



Towards An Effective Use of MoUs | Guidelines

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Introduction

This document provides guidance on when to use a Memorandum of Understanding (MoU) in the context of national and international cooperation and what information it should contain. Its main objectives are to 1) ensure that INESC TEC embarks on written partnership agreements likely to produce meaningful results and outcomes and 2) generate commitment and accountability from those charged with managing and overseeing an MoU.

1. What is a Memorandum of Understanding?

An MoU is a document that records the common intent and agreement between two or more parties. As set forth by the American Council on Education (ACE), MoUs represent a “*general handshake or umbrella agreements - agreements to agree – which require additional agreements for specific activities [...]. Such agreements could simply identify basic aims for possible future collaborations in the most general senses, or they could specify overarching goals and scope of a partnership, including methods for organisation and communication as well as clauses for review and termination*”¹.

Also, since MoUs are not legally binding documents, they do not commit their signatories to allocate, share or transfer resources between them to pursue identified joint goals. Therefore, MoUs are light-written agreements that will require additional instruments in the future to turn intents into concrete collaborative actions.

2. Functions of MoUs

MoUs can be very important to create the framework and trusting environment needed to initiate a long-term collaboration. Therefore, they are often the foundation for negotiations and the first step in a collaborative relationship. In some countries and cultures, MoUs are fundamental to forming partnerships.

MoUs help clarify roles and responsibilities, intents, and goals and give evidence of consensus so that the involved parties can move towards a more concrete, detailed and follow-up form of agreement. MoUs may also serve public relations and diplomatic purposes.

Whenever appropriate, INESC TEC’s staff involved in negotiating an MoU should seek advice to understand whether the cooperation opportunity ahead of the organisation calls for such a type of arrangement.

One important advice to remember is to refrain from entering MoUs that are unlikely to lead to partnership activities within their timeframe. Some organisations are MoU-averse because of the risk that the other party signing it will take an excessively

¹ “International Partnerships – Part One: Definitions and Dimensions”



light approach to implement it and make little effort to move from intentions to actions. To this end, they have very strict rules and procedures in place to ensure that their staff will only work on MoUs likely to lead to meaningful results. Having an extensive list of MoUs on your website or formal presentation that are dormant or nothing but a pile of paper can actually be more harmful than having a small number of MoUs making their way towards implementation agreements.

To prevent entering paper-only agreements, the SRI gives guidance on what makes a good MoU (see no. 5).

3. When to use an MoU?

As mentioned in No. 2, an MoU can be a good option when:

- The parties share a common understanding in working towards shared goals / wish to create a framework for future collaboration but do not have the required financing instruments in place to move on to joint implementation / are not yet ready to allocate, share or transfer funds.
- The parties need some evidence of collaboration to get the support of funding agencies, governments, or other sponsors/champions to move forward with concrete actions.
- There is, at least, a champion in each party involved who not only is the agreement's main enthusiast at their organisation but is also liable for bringing the MoU to life, i.e., for ensuring that the MoU does not lose momentum after its signing and generates collaborative opportunities (not anymore at the researcher's level but from now on) at the institutional level.

Before entering an MoU, INESC TEC should investigate the collaborative opportunity to be sure that:

- We know the organisation we will be collaborating with to the point that we can confidently sign an agreement with them.
- No other MoU is being discussed with that organisation. If this happens to be the case for some reason, the SRI, for international agreements, and the Legal Service (AJ) should work with all concerned stakeholders to ensure that the same agreement addresses all potential areas of collaboration with the future partner organisation
- There are no political or diplomatic issues preventing or refraining us from signing an MoU with organisations of a given country (applicable to international MoUs).
- The representative of each party signing the MoU is invested with the authority to bind the organisation.



The SRI is charged with conducting this investigation when the MoU on the horizon is with a foreign organisation.

4. The MoU Champion

As mentioned earlier in this document, a precondition to enter an MoU is the existence of a champion of the partnership at INESC TEC. This individual might have been the first or among the first to contact and engage with the potential partner. They are now expected to become the leading advocate of the partnership in the institution and its Board of Directors.

Their profile makes them suitable to take on this role. In addition to having a scientific background, they should be great networkers and connectors and knowledgeable of INESC TEC's research and innovation to an extent that allows them to spot collaborative opportunities beyond their research interests and their group's. In other words, they are able and committed to pushing what was once an individual-based relationship into an institutional partnership.

Throughout the MoU's lifetime, the MoU Champion should work with the other party's Champion and key people at INESC TEC to ensure that the partnership makes progress and that the MoU does not go dormant. This means that the signatory parties should meet periodically to reflect on what is being done to ensure that the MoU leads up to concrete collaborative actions and, desirably, to implementation agreements.

In principle, MoU Champions should not coincide with the individuals signing the MoU.

5. Memorandum of Understanding Template

MoU templates should include the following components:

- Articulated purpose that describes how and when the parties will collaborate.
- Scope/areas of intended collaboration.
- Type of activities foreseen.
- Staff at each signatory organisation accountable for managing the MoU from an administrative and technical standpoint.
- Considerations about Intellectual Property and Confidentiality issues.
- Evaluation and reporting of progress.
- Anticipation of follow-up agreements.
- Duration, expiration and terms for renewal and modification.
- Dispute resolution; and
- The non-binding understanding/nature of the agreement.

INESC TEC has a template for MoUs that includes all these components (please refer to the SRI at internationalrelations@inesctec.pt).



Nevertheless, organisations wishing to have INESC TEC as a partner may come forward with their templates to support a draft agreement. INESC TEC should be flexible enough to work with a partner institution's templates as long as they meet INESC TEC's requirements for a specific type of agreement and all required sections are included.

Since MoUs presented by soon-to-be-partners can sometimes carry the same obligations as contracts or other binding agreements, a careful review by legal experts is mandatory. Indeed, sometimes, agreements take on designations that do not reflect their accurate terms. Therefore, more important than the designation given to an agreement (e.g., MoU, Cooperation Agreement), it is the content that will determine its binding or non-binding nature. INESC TEC shall only enter MoUs with prior review by the SRI (only for international agreements) and the Legal Support Service (AJ) to ascertain their non-binding nature.

Some templates have a section on automatic renewals. The SRI strongly discourages renewing MoUs automatically, as it is much harder to concisely say their value and pinpoint the specific results/outcomes of the collaboration. Renewals should always be preceded by an assessment conducted by the parties to determine the main outcomes of the soon-to-be-expired MoU, the existence of, at least, an ongoing joint activity that justifies the continuation of the partnership beyond the current MoU and the identification of new opportunities for the partnership to explore together under a renewed framework.

6. Memorandum of Understanding Checklist

Below is a set of questions that can be used when negotiating, drafting/reviewing an MoU:

Before starting to prepare the MoU

- Has there been any previous interaction between the proposed partner institutions?
- Is it aligned with areas of knowledge, application, or geographic markets that are strategic to INESC TEC, or will it open opportunities that may become strategic to the organisation?
- Is there a strong potential for mutual benefit?
- Has any on-site coordinator or contact person been identified at each institution?
- Is there stated support from potential Centres explicitly implicated in the prospective agreement?
- Why is the MoU the most suitable type of agreement to move the partnership forward at this stage?



When drafting/reviewing the MoU (using external templates)

Parties entering the MoU

- Does the MoU identify the signatories and their mission/core activity?

Purpose of the MoU

- Is the MoU's purpose clear (what does it set out to achieve)?
- What is the scope/areas of intended collaboration?
- What type of activities are foreseen by the MoU (e.g., advanced training, research projects, mobility of staff, joint research projects, organisation of events, joint publications, R&D activities)?
- How will these activities take place? Each cooperative project or activity should be clarified, defined, and described in a separate written agreement (with financial arrangements and other applicable terms) that all parties sign/enter into.
- What are the benefits of creating the MoU?

Parties' roles and responsibilities

- Is the role of each party in the MoU clearly described?
- What are the agreed responsibilities of each party in the MoU?
- Has each party appointed a staff member accountable for managing the MoU? Also known and referred to as "MoU Internal Champion".

Communication, Dissemination, and IP

- Does the MoU foresee any provisions related to Intellectual Property and Confidentiality?
- Does the MoU have any provisions regarding using the name or logo of all parties involved or releasing information regarding their joint activities? Commitment of resources
- Does the MoU foresee any resource exchange or transfer between parties, and on what basis? An alternative course of action to MoUs should be identified if money is involved.

Evaluation and Reporting

- Will the MoU be reviewed during its lifespan to ensure it remains actual and purposeful (e.g., annually?) Who will conduct the review?



- Does it include any desired requirements for reporting on progress, challenges, funding updates, or information about the timing of such reports?
- When/How will the MoU be renewed? On what terms?

Withdrawal of Parties

- What happens if a party wants to leave?
- Should the parties decide to terminate an MoU before the agreed end date, are there any provisions on how this termination will affect follow-up agreements?
- How will the parties resolve any potential disputes?

Miscellaneous

- Are the MoU's start and end dates clearly identified?
- Can the MoU be amended?
- Does the MoU include a space for the parties' signatures, titles, and signing dates?
- After all parties sign the agreement, a copy of the MoU must be sent to the SRI (only for international agreements), AJ, and AG for record-keeping.

Sources

<https://docplayer.net/156735080-Internationalization-in-action-international-partnerships-part-one-definitions-and-dimensions.html>

<http://www.iprhelphdesk.eu/sites/default/files/newsdocuments/H2020-MoU-Memorandum-of-Understanding-EN.pdf>

<https://www.gov.uk/government/publications/setting-up-school-partnerships/guide-to-writing-a-memorandum-of-understanding-mou>



Workflows (Applicable for International MoUs to be monitored by the SRI)

Figure 1 – Approval of international MoUs (or similar agreements)

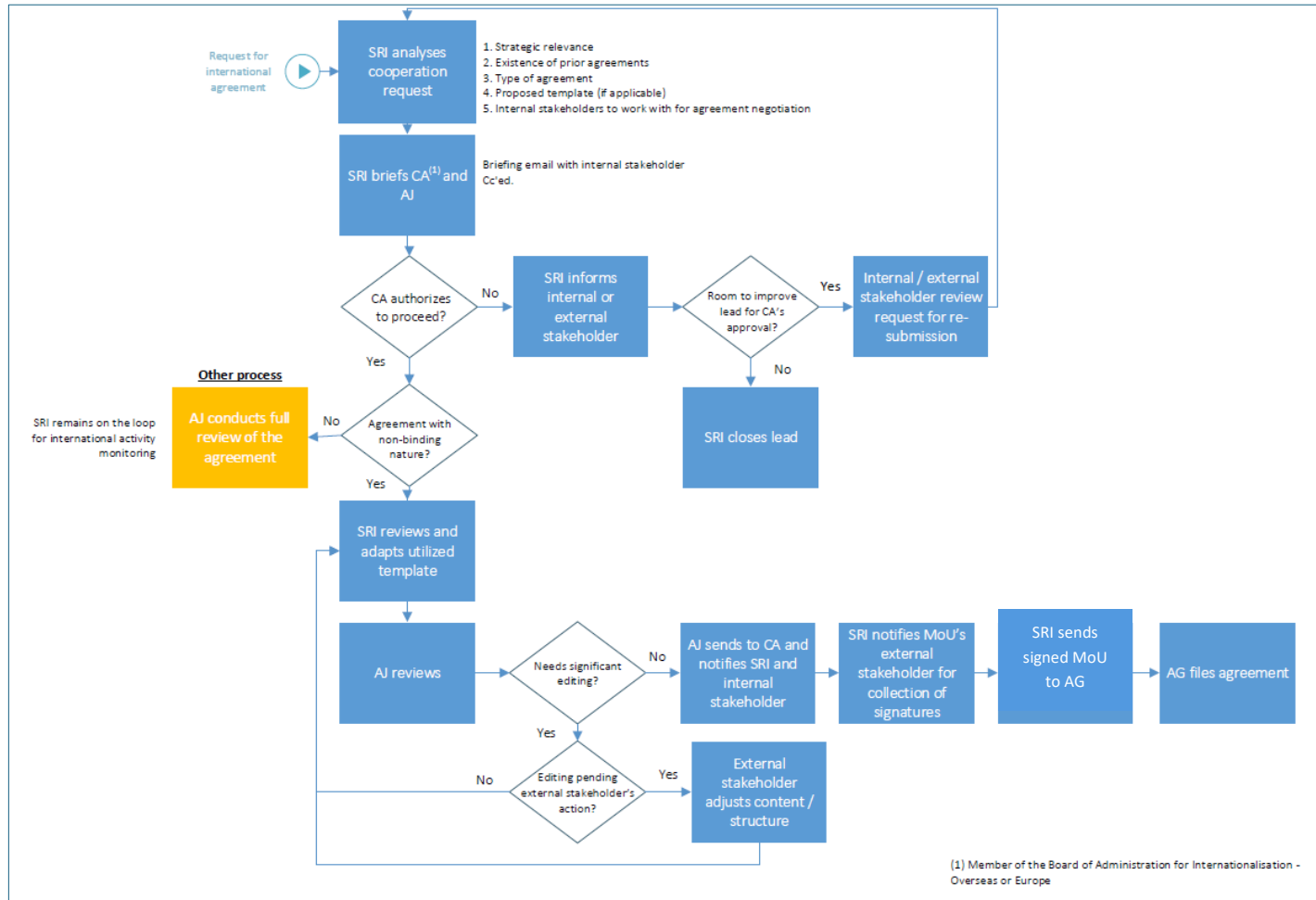




Figure 2 - Monitoring of international MoUs by the SRI (or similar agreements)

