authority, as set out in Article 2 of Regulation (EU) 2019/1149, is to contribute to ensuring fair labour mobility across the Union and assist Member States and the Commission in the coordination of social security systems within the Union. To this end, ELA shall: 4 goals listed on the slide.

3

The role of ELA
and its objectives

The role of ELA and its objectives

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Facilitate and enhance cooperation between Member States in the enforcement of relevant Union law across the Union, including **facilitating concerted and joint inspections**.



Mediate and facilitate a solution in cases of cross-border disputes between Member States.



Support cooperation between Member States in tackling undeclared work.

The scope of the Authority

1 Free movement of workers (Regulation (EU) No 492/2011 and Directive 2014/54/EU)

2 EURES (Regulation (EU) 2016/589)

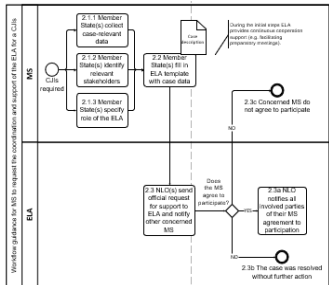
3 Posting of workers (Directive 96/71/EC (as amended by Directive 2018/957/EU) and Directive 2014/67/EU)

4 Social security coordination (Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009, Regulation (EU) 1231/2010) and in so far as they are still applicable, Council Regulations (EEC) No 1408/71 and (EEC) No 547/72, and (EC) No 859/2003

5 Social aspects of international road transport rules (Regulation (EC) No 561/2006; Directive 2006/22/EU; Regulation (EC) No 1071/2009).

ELA is the first and only body to deal with the entire labour mobility legislation

Tools & processes of CJIs developed by ELA



Workflows

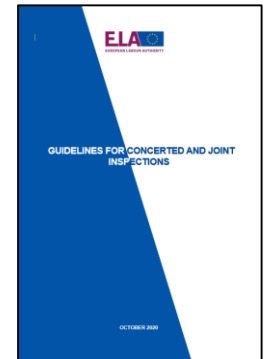
Case description

Model agreement

Post inspection report

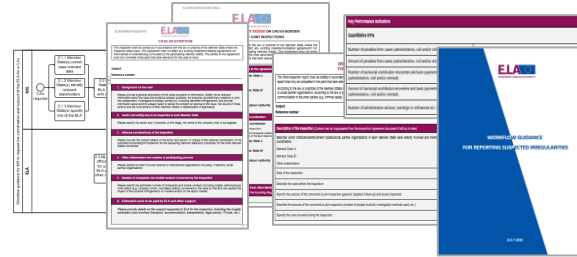
| Key Performance Indicators | |
|--|--|
| Quantitative data | |
| Number of profiles from cases administrative, civil and/or criminal | |
| Amount of profiles from cases administrative, civil and/or criminal | |
| Number of national contribution resources and task payments from cases administrative, civil and/or criminal | |
| Amount of national contribution resources and task payments from cases administrative, civil and/or criminal | |
| Number of administrative actions, warnings or orders etc. issued to companies | |

Key Performance Indicators



Guidelines for CJIs

What will happen with the documents?



Final templates and guidance to be **presented to the Management Board of ELA**
December 15, 2020



Approval of final templates and guidance **by the Management Board of ELA**



The **documents will be operational** and should be used for cross border inspections (incl. regular update of the documents)

4

Concerted and Joint Inspections

The role of CJI in enforcing Union law in the area of labour mobility

The need for CJIs is increasing, especially in areas such as:

- Cross-border **labour mobility issues** are **increasing** across the EU
- An effective **cross-border inspection** can **address those issues**
- Cross-border inspections are **still not common**
- Enforcement bodies have abroad **limited authority and capacity to tackle labour mobility issues**
- Complexity of labour mobility abuse demands **better risk assessment and coordination** of inspections **across** more countries and the **EU** as a whole.



Definition and inspection needs

Concerted inspections

Inspections carried out **simultaneously in two or more MS** regarding related cases

Joint inspections

Inspections carried out in **one MS** with the participation of the national authorities of one or more other MS



At one location in
one MS



At multiple locations
in one MS



At one or multiple locations
in two or more MS

The main actors for the CJIs supported by ELA



ELA

can suggest
concerted and joint
inspection



MS

can request
concerted and joint
inspection



SPO

can bring case to
the attention of the
ELA

15 minutes
coffee break



5

Planning the CJI

Guidelines for CJIs

- ✓ The **entire inspection process** is **described in detail** in the guidelines for CJIs
- ✓ Guidelines cover the necessary aspects to **help MS with planning, execution and follow up of CJIs**
- ✓ Provide **practical guidance** for national enforcement bodies on **how to prepare, implement, and follow up effective cross-border inspections** to ensure that the EU rules on labour mobility are enforced in a fair, simple and effective way.

Steps for successful CJIs



Planning



Implementing



Following-up

Guidelines for CJIs

Highlighting elements included:

- How ELA can help?
- Important note

Highlighting elements (examples)

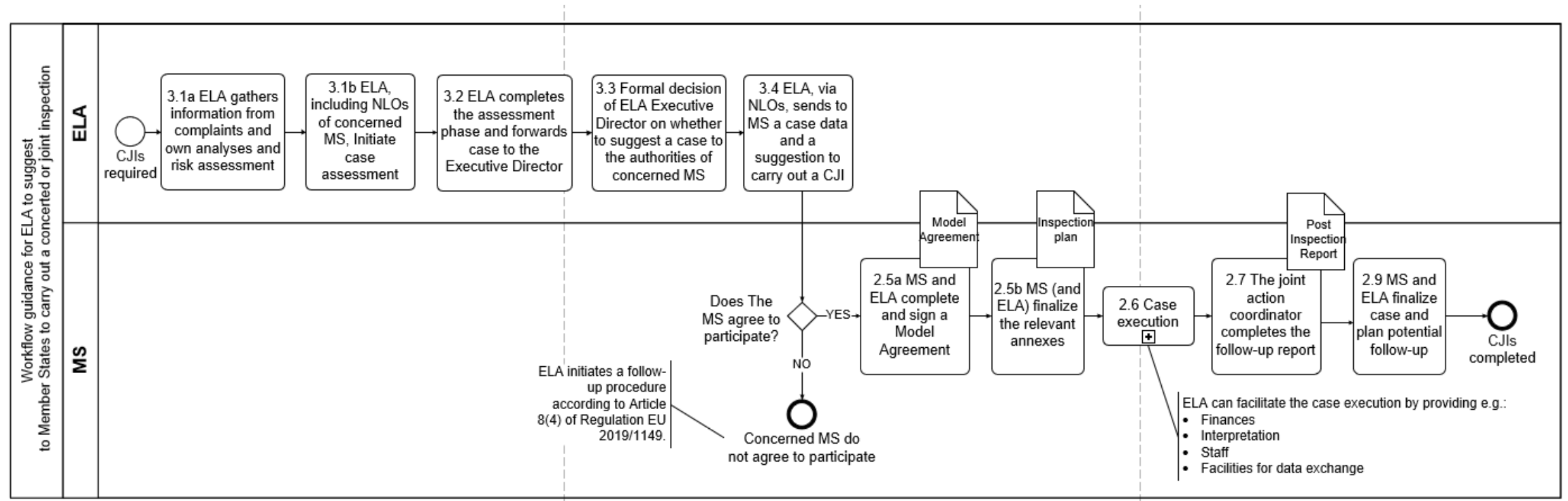
| | |
|--|--------------------------|
|  | Important |
| It is highly recommended that the MS has already done some investigative activity concerning the relevant case before starting joint measures and contacting the parties involved. | |
|  | How can ELA help? |
| By promoting the exchange and dissemination of experience and good practices, including examples of cooperation between the relevant national authorities. | |
| By organizing common learning (on-line) platforms and forums. | |
| By maintaining a knowledge database with key findings and lessons learnt from all cross-border inspections. | |

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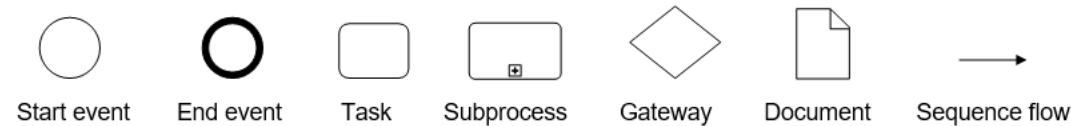
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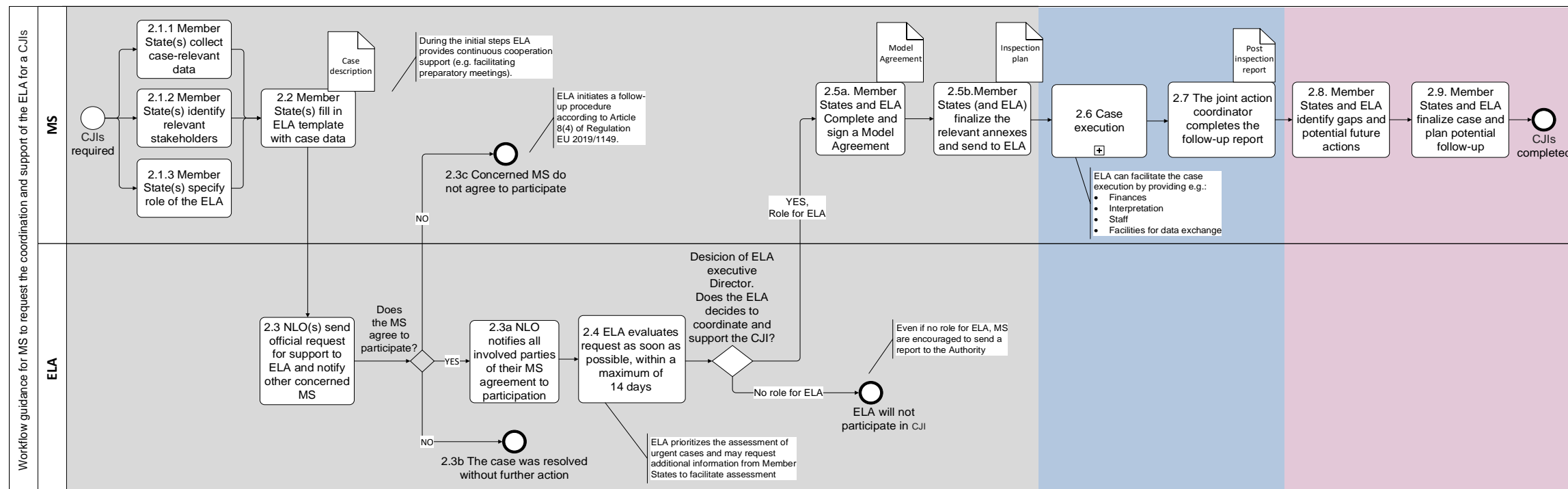
Workflow guidance for ELA to initiate a CJIs



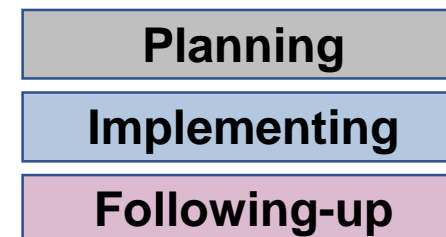
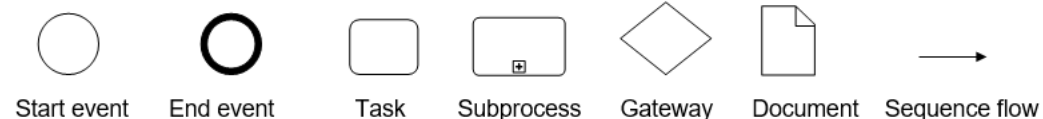
Explanatory Notes



Workflow guidance for MS to request the coordination and support of ELA for a CJI

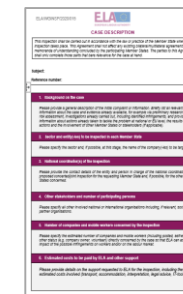


Explanatory Notes



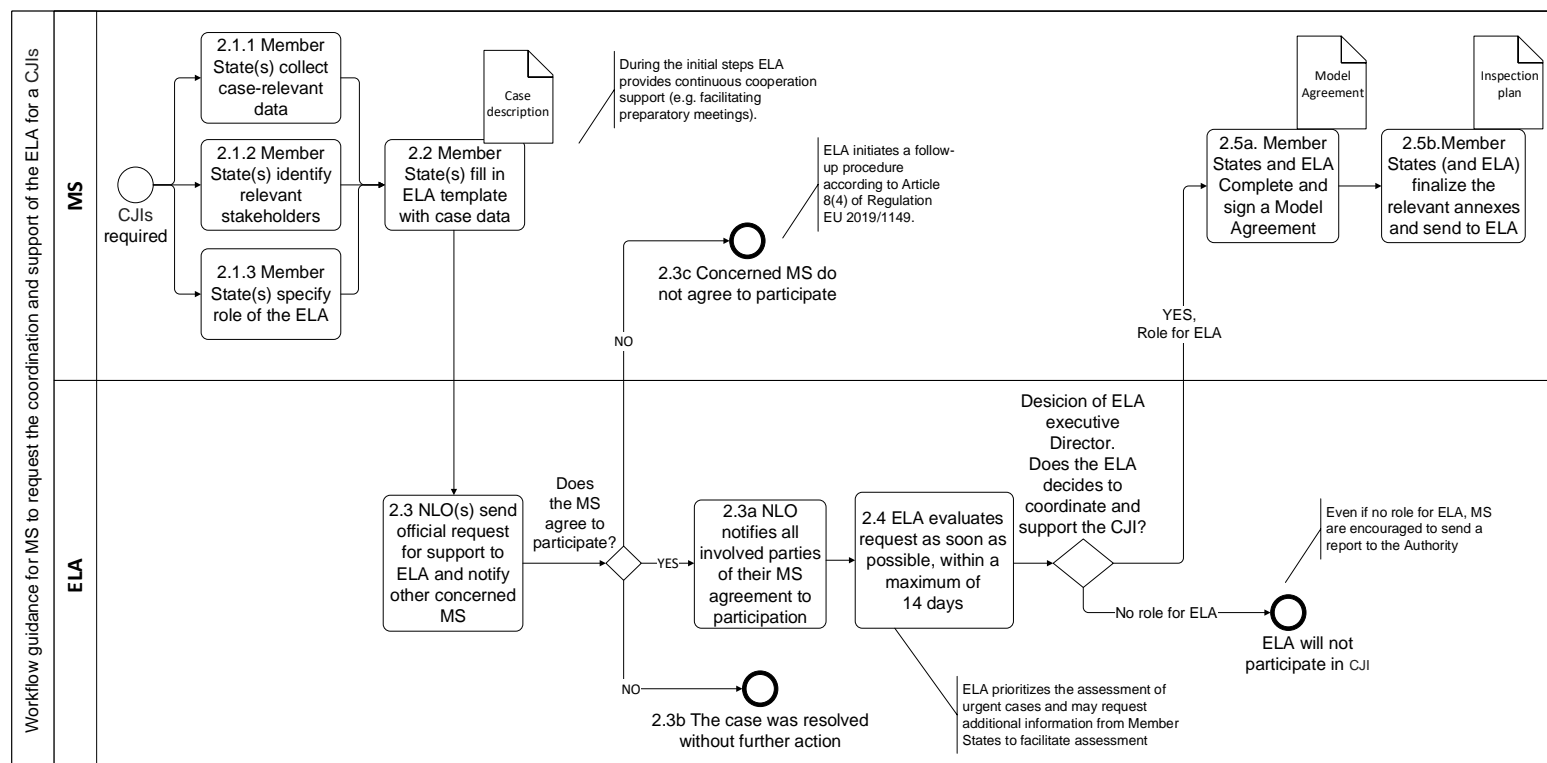
Planning the CJI

- Correct **planning** of an inspection is **crucial**
- Planning ensures the **success of activities** and **efficient allocation of resources**.
- CJI planning **begins with the identification and specification of a case** and **ends with the final to be signed Agreement**

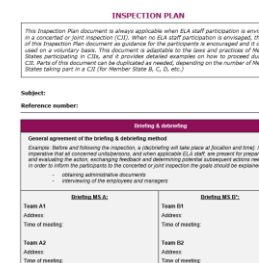


Case description

Key steps in planning CJIs



Model agreement



Inspection plan

Planning the CJI, steps 2.1.1 – 2.1.3

2.1.1 MS collect case-relevant data

- An inspection should be initiated as a result of serious complaints, reoccurring cross-border issues or risk assessment outcomes.

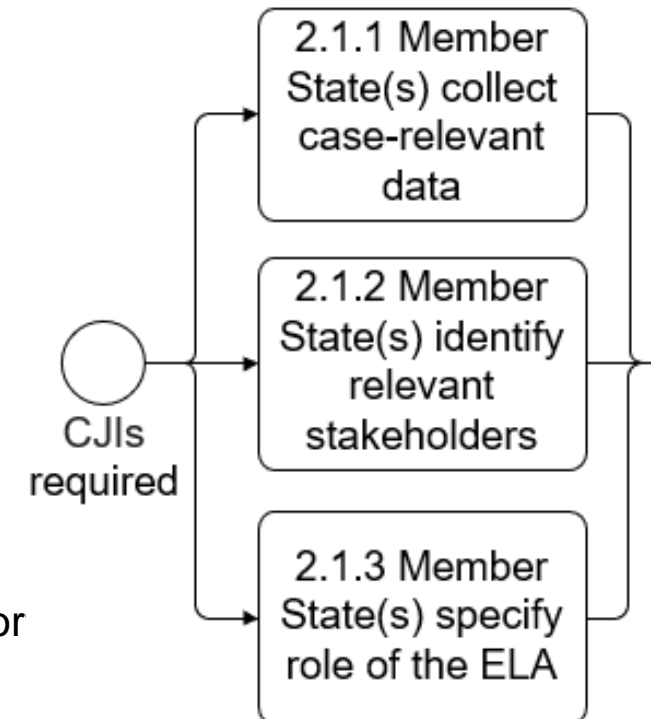
2.1.2 MS identify relevant stakeholders

- In some complex cases, it is necessary to involve other stakeholders:
 - ✓ Member States
 - ✓ National or international bodies, such as EU-OSHA, EUROPOL, EUROJUST
 - ✓ Social partners

2.1.3 Member States specify role of ELA

Together with ELA, the Member State in order to undertake the inspection specifies:

- ✓ Role of ELA
- ✓ Support required from ELA (staff, conceptual, logistical, technical, legal, or support related to translation)
- ✓ Estimated costs (transport, accommodation, interpretation, legal advice, IT-tools, etc.). The work of inspectors (time spent on inspection) is not eligible cost.



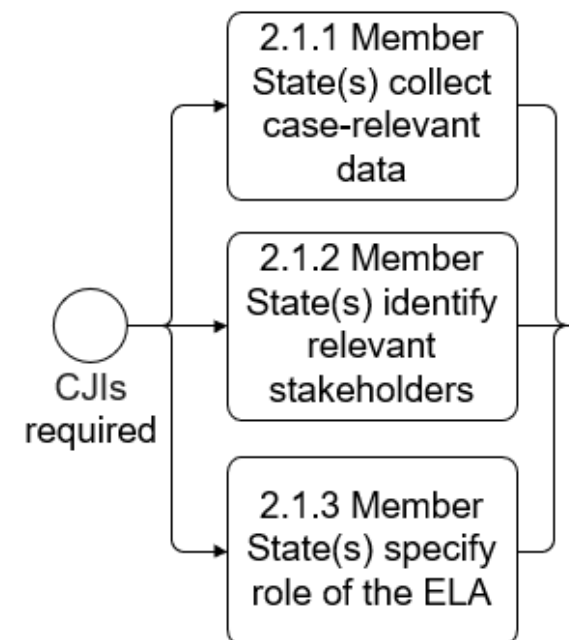
Planning the CJ, steps 2.1.1 – 2.1.3

How can ELA help?

- ELA **liaises with EUROPOL** and **EUROJUST** to investigate and prosecute cases
- By establishing permanent **working arrangements with EUROPOL** and **EUROJUST** to operationalise cooperation procedures
- By providing **continuous cooperation support** (e.g. facilitating preparatory meetings)

| Important |
|---|
| It is highly recommended that the initiating authority (MS or SPO) has already done some investigative measures concerning the relevant case before starting joint measures and contacting the parties involved. |

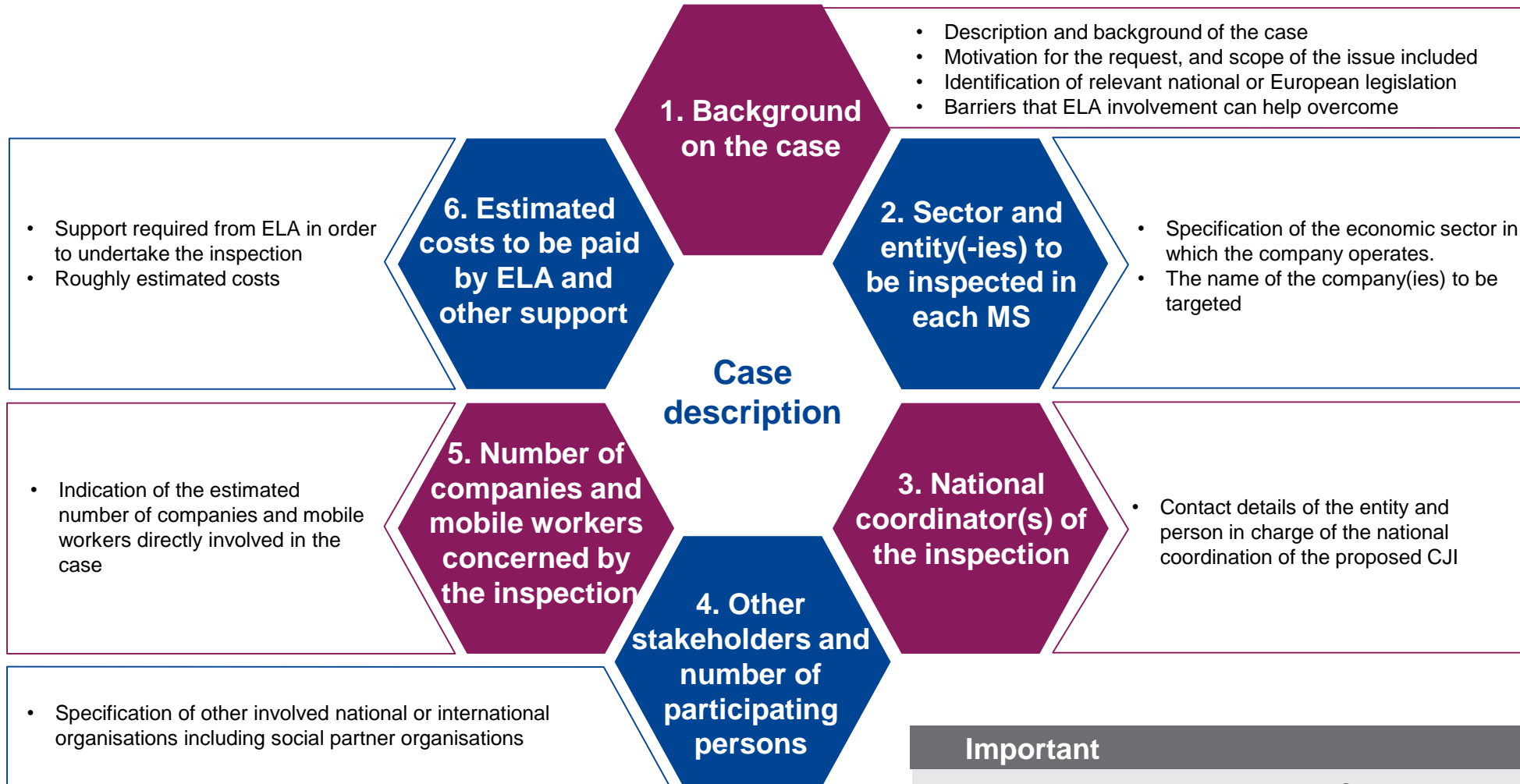
| Best Practice |
|--|
| It is important to consider the possibility of setting up mixed teams coordinated by different competent authorities before starting an inspection. |



2.2 MS fill in template with case data

2.2 Member State(s) fill in ELA template with case data

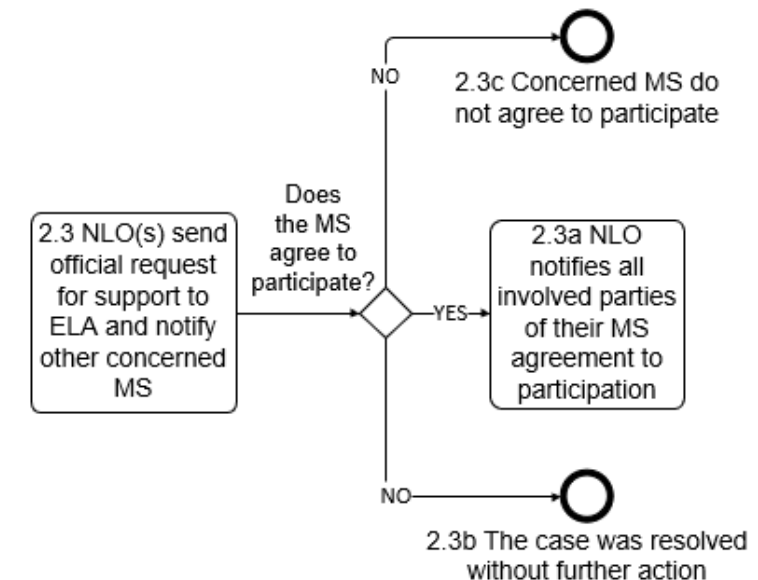
The initiating authority will specify in the Case description:



Important
According to the ELA Regulation, MS and the Authority shall **keep information** about envisaged inspections **confidential** with regard to third parties.

2.3 NLO(s) send official request for support to ELA and notify other concerned MS

- When NLO(s) send official request for support to ELA and notify other concerned Member States, **three outcomes** are possible:
 - ✓ **All Member States agree to participate**
 - ✓ **No further action is needed.**
 - ✓ One or more **Member States do not agree to participate.**
- If a MS decides not to participate in a CJI the Authority shall establish and adopt the modalities to **ensure appropriate follow-up**. In such a case:
 - ✓ The concerned Member State shall **inform of the reasons for its decision** and about the **measures it plans to take** to resolve the case .
 - ✓ The concerned Member State shall inform about the **outcomes of the measures** they took.
 - ✓ The Authority may suggest that a MS which do not participate in CJIs, **undertake its own inspection** on a voluntary basis.



Important

MS that decide not to participate shall **keep information** about such an inspection **confidential**

2.4 ELA evaluates request for support CJJ

- Based on a set of **agreed criteria**
- **Prioritizes** the assessment of **urgent cases**
- Request **additional information** from Member States to facilitate assessment



Criteria for ELA to assess the case



Eligibility criterion

to be eligible for support, the proposed inspection should concern a cross-border case within the scope of the ELA as set-out in Article 1 of the ELA Regulation.



Number of workers/companies concerned



Geographical spread of ELA support



Necessity of the case

cases requiring action because the issue is recurring, it was not addressed previously, or because of the severity of the infringements or in relation to the nature of the suspected activities, etc. should be given priority.



Gravity of the impact on workers and/or labour markets

ELA should prioritize cases depending on the severity of the infringements (such as involving organized fraud/ crime etc.) and the impact on workers or on the local or national labour markets.

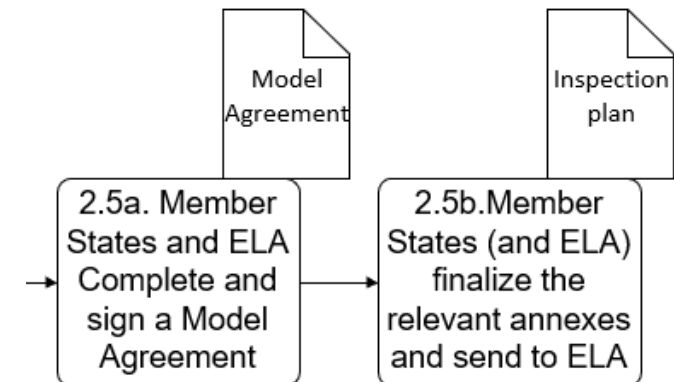
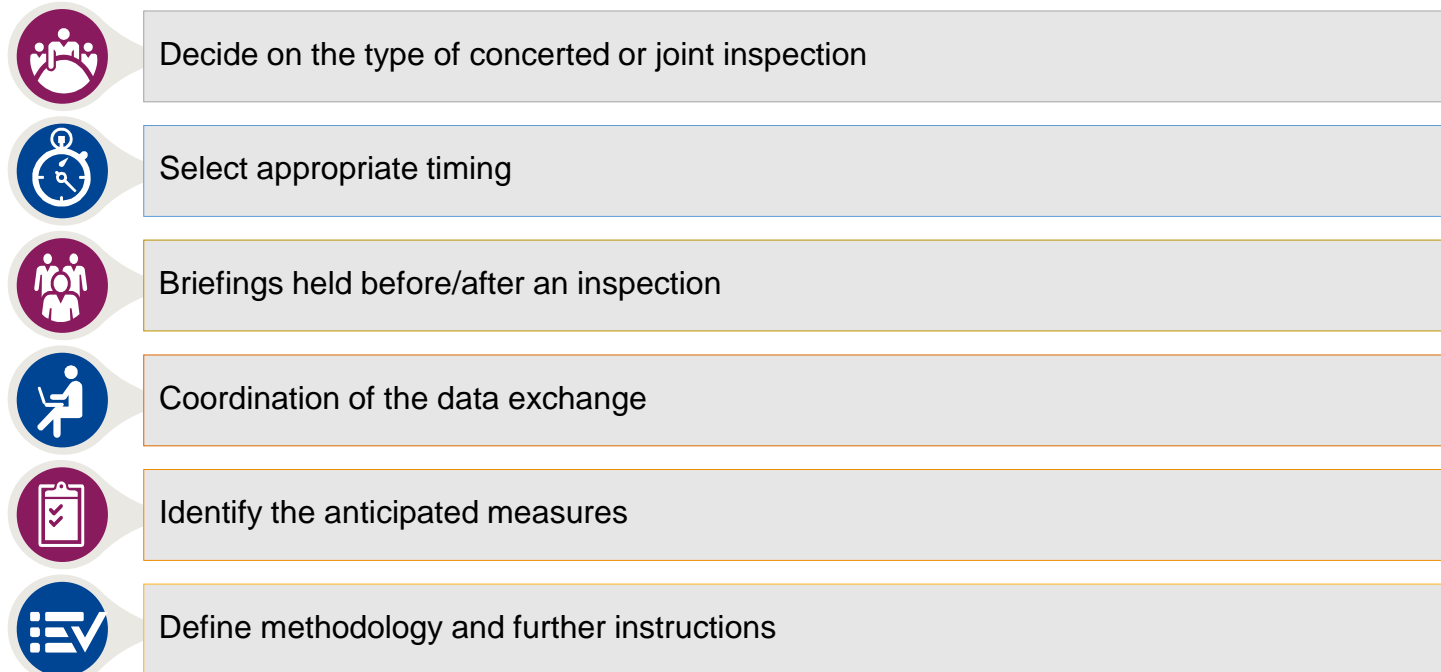


Sectoral coverage

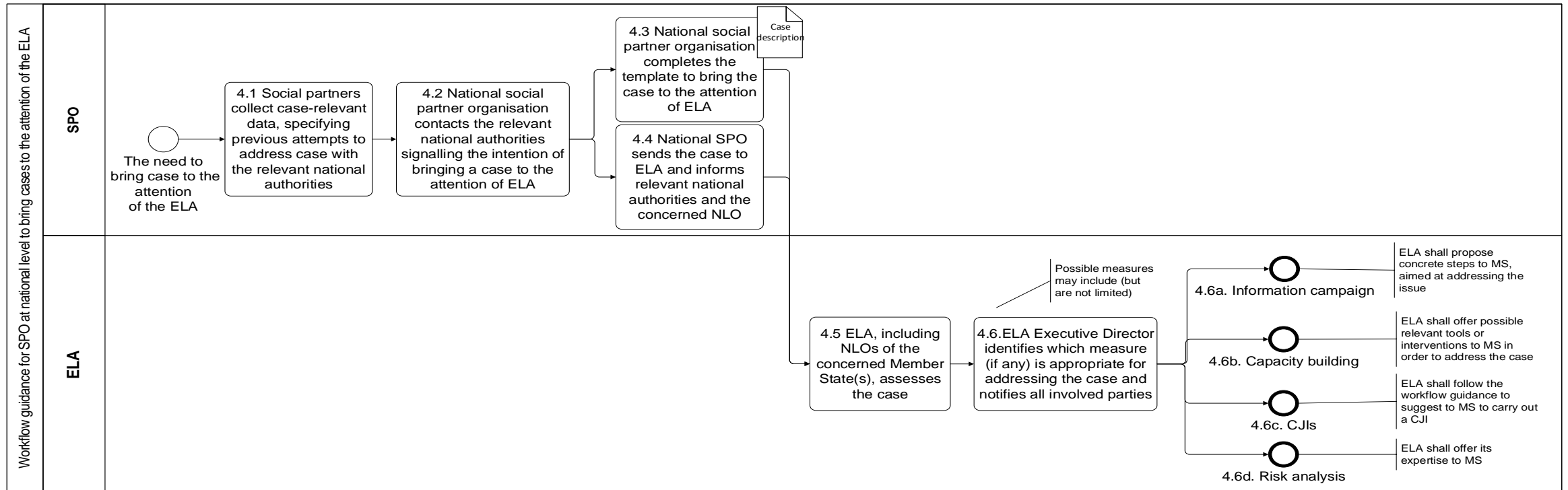
ELA should focus on priority sectors identified following the risk assessment and approved by the Management Board. Nevertheless, ELA should strive to ensure the coverage of other sectors in which cases clearly meet the above criteria.

2.5 MS and ELA complete and sign the Agreement and agree on the specificities of CJI

- The **last step** for **formalizing the main responsibilities and steps** to be taken by the parties
- **Agreement** of all participating Member States is a **prerequisite** for initiating concerted or joint inspections
- The choice of when, how and what type of cross-border inspections to perform depends on individual cases:



Workflow guidance for SPO at the national level to bring cases to the attention of ELA



Explanatory Notes



Start event



End event



Task



Document



Sequence flow

SPO brings cases to the attention of ELA

4.1 Social partners collect case-relevant data, specifying previous attempts to address case with the relevant national authorities

SPO can counters the potential labour mobility issues by bringing a case to the attention to ELA

4.2 National SPO contacts the relevant national authorities signaling the intention of bringing a case to the attention of ELA

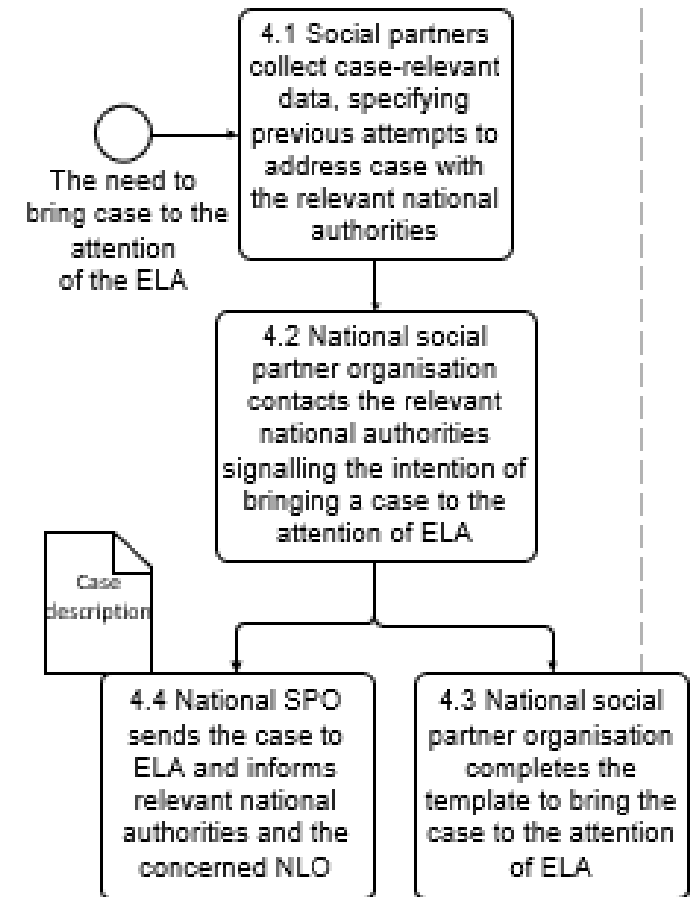
- SPO and the relevant national authorities **assesses the need for an action.**
- SPO and the relevant national authorities **do not agree on the need for an action or on the type of an action** or national authorities do not act upon the request of the SPO, the SPO may **bring the case to the attention of ELA.**

4.3 National social partner organisation completes the template to bring the case to the attention of ELA

SPO completes the template Case description to bring the case to the attention of ELA.

4.4 National social partner organisation sends the case to ELA and informs relevant national authorities and the concerned NLO

SPO sends the completed Case description to ELA and provide this information to the relevant national authorities and NLOs.

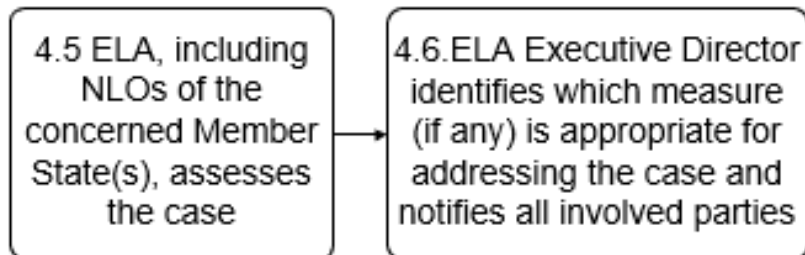


ELA assesses the case and identifies appropriate measure

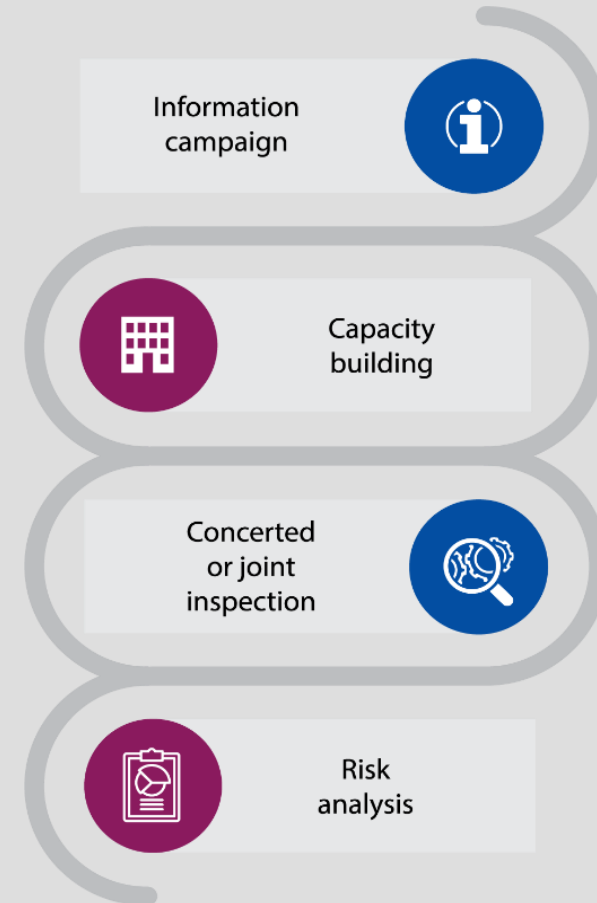
4.5 ELA, including NLOs of the concerned Member State(s), assesses the case

- Based on a set of **agreed criteria**
- **Prioritizes** the assessment of **urgent cases**
- Request **additional information** from Member States to facilitate assessment

4.6 ELA Executive Director identifies which measure (if any) is appropriate for addressing the case and notifies all involved parties



Measures for addressing the case



How can ELA help?

Offering technical, administrative, financial or other support for an information campaign to address the issue.

6

Use case #1 -
Planning of joint
inspection

**1 hour
lunch break**



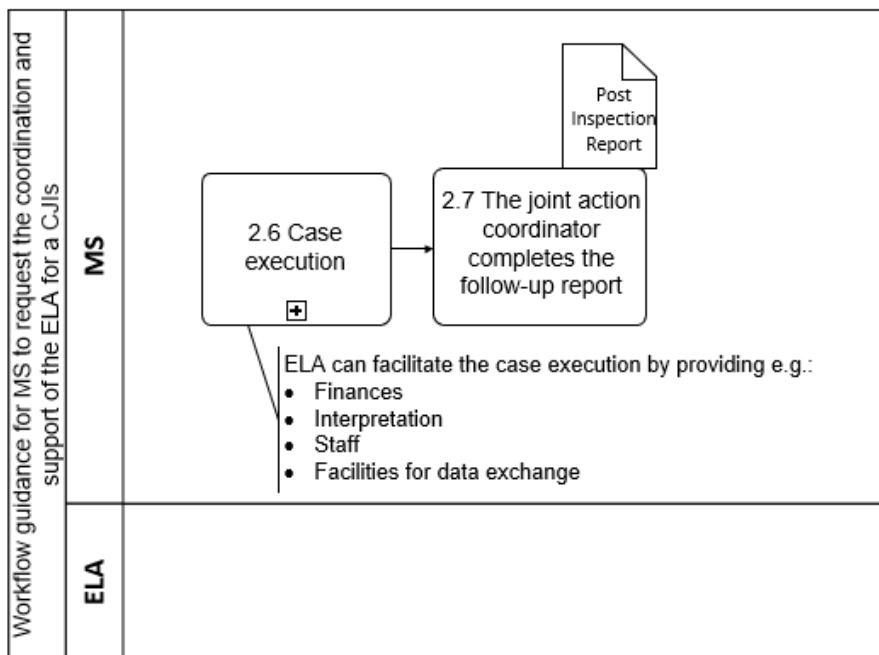
7

Implementing the CJI

Implementing the CJI

- The implementation phase describes the **on-site stages** of concerted and joint inspections
- During the implementation phase, all team members **follow the instructions stated in the Agreement and/or Inspection Plan**
- Inspectors look to **clarify details of inspection cases**

Key steps in implementing CJIs



| |
|---|
| DRAFT POST-INSPECTION REPORT XX/2020 FOR CONCERTED AND JOINT INSPECTIONS |
| <small>This Post-Inspection report shall be drafted in accordance with the law or practice of the Member State where the inspection takes place. The Post-Inspection report shall only be completed in the parts that bear relevance for the case at hand.</small> <small>According to the law or practices of the Member States in which the inspection takes place some findings of the inspectors can be subject to communication to social partner organisations. According to the law or practices of the Member States in which the inspection takes place some findings can be subject to non-communication to the other parties (e.g. criminal cases).</small> |
| Subject: Reference number: |
| Description of the inspection (Content can be copy/pasted from the inspection Agreement document if still up to date) |
| <small>Describe which institutions/enforcement bodies/social partner organisations in each Member State were directly involved and mention the respective national coordinators.</small> Member State A: Member State B: Other stakeholders: |
| <small>Date of the inspection:</small> |
| <small>Describe the case before the inspection:</small> |
| <small>Specify the purpose of the concerted or joint inspection (general, targeted, follow-up) and issues inspected:</small> |
| <small>Describe the process of the concerted or joint inspection (number of people involved, investigation methods used, etc.):</small> |
| <small>Specify the costs incurred during the inspection:</small> |

Post Inspection Report

Case execution

2.6 Case execution



Key steps for Case execution



1. Utilise tools and foreign language support during CJIs



2. Verifying data can potentially expand the scope of the case



3. Use of collected data as evidence

- Agreement on the **type of information and the questions legally permitted** and admissible as evidence
- **Standardized tools** for cross-border inspections may be developed, such as (not limited to):
 - bilingual or multilingual questionnaires,
 - standard information documents,
 - comparison of investigative powers and underlying national legislation.
- **Multi-lingual questionnaires** and **electronic devices** can be use
- **Phones and tablets** may also be used **to access information**

Inspection check list

The information relevant for a cross border inspection.

- ✓ Full identification of the employer and his subcontractor(s)
- ✓ Nature of the contractual relationship and social security status of the workers
- ✓ Exact date of signature of the contract, and/or date of commencement of work (the two may not coincide)
- ✓ Validity of the employment contract (as necessary)
- ✓ In the event of a probation period, its stated duration and terms
- ✓ Job title and/or job specification (professional category)
- ✓ Employee structure (team/department), if available
- ✓ Salary, payment modalities and/or calculation method
- ✓ Additional payments and subsidies or entitlements paid to the worker in the prescribed manner (e.g. posting allowances)
- ✓ Working hours and daily record of workers on-site (timesheets), compensation for overtime
- ✓ The type and duration of annual leave (minimal, additional, extended)
- ✓ A1 forms and prior declaration for posted workers (if any) or proof of registration of the employee in the social security system of the host country

Case execution

2.6 Case execution



Key steps for Case execution



1. Utilise tools and foreign language support during CJIs

2. Verifying data can potentially expand the scope of the case



3. Use of collected data as evidence

- Following an on-site visit, collected **information** is **checked and analyzed**
- **Additional infringements** or **irregularities** may be **detected**
- **Data** collected during a single site visit can be **insufficient** and result in:
 - The inspection being extended,
 - Requests for additional information,
 - Checks in another Member State.

“Irregularity” means any infringement or suspected infringement of Union Law which is identified during an inspection and does not directly fall within the scope of the inspection.

Case execution

2.6 Case execution



Key steps for Case execution



1. Utilise tools and foreign language support during CJIs

2. Verifying data can potentially expand the scope of the case



3. Use of collected data as evidence



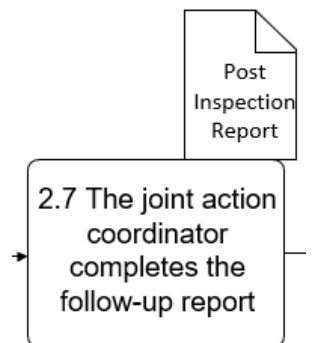
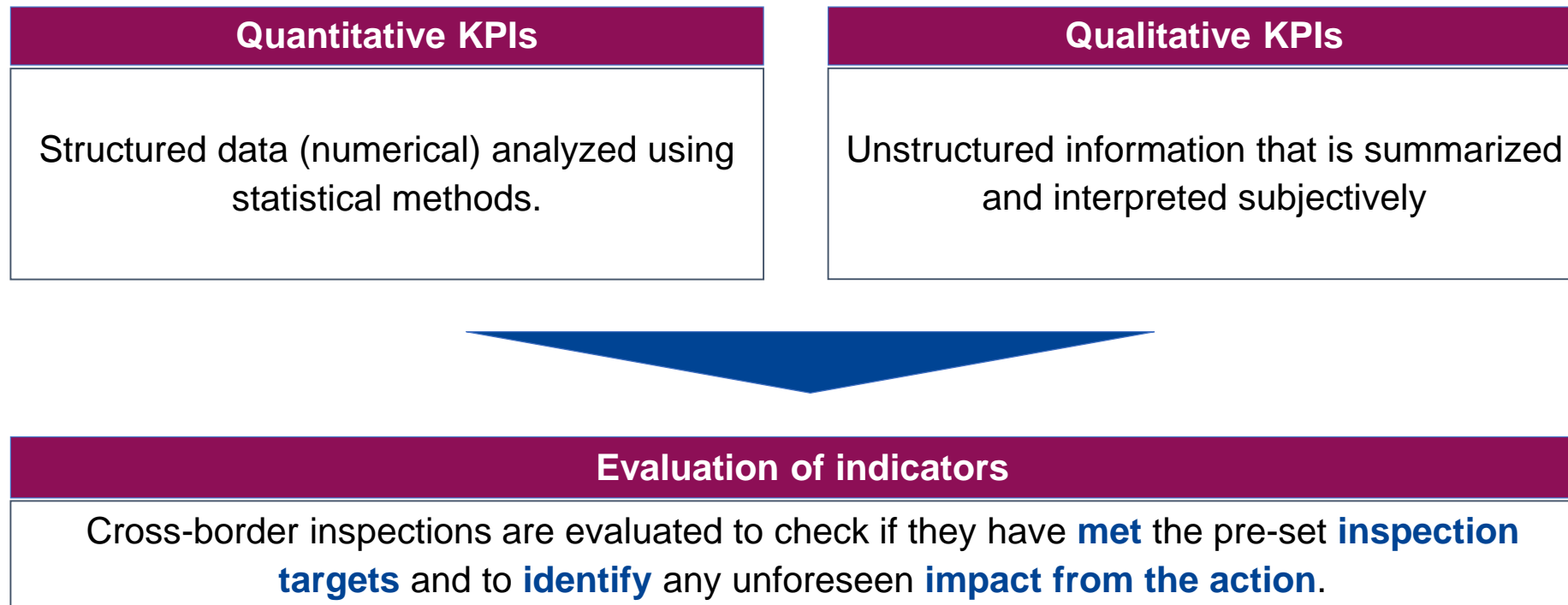
- Collaboration and data sharing **requires solutions compatible with national legal framework**
- **Evidence** can be **used in administrative or criminal procedures** in accordance with national law and practice. However the **data can't always be used as evidence** (for more information see Guidelines for CJI, annex 4)
- **Procedures for collecting information** and its **relevance as evidence in court must be in align** with the **national legislation** of all Member States involved.
- Administrative or criminal **procedures can result** in:
 - Financial penalties
 - Public tenders being withdrawn
 - Recovery of unpaid wages and social security contributions,
 - Withdrawal of fraudulent benefits,
 - The relevant authorities may decide to apply a temporary business closure penalty to prevent a company declaring insolvency to evade responsibility.

The joint action coordinator completes the follow-up report



The authority of a MS that carries out a CJI shall report to the Authority on the **outcome of the inspection** and on the **overall operational running** of the CJI.

The report is completed by the joint action **coordinator for all participating countries**



Post Inspection Report

Description of the inspection

Involvement of ELA and/or other stakeholders

Details of the entity being inspected

The total number of companies and mobile workers concerned by the inspection

The results of the concerted or joint inspection

Which laws were breached based on which findings

- Non-compliance with labour rights of EU mobile workers (e.g. underpayment/ non-payment of wages)
- Incorrect payment or non-payment of social security contributions and/or unlawfully obtained social benefits
- Cross-border undeclared work
- Non-genuine posting of workers
- Bogus self-employment
- Bogus, fraudulent or illegal temporary work agencies
- Letterbox companies and fictitious company constructions
- (Organised) illegal employment of third country nationals
- Trafficking of human beings and/or labour exploitation
- Other findings (including suspected irregularities in the application of Union law)

Providing information not only on identified irregularities but also on the **positive effects of the CJI**, indications that the **CJI has improved or promoted compliance with the law.**

Post Inspection Report

Can the inspection teams use the data collected during the inspection as evidence?

Provide additional information in case any special type of evidence is needed

Clarify who will lead any follow-up of the inspection

Did you communicate results to other relevant authorities

Should there be any further cross-border actions including with ELA support

What are the lessons learnt?

- Criminal prosecution (involvement of a public prosecutor)
- Civil procedures via social partner organisations
- Administrative fine
- Recovery of social contributions
- Payment of wages
- Recovery of undue social benefits
- Tax contributions
- Other coercive measures (license withdrawal, public procurement, etc.)
- Conciliation or other out-of-court dispute resolution procedures
- Follow-up inspections (including with ELA support)
- Any other follow-up activities (such as liaising with or reporting to EU institutions and bodies, international organizations, third countries' authorities or other stakeholders)

8

Use case #2 -
Implementing
concerted inspection

15 minutes
coffee break



9

Following-up
the CJI

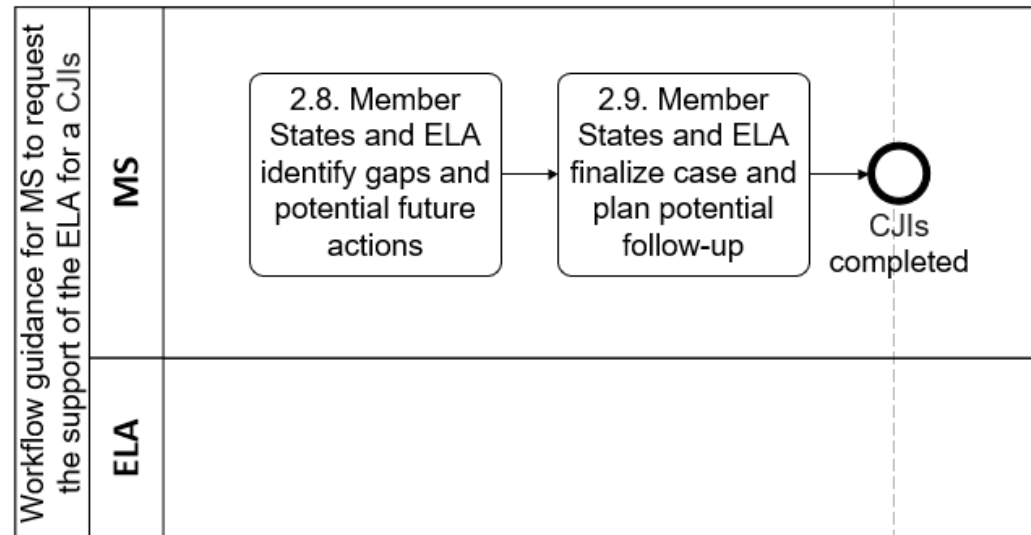
Following-up the CJI

Following up on cross-border inspections is necessary to achieve the following **three key objectives**:

- 1** **Increasing the effectiveness** of concerted and joint inspections
- 2** **Increasing capacity** of inspectors and other relevant authorities **to assess and address** the risks of new and **complex cases** of labour mobility.
- 3** **Altering the behaviour of employers and employees** (e.g. increasing the number of declared workers at the inspected company or in the sector).

Critical reflection and potential improvement of processes for future inspections **based on evaluated KPIs**.

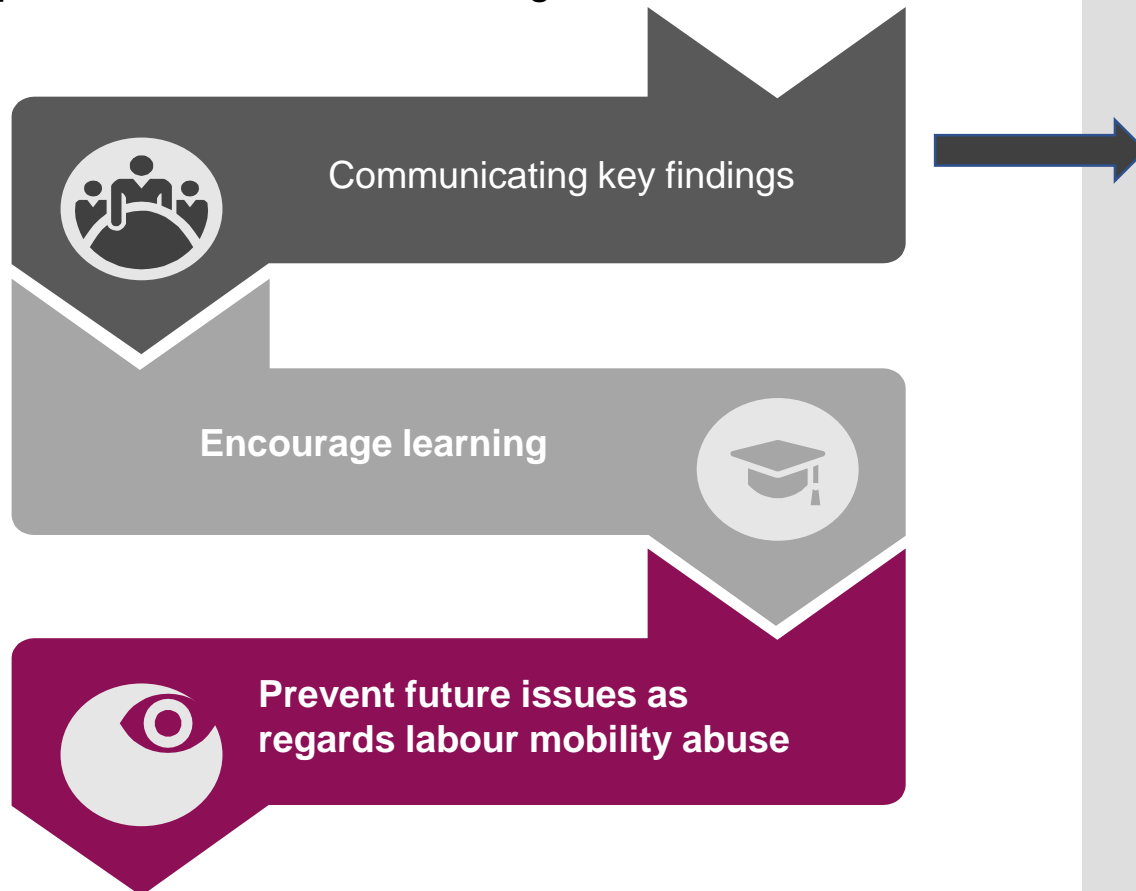
Key steps in following-up the CJIs



Member States and ELA finalize case and plan potential follow-up

2.9. Member States and ELA finalize case and plan potential follow-up

Member States and ELA identify necessity for follow-up to inspections based on the findings.



- Internal and external communication can **maximize the impact of cross-border inspections**:
 - **Externally**, to inform other authorities, including those in other Member States, in order to:
 - ✓ Enable **expansion of the case** and the benefits of its findings,
 - ✓ Enhance **understanding of complex cases** operating in several countries,
 - ✓ **Improve measures** by countering or preventing similar fraud schemes, and **sharing lessons learnt**.
 - **Internally**, to **share results and lessons learnt** with colleagues and inspire a cross-border working culture.
- **Sharing results widely with the public** can also increase the impact of an inspection.

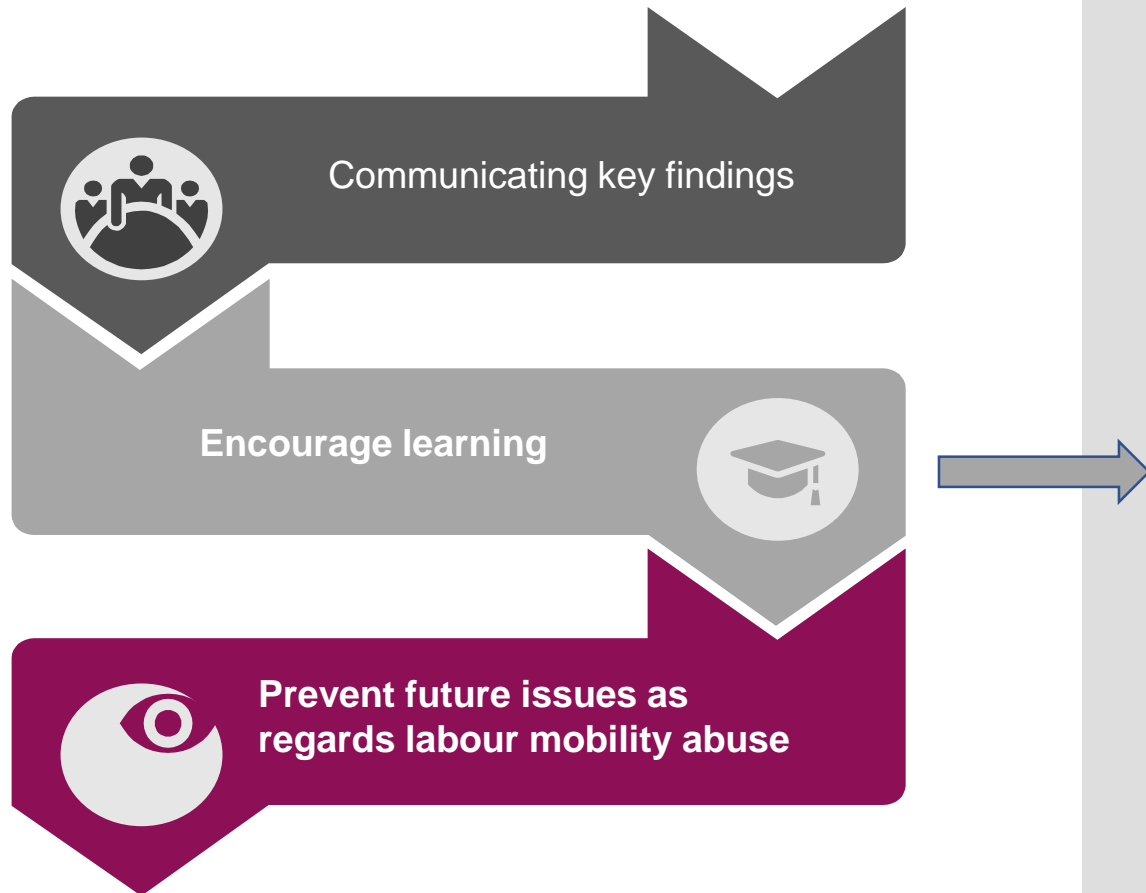
How can ELA help?

- ELA support and advice on communicating key findings is also available

Member States and ELA finalize case and plan potential follow-up

2.9. Member States and ELA finalize case and plan potential follow-up

Member States and ELA identify necessity for follow-up to inspections based on the findings.



- Inspection results can offer **insight into emerging fraud schemes** and **fine-tune risk assessment systems**
- Results can also be used to:
 - **Revise trainings and manuals,**
 - Develop good practices for **sharing success stories**
 - **Improve templates**

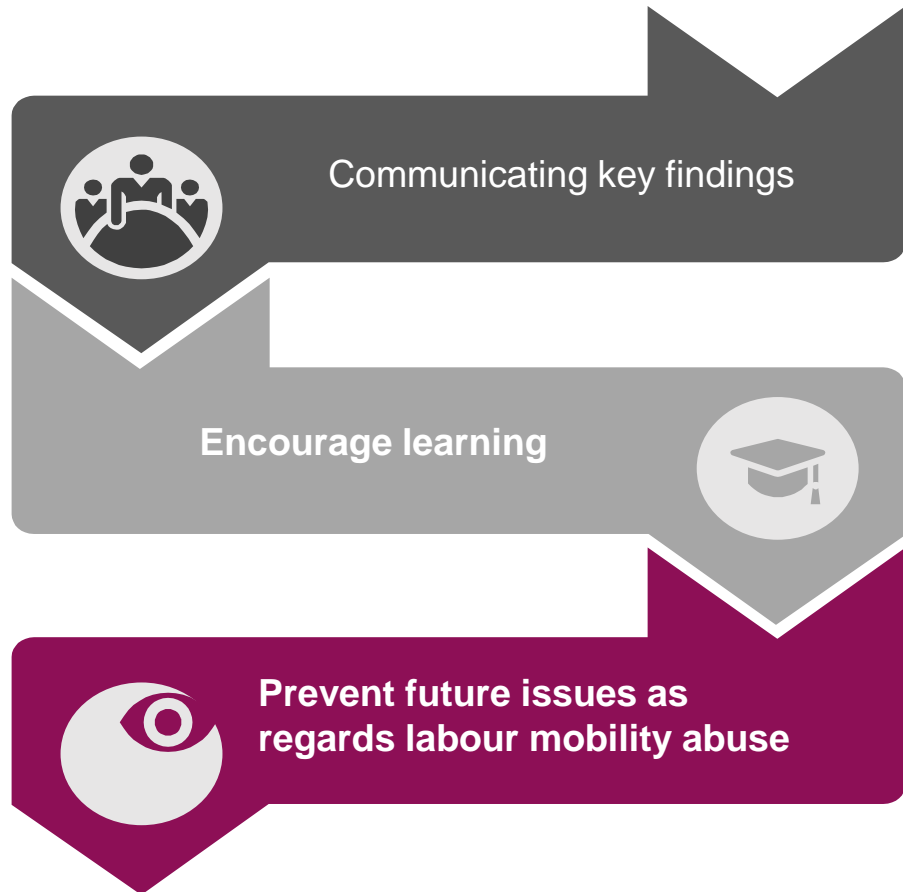
How can ELA help?

- By **providing mutual learning and training activities**
- By **developing** sectoral and cross-sectoral **training programmes**
- By **updating guidelines**

Member States and ELA finalize case and plan potential follow-up

2.9. Member States and ELA finalize case and plan potential follow-up

Member States and ELA identify necessity for follow-up to inspections based on the findings.



Cross-border inspections can **uncover widespread problems** in the labour market



Development national or EU-wide **awareness raising campaigns** to tackle them.



To inform individuals and employers, especially SMEs, of their **rights and obligations** and the opportunities available to them.

The role of ELA

- ELA **assesses risk** in cooperation with the MS and social partners. The risk assessment address topics, such as:
 - Labour market imbalances,
 - Sector-specific challenges,
 - Recurring problems.
- ELA carries out focused **in-depth analyses and studies** to investigate specific issues.

10

Discussion and
closing remarks
of the day