



European Platform Undeclared Work

**PRACTITIONER'S TOOLKIT:
DRAFTING, IMPLEMENTING,
REVIEWING AND IMPROVING
BILATERAL AGREEMENTS
AND MEMORANDA OF
UNDERSTANDING TO TACKLE
UNDECLARED WORK**

**A practitioner toolkit from the thematic
workshop of the European Platform
Undeclared Work**



Ruslan Stefanov and Daniela Mineva

Vitosha Research EOOD (Center for the Study of Democracy Group, Bulgaria)

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LIST OF KEY TERMS AND ABBREVIATIONS

| | |
|-----------|---|
| BAs | Bilateral Agreements |
| CIRCABC | Communication and Information Resource Centre for Administrations, Businesses and Citizens |
| CSD | Center for the Study of Democracy (Bulgaria) |
| CSOs | Civil society organisations |
| DG | Directorate General |
| DILTI | Interministerial Delegation for Combating Illegal Work (France) |
| EAS | Employment Agency Standards Inspectorate (UK) |
| EC | European Community |
| EU | European Union |
| Eurofound | European Foundation for the Improvement of Living and Working Conditions |
| FTA | Free trade agreement |
| GFMD | Global Forum on Migration and Development |
| GLA | Gangmasters Licensing Authority (UK) |
| GLAA | Gangmasters and Labour Abuse Authority (UK) |
| GMG | Global Migration Group |
| HMRC-NMW | HM Revenue and Customs - National Minimum Wage (UK) |
| IALI | International Association of Labour Inspection |
| ICF | ICF Consulting Services Ltd. |
| ILO | International Labour Organization |
| IMI | Internal Market Information System |
| IOTA | Intra-European Organisation of Tax Administrations |
| ISSA | Information Systems Security Association |
| MoU | Memorandum of Understanding |
| NAs | National Agreements |
| OASIS | Organisation Anti-fraude des Services d'Inspection Sociale (Belgium) / Social Inspection Services Anti-fraud Organisation |
| OECD | Organisation for Economic Co-operation and Development |
| SIRS | Service d'information et de recherche sociale/Information and Social Research Service (Belgium) |
| SMART | Specific, measurable, attainable, realistic and timely |
| SWOT | Strengths, weaknesses, opportunities and threats |
| TOR | Terms of Reference |
| UDW | Undeclared work |
| UK | United Kingdom |

INTRODUCTION

Purpose of the toolkit

The Practitioner's Toolkit aims to assist experts with concrete guidance in drafting, implementing, reviewing and improving Bilateral Agreements (BAs) and bilateral Memoranda of Understanding (MoUs). Its goal is to promote the use of BAs and MoUs as a tool for tackling undeclared work and the informal economy among the countries of the European Union, and beyond. It will thus also build upon the main purpose of the Platform to engage its members in closer cross-border cooperation and joint activities. The main recommendations are presented in easy-to-follow steps based on a learning and implementing approach. The toolkit includes a description of all necessary major steps and practical tools for the realisation of BAs and MoUs such as checklists, questionnaires, guides and the ideal structure and content. Specific focus is placed on the organisational requirements for implementing cross-border collaboration, resources needed, broader reform aims, as well as on the understanding and commitment to these aims. The toolkit thus has as an additional objective to help institutions improve their internal operations, processes, organisations and policies. The toolkit is meant to provide a non-exhaustive list of ideas on how to draft and review Bilateral Agreements. Bilateral MoUs, which are a lighter form of cooperation, can be developed using just parts of the toolkit depending on the specific purpose and focus. The proposed logic of the modules and steps in the toolkit can also be applied to National Agreements on UDW.

Why have a toolkit on BAs and bilateral MoUs to tackle undeclared work?

This toolkit was developed as part of the mutual learning process of the European Platform Tackling Undeclared Work. This involved a [Thematic Review Workshop](#) on the topic held in the Netherlands on 11-12 April 2017, a [Follow-up Visit](#) to the Belgian Labour Inspectorate held on 26-27 June 2017, a [Learning Resource Paper](#), a number of good practice fiches and staff exchanges between Platform members. The participants at the workshop agreed on the benefits of having guidelines for the drafting, implementing and monitoring for the most frequently used instruments for cross-border cooperation – BAs and bilateral MoUs. At the same time the toolkit could serve as a guiding point for the elaboration and use of National Agreements (NAs), which are similar in terms of structure.

The toolkit is designed in three main modules which the user can navigate using the Table of Contents, List of Figures, List of Tables and List of Abbreviations. It should be noted that not all modules and/or steps need to be present in all BAs and MoUs but should rather be seen as a comprehensive list of suggestions which should be adapted to the specific need at hand.

Who is the toolkit aimed at?

The toolkit is aimed at all practitioners (policy-makers, public authorities, social partners, external experts and evaluators) involved in designing, implementing and evaluating Bilateral Agreements and/or bilateral MoUs in the area of tackling undeclared work. If adapted appropriately it can also be useful for initiating and carrying out other forms of collaboration between relevant authorities and/or social partners, especially within the framework of the European Platform Tackling Undeclared Work. Table 1 presents an overview of the topics contained in the toolkit which allows practitioners to choose the issues that are of greatest concern to them or which they would like to explore deeper.

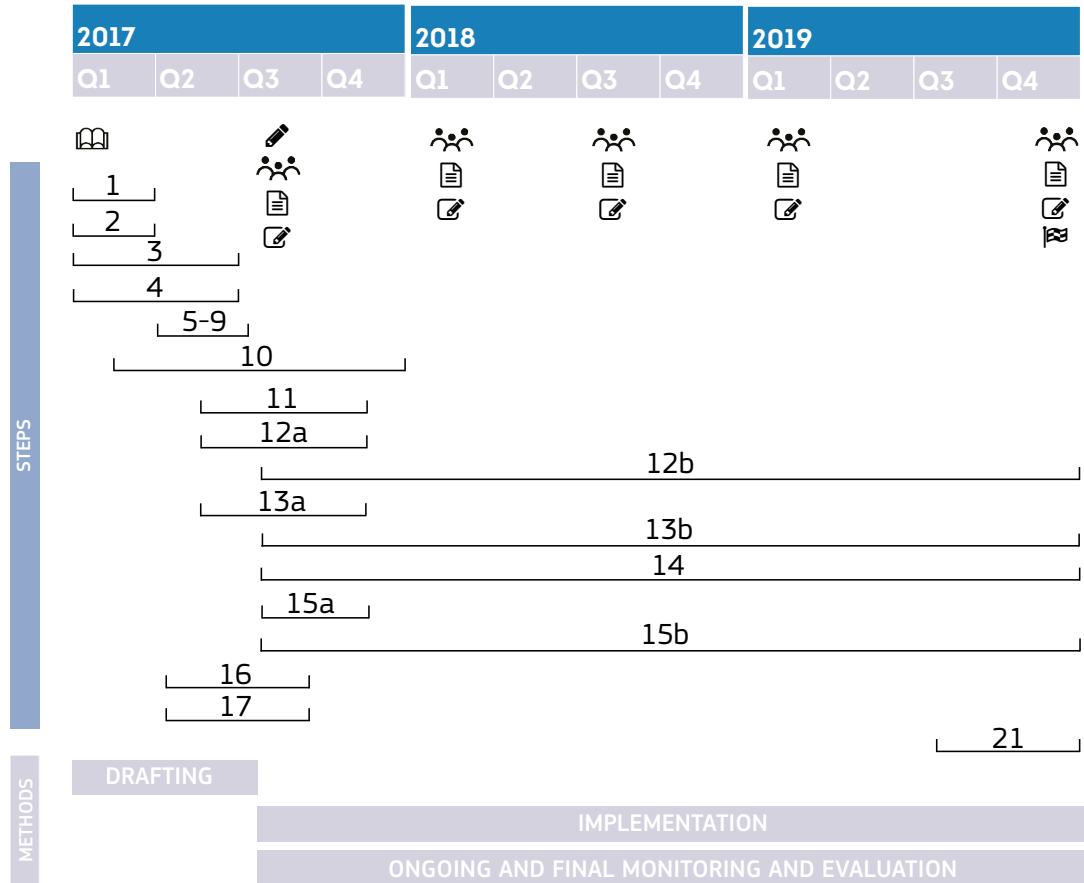
Table 1. How is this toolkit structured and how do I navigate through it?

| Introduction | Key definitions, and explaining the purpose of the toolkit |
|--|---|
| Module 1: Drafting Bilateral Agreements (BAs) and Memoranda of Understanding (MoUs) | <p>To be used by government bodies tasked with initiating cross-border collaboration in the field of undeclared work</p> <ol style="list-style-type: none"> 1. Defining objectives and targets and identifying actors 2. Choice of drafting procedures 3. Define areas to be covered and the measures to be proposed 4. Normative foundation 5. Key terminology (common glossary) 6. Division of clear responsibilities between parties 7. Regular monitoring and periodic evaluation 8. Complaints and dispute resolution 9. Provide templates/models for key documents |
| Module 2: Implementing BAs and MoUs | <p>To be used by practitioners and responsible bodies implementing agreements and MoUs as well as any other stakeholders and social partners involved</p> <ol style="list-style-type: none"> 10. Ensure staffing and funding 11. Ensure capacity building and commitment to the aims 12. Action plan, time-schedule, and regular communication 13. Information exchange – methods and procedures 14. Additional activities, considered good practices 15. Transparency, publicity, dissemination and follow-up |
| Module 3: Reviewing, Evaluating, Improving and Updating BAs and MoUs | <p>To be used by the responsible bodies implementing agreements and MoUs, the contact points, the social partners and the external evaluators</p> <ol style="list-style-type: none"> 16. Setting goals and indicators in advance, allowing for flexibility 17. Evaluation coordinators and stakeholders 18. Regular meetings of a working/monitoring group 19. Review and evaluation (ongoing, post-implementation), Evaluation report 20. Update of the agreements 21. Sustainability and renewal of the cooperation |
| Useful links | To be used for accessing additional information |
| Bibliography and Recommended Reading | To be used for accessing additional information |
| Annexes | Examples of key elements to the agreements (request forms, time-schedules, etc.) |

Source: CSD/ICF.

An example of a time-schedule of a 3-year Bilateral Agreement is shown below, which aims to provide guidance to plan each activity.

Figure 1. Example of a time-schedule of a 3-year Bilateral Agreement



| | | | | | |
|--|--|--|--|--|--|
| | Setting up a Working Group in charge of drafting | | Step 18: Regular meetings of the Steering/ Monitoring Committee. Monitoring of the progress. | | Step 20: Corrections and adjustments to the activities, if necessary |
| | Signature of the agreement | | Step 19: Review and evaluation (ongoing) | | Final Evaluation Report |

| Step N°: | Description | Step N°: | Description | Step N°: | Description |
|----------|--|----------|--|----------|---|
| 1 | Defining objectives, targets | 10 | Ensure staffing and funding | 15a | Set up Visibility and Communication Strategy |
| 2 | Drafting procedures | 11 | Capacity building/ trainings | 15b | Dissemination and visibility |
| 3 | Defining areas and measures | 12a | Action Plan | 16 | Set up goals and indicators |
| 4 | Normative foundation | 12b | Communication | 17 | Set up Steering/Monitoring Committee |
| 5-9 | Common glossary Comparison of powers Dispute resolution Templates | 13a | Set up procedures for information exchange | 21 | Sustainability and initiation of the process of renewal of the cooperation/extension of the agreement |
| | | 13b | Information exchange | | |
| | | 14 | Additional activities | | |

Source: CSD/ICF.

Definitions

Historically BAs and MoUs were initially developed (and still largely encompass) in response to a range of issues related to the regulation of labour mobility flows (admission, integration, fundamental rights, return), as well as more recently economic and cultural cooperation. Although BAs and MoUs can have various scope and purposes, this toolkit prioritises tackling undeclared work as well as the related areas of preventing social security fraud and tax evasion, hiring of illegal workers, and double taxation. The provided guidelines could also be useful for agreements, which set up procedures for transfer of benefits and social security rights. The toolkit focuses on Bilateral Agreements but it can also be adapted to apply to bilateral Memoranda of Understanding and National Agreements on tackling undeclared work.

Bilateral Agreements (BAs): Concluded between Member States/EEA countries in written form and governed by European and/or international law. BAs are agreements between two Member States/EEA Countries which describe in detail the specific responsibilities of, and actions to be taken by each of the parties, with a view to accomplishing their goals in the area of undeclared work. BAs create legally binding rights and obligations¹.

Memorandum of Understanding (MoU): Less formal instrument than BAs, often setting out operational arrangements under a framework agreement on an international level. MoUs entail general principles of cooperation describing broad concepts of mutual understanding, goals and plans shared by the parties. They are usually non-binding². MoUs can cover agreements between enforcement bodies of different MS/EEA countries.

National Agreements (NAs): Instruments for cooperation between two or more national institutions, eventually also involving cooperation with relevant stakeholders such as trade unions and/or employer associations³ to undertake activities defined either by law or policy to tackle undeclared work. NAs can have many different forms such as legal prescriptions, MoUs, Strategic Documents and Action Plans, Executive Orders, etc.

Types of undeclared work and possible counter-measures

There are several main types of undeclared work which should be identified and analysed in depth before designing appropriate counter-measures across borders or at national level, through BAs, bilateral MoUs or NAs. These include:

- declared work with an undeclared element (envelope wages);
- undeclared/off the books employment;
- undeclared or 'bogus' self-employment;
- work undertaken by those claiming social assistance or registered unemployed;
- underpayment/full time jobs declared as part-time/bogus part-time work;
- workers without contracts/appropriate documentation;
- no report or under-reporting of hours worked;
- undocumented work⁴; or
- country nationals, foreign workers, and legal immigrants deceived about their rights/employment status, who may be controlled in forced labour.

After analysing the nature of the problem it is recommended that the responsible parties should exchange views with all stakeholders and social partners in order to decide on an appropriate course of action. The possible measures for tackling undeclared work can be found in various reports⁵, analyses, strategies and action plans⁶ as well as in the Platform's Factsheets⁷ and the Eurofound database⁸.

1 (Wickramasekara, 2015)

2 (Wickramasekara, 2015)

3 The selection of the most appropriate cooperation partners depends on the cultural/social engagement approach of the different countries.

4 (European Platform tackling undeclared work, 2016)

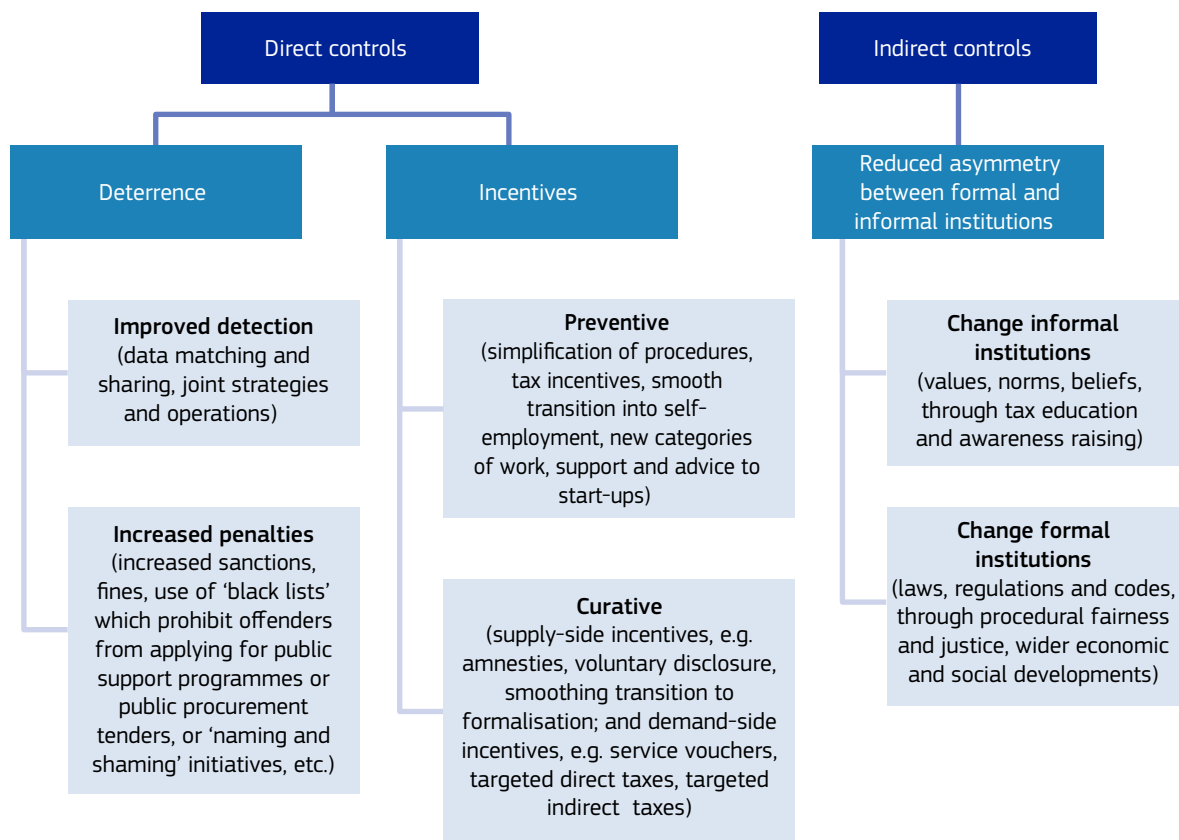
5 (Eurofound, Regioplan, 2008)

6 (International Labour Organisation, 2016)

7 (European Platform tackling undeclared work, 2016)

8 Eurofound website: <http://www.eurofound.europa.eu>

Figure 2. Policy approaches and measures available for transforming undeclared work into declared work



Source: (European Platform Tackling Undeclared Work, University of Sheffield, 2017)

Below two examples from Greece and Belgium are presented, where the manifestations and causes of undeclared work have been identified and corresponding counter-measures have been adopted. A similar approach is recommended both as national policy and as a basis for formulating the joint activities in any bilateral agreements of MoUs.

Example: Road-mapping to implement a holistic integrated strategic approach towards tackling undeclared work in Greece

The International Labour Organisation (ILO), in close collaboration with the Greek government and the social partners, prepared a Roadmap which describes a list of measures for fighting undeclared work and includes the following: signing a Memorandum of Understanding (MoU) for the exchange of data between the Ministry of Labour, the Ministry of Finance and the General Secretariat of Public Revenues; the synchronisation of databases; new risk analysis rules for targeted inspections; common tax and social insurance contributions collection; training of inspectors; new legislation and a new sanction system; the use of “white” lists (a positive ranking of firms, employers or ensured persons who are in compliance with the labour and tax laws and regulations); electronic payments; a service voucher system; collective labour agreements; a tax incentive scheme for formalisation; the fight against bogus self-employment; a public awareness campaign; information about formalisation advice and incentives for business and joint inspections.

Source: (International Labour Organisation, 2016)

Example: Belgian Action Plan with 90 measures to tackle UDW

The 2016 Belgian Action Plan defines 90 measures covering not only the different forms of undeclared work but also everything that may be considered as social fraud in relation to different social security or social assistance benefits. It also concerns the application of some aspects of the labour law (false self-employed status, false employment contracts). The fight against undeclared work remains organised around targeted sectors: Horeca (food service industry), building and cleaning. These three sectors represent about 60% of the controls operated. But other sectors have also been identified: the meat sector, transport and taxis, car repair services, manufacturing, horticulture, retail trade, craft bakeries.

Source: (European Platform tackling undeclared work, 2016) and (Information and Social Research Service (SIRS), Belgium, 2016)

MODULE 1: DRAFTING BILATERAL AGREEMENTS (BAS) AND MEMORANDA OF UNDERSTANDING (MOUS)

1.1 Introduction to the module: Importance and key challenges

In this module, you will learn:

- The main steps to follow from the time of the agreement's inception idea to the moment of the agreement signature.
- The key requirements, prerequisites, targets, objectives and content of BAs based on the current practices.
- How to adapt the guidelines in the current toolkit and use them as a basis for the preparation of bilateral MoUs (which are usually shorter than BAs, and focus mainly on the key objectives and areas of collaboration of BAs) and NAs (concluded among national bodies).

As this toolkit is dedicated mainly to the use of BAs and MoUs, it should be noted that all instructions below suggest, as a precondition, the existence of a cross-border undeclared work problem which has led to the launch of cross-border collaboration.

It is important for all agreements to have clear objectives, division of responsibilities and concrete measures or activities for the achievement of the final goals. They should strive to include key good practice provisions such as sufficient and appropriate staffing in the involved institutions from both countries, skills improvement, fair recruitment practices, requirements for travel and identity documents, dispute resolution mechanisms, etc. The key recommendations for drafting an agreement are presented in Table 2.

Table 2. Key recommendations for drafting agreements

1. Ensure the political will is in place (at the top and the bottom) across organisations for cross-border collaboration and multi-agency approach
2. Elaborate national action plans, set up and/or update the necessary legal base, strategies, measures and risk management
3. Include all responsible institutions such as policy-makers, ministries, agencies, social partners, special prosecutors, etc.
4. Ensure competent technical support for consolidating databases and registers
5. Provide a clear division of responsibilities with no overlapping of activities
6. Optimise the inspection process in a way that the value of fines collected and the deterrence effect justify the cost of inspections
7. Resolve the issues of data protection and confidentiality so that they do not act as a barrier to information exchange between the involved institutions and countries
8. Ensure sufficient investigative powers and legal competencies of the labour inspectors both nationally and during cross-border inspections (clear rules of engagement)
9. Ensure effective enforcement and simplified sanctioning procedures

Source: (CSD/ICF, 11-12 April 2017)

1.2 Main steps checklist (including key good practices and pros/cons of available options)

Step 1. Defining objectives and targets and identifying actors

The initiative for a new agreement is typically prompted by an emerging UDW issue which warrants social and political attention and needs to be resolved. The process of drafting an agreement should start with clarifying all manifestations and causes of the specific UDW issue as well as the desired effects of its resolution, taking into account the needs of the society in all concerned countries. The problem should be defined in as detailed and specific a manner as possible. Some examples of the manifestations of undeclared work which might warrant the establishment of an agreement are presented in Table 3.

Table 3. Manifestations of undeclared work, indicating the need of improvement of the existing practices at national or bilateral level

| Manifestation of UDW | Check |
|---|--------|
| Access to healthcare is limited as no healthcare contributions have been paid, resulting in higher medical costs both for nationals and foreign workers | Yes/No |
| National and foreign workers do not have a right to pension and maternity leave contributions if no social security contributions are paid | Yes/No |
| National and foreign workers do not have a right to redundancy payments and unemployment benefits | Yes/No |
| Harmed employment rights, such as the right to paid annual leave and limits to working time | Yes/No |
| Poor working conditions (incl. lower salaries), especially for foreign workers/migrants | Yes/No |
| Abusive working conditions | Yes/No |
| Health and safety obligations are neglected | Yes/No |
| Training needs or life-long learning needs are ignored | Yes/No |
| Fraud in social insurance contribution practices exist | Yes/No |
| Tax evasion practices exist | Yes/No |
| Distorted labour market | Yes/No |

Source: CSD/ICF.

Some examples of identified undeclared work problems, needs of urgent measures and possible solutions are presented below.

Country examples: Identification of problems, needs and desired effects

1. The rapid increase of EU mobile workers into Germany following the 2004 and 2007 EU Enlargements and of refugees during the Migration Crisis in 2015–16 posed a risk of increasing undeclared work. Therefore, there is a need for urgent measures in Germany to tackle the problem and mitigate the risk.
2. Rapid growth in the construction sector (e.g. in Germany, Austria, Bulgaria) combined with a disproportional increase of the overall number of workers or the level of salaries in the sector also indicates a possible risk of increasing UDW practices. There is need to impose stricter controls and inspections targeted at construction sites to decrease UDW practices.
3. The number of temporary work agencies operating in Europe increased to 33,000, mainly in France, Germany, Netherlands and the UK (2013). However, even where there are licensing or registration requirements many labour market intermediaries operate informally or unlawfully. There is a need for strengthened controls and rules. Solutions can be sought in joint initiatives, codes of conduct, sectoral collective agreements, increased inspections, and media publicity⁹.

Source: CSD/ICF and (Eurofound, 2016)

⁹ (Eurofound, 2016)

Tip: Some examples of circumstances that may act to incentivise UDW and require national and/or cross-border counter-measures include the following:

- the taxation of overtime (which could provide an incentive for undeclared overtime);
- the respect of minimum wages or wages set by collective agreements and their possible role as levels of reference for envelope wages;
- tax distortions between the status of employee and self-employed (which could be an incentive for declaring false self-employment);
- the reduction of taxation rates on low productivity jobs (which could lead to incorrect job classification by the employers).



The needs analysis should not focus only on the manifestations of the problem but also on the reasons for its existence. Such information could be obtained through thematic sociological surveys such as the Special Eurobarometer 402¹⁰. The latter takes special note of the incentives for UDW participation, for example financial benefits, in cases where workers cannot (easily) find a regular job, where tax and/or social security contributions are too high, where no other form of income exists, or undeclared work is common practice, perhaps red tape for minor or occasional work is too complicated, or where the person(s) that the employees were supplying with a good/service insist on non-declaration.

Depending on the nature of the problem that needs to be resolved the responsible bodies should clarify the overall objective of the new agreement and its main areas of intervention. This is closely linked to the next step of selecting the best available measures and practical solutions.

A key part of Step 1 is identifying not only the responsible public bodies from all concerned countries but also any private sector and/or social partner/s who can contribute to the solution in terms of activities and financing. As agreements usually have a fixed period of implementation, the sustainability plan for continuation of the measures, or at least their effect beyond the duration of the agreement, should be clarified at the very early stages of its preparation.

Tip: At the end of this step, a working group in charge of drafting the agreement should be set up, including representatives from all the countries involved.



Figure 3. Main actors and sources of financing

| Main actors | Sources of financing |
|---|---|
| <ul style="list-style-type: none"> • Labour inspectorates (typically the key UDW actors in most EU/EEA countries) • Social security inspectorates (of key relevance in Belgium and Spain) • Revenue/Tax administrations • Employers' organisations • Employees' organisations • Civil society/Third sector • Local governments • Customs authorities • Migration bodies • Research/academic partners • Police • Public prosecutors • Other (international organisations, regional governments, etc.) | <ul style="list-style-type: none"> • Government/public bodies at national level • EU programmes • Regional public bodies/municipalities • Business or employers' organisations or business supporters • Trade unions/employees' organisations • International organisations • Foreign donors • Civil society/Third sector (e.g. CSOs) • Research/academic partners |

Source: CSD/ICF, based on (European Commission, 2014).

10 (European Commission, DG Employment, Social Affairs and Inclusion and DG Communication, 2014)



Tip: Foresee the influence of external factors and develop risk mitigation plans.

Considering all external factors at the initial stages of drafting the agreement is crucial for achieving success and sustainability of the applied measures. Unforeseen risks to the process could be present in the following aspects: a) the business or political interests or will for cooperation of the main actors; b) any developments having undesired effects on the economy, the labour market or migration flows; c) differences in national priorities or the competent national bodies; d) lack of resources; e) corruption as an operational concern once the agreement is implemented; f) extensive bureaucracy and g) differing administrative/political systems and legislation. All of these risks should be taken into account at the drafting stage.

Step 2. Choice of drafting procedures

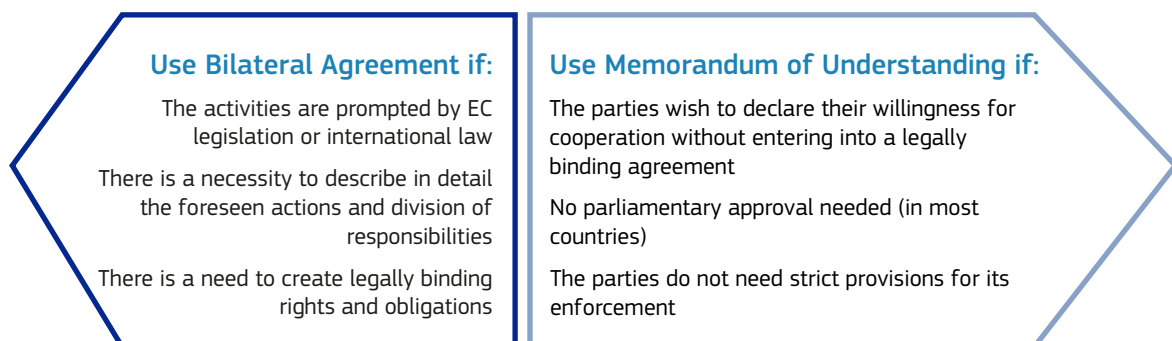
Although the initiators of the new agreement would probably have a list of joint measures that they would like to propose to all concerned parties, there are several intermediary tasks that may need to be performed before that. These intermediary steps would ensure that the suggestions for joint actions would be more grounded and methodologically sound.

Select guidelines or manuals to help you with the process

Examples of useful manuals for drafting agreements include the current toolkit, other materials published at the Platform's website (learning resource paper, good practices fiches, etc.), and ILO guidelines. Other manuals may also be useful at the implementation phase as valuable sources for ideas and methodologies, e.g. the ILO Trainer's Handbook on Extending Labour Inspection to the Informal Economy¹¹, the ILO Self-Assessment Tool for Labour Inspection Systems¹², the training package on Building Modern and Effective Labour Inspection Systems¹³, the publication entitled Measuring Informality: A Statistical Manual on the Informal Sector and Informal Employment.¹⁴

After gathering and reading the available guidelines the responsible bodies should decide on a plan of action, including a selection of the most appropriate instruments for cross-border collaboration – Bilateral Agreement or Memorandum of Understanding.

Figure 4. Choosing between Bilateral Agreement or Memorandum of Understanding



Source: CSD/ICF.

11 (International Labour Organization, 2015)
 12 (International Labour Organization, 2012)
 13 (International Labour Organization and the International Training Centre, 2010)
 14 (International Labour Organization, 2012)

Identify and consult with key stakeholders (ministries, inspectorates, trade unions, CSOs, etc.)

The initiators of the agreement should identify all relevant stakeholders required to address the identified issue. They may differ in terms of types and functions depending on the specific governance structures in the countries involved. In many cases, they also include employers' and employees' organisations and CSOs. Additional support could also be provided by Members and Observers of the European Platform Tackling Undeclared Work, the public bodies implementing measures to tackle undeclared work, as described in the good practice fiches on the [Platform's website](#), the DG Employment Database of labour market practices,¹⁵ or Eurofound.

Seek advice and assistance from third party European and international organisations

In addition to the EU efforts there are several international organisations that aim to coordinate the issues linked to undeclared work. These organisations could assist in the drafting of the agreements, provide policy solutions, endorsement and support. The International Labour Organization has developed tools in accordance to the ILO Migration for Employment Convention (Revised), 1949 (No. 97)¹⁶ for information exchange on national policies, laws and regulations relating to migration for employment. In addition, the ILO Convention No. 81¹⁷ has established a system of labour inspection in industrial workplaces.

On EU level the Senior Labour Inspectors Committee (SLIC) to the EC, established in 1982, implements joint inspections, and data and personnel exchange mainly in the areas of health and occupational safety. In the Committee of Experts on Posting Workers, public bodies and social partners are working together to enhance administrative cooperation. Other examples of potential international and European partners that could contribute to the development, implementation and evaluation of BAs and MoUs include:

- [the Information Systems Security Association \(ISSA\)](#)
- [the Intra-European Organisation of Tax Administrations \(IOTA\)](#)
- [the International Association of Labour Inspection \(IALI\)](#)
- [the International Industrial Relations Association \(IIRA\)](#)
- [the Baltic Sea Network on Occupational Health and Safety](#)
- [the International Labour and Employment Relations Association \(ILERA\)](#)
- [the Global Migration Group \(GMG\)](#)
- [the Global Forum on Migration and Development \(GFMD\)](#)

The international forums and conferences as well as the online discussion platforms (including the European Platform Tackling Undeclared Work), or even social media, present an excellent opportunity for initiating working relations with stakeholders of other countries and reaching consensus on joint activities or minimum labour market standards.

Similar to the draft-legislation, which is usually published online and presented for discussion to all stakeholders, the agreements should also seek advice, feedback and endorsement from a wide range of experts including trade unions, business associations, civil society organisations (CSOs), the police, the prosecution service, etc. A good practice is to invite all concerned parties to the internal meetings of the task force, drafting the agreement if appropriate, and gathering ideas for additional counter-measures or initiatives. Some of the third parties might also be willing to perform external monitoring of the process which will greatly increase the transparency and guarantee an external point of view and solutions on any unexpected problems occurring with implementation. It is also recommended to plan a promotional and awareness campaign about the activities which will decrease the risk of misinterpretation by the media and society of the specifics of any joint actions.

¹⁵ (European Commission, DG Employment, Social Affairs and Inclusion, 2017)

¹⁶ (International Labour Organisation, 1949)

¹⁷ (International Labour Organisation, 1947)

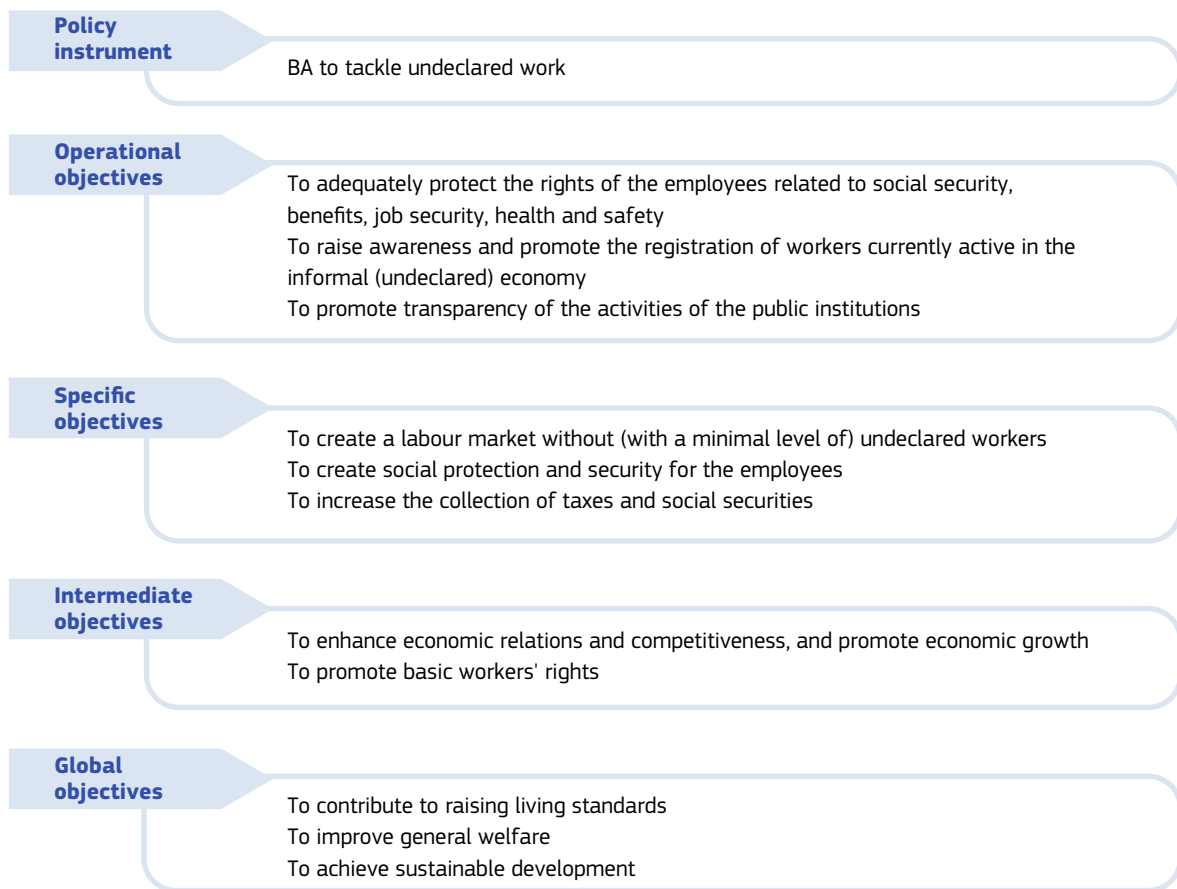
Tip: The meetings with stakeholders should not unreasonably delay the signature of the agreement. The stakeholders can provide insights about “real life” problems and propose solutions; however, the public authorities who sign the agreement are ultimately responsible for clarifying any procedural and/or operational issues.



Step 3. Define the areas and measures

After the key stakeholders are identified, it is crucial for the responsible parties to consult with them and decide on a clear intervention logic which matches most efficiently and effectively the identified needs.

Figure 5. Example of an Intervention Logic



Source: CSD/ICF, based on (European Commission, 2015)

The intervention logic will consequently present options for practical measures to tackle UDW. The areas of intervention for countering the identified UDW issues are at the heart of every agreement. The successful implementation and the achievement of the desired effects is its main purpose. For that reason, the current step should not be taken lightly. However, it should be noted that agreements cannot cover all eventualities in detail. They describe only the dynamic operational liaison on the target areas as well as a general agreement on measures, including future ones that cannot be foreseen at the drafting stage.

Tip: The agreements should be flexible enough to include new practical measures and activities in the future.



Some examples of the most common measures are presented in Table 4.

Table 4. Typical measures of cooperation

Information exchange (through requests for information, Internal Market Information System (IMI), consolidating and linking databases and registers, etc.)

Streamlining and facilitation of labour flows (managing labour mobility)

Best practice exchange (vouchers, amnesties, employment contract provisions, seasonal jobs provisions, advice from information desks, registration incentives, use of agencies handling foreign recruitment, awareness measures, requirements for travel and identity documents, etc.)

Support for operational activity (e.g. joint investigations and measures, joint risk assessments, joint inspections, etc.)

Triggering of offences or legal action

Decisions on penalties and prosecution

Capacity building, training secondments, exchanges of experts

Source: CSD/ICF.

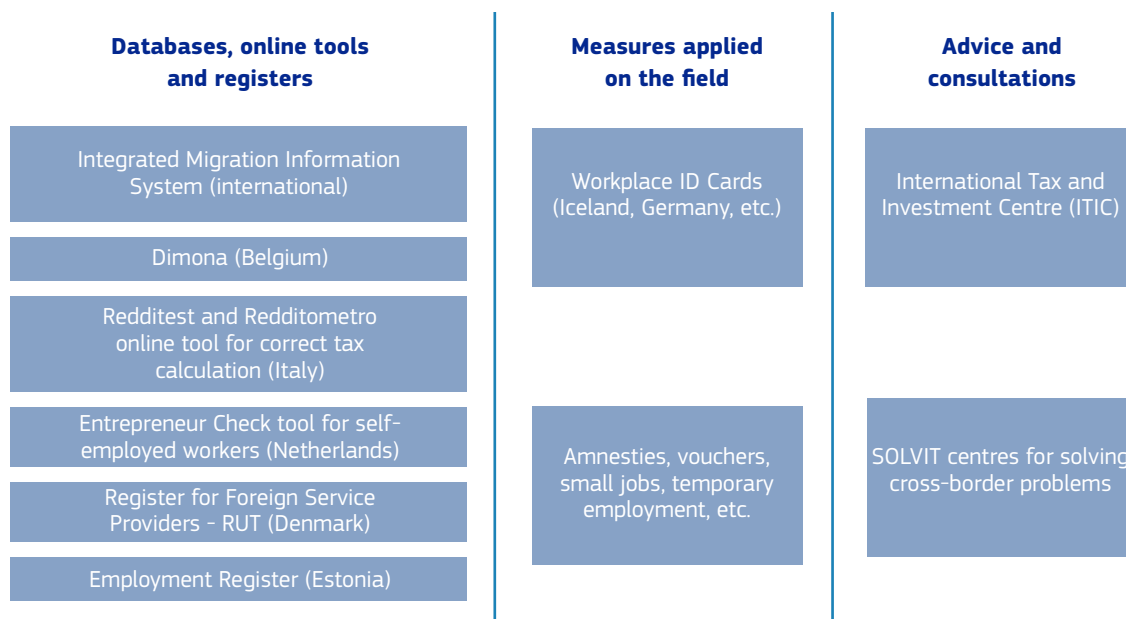
Tip: Besides control and punitive measures, a good practice is also to plan an awareness-raising campaign to inform the public about the negative effects of undeclared work. The campaign can utilise the following avenues in order to raise awareness: TV advertisements, promotional videos, leaflets, websites and social media, press releases and targeted articles in media, face-to-face visits in large companies, consultation services at job centres and employment agencies or special courses at universities.

Tip: When agreeing on measures, do not forget to consider the following aspects: the process of internal skills and human resource development of the implementing organisations, any gender concerns, equal treatment of EU mobile workers and migrant workers, the reintegration aspect of the migration cycle, dispute and complaints resolution procedures, different working languages, and data legislation issues.

In this step it is recommended that responsible bodies look outside the most conventional joint activities (exchange of information, inspections and training) and consider widening the scope of the agreement, if appropriate, by including additional and more innovative initiatives. Such initiatives could include: setting up resource or information centres, consultation and support services, fixing minimum wages, the creation of welfare funds, voluntary insurance schemes for migrants or reintegration support. Some examples of measures to tackle undeclared work, aside from the most conventional activities, are presented in Figure 6.



Figure 6. Some examples of innovative measures to tackle undeclared work



Source: CSD/ICF, based on European Platform tackling Undeclared Work.

Tip: You can find good practice factsheets of similar tools and measures at the Virtual library on the Platform website.



Step 4. Define and strengthen the normative foundation

Adopting national strategies, action plans, changes in the legislation

One of the key challenges to cross-border cooperation is the lack of comprehensive normative foundation¹⁸ (national strategies, laws), and specialised public bodies tasked with tackling undeclared work. Sometimes special legislation or regulations would need to be adopted by the government, to make the signature of an agreement or MoU worthwhile or practically relevant. The legislation could concern setting of national priorities, the creation of a new agency or empowering an existing public body with additional roles and authority or the launching of a new policy and UDW counter-measures. Technical details related to data protection, use of electronic data exchange, dispute resolution should also be clarified in the respective laws and regulations.

Some examples of established specialised public bodies include the Hidden Economy Monitoring Group, Ireland; the Inter-Ministerial Delegation to Combat Underground Work, France; the German Financial Control of Undeclared Work (FKS); the Social Information and Investigation Service (SIIS), Belgium; the Central Coordination Group for Labour Inspection and Reduction of Undeclared Work, Lithuania; Cooperation against the Black Economy (SMSØ), Norway; and the Inter-Ministerial Committee against Undeclared Work (CIMND), Romania.

Some examples of adopting new laws, strategies, decrees or acts in order to introduce measures for tackling the undeclared work are presented below.

¹⁸ E.g. Laws, strategies, regulations, decrees and norms.

Example: Legislative provision to promote collaboration in UK

“The Immigration Act 2016 creates the Director of Labour Market Enforcement role, whose office will produce an annual strategy to identify the key risks where the enforcement authorities may need to focus their resources, and identify opportunities for cooperation. The Immigration Act 2016 also introduced new powers for the Gangmasters and Labour Abuse Authority (GLAA) to investigate labour market offences, and for the GLAA, the Employment Agency Standards Inspectorate, and HMRC National Minimum Wage teams to work together to secure compliance with labour market enforcement legislation.”

“There are express legal gateways for the disclosure of information by the GLAA, HM Revenue and Customs - National Minimum Wage (HMRC-NMW) or the Employment Agency Standards inspectorate (EAS) contained in section 19 of the Gangmasters (Licensing) Act 2004, section 9 of the Employment Agencies Act 1973 and section 15 of the National Minimum Wage Act 1998, as amended by Schedule 3 to the Immigration Act 2016. These provisions provide broad powers to exchange information which supports labour market enforcement functions.”

Source: (Gangmasters and Labour Abuse Authority; HM Revenue and Customs; Department for Business, Energy and Industrial Strategy, Employment Agency Standards inspectorate, 2016)

Example: Setting up a public body to tackle undeclared work in France

Since 11 March 1997, a law (Decree No. 97-123) has been in place that allows the creation of a more coherent structure of governance in France when tackling undeclared work. New institutions have been set up, most notably the Interministerial Delegation for Combating Illegal Work (DILTI), as well as agencies at regional and local level. This decree ensures not only full cooperation between the numerous central government departments with various responsibilities for combating undeclared work but also an important role for regional and local government, as well as trade union and employer organisations at all levels.

Source: (Eurofound, 2009)

Adopting existing and planned EU directives and regulations

The collaborating countries should adopt into their national legislations, policy and practical measures the key provisions from the existing or even planned EU directives and regulations, concerning the labour market, social and tax securities. The EU laws set the minimal standards related to working time, security coverage, health conditions and registration of employment. These should be observed in order for the bilateral or national collaboration to be efficient. The cooperating parties are also advised to foresee annual review mechanisms for the agreement (through internal monitoring committee and/or external evaluator), which would allow them to request any update of legislation or adapt to such changes and to how they affect the particular UDW BA.

Step 5. Define the key terminology (common glossary)

A good practice is to provide definitions of the terms used when drafting an agreement. The EU Regulations and European Parliament and Council Directives rely on several common terms for tools for achieving cross-border cooperation which are also invaluable for any BA, and applicable to MoUs and NAs as well. For example, a number of commonly used terms are defined in Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

It should be noted that the terms “self-employed person”¹⁹, “posted worker”²⁰ and in some cases “right of residence”²¹ are of specific importance in relation to labour law and UDW, and should be included in the agreements by referring to their definitions in the respective legal acts at EU level. The definition of “employed person” can be obtained from the guidelines of the International Labour Organization (ILO) and/or Eurostat²².

In addition, EuroVoc, the Multilingual Thesaurus of the European Union (<http://eurovoc.europa.eu>) can provide a useful source to translate key terms.

| Tip: Specify the official working language of the agreement.



¹⁹ As defined in (European Parliament and the Council , 7 July 2010)

²⁰ As defined in (European Parliament and the Council , 16 December 1996)

²¹ As defined in (European Parliament and the Council, 29 April 2004)

²² According to ILO and Eurostat, an “employed person” is a person aged 15 and over (or 16 and over in Iceland and Norway) who during the reference period performed work - even if just for one hour a week - for pay, profit or family gain.

Figure 7. Example of common glossary

| | |
|--|---|
| “undeclared work” | any paid activities that are lawful as regards their nature but not declared to public authorities, taking account of differences in the regulatory systems of the Member States |
| “automatic exchange” | the systematic communication of predefined information on residents in other Member States to the relevant Member State of residence, without prior request, at pre-established regular intervals |
| “spontaneous exchange” | the non-systematic communication, at any moment and without prior request, of information to another Member State |
| “central liaison office” (or contact points) | the office which has been designated with principal responsibility for contacts with other Member States in the field of administrative cooperation |
| “competent authority” | in respect of each Member State, the Minister, Ministers or other equivalent authority responsible for social security schemes (or the issue of concern to the agreement) throughout or in any part of the Member State in question |
| “competent official” | any official who can directly exchange information (where the main objective of the agreement is information exchange) |
| “institution” | in respect of each Member State, the body or authority responsible for applying all or part of the legislation |
| “requesting authority” | the central liaison office, a liaison department or any competent official of a Member State who makes a request for assistance on behalf of the competent authority |
| “automated access” | the possibility of access without delay to an electronic system in order to consult certain information contained therein |
| “by electronic means” | using electronic equipment for the processing (including digital compression) and storage of data, and employing wires, radio transmission |
| “simultaneous control” | coordinated checks on the tax situation of a taxable person or related taxable persons, organised by two or more participating Member States with common or complementary interests |
| “CCN network” | the common platform based on the common communication network (CCN), developed by the Union for all transmissions by electronic means between competent authorities in the area of customs and taxation |
| “frontier worker” | any person pursuing an activity as an employed or self-employed person in a Member State and who resides in another Member State to which he/she returns as a rule daily or at least once a week |
| “refugee” | has the meaning assigned to it in Article 1 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (i.e. any person with well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, who is unable or, owing to such fear, is unwilling to avail himself of the protection of that country) |
| “stateless person” | has the meaning assigned to it in Article 1 of the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954 (i.e. a person who is not considered as a national by any State under the operation of its law) |
| “stay” | temporary residence |
| “illegal employment” | this term could vary depending on the context and the purpose of the agreement. For agreements related to cross-border labour relations, it usually refers to the employment of an illegally staying third-country national |
| “legislation” | in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures relating to social security branches (or the focus area of the agreement) |

Source: (European Council, 2014); (European Council, 2011); (European Council, 2010); (The European Parliament and the Council, 2004); (European Commission, 1998).

Note: The glossary can be further expanded or adapted to fit the needs of the prepared agreement.

Step 6. Division of clear responsibilities between parties

In this step the responsible bodies should make sure that the agreement describes clearly the responsibilities and authority of the involved institutions, including which one of them will take the lead in cases of joint operations (e.g. inspections). The efficient implementation of the BAs and MoU is facilitated by:

- setting communication procedures;
- designating contact persons and steering groups/task forces;
- producing templates for exchange of information and reporting;
- ensuring compatibility of data and possibilities for databases consolidation.

Tip: Provide a “Comparison of Powers” table as an annex to the agreement, as well as names, telephone numbers and e-mails of contact points. See Annex 1 for an example of a Comparison of Powers Table based on the MoU between the UK Gangmasters Licencing Authority and the Workplace Relations Commission (WRC) of Ireland, 8 March 2016.



Example: Description of competences and responsibilities in the UK

“Officers of HMRC-NMW can investigate offences under the National Minimum Wage Act 1998 and seek undertakings, apply for orders and investigate offences under section 27 of the Immigration Act 2016 where the trigger offence is from the National Minimum Wage Act 1998.”

“Each authority should identify the nature of suspected breaches to determine if joint or parallel investigations are required with partners, or if the case should be referred to the GLAA for investigation.”

Source: (Gangmasters and Labour Abuse Authority; HM Revenue and Customs; Department for Business, Energy and Industrial Strategy, Employment Agency Standards inspectorate, 2016)

Step 7. Adopt a system for regular monitoring and evaluation

The process of monitoring, evaluation, as well as updates of the agreements is described in detail in Module 3. It is important, however, to plan the evaluation process at the stage of agreement drafting. It is also necessary not to forget to set up the evaluation methodology, indicators to measure targets and feedback processes (including Evaluation Plan and Terms of References) at the initial stages of agreement implementation. Many parties prefer to substitute a more formal evaluation mechanism for a lighter touch approach of annual or bi-annual reviews. The latter allow for a mutual update on changes (e.g. in the legislation) as well as on the practical efficiency of the BA without requiring the resources for a formal evaluation.

Example: Management of an agreement and regular meetings of the State Labour Inspectorates of Estonia, Latvia and Lithuania

“Article 2. Management of co-operation

1. Parties are jointly responsible for the implementation of the Agreement.
2. The cooperation is chaired by each party for one year by way of rotation. Meetings shall be organised by the party in chair.
3. Each party shall submit issues for discussion for the meeting at least one month prior to the established date of the meeting. The issue is discussed if all Parties agree to discuss it.
4. Parties shall meet as required to discuss the co-operation in the broad context.

5. Extraordinary meetings shall be convened on the initiative of Parties and with consent of the other Parties.”

Source: (State Labour Inspectorates of Estonia, Latvia and Lithuania , 2007)



Tip: Do not forget to specify the frequency of the regular meetings.



Step 8. Set complaints and dispute resolution procedures

Although agreements usually foresee obligations for all signatories as well as activities (e.g. inspections) that could sometimes be considered invasive by business owners or employees, the procedures for complaints and dispute resolutions are often omitted. It is recommended therefore to include at least short provisions in all agreements in order to clarify:

- How and by which official body the dispute will be resolved (e.g. in cases where exchanges of labour inspectors are planned, but only one of the participating countries carries out its obligation).
- In cases where a complaint is made against the joint activity of both parties, the agreement should foresee that the party which receives the complaint forwards it to the other party.

Example: Resolution of disputes procedure in the Agreement on social insurance between Republic of India and Federal Republic of Germany

- “1. Disputes regarding the interpretation or application of this Agreement shall be resolved, to the extent possible, by the competent authorities.
2. If a dispute cannot be resolved in this way, it shall, if necessary, be settled by a joint ad hoc commission set up by mutual agreement.”

Source: (Republic of India and Federal Republic of Germany, 2008)



Tip: Do not forget to provide the name of the “competent authority” which will resolve the disputes as well as stating in the agreement what the primary language of the cooperation will be, and the legal system under which rules the dispute would be resolved.



Step 9. Provide templates/models for key documents

It is recommended that the agreements include annexes in which the parties provide templates or examples of various documents which might be relevant to the UDW issues it concerns: travel and identity documents; labour contracts; request for information forms; list of monitoring and evaluation indicators, target values, time-schedules with deadlines for the planned activities; as well as additional contact details of the responsible institutions or contact points.

Example: Contents of annexes in a UK MoU

The appendices to the agreement between the Gangmasters Licensing Authority and the the Health and Safety Executive from 2014 include: a) Contact details of both signatories and b) Templates for requests for information. For example, the requests for information from GLA by HSE regarding entities applying for a GLA Licence, include information on issues such as “Are adequate and effective arrangements in place for managing the health and safety of any workers provided?”.

Source: (Gangmasters Licensing Authority and the Health and Safety Executive, 2014)



1.3 Recommended contents and structure of BAs, bilateral MoUs and other forms of cross-border agreements

BAs and MoUs have similar structures, however, some key elements representing good practice are sometimes omitted (e.g. publicity, review and evaluation, disputes and complaints, templates for information requests, etc.). The following structure is recommended for the drafting of any future NAs, BAs and MoUs.

Table 5. Recommended structure of BAs and bilateral MoUs*

| Article title | Description | BA | NA | Bilateral MoU |
|---|---|----|----|-------------------------|
| Introduction | <ul style="list-style-type: none"> • Introduce the signatories • Explain the necessity of the cooperation • Refer to relevant legislation (sometimes in separate section) • Provide history and background of the problem and the measures taken so far • Specify if the document is legally binding or not • Introduce briefly the key responsible bodies | ✓ | ✓ | ✓ |
| Purpose/Areas and objectives covered | List the economic or legal areas that the document covers, noting the desired effect from the cooperation. | ✓ | ✓ | ✓ |
| Term | Set the time limit/duration of the agreement/MoU as well as the deadlines of regulating the national procedures according to the provisions of the document (e.g. six months). | ✓ | | (optional, recommended) |
| Jurisdictions and Responsibilities | Explain the authority and power of each body involved in the national context and set the areas of their responsibilities in the context of the agreement/MoU. | ✓ | ✓ | ✓ |
| Scope of the cooperation | <p>Specify the <i>geographic dimension</i> (one or a combination of the levels listed below):</p> <ul style="list-style-type: none"> • Cross-border collaboration (involving two or more countries) • European or international collaboration (e.g. including measures in line with EU regulations and directives) <p>List and explain the concrete actions related to the areas of the cooperation such as:</p> <ul style="list-style-type: none"> • Joint inspections • Streamlining and facilitation of labour flows (managing labour migration) • Information exchange (incl. spontaneous disclosure of information) • Good practice exchange • Support for operational activity (e.g. joint investigations or assistance in investigations, joint measures) • Triggering of offences or legal action, decisions on prosecution, capacity building • Exchange of experts and training • Creation of joint technical advisory committees | ✓ | ✓ | ✓ |

| Article title | Description | BA | NA | Bilateral MoU |
|--|--|----|----|-------------------------|
| Scope of the cooperation | Specify <i>financial parameters</i> : who pays for what as well as possible funding sources for the implementation of the agreement. If appropriate, agree on an annual budget. The usual practice is that each participating party pays for its involvement and both parties seek EU and international sources of funding. | ✓ | ✓ | ✓ |
| Use and Disclosure of Information/ Confidentiality/ Publicity | Clarify any issues related to confidentiality, use and disclosure (including intellectual property rights). A good practice would be to grant access to third parties to the agreement, and to make efforts to increase the awareness and understanding of the foreseen or applied policies. This would decrease any potential misinterpretation by the media or the public. Publicity is recommended not only by publishing the agreement or MoU online, but through training, leaflets, etc. | ✓ | | (usually not included) |
| Storage of information | Specifies how and by whom the information should be stored, as well as the period of storage. | ✓ | | (optional, recommended) |
| Format of information requests (if any are foreseen) | Explains the formats of the requests, methods (fax, electronic, etc.), areas of (non-)compliance with legislation that information requests may refer to, as well as the level of detail. Note: This could also be included in an Annex. | ✓ | | (optional, recommended) |
| Details of the joint inspections (if any are foreseen) | <ul style="list-style-type: none"> • Descriptions of the planning phase • Procedures for multi-agency investigations • Clarifications related to the investigative powers - power of entry, use of surveillance, power of arrest, access to custody facilities, access to interview facilities, access to equipment, etc. Note: This could also be included in an Annex. | ✓ | | (usually not included) |
| Management | List the body(ies) responsible for the day-to-day control of the agreement/MoU, including their specific responsibilities. | ✓ | | (usually not included) |
| Contact points | Provide the contact details of the responsible bodies and/or the signatories (name, position, telephone, e-mail, address). | ✓ | ✓ | ✓ |
| Disputes and complaints | Clarify the law governing disputes resolution and procedures for complaints resolution against activities generated by the operation of the agreement or memorandum. Definition of the language and the legal system which would take preference in dispute resolutions. | ✓ | | (usually not included) |
| Review/ evaluation | Specify the frequency of the review of the document and the body(ies) responsible (usually joint committees that meet quarterly). A good practice would be setting concrete indicators, targets and deadlines. The evaluations should examine: <ul style="list-style-type: none"> • effectiveness and efficiency of the agreement/MoU • relevance of the measures and implemented activities (e.g. for decreasing the undeclared work) • the coherence of the agreement/MoU with the objectives of the European directives and/or the national strategies • The impact of the implementation of the agreement/MoU on undeclared work, sustainable development, economic, social and environmental dimensions, human rights, etc. | ✓ | | (optional, recommended) |

| Article title | Description | BA | NA | Bilateral MoU |
|--------------------|---|----|----|-------------------------|
| Signatories | Specify the signatories, usually Ministries of Labour, Ministries of Interior, Justice and Foreign Affairs, Offices for Immigration, tax authorities, etc., but could also include employers' and employees' associations, business associations, CSOs, etc. | ✓ | ✓ | ✓ |
| Annexes | Include any technical information or templates as annexes, e.g. institutional set-up schemes, comparison of powers/ authorities of the signatories, list of relevant legislation, templates for information requests, lists of the areas that could be covered by the information requests, related legislation, detailed contacts of the signatories, etc. | ✓ | | (optional, recommended) |

Source: CSD/ICF, Discussion Paper for the Thematic Review Workshop: 'National and Bilateral Agreements and Memoranda of Understanding to tackle undeclared work' Utrecht, The Netherlands, 11-12 April 2017²³.

*Note: The current structure can also be adopted for NAs and shortened to match the purposes of a MoU.

23 (CSD/ICF, 11-12 April 2017)

MODULE 2: IMPLEMENTING BAS AND BILATERAL MOUS

2.1 Introduction to the module: Importance and key challenges

In this module, you will learn:

- The main steps to follow during the agreement's or MoU's implementation.
- The key requirements and recommended approaches to ensure quality, timely and efficient implementation of joint measures for tackling undeclared work.
- How to structure a time-schedule or Action Plan.
- How to ensure transparency and publicity of the joint activities carried out and the positive results achieved.

It is of crucial importance that the planned measures are transformed into practical actions, and all countries concerned elect the "leaders" responsible both for their implementation and evaluation. It is recommended that the agreement or memorandum sets a deadline of, for example, six months after signature for the parties to regulate the implementation procedures and fulfil internal legal procedures. Then, a working group should be formed to coordinate and monitor the implementation process²⁴.

Table 6. Key recommendations in implementing agreements

| |
|--|
| Ensure sufficient budget and human resources for the public authorities |
| Use unified and harmonised legislations, administrative procedures and definitions, leading to a common understanding of the phenomena (e.g. total UDW, bogus self-employment, under-declared work, tax/social security fraud, etc.) |
| Decide on the level of cooperation: simple information sharing, joint actions and rules, or full cooperation based on a partnership of common targets |
| Raise awareness and make undeclared work a socially unacceptable phenomenon |
| Increase the knowledge and competencies on how to "use" the agreements, in order to transfer them into measures and activities in practice. Train the responsible authorities in methodology development |
| Resolve the issues of data protection, privacy issues/confidentiality, encryption systems, technical incompatibility of the electronic databases |

Source: (CSD/ICF, 11-12 April 2017)

2.2 Main Steps

Step 10. Ensure staffing and funding

Every agreement should provide the points of contact of the signatories in order to facilitate the communication between the parties. In addition, sufficient financing and personnel time should be dedicated to the implementation of the planned measures, which could include internal staff (e.g. for provision of requested information, performing inspections, risk analysis), as well as external experts.

Tip: Do not forget to prepare in advance Terms of Reference, explaining the tasks of any external experts to be engaged - e.g. programmers to consolidate databases, lecturers at specialised trainings, etc.



²⁴ See for example (Ministry of Social Affairs and Employment of the Kingdom of the Netherlands and Ministry of Labour, Family and Social Protection in Romania, 2010)

Step 11. Ensure capacity building and commitment to the aims

The national or bilateral agreements provide the basis for collaboration between institutions which, later on, could expand to a more formal intra-departmental or intra-ministerial body. Even if this is not the case, at the beginning of every agreement's implementation it is recommended that the organisational structures and internal procedures are clarified and improved to accommodate for the forthcoming measures to tackle undeclared work. This includes internal and external communication rules, quality control and time-management procedures, formalisation of responsibilities, or the creation of databases and online sharing tools (if relevant).

In some cases the national legislation should be changed to accommodate the efficient implementation of the agreement, or the unobstructed operation of the newly created public bodies (if these are anticipated).

In addition, specialised training, study visits and/or staff exchanges could be invaluable for familiarising the experts with the legislation and practices in the partner country. The training events are very helpful for presenting new methodologies for undeclared work risk analysis, monitoring, policy and measures formulation and their practical implementation. Besides the labour and tax inspectorates, a wide range of other stakeholders could also be invited to the training (e.g. consular officials for cases of bilateral agreements related to the undeclared work risk due to intensified migration flows). New information and advice services could also be created and trained at the beginning of their operation – employment and formalisation centres, legal consultancies, etc. The training topics might encompass risk analysis methodologies, inspections, data matching, joint operations, strategy elaboration, imposing fines or enforcing cessation of operations, simplification of procedures, identifying the most suitable tax incentives, creation of new measures for smooth transition into self-employment, implementing vouchers, amnesties and voluntary disclosure programmes, raising the awareness of the benefits of declared work, provision of support and formalisation advice.

Example: Learning exchange for labour inspectorates in Estonia, the Czech Republic and Lithuania

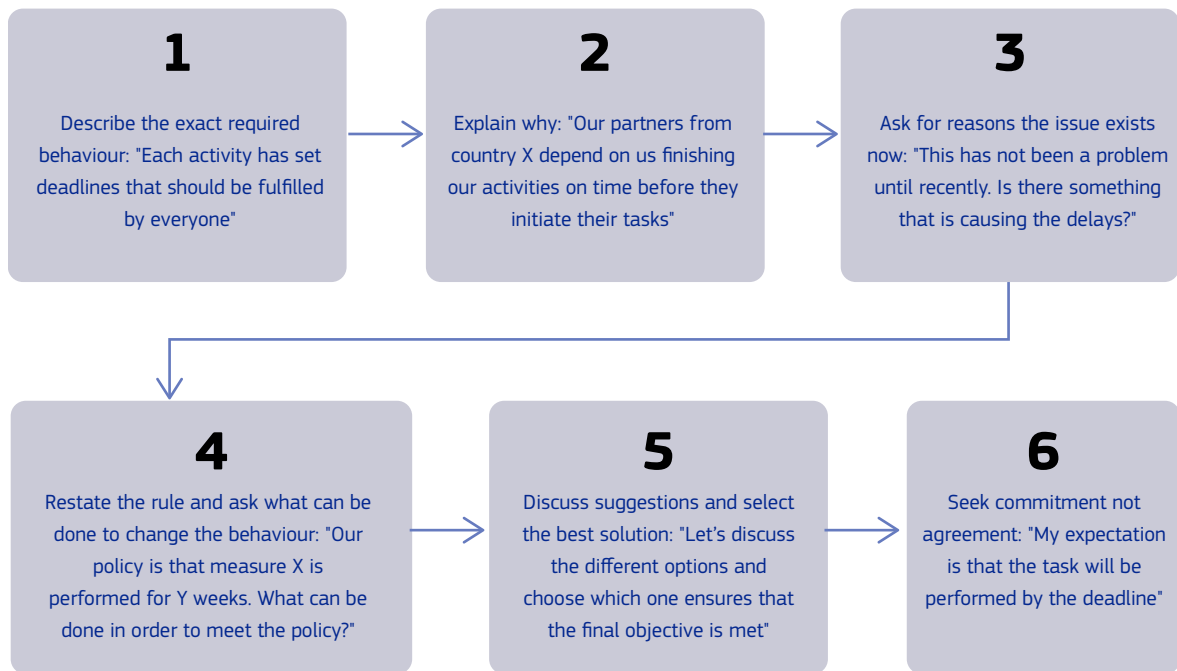
“The Estonian Tax and Custom Board hosted a learning exchange that brought together ministry officials and representatives of labour inspectorates from Estonia, the Czech Republic and Lithuania. The event took place on 11 October 2013 in Tallinn. At this event representatives from the Czech Republic expressed their interest in discussing in more detail the preventive measures implemented in Estonia to tackle undeclared work. The Estonian strategy is based on the understanding that ‘Prevention is better than cure’ and includes an e-Tax/e-Customs contact centre, letters, e-mail notifications and phone calls to non-compliant enterprises and individuals, as well as 10 phone lines dedicated to giving advice on different taxation matters. Estonian representatives were interested in the recently introduced Lithuanian system of registering employees one day before the start date of the work contract.”

Source: (European Commission, DG Employment, Social Affairs and Inclusion, 2013)

Last, but not least, it should be noted that the conclusion of agreements between countries with a common language further facilitates the cooperation. Such agreements are particularly recommended, especially in the cases where the workforce migration also follows the path of a common language country destination.

Despite the listed enabling factors, a key challenge is ensuring that there is will and commitment among the staff of the responsible bodies for implementation of the planned measures for tackling UDW. If the agreements are performed in an overly bureaucratic manner no real impact can be reached. Several key steps to facilitate buy-in are recommended.

Figure 8. Getting employees' commitment/buy-in



Source: (Human Resources, 2009)

Tip: Dedicate some time to ensure staff buy-in, identify and engage internal champions and leaders of change.



Step 12. Action plans, time-schedules and contact points

The next step includes the elaboration of an action plan and/or a time schedule for the activities under the agreement. The plan should include a list of actions, description of the work involved, possibly a justification or an explanation why the action is needed, the expected outcome (including quantitative indicators, where possible), the responsible bodies and involved actors, as well as the deadlines for the implementation of the activity.

Tip: Set up a plan for staff exchange and mutual learning.



Table 7. Example of a time-schedule or action plan for implementation

| Activity (example) | Description/Rationale (example) | Expected outcome (example) | Responsible bodies/ Actors involved (example) | Timeframe (example) |
|---|--|--|---|---------------------|
| Implement a holistic integrated strategic approach towards tackling undeclared work | It is essential to join-up the strategies, operations and knowledge of all state agencies and the social partners in a coordinated approach against undeclared work. | Elaboration of a coordinated national strategy | Ministers of Labour, Social Security, Minister of Finance, social partners, business sector | Aug 2017 |

| Activity (example) | Description/Rationale (example) | Expected outcome (example) | Responsible bodies/ Actors involved (example) | Timeframe (example) |
|---|--|---|---|--|
| Improve the effectiveness of electronic systems and the interoperability of databases | Not all the electronic systems for data mining are fully operational, and there is a lack of full data sharing across these systems whenever required. This is not wholly a technocratic but also an organisational problem, and needs to be resolved. There is currently a lack of willingness among the individual bodies involved in data mining to freely share their data with others, and each appears to have a desire for their own information system to be the one comprehensive system. | Join-up the existing relevant data-sets and enable more effective data mining across government institutions. | Secretary General of Information Systems Ministry of Finance | Jan 2017 |
| Targeting and planning inspections | At present, inspections are not necessarily targeted at those sectors and businesses in which undeclared work is rife (e.g., agriculture and small businesses). | Improved rate of detection of labour law violations, tax non-compliance and social insurance fraud. | Labour Inspectorate Ministry of Labour Ministry of Finance Social securities and revenue authorities | July 2017 |
| Training of inspectors | There is currently limited official training of labour, tax and social security inspectors on the issue of tackling the undeclared economy. | Improved efficiency and effectiveness of inspectors in tackling the undeclared economy. Capacity-building of inspectorates. Enhanced organisational culture and change towards a more customer-friendly approach. | ILO Ministry of Finance Labour Inspectorates External experts | July 2017 |
| Meeting of the joint working group | There is need for or regular coordination of joint activities and monitoring of the progress. | Improved communication, planning of future activities, achieved synergy and avoiding overlapping of activities. | The contact points from the signatories of the agreement | Jan 2017, Apr 2017, July 2017, Oct 2017 |

Source: Example based on the measures suggested by ILO and in the National Action Plan for tackling undeclared work for Greece at (International Labour Organisation, 2016)

Tip: The meetings of the joint working group could be either in person (including during joint inspection activities), or through video-chats, telephone conferences, etc. Dedicated discussion boards, social media (Facebook/LinkedIn groups/Twitter), file sharing options/cloud services could also facilitate the collaboration process. Anticipate regular procedures for receiving feedback from all partners (e.g. on how the data obtained from the other country was used).



Step 13. Information exchange – methods and procedures

One of the key uses of the NAs, BAs and MoUs is to present the formal framework for requesting information from another national or foreign country authority. It is a good practice that the agreements include in an annex an information request template, and a list of the contact persons or liaison officers. However, based on practical experience, the process could be most efficient if the relevant bodies have already established contacts even before the signature of the agreement, and these initial informal ties continue to be utilised in a more structured way during the agreement's implementation. In that way, an agreement can be used to formalise cooperation that already exists. The importance of keeping in contact with the "right people" in partner institutions, especially in countries with well-developed databases was noted during discussions with members of the Platform²⁵. Thus, there is usually a large demand from countries with less developed information exchange systems or databases to conclude agreements with countries with strong experience in the area (e.g. Belgium). Such collaboration is strongly recommended, as it could serve not only its initial purpose of specialised information exchange, but it could also have a spill over effect on the development of data consolidation and analytical capacities in the less experienced country.

Having a "one stop shop" (a single online tool with standardised procedure of information request via dedicated contact points) is considered to be very beneficial for speeding up and automating the process, especially for some frequently encountered and habitual issues. However, as the specifics of each case of undeclared work may greatly differ, a custom-made response from partner institutions could sometimes be required. In such cases, the procedure of contacting the liaison officer in a partner institution with individual requests will most likely continue.

Another issue to consider when requesting information is the legal "strength" of the concluded agreement. An agreement signed between two governments could have a stronger legal basis than an agreement signed between directors of respective employment, social security or revenue authorities. Ideally, the high level of political engagement would also facilitate the solution to any legal issues obstructing the exchange of information (e.g. data protection and privacy laws)²⁶.

Tip: Get to know the person you will need to contact when issuing an information request. An example of an Information Request Template is presented in Annex 2.



Step 14. Implementation of good practice

This step aims to serve as a reminder to the agreement's implementing bodies that besides the more conventional activities (sharing of information, training, joint inspections), it is also good practice to include new approaches and measures to tackle undeclared work. These could be adopted from other countries to complement the existing deterrence and enabling compliance measures.

²⁵ (European Platform Undeclared Work, 26-27 June 2017)

²⁶ Ibid.

Table 8. Some examples of practical policy approaches and tools for combating undeclared work that could be adopted by other countries

| Practical Policy Approaches | Examples/Description |
|---|---|
| Synchronisation of databases, incl. white and black lists | e.g. planned for Greece in the ILO Roadmap for Fighting Undeclared Work |
| New risk analysis rules for targeted inspections | e.g. planned for Greece in the ILO Roadmap for Fighting Undeclared Work |
| Common tax and social insurance contributions collection | e.g. planned for Greece in the ILO Roadmap for Fighting Undeclared Work |
| Practical measures applied “on the ground” | e.g. workplace ID Cards (Iceland, Germany) |
| Online tools, electronic systems, registers and databases | IMI, CIRCABC, OASIS (to detect fraud scenarios) and DIMONA (employees registration) in Belgium; employment and self-employment status on-line diagnostic tools in the UK; Redditest and Redditometro in Italy; Entrepreneur Check in the Netherlands; Register for Foreign Service Providers (RUT) in Denmark; Employment Register in Estonia |
| Training and peer review | e.g. Learning Exchange between Czech Republic, Estonia and Lithuania, 2013; Training labour inspectors in Portugal, 2009 |
| Cooperation at national level | e.g. Hidden Economy Monitoring Group in Ireland; Inter-Ministerial Delegation to Combat Underground Work in France; SIRS/SIOD in Belgium, etc. |
| Electronic payments and fiscal devices connection to revenue agencies | e.g. digital payments of services in Denmark; connecting fiscal devices to the National Revenue Agency in Bulgaria; FINA e-card for businesses in Croatia |
| Service vouchers | e.g. for household services in Belgium |
| Collective agreements for pay rates and higher minimum wages | e.g. in construction and woodworking in Hungary |
| Tax incentives for formalisation | e.g. for domestic work in Sweden and Finland |
| Fight against bogus self-employment | e.g. UK, 2014-15 |
| Registration of temporary employment agencies | e.g. Netherlands, 2012 |
| Public Awareness Campaigns | e.g. Let’s stop undeclared work campaign in Slovenia, 2010; SMARTS student competition in Latvia, 2012; “Na svetlo”/„In the light“ in Bulgaria; Information and awareness-raising campaign in Lithuania, 2009; Fair Play in Iceland, 2011-12; Action Alliances in Germany, 2004 |
| Helplines and consultation centers | e.g. SOLVIT centres for solving cross-border problems |
| Amnesties | e.g. for undeclared workers in Spain, 2011; for illegal migrants in Poland, 2012; tax amnesties for informal businesses in Turkey up to 2003 |

Source: (Eurofound, 2017), (International Labour Organisation, 2016), (European Platform tackling undeclared work, 2016), (European Commission, DG Employment, 2017)

Note: The list is not exhaustive. For more information on practical tools, materials and handbooks see the national Factsheets and Synthesis Report²⁷ developed by the Platform, as well as the websites of Eurofound, ILO, etc.

27 (European Platform tackling undeclared work, 2016)

Step 15. Transparency, publicity, dissemination and follow up

The dissemination and publicity of the agreements, their implementation and evaluation is recommended in order to ensure transparency and accountability to the public, promote discussion and feedback by stakeholders, gain endorsement for the suggested measures as well as avoid misinterpretations by the media or the social platforms. Hence, the texts of the agreements should be published at least on the websites of the signatories.²⁸

The publicity of the agreement can be achieved through:

- the publication of the agreement/MoU online, as well as dissemination of information about its content and purpose, in order to avoid misinterpretation by the media and society as well as by other public bodies;
- creation of internal communication mechanisms and regular meetings;
- publicity and awareness campaigns using TV, social media, leaflets, etc.

Tip: It is not only the general public and social partners that need to be made aware of the existence and specifics of the agreement or MoU. Dedicate some time and effort to relay the relevant information, planned activities and expected results to the public bodies' own staff, including those not directly responsible for the implementation. Ideally, a Visibility and Communication Strategy should be drawn up.



²⁸ See for example the website of (Australian Government, Department of Social Services, 2016), including all signed social security agreements.

MODULE 3: REVIEWING, EVALUATING AND IMPROVING BAS AND BILATERAL MOUS

3.1 Introduction to the module: Importance and key challenges

In this module, you will learn:

- The main steps necessary for the timely updates of activities, based on regular reviews and evaluations.
- How to set goals and indicators in advance, appoint a monitoring group, and involve stakeholders and/or external evaluators.
- How to contract an evaluator and how to structure an evaluation report.
- How to ensure the sustainability and renewal of the cooperation.

Evaluations are indispensable tools for monitoring the progress towards the set goals, identification of possibilities for optimisation of internal and external procedures, and verification that the selected implementation methodologies are the most appropriate ones. But they also require specialised resources and can be politically damaging for either of the two sides. Hence, they are often replaced in practice by more light-touch annual meeting reviews, which typically focus on voicing the parties' continued commitment to the agreement, whether or not it has fulfilled its main objectives, review any issues of concern, and propose or expect any changes in the legislation of regulations that might affect the agreement's implementation. Yet, more formal evaluations, if implemented properly, can provide indispensable guidance to policy-makers, practitioners, and other interested parties. The text below presents the steps necessary for implementing a full formal evaluation which would ideally be implemented by an external expert. These instructions, however, could also be useful as general principles for implementation of internal (in-house) monitoring and review.

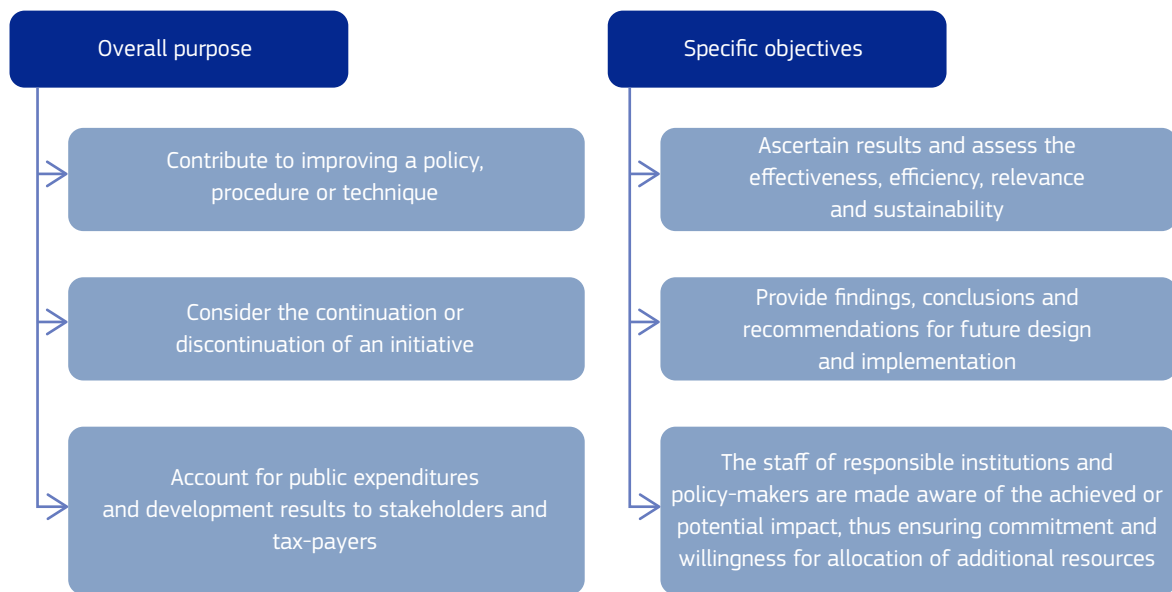
Tip: In cases of insufficient time, budget or human resources for regular detailed evaluations, it is recommended that a Joint/Steering Committee or Joint Implementation Task Force is formed. It can meet every 3 to 6 months to internally discuss the progress of the agreement and suggest changes in the activities or related procedures, if necessary. The available resources below recommend at least one final, ex-post evaluation by an external evaluator after the end of the agreement's term.



“Evaluations serve to improve the effectiveness and efficiency of programmes as well as to assess their effects. They are meant to increase knowledge of what works and what does not in order for decision makers to make timely decisions to support the implementation of programmes and to draw conclusions for policy making”.

Source: (European Commission, DG Regional Policy, 2015)

Figure 9. Evaluation's overall purpose and objectives



Source: (OECD, 2010)

Figure 10. Main issues for consideration during an evaluation

| | |
|------------|---|
| Efficacy | <ul style="list-style-type: none"> Comparing the expected level of reduction of undeclared work with the achieved result |
| Conformity | <ul style="list-style-type: none"> Whether results are obtained in conformity with established procedures (labour and tax laws and regulations, internal rules) |
| Pertinence | <ul style="list-style-type: none"> Whether the agreement corresponds to the needs (relevance for addressing the problem) |
| Efficiency | <ul style="list-style-type: none"> Cost-benefit analysis (e.g. if the same reduction of undeclared work levels could have been achieved with less resources) |
| Impact | <ul style="list-style-type: none"> On the system and on the stakeholders in all concerned countries (e.g. increased share of the socially secured, the tax revenues, the overall business environment) |

Source: Based on (Panizzon, 2015)

Example: Evaluation of results and impact in Spain

“As a result of an evaluation, the agreements on regularisation and management of migration flows between Spain and Colombia and Spain and Ecuador (signed in 2001) were not fully implemented. Only a small number of workers were affected by those agreements, as the agreements did not result in preferential admission of workers from Colombia and Ecuador. Various provisions of the agreements were not implemented, such as qualification of workers, information and assistance for voluntary repatriation.”

Source: (Panizzon, 2015)

Despite the numerous advantages of performing ex-ante, interim and ex-post evaluations, in practice very little is being done. There are numerous reasons why evaluations of bilateral agreements are almost non-existent. For example, the evaluations (and sometimes the agreements as a whole) are not considered obligatory or binding, policy-makers are cautious that the results of the evaluations could prove to be unfavourable, there is no genuine stakeholder collaboration throughout the implementation, or a general lack of an evaluation culture, staff capacities, time and financing.

3.2 Main Steps

Step 16. Setting goals and indicators in advance

Any agreement should be based on clear goals and objectives (e.g. enhancing capacity of labour inspectors, decreasing UDW in specific sectors, etc.). In order for the responsible bodies to gather information on an ongoing basis on the progress towards these common goals and make corrections, if necessary, a set of target indicators should be developed in advance. They should study the relevance, effectiveness, efficiency, impact and sustainability of the applied measures and collaboration activities. At the same time the implementation and evaluation plans should allow for flexibility towards changes in the environment. Indicators for measuring achievement of the objectives should be validated according to generally accepted criteria, such as being specific, measurable, attainable, realistic and timely (SMART)²⁹. The methodology should include specification and justification of the design of the evaluation and the techniques for data collection and analysis. A clear distinction should be made between the different result levels (intervention logic containing an objective-means hierarchy stating input, output, outcome, impact). The resources provided for the evaluation should also be adequate in terms of funds, staff and skills³⁰.

Table 9. Example structure of target indicators

| Performance Indicators | Target Value | Responsible bodies |
|---|--------------|--|
| Number of adopted/amended new laws, incl. sanction systems, tax incentive schemes, fight against bogus self-employment, ratification of the International Labour Convention, etc. | 4 | <ul style="list-style-type: none"> • Government • Ministry(ies) of Labour |
| Number of elaborated procedures and methodology for information exchange. Number of synchronised databases (demographic data, personal details, monthly declarations of employment, insurance history, self-employed contracts) | 1 | <ul style="list-style-type: none"> • Ministry(ies) of Labour • External subcontractor (software agency/ programmers) |
| Number of submitted/received requests for information | 5,000 | <ul style="list-style-type: none"> • Ministry(ies) of Labour • Labour Inspectorate • Etc. |
| Number of performed crosschecks of the statements related to employment | 1,000 | <ul style="list-style-type: none"> • Labour Inspectorate(s) |
| Number of risk assessments performed for undeclared work in companies based on their financial and other information | 1,000 | <ul style="list-style-type: none"> • Tax authority(ies) • Labour Inspectorate(s) |
| Number of elaborated risk analysis rules for targeted inspections | 1 | <ul style="list-style-type: none"> • Labour Inspectorate(s) |

²⁹ (Bogue, R. and TechRepublic, 2013)

³⁰ (OECD, 2010)

| Performance Indicators | Target Value | Responsible bodies |
|---|----------------|--|
| Created new system for the common collection of taxes and social insurance contributions | 1 | <ul style="list-style-type: none"> Ministry(ies) of Labour |
| Number of training sessions set up for inspectors | 10 | <ul style="list-style-type: none"> Ministry(ies) of Labour Social partners (e.g. trade unions, non-governmental organisations, etc.) |
| Number of performed (joint) inspections | 500 | <ul style="list-style-type: none"> Labour Inspectorate(s) Tax authority(ies) Health and safety authorities |
| Number of awareness raising and prevention materials, videos, leaflets, helpline on formalisation advice, etc. | 5 | <ul style="list-style-type: none"> Ministry(ies) of Labour Social partners (e.g. trade unions, non-governmental organisations, etc.) |
| Impact indicators, incl. social impact | Target Value | Responsible bodies |
| Decrease in undeclared work for the period (%) | ...% | ... |
| Number of companies which changed their practices and started registering employees | ... | ... |
| Number of employees who moved from undeclared to declared work | ... | ... |
| Additional social benefits, pensions, maternity leave, etc. obtained by the employees who decided to declare their employment (amount of funds) | EUR ... | ... |

Source: CSD/ICF, based on (International Labour Organisation, 2016)

Note: The indicators, values, and responsible bodies listed in the table are examples, provided for illustrative purposes. They need to be adjusted for each individual agreement.

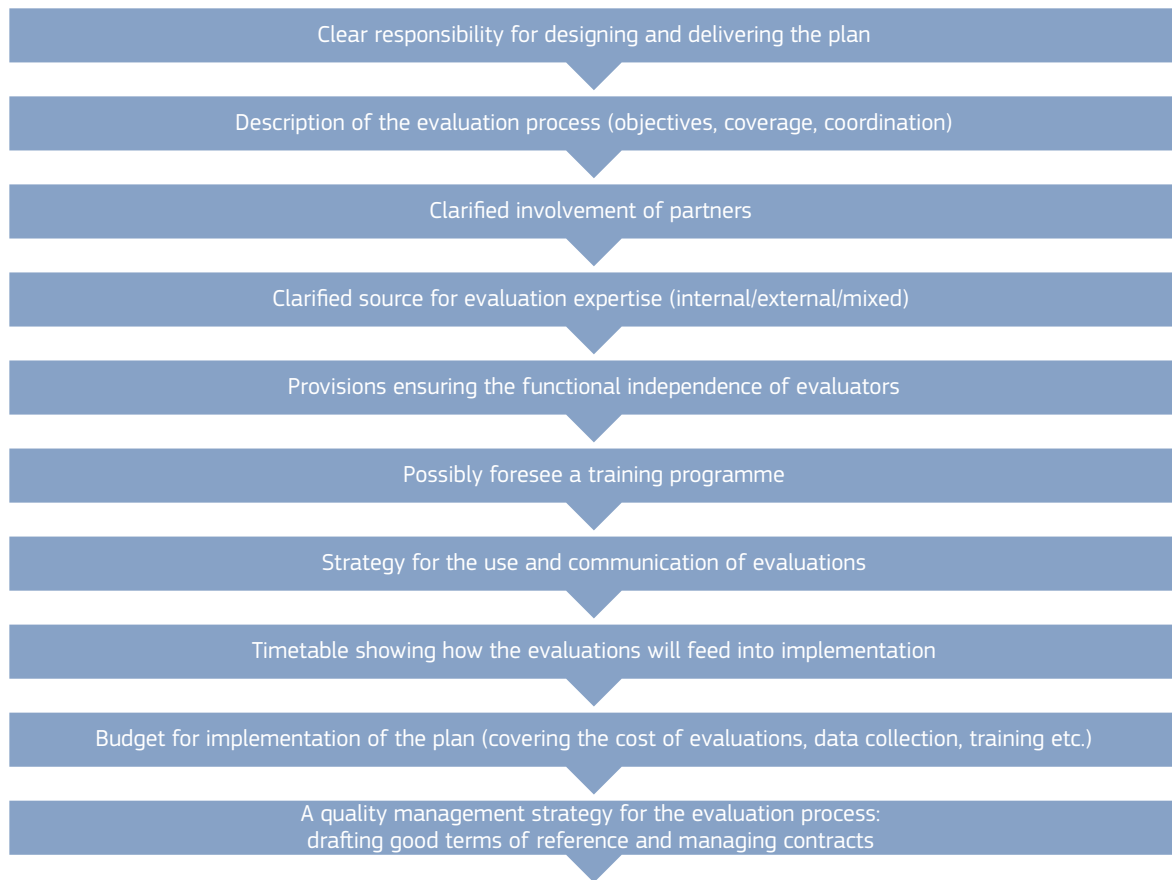
Tip: Do not forget that the internal processes, organisation and management of the agreements are also subject to evaluation. Any unforeseen outcomes and side effects should also be noted (e.g. established collaborations with the health and safety authorities while implementing measures targeting undeclared work).



A good practice is to start by drawing up an evaluation plan shortly after signature of an agreement, including a time-schedule for the various types of evaluations anticipated (e.g. internal/external; interim/final, sectoral or general for all measures foreseen in the agreement, etc.). For example, DG Regional Policy has elaborated detailed instructions for evaluation of the EU cohesion policy, including a Guidance Document on Evaluation Plans³¹ which can be adapted to the area of NA, BA, MoUs.

³¹ (European Commission, DG Regional Policy, 2015)

Figure 11. Elements of the evaluation plan



Source: (European Commission, DG Regional Policy, 2015)

Figure 12. Key considerations that the evaluation plan should anticipate for each evaluation

| | |
|---|--|
| Subject and rationale | Background, the coverage, the main approach (process or impact evaluation) and the main guiding evaluation questions (ToR for the evaluations) |
| Methods to be used and their data requirements | According to the evaluation subject, different methods may apply: a process evaluation may use data analysis, interviews, surveys, while an impact evaluation may involve other methods such as literature review, focus groups, case studies or comparison groups |
| Commitments that particular data sets will be available | Experience shows that the lack of systematic collection of evaluation data significantly increases the cost of collecting them retrospectively or leads to using less rigorous methods. Thus, this requirement for availability of data is crucial for the process |
| Duration and a tentative date | These are linked with the evaluation subject, coverage and method, e.g. impact evaluation can only be carried out when results are achieved |
| Estimated budget | The cost is linked to the selected methods and the duration of the contract |

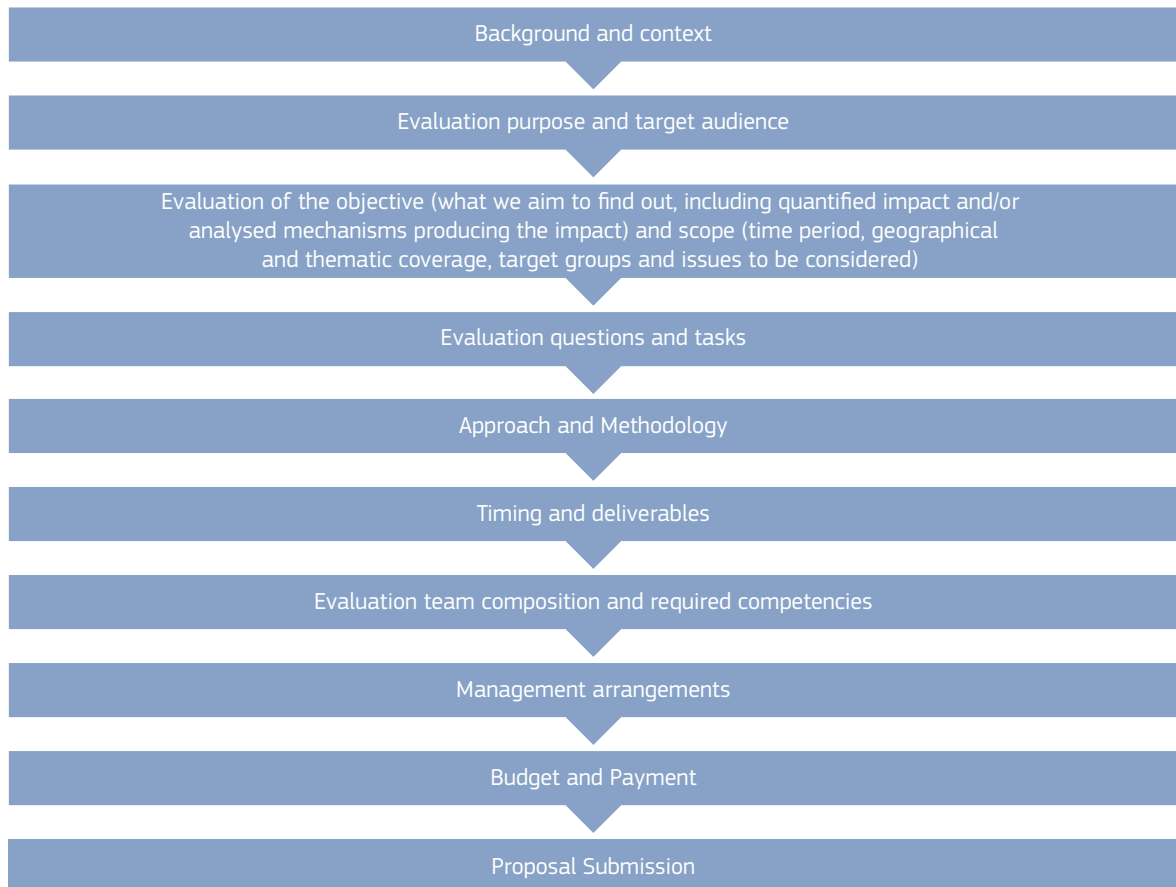
Source: (European Commission, DG Regional Policy, 2015)

Step 17. Evaluation coordinators and stakeholders

The governance and management structures should be designed to fit the evaluation's context, purpose, scope and objectives in order to safeguard credibility, inclusiveness, and transparency. Ideally, two types of evaluations might be performed, as appropriate, and if the budget and available human resources allow: a) ongoing internal evaluations to monitor the progress of each measure or activity (by working/steering groups including members of the responsible bodies), and b) ex-ante/interim and final/ex-post external evaluations to assess the overall results and impact (by contracting external evaluators, supported by other social partners).

During the planning stage the responsible bodies should draft clear and well-specified "Terms of Reference" (ToR), including the scope, objectives and methodology of the evaluation. The ToR determines, to a large degree, the quality of the evaluation. Depending on the legislation of the involved countries, the corresponding procurement rules should be followed when selecting external evaluation experts.

Figure 13. The ToR should include as a minimum the sections below



Source: (European Commission, DG Regional Policy, 2015)

Table 10. Example tasks of the evaluation

| Phase | Description of the task | Sub-tasks/details |
|----------------|--|---|
| Inception | • Comment on and revise, if necessary, the intervention logic | • Update the measures |
| | • Define and develop the evaluation tools | • Define: information sources; indicators; scope, assumptions and methodology for evaluation; consultation strategy; main risks to the activities and propose concrete ways to address them |
| | • Review the existing studies and reports | • Provide information on methods and data used |
| | • Provide a concise but comprehensive description of the agreement | • Context, institutional structure, implementation and its interaction with other instruments |
| | • Create a website dedicated to the evaluation (optional) | • Homepage with summary on the state-of-play of the evaluation process and all evaluation-related information |
| Implementation | • Stakeholder consultations | • e.g. online public consultation; targeted surveys, interviews, roundtables, workshops, etc. |
| | • Conduct case studies | • Case studies to capture the impact of the agreement on the labour market in its economic and social dimensions, as well as on social securities, tax revenues, human rights, etc. |
| | • Carry out specific analyses | • Analyse the latest development affecting the labour market, applied measures to tackle UDW, etc. |
| | • Reply to the evaluation questions | • Assess the relevance, effectiveness, efficiency, coherence of the applied measures |
| | • Provide conclusions and recommendations | • Based on the performed analysis and interviews |

Source: CSD/ICF based on (Civic Consulting, 2016).

Every evaluation process should follow strict ethics and be transparent and independent from the management and policy-making processes. Internal and external evaluators should be selected carefully based on integrity principles. In order to build mutual accountability for results, a partnership approach to evaluation development could be considered early in the process, involving different stakeholders such as government, ministries and agencies, civil society, employers' and employees' associations, etc. Relevant stakeholders should be involved early on in the evaluation process and given the opportunity to contribute to evaluation design, including identifying issues to be addressed and evaluation questions to be answered. As a spill-over effect, an evaluation may, for instance, support capacity development, strengthen evaluation management, stimulate the demand for and use of evaluation findings, and support an environment of accountability and learning. At the same time, quality control should be carried out through an internal and/or external mechanism, for example peer review, advisory panel, or reference group³².

Tip: It is recommended that third parties (e.g., trade unions, employers' associations, CSOs etc.) are involved and encouraged to provide an external, unbiased view. International or inter-agency groups could also provide advice in all steps of the BAs and MoUs elaboration, implementation and assessment, e.g. ILO, Information Systems Security Association (ISSA), Intra-European Organisation of Tax Administrations (IOTA), International Association of Labour Inspection (IALI), Global Migration Group (GMG), Global Forum on Migration and Development (GFMD).



32 (OECD, 2010)

Step 18. Regular meetings of a working/monitoring group

The monitoring of the activities' progress should be implemented on an ongoing basis, including day-to-day gathering of quantitative and qualitative information. A secretariat, working group or internal evaluation team comprising of all responsible partners should be formed for the task. The team should meet regularly (e.g. quarterly), in person or online, to review the information gathered, check for any potential risks in the implementation as well as to plan and launch the assessments envisioned in the evaluation plan. The team should also perform any planned internal evaluations (of the whole agreement or focusing only on one specific measure such as training, inspections, database consolidation, social securities fraud, tax fraud, etc.). Ex-ante, interim, and post-implementation evaluations of all measures from the agreement should be performed by external independent evaluator(s). Including social partners in the process of internal and external evaluation will provide additional points of view, endorsement and transparency. Depending on the complexity of the measures planned in the agreement and the available resources, the ex-ante and interim evaluation could in some cases be optional, however, it is recommended that at least one post-implementation evaluation is performed.

Step 19. Performing the evaluation (ongoing, post-implementation)

The evaluations should be conducted efficiently and within the budget, and results should be made available to the responsible bodies and all stakeholders in a timely manner. Changes in conditions and circumstances should be reported and unforeseen changes to timeframe and budget should be explained, discussed and agreed between all relevant parties³³. If the evaluation is ex-ante/interim/ongoing, the parties involved should consider if any changes in the applied measures and policies are necessary in order to respond to changes in the environment (e.g. increase of immigrants, potentially working without registration). In case the evaluation is ex-post/post-implementation, the parties should take note which processes could be optimised for any future collaborations.

Tip: A good practice is to publish the evaluation reports at least on the websites of those who commissioned the evaluation - Ministries of Labour, revenue authorities, agencies, etc.



Example: Re-payment of hidden social security and income in the Netherlands

"The Netherlands has a National Steering Committee on UDW which includes all relevant actors. Its actions are implemented through projects and Joint Investigation Teams. The Dutch have also developed an advanced system for data collection, data modelling, guaranteeing to the highest extent data protection. According to the representative of the Ministry of Social Affairs and Employment at the Platform's Thematic Review Workshop (11-12 April 2017, Utrecht, The Netherlands), in 2016 a total of 169 projects were realised, resulting in the re-payment of EUR 300 million of hidden social security and income. After 13 years of operation, the national agreement has been evaluated and re-started with new signatures from the key actors on March 17, 2017."

Source: (European Platform Tackling Undeclared Work, 11-12 April 2017)

Example: Joint Surveillance Commission for monitoring and reinforcement of bilateral relations between Spain and Portugal

"An increase in the posting of Portuguese workers to Spain has resulted in frequent irregularities and concerns about worker discrimination, work safety and health conditions, salaries, duration of working hours and labour traffic. On October 3, 2003, the Spanish Labour and Social Security Inspectorate and the Portuguese Labour Inspectorate thus signed an agreement to exchange information and promote cooperation as a way to establish permanent collaboration between government authorities in both

33 (OECD, 2010)

countries. For the practical application of the agreement and tracking of the measures adopted, a Joint Surveillance Commission was created. This commission met for the first time in 2004. It is presided alternately each year by one of the two countries. In the context of application of the agreement signed in 2003, the two inspectorates have gradually increased their cooperation efforts to improve the flow of information related to workers and companies. The Fifth (Braga), Sixth (Santiago de Compostela) and Seventh (Sintra) meetings of the Joint Surveillance Commission established by the agreement led to operational decisions allowing the reinforcement of bilateral relations (centralised collection and analysis of information concerning joint control actions, revision of the technical handbook, mutual recognition of professional categories in the construction sector, training plan for inspectors in Spain and Portugal, transfer of knowledge and skills acquired by participants in the “Euro Posting” project to improve controls).”

Source: (Work Conditions Authority (ACT), 2014)

Step 20. Update of agreements

The constant changes in the social, political and economic environments pose both threats and opportunities for the labour markets. It is important for the parties responsible for implementation of the agreements to regularly monitor the changes and adopt, in a timely manner, relevant measures to tackle undeclared work, as well as any related tax and social securities’ avoidance practices. In order to use any “windows of opportunities” the partners should consider solutions and best practices from other countries which have faced similar challenges in the past.

Tip: Any changes to the situation and possible solutions to the changes should be sought from consultations with a wide range of stakeholders through various means such as a) ad hoc consultations/interviews; b) online surveys/electronic consultations; c) events/workshops/discussions; and d) website and social media.

Based on the analysed data the responsible parties can reach a decision in order to update the agreement concerning, for example, the following:

- Changes in the legislation needed in order to reach the objectives.
- Changes in the applied measures (e.g. a large inflow of immigrants in a country would require intensification of the measures for tackling undeclared work specifically among this group, diverting the focus of the activities from other planned areas).
- Changes in the time-schedule or the sequence of actions (e.g. elections, change of the management of an employment agency or other circumstances can change the timing of a planned study visit, replacing it with another activity such as consolidation of databases).

It should also be noted that the experience gained (which measures and procedures work and which do not) can serve not only as the basis for an update of a current agreement but also for the establishment of new agreements with new countries. For example, the Netherlands signed four bilateral MoUs with the Czech Republic, Portugal, Romania and Slovakia between 2006 and 2010. Based on the experiences of existing agreements, the focus in MoUs set up by the Netherlands aims to concentrate on practical arrangements (like the use of IT procedures) to enable more direct cooperation between officials³⁴.

Step 21. Ensure sustainability and renewal of the cooperation

After the end of the joint activities the parties involved should consider the overall impact of the collaboration and decide if similar activities will be beneficial in the future. A post evaluation can greatly contribute to this decision by providing an external view of any aspects in the implementation process that can be improved upon in the future. Sustainability can be sought in a) ensuring the continued engagement and support of all stakeholders, and b) ensuring sufficient staff, financing and time for any new activities.

³⁴ For more information see the website of the European Platform Tackling Undeclared Work, Good Practice Fiches.

USEFUL LINKS



The European Platform Tackling Undeclared Work at the DG Employment, Social Affairs and Inclusion website



The Platform's 2-year Work Programme for 2017-2018



Factsheets of undeclared work across Europe



Virtual library of the Platform (including good practices, studies, toolkits)



International Labour Organization



Eurofound



DG Regional Policy Guidelines in Evaluating EU Cohesion Policy

NATIONAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING



UK, Association of Chief Police Officers and Gangmasters Licensing Authority. (2007).
Memorandum of Understanding for Information Sharing and Operations.



UK, Gangmasters Licensing Authority and the Health and Safety Executive. (2014).
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BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING



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Ministry of Social Affairs and Employment of the Kingdom of the Netherlands and Ministry of Labour and Social Affairs of the Czech Republic. (2010). *Memorandum of Understanding on Data Exchange and Cross-Border Cooperation in Combating of Fraud in Transnational Posting of Workers and Illegal Labour*.



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ANNEX 1. EXAMPLE OF COMPARISON OF POWERS TABLE

| Action | Gangmasters (Licensing) Act 2004 | Workplace Relations Act 2015 |
|---|----------------------------------|------------------------------|
| Inspection | | |
| Authorisation as an inspector and identification of authority | S15(5) | S26(3) |
| Require the production of documents relevant to the inspectors authority | S16(1)(a) | S27(1)(e) |
| Require an explanation of any records/information and assistance | S16(1)(b) | S27(1)(d) |
| Production of any other information necessary to confirm compliance with the Act and with license conditions (where applicable) | S16(1)(c) | S27(1)(f) |
| Entry at reasonable times to carry out functions | S16(1)(d) | S27(1)(a) |
| Format of records that may be examined, etc. | S16(3) & S16(4) | S27(1)(b) |
| Examine, copy, or remove records | S16(1)(a) | S27(1)(b)&(c) |
| To interview any relevant person – owner, employer, employee, user of workers supplied | S16(1)(c) & S16(5) | S27(1)(g) |
| Criminal Investigation | | |
| Court warrant for entry | S17(1) | S27(4) |
| Entry under a warrant by force (if necessary) | S17(1) | S27(1)(a) & S27(4) |
| Take others/equipment necessary to discharge duties effectively | S17(2)(a) | S27(2) |
| Carry out examinations at the premises entered under warrant | S17(2)(b) | S27(1)(b) |
| Take possession of documents (seize under warrant) | S17(2)(c) | S27(1)(c) |
| Secure premises entered under force | S17(3) | |
| Leave a record of documents removed under warrant | S17(4) | |
| Obstructing inspectors | | |
| Offence of obstruction | S18 | S27(5) |
| Information exchange | | |
| Supply of information to another organisation with similar responsibilities | S19(1) | S35 |
| Receipt of information from another organisation with similar responsibilities | S19(2) | |
| Any restrictions imposed by Data Protection legislation | S19(4) | S35(5) |
| Assistance other than information exchange, where specified | | |
| Operational cooperation | | S35(1)(b) |

Source: (UK Gangmasters Licensing Authority and the Workplace Relations Commission (WRC) of Ireland, 8 March 2016).

ANNEX 2. EXAMPLE OF INFORMATION REQUEST TEMPLATE

From:

To:

| | | | | | |
|---|---|-------------------------------------|---------------------------------------|---------------------------------|-------------------------------------|
| Protective Marking | | Restricted <input type="checkbox"/> | Confidential <input type="checkbox"/> | Secret <input type="checkbox"/> | Top Secret <input type="checkbox"/> |
| Name: | | Tel no: | | | |
| GLA/ (OGD): | | Fax No: | | | |
| Enquiry Ref: | | | | | |
| Legal person/organisation about whom information is sought: | | | | | |
| Full name: | | | | | |
| Full address: | | | | | |
| Date of birth: | | | | | |
| National Insurance No: | | | | | |
| Other relevant information as appropriate: | | | | | |
| NIM 5x5x5 assessment | | | | | |
| Nature of Enquiry: | State details of the investigation, proceedings or purpose to which request relates | | | | |
| | | | | | |

| | | | | |
|---|-------------------------------------|---------------------------------------|---------------------------------|-------------------------------------|
| Protective Marking | Restricted <input type="checkbox"/> | Confidential <input type="checkbox"/> | Secret <input type="checkbox"/> | Top Secret <input type="checkbox"/> |
| Information requested: | | | | |
| | | | | |
| Please give brief details to show that: | | | | |
| <ul style="list-style-type: none"> • the requested information cannot be obtained by other means or from other sources • the requested information will be of substantial value to the investigation or proceedings • lack of access to the requested information will prejudice the investigation, proceedings or effective application of the immigration rules. | | | | |
| | | | | |
| Authorising Officer details: | | | | |
| Name (print) | | | Rank | |
| Location | | | Signature | |
| | | | Date | |

| | | | | |
|---|-------------------------------------|---------------------------------------|---------------------------------|-------------------------------------|
| Protective Marking | Restricted <input type="checkbox"/> | Confidential <input type="checkbox"/> | Secret <input type="checkbox"/> | Top Secret <input type="checkbox"/> |
| From: | | To: | | |
| Re Enquiry Ref: | | | | |
| Spontaneous Disclosure ref (if applicable) | | | | |
| 5x5x5 score | | | | |
| Reply box: | | | | |
| Please use this space to provide any information which would be of use to GLA/WRC | | | | |

Source: (UK Gangmasters Licensing Authority and the Workplace Relations Commission (WRC) of Ireland, 8 Mar



FEEDBACK NOTE

We hope that you found this toolkit useful. If you have any feedback or comments, please do not hesitate to contact us on: EU-UDW-PLATFORM@icf.com