

FRAMEWORK AGREEMENT

BETWEEN

THE SWISS FEDERAL COUNCIL

AND

THE GOVERNMENT OF ROMANIA

CONCERNING

**THE IMPLEMENTATION OF THE SWISS-
ROMANIAN COOPERATION PROGRAMME**

**TO REDUCE ECONOMIC AND SOCIAL
DISPARITIES WITHIN THE ENLARGED**

EUROPEAN UNION

THE SWISS FEDERAL COUNCIL (hereinafter referred to as "the Swiss Party")

AND

THE GOVERNMENT OF ROMANIA (hereinafter referred to as "the Romanian Party")

hereinafter collectively referred to as "the Parties",

- AWARE of the importance of the enlargement of the European Union (hereinafter referred to as "EU") for stability and prosperity in Europe;
- NOTING the solidarity of the Swiss Party with the endeavours of the EU to reduce economic and social disparities within the EU;
- BUILDING upon the previous successful cooperation between the two countries;
- HAVING regard to the friendly relations between the two countries;
- DESIROUS of strengthening these relations and the fruitful cooperation between the two countries;
- INTENDING to promote further the social and economic development in Romania;
- IN VIEW of the fact that the Swiss Federal Council has expressed, in the Addendum of 25 June 2008 (hereinafter referred to as "Addendum") to the Memorandum of Understanding with the European Community of 27 February 2006 (hereinafter referred to as "Memorandum of Understanding"), the intention that the Swiss Party shall increase its contribution of CHF 1,000,000,000 (one billion Swiss francs) to reduce economic and social disparities within the enlarged EU by an additional contribution amounting up to CHF 257,000,000 (two hundred and fifty seven million Swiss francs) to Romania and Bulgaria;

have agreed as follows:

Article 1 – Definitions

For the purpose of this Framework Agreement:

- "Contribution" means the non-reimbursable financial contribution granted by the Swiss Party;
- "Swiss-Romanian Cooperation Programme" means the bilateral programme for the implementation of this Framework Agreement;
- "Supporting Measure" means a Project, a Thematic Fund, the Project Preparation Facility, the Technical Assistance Fund or other joint activities;

- "Project" means an individual project or a programme. A programme consists of component projects linked by a common theme or shared objectives;
- "Thematic Fund" means a grant-provision scheme for financing activities to address specific thematic areas or to target specific beneficiary groups;
- "Activity" means specific assistance for, inter alia, projects, scholarships, partnerships and knowledge transfer provided within a Thematic Fund;
- "Commitment" means the allocation of a certain amount of the Contribution to a Supporting Measure agreed upon by the Parties;
- "Project Agreement" means an agreement between the Parties and, if need be, additional contracting parties, on the implementation of a Project agreed upon by the Parties;
- "Thematic Fund Agreement" means an agreement between the Parties and, if need be, additional contracting parties, on the implementation of a Thematic Fund agreed upon by the Parties;
- "National Coordination Unit" (NCU) means the Romanian unit in charge of the coordination of the Swiss-Romanian Cooperation Programme;
- "Intermediate Body" means any legal public or private entity appointed by the NCU which acts under the responsibility of the NCU or which carries out duties on behalf of the NCU with regard to Executing Agencies implementing Projects;
- "Swiss Intermediate Body" means any legal public or private entity mandated by the Swiss Party for the management of a Thematic Fund;
- "Paying Authority" means the unit established in the Ministry of Public Finance ensuring on the Romanian side appropriate financial control of the Swiss-Romanian Cooperation Programme;
- "Audit Authority" means the unit established in the Ministry of Public Finance responsible on the Romanian side for the control of the use of financial resources of the Swiss-Romanian Cooperation Programme;
- "Executing Agency" means any legal public or private entity, as well as any organisation recognised by the Parties and mandated to implement Supporting Measures;
- "Implementation Agreement" means an agreement between the NCU and/or the Intermediate Body and the Executing Agency for the implementation of the Project;

- "Mandate Agreement" means an agreement between the Swiss Party, the Swiss Intermediate Body and/or possibly the Executing Agency for the implementation of a Thematic Fund;
- "Delegation Agreement" means an agreement between the NCU and the Intermediate Body / Executing Agency / Paying Authority in order to delegate tasks from the NCU to the Intermediate Body / Executing Agency / Paying Authority for the implementation of projects;
- "Project Preparation Facility" means the facility providing financial support for the preparation of the Final Project Proposals;
- "Technical Assistance Fund" means the fund set up to finance the tasks performed by the Romanian authorities additionally and exclusively for the implementation of the Contribution;
- "Block Grant" means a fund set up within a Thematic Fund for a clearly defined purpose, dedicated to financing small Activities in a cost-effective way.

Article 2 – Objectives

1. The Parties shall promote the reduction of economic and social disparities within the enlarged EU through Supporting Measures mutually agreed upon between the Parties and in line with the Memorandum of Understanding and its Addendum and the Conceptual Framework for the Swiss-Romanian Cooperation Programme as outlined in Annex 1 of this Framework Agreement.
2. The objective of this Framework Agreement is to establish a framework of rules and procedures for the planning and implementation of the cooperation between the Parties.

Article 3 – Amount of the Contribution

1. The Swiss Party agrees to grant a non-reimbursable Contribution towards the reduction of economic and social disparities within the enlarged EU of up to CHF 181 million (one hundred and eighty one million Swiss francs) to Romania for a Commitment period of five years and a disbursement period of up to 10 years, starting from the approval date of the Contribution by the Swiss Parliament, which is 7 December 2009.
2. The Parties shall accept submissions of final proposals for Supporting Measures for commitment of funds until two months before the end of the Commitment period.
3. Funds not committed during the Commitment period shall no longer be available for the Swiss-Romanian Cooperation Programme.

Article 4 – Scope

The provisions of this Framework Agreement shall apply to national and transnational Supporting Measures financed by the Swiss Party or co-financed by the Swiss Party with multilateral institutions and other donors, executed by an Executing Agency, mutually agreed upon by the Parties.

Article 5 – Utilisation of the Contribution

1. The Contribution shall be used to finance Supporting Measures and can take the following forms:

- a) Financial assistance including grants, credit lines, guarantee schemes, equity and debt participation and loans;
- b) Technical Assistance.

2. The Contribution shall be used in line with the objectives, principles, strategies, geographic and thematic focus as outlined in the Conceptual Framework in Annex 1.

3. 5% of the Contribution shall be used by the Swiss Party for its administration of this Framework Agreement. This includes, inter alia, expenses for staff and consultants, administrative infrastructure, missions, monitoring and evaluation.

4. The Contribution, in the form of grants, may not exceed 60% of the total eligible costs of a Supporting Measure, except in the case of Supporting Measures receiving additional financing in the form of budget allocations from national, regional or local authorities, in which case the Contribution may not exceed 85% of the total eligible costs. Institution-building and technical assistance Supporting Measures, Supporting Measures implemented by non-governmental organisations as well as financial assistance benefiting the private sector (credit lines, guarantee schemes, equity and debt participation) may be fully financed by the Contribution.

5. The following costs shall not be eligible for grant support: expenditures incurred by all parties before the signing of the Agreement for the respective Supporting Measure as mentioned in Article 6 paragraph 3, interest on debt, the purchase of land and buildings, recoverable value added tax as specified in Article 7 of this Framework Agreement.

Article 6 – Coordination and Procedures

1. To make sure that Supporting Measures have the greatest possible impact and in order to avoid duplication and overlapping with projects financed through structural and/or cohesion funding as well as through any other funding source, the Parties shall assure effective coordination and share all information needed to that end.

2. All the correspondence exchanged between the Parties, including reports and documents related to Supporting Measures, shall be drafted in English.

3. Each Supporting Measure shall be subject to an Agreement (e.g. Project Agreement, Thematic Fund Agreement), which shall set out the terms and conditions of grant assistance as well as the roles and responsibilities of the contracting parties.

4. In general, the Romanian Party is responsible for the identification of Projects to be financed by the Contribution, whereas Thematic Funds are worked out by the Swiss Party. The Swiss Party may also suggest to the Romanian side Projects to be financed by the Contribution, including Projects of multilateral, national or transnational institutions. The rules and procedures for the selection and implementation of Supporting Measures are defined in the Annexes to this Framework Agreement.

5. All Supporting Measures shall be approved by the Romanian and the Swiss Party. The Parties attach high importance to the monitoring, the evaluation and the auditing of Supporting Measures, and of the entire Swiss-Romanian Cooperation Programme. The Swiss Party, or any mandated third party acting on its behalf, is entitled to visit, monitor, review, audit or evaluate all activities and procedures related to the implementation of the Supporting Measures financed by the Contribution, as deemed appropriate by the Swiss Party. The Romanian Party shall provide all requested or useful information and shall take, or cause to be taken, all actions allowing the successful realisation of such mandates.

6. Upon entry into force of this Framework Agreement, the Romanian Party shall inform the Swiss Party about opening a separate bank account in which the funds received from the Swiss Contribution shall be deposited. The accumulated net interest shall be reported to the Swiss Party on an annual basis. The grants for the Thematic Funds that are managed directly by a Swiss Intermediate Body or an Executing Agency as well as the Swiss administration costs referred to in Article 5, Paragraph 3 of this Framework Agreement shall not be managed through this account.

7. Payment procedures for Projects and the Thematic Funds are outlined in Annexes 3 and 4 respectively. Procedures for the Technical Assistance Fund and Project Preparation Facility are mentioned in Annex 5.

8. The NCU shall establish a Monitoring Committee, which is responsible for the monitoring of the implementation of the Swiss-Romanian Cooperation Programme.

Article 7 – Value Added Tax and other Taxes and Charges

1. Value added tax (VAT) shall be considered eligible expenditure only if it is genuinely and definitively borne by the Executing Agency. VAT which is recoverable, by whatever means, shall not be considered eligible even if it is not actually recovered by the Executing Agency or by the final recipients.

2. Other levies, taxes or charges, in particular direct taxes and social security contributions on eligible salaries and wages, shall constitute eligible expenditure only if they are genuinely and definitively borne by the Executing Agency or by the Intermediate Body.

Article 8 – Annual Meetings and Reporting

1. The Parties agree to hold Annual Meetings in order to ensure effective implementation of the Swiss-Romanian Cooperation Programme. The first meeting shall be held no later than 18 months after the beginning of the application of this Framework Agreement.

2. The Romanian Party shall organise the meetings in cooperation with the Swiss Party. The NCU shall present one month before the meetings a consolidated annual report covering the whole Swiss-Romanian Cooperation Programme. Its content shall include, but not be limited to, the issues listed in Annex 2.

3. Within 3 months after the final disbursement under this Framework Agreement, the Romanian Party shall submit to the Swiss Party a final report assessing the accomplishment of the objective of this Framework Agreement and a final financial statement on the use of the Contribution, based on the financial audits of the Supporting Measures.

Article 9 – Competent Authorities

1. The Romanian Party has authorised the Ministry of Public Finance to act on its behalf as the NCU for the Swiss-Romanian Cooperation Programme. The NCU shall have the overall responsibility for the management of the Contribution in Romania. The Romanian Party has authorised the Ministry of Public Finance to act on its behalf as the Paying Authority and the Audit Authority.

2. The Swiss Party has authorised:

the Federal Department of Foreign Affairs, acting through the Swiss Agency for Development and Cooperation (SDC)

and

the Federal Department of Economic Affairs, acting through the State Secretariat for Economic Affairs (SECO)

to act on its behalf for the implementation of the Swiss-Romanian Cooperation Programme.

Supporting Measures are assigned to one or the other above mentioned institutions according to their respective fields of competence.

3. The Swiss Embassy in Bucharest shall act as the contact point for the NCU with regard to official information referring to the Swiss-Romanian Cooperation Programme. Day-to-day communication between the competent authorities may be maintained directly.

Article 10 – Common Concern

The Parties share a common concern in the fight against the misuse of funds, which jeopardises good governance and the proper use of resources needed for development, and, in addition, endangers fair and open competition based upon price and quality. They declare, therefore, their intention to combine their efforts to fight the misuse of funds and, in particular, declare that whoever asks for, lets himself/herself be promised or accepts an advantage for acting or refraining from acting in the context of a mandate or contract within the framework of this Framework Agreement, will be considered to have committed an illegal act which shall not be accepted. Any actual case of this kind shall constitute sufficient grounds to justify termination of this Framework Agreement, the respective Supporting Measure Agreements, the annulment of the procurement or resulting award, or for taking any other corrective measure laid down by applicable law.

Article 11 – Final Provisions

1. Annexes 1 to 5 shall form an integral part of this Framework Agreement.
2. Any dispute which may result from the application of this Framework Agreement shall be resolved by diplomatic means.
3. This Framework Agreement shall enter into force on the date of the latter notification confirming the completion by both Parties of their respective approval procedures. The Framework Agreement covers a Commitment period of five years and a disbursement period of ten years. It applies until the final report by the Romanian Party assessing the accomplishment of the objective of this Framework Agreement is submitted according to Article 8 Paragraph 3. The Commitment period shall start according to Article 3 Paragraph 1. The Parties shall apply this Framework Agreement provisionally starting on the day of its signing.
4. Any amendment to this Framework Agreement shall be made in writing with the mutual agreement of the Parties and according to their respective procedures. Any amendment to the Annexes 1 to 5 of this Framework Agreement shall be made in writing with the mutual agreement of the competent authorities mentioned in Article 9.
5. This Framework Agreement can be terminated at any time by one of the Parties upon a six-month prior written notice containing a justification of its decision. Prior to making such a decision, the Parties shall enter into consultation with a view to ensuring that the said decision is based on accurate and correct facts. In case of said termination, the provisions of this Framework Agreement shall continue to apply to the respective Supporting Measure Agreements concluded before the termination of this Framework Agreement. The Parties shall decide by mutual agreement any other consequences of the termination.

Signed at Bern on September the 7th, 2010, in two originals in the English language.

For the Swiss
Federal Council

For the Government of
Romania

Doris Leuthard
President
of the Swiss Confederation

Teodor Baconschi
Minister of Foreign Affairs

Micheline Calmy-Rey
Federal Councillor
of the Swiss Confederation