



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.