

THE COOPERATION PROGRAMME BETWEEN SWITZERLAND AND THE REPUBLIC OF
POLAND

PROJECT AGREEMENT

BETWEEN
SWITZERLAND
REPRESENTED BY

THE SWISS AGENCY FOR DEVELOPMENT AND COOPERATION (SDC)
AND

THE REPUBLIC OF POLAND

REPRESENTED BY
THE MINISTRY OF REGIONAL DEVELOPMENT AS THE NATIONAL COORDINATION
UNIT (NCU)

CONCERNING
THE GRANT
FOR

THE PROJECT KIK "....."

TO BE IMPLEMENTED DURING THE PERIOD

..... -

The Government of Switzerland and the Government of the Republic of Poland

Having regard to the friendly relations between the two countries,

Desirous of strengthening these relations and the fruitful co-operation between the two countries,

Intending to promote further the social and economic development in the Republic of Poland,

Referring to the Framework Agreement between the Swiss Federal Council and the Government of the Republic of Poland concerning the implementation of the Swiss-Polish cooperation programme to reduce economic and social disparities within the enlarged European Union, concluded on 20 December 2007,

Considering the Swiss Grant for the project "... ..", in the Republic of Poland ,

have agreed as follows:

Article 1
Definitions

In this Project Agreement, unless the context otherwise requires, the following terms shall have the following meaning:

"Framework Agreement" means the Agreement between the Swiss Federal Council and the Government of the Republic of Poland concerning the implementation of the Swiss-Polish Cooperation Programme to reduce the economic and social disparities within the enlarged European Union, concluded on 20 December 2007;

"Contribution" means the non-reimbursable financial contribution granted by Switzerland under the Framework Agreement;

"Project Agreement" means the Agreement between the Swiss Agency for Development and Cooperation (SDC) and the Ministry of Regional Development acting as the National Coordination Unit (NCU) which lays down the rights and obligations of the Contracting Parties regarding the implementation of the Project;

"National Coordination Unit" (NCU) means the Polish unit in charge of the coordination of the Swiss-Polish Cooperation Programme. In reference to the Framework Agreement, Art 9., the Republic of Poland has authorized the Minister of Regional Development to act on its behalf as the NCU for the Swiss-Polish Cooperation Programme;

"Project" means all activities undertaken under this Project Agreement;

"Grant" means the non-reimbursable financial contribution granted by Switzerland under this Project Agreement;

"Contracting Parties" of the Project Agreement means the Polish Government, represented by the NCU on the one side and the Swiss Government, represented by SDC on the other side;

"Paying Authority" means the institution established in the Ministry of Finance ensuring appropriate financial control within the Swiss-Polish Cooperation Programme;

“Intermediate Body” is the “...” acting under the responsibility of the NCU with regard to the Executing Agency implementing this Project;

“Executing Agency” is the “...” mandated by the Intermediate Body to implement the Project financed under this Project Agreement.

Article 2

Objectives and Scope of the Project

2.1 The objective of the Project “.....” is to

2.2 The Executing Agency is the “...”.

2.3 The Project has to be implemented according to the following documents, forming the list of Annexes:

a) the confirmation of the Project approval by the SDC and its possible amendments agreed by the Contracting Parties (Annex 1)

b) the main body of Final Project Proposal (Annex 2)

c) updated Budget (Annex 3) and

d) updated Project Logframe (Annex 4)

These annexes constitute an integral part of the Project Agreement.

2.4 The Project Agreement shall be implemented in compliance with the following documents:

a) the Framework Agreement and respective guidelines adopted on its basis

2.5 The Project Agreement shall be implemented based on all Annexes to the Final Project Proposal.

Article 3

Amount and Utilization

3.1 The estimated total cost of the Project amounts to CHF ... The estimated eligible cost of the Project amounts to CHF ... (see Annex 1).

3.2 Switzerland shall provide a Grant in Swiss Francs amounting to **maximum** CHF ... to the Republic of Poland for the implementation of the Project defined in Art. 2.

- 3.3 The Grant shall cover **a maximum of 85 %** of the total eligible costs of the Project in Swiss Francs. This percentage shall never be exceeded during the project implementation. The NCU shall ensure the timely provision of the co-financing of a **minimum of 15 %** of the total eligible costs of the Project in Swiss Francs by domestic sources.
- 3.4 As stipulated in Art. 7.1 of the Framework Agreement, the Value Added Tax (VAT) shall be considered as an eligible cost 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 recipient.
- 3.5 As stipulated in Art. 7.2 of the Framework Agreement, other levies, taxes or charges, in particular direct taxes and social security contributions on salaries and wages, shall constitute eligible costs only if they are genuinely and definitively borne by the Executing Agency.
- 3.6 The following costs shall not be eligible for grant support: expenditures incurred before the signing of the present Project Agreement by all parties, interests on debt, the purchase of real estate and recoverable VAT as specified in Art. 3.4 of this Project Agreement.
- 3.7 The final date for eligibility of costs corresponds with the end of the Project's physical realization as defined in Art. 22.2. Eligibility of costs for reporting, auditing and evaluation ends six months after Project's physical completion. Reimbursement Requests must have been received by Switzerland not later than six months after the final date of eligibility of costs for reporting, auditing and evaluation.
- 3.8 Before the completion of the project, the Contracting Parties shall agree mutually on the use of any unutilised portion of the Grant.

Article 4

Reimbursement Procedures

- 4.1 The Grant shall be disbursed in accordance with the Framework Agreement, Annex 2, chapters 3 and 4, and the updated Budget referred to in Article 2.3 lit. c (Annex 3).
- 4.2 Disbursements shall be made based on reimbursement request as well as the reports pursuant to Article 8.1, certified and verified by the NCU, in the form of reimbursements of eligible costs incurred within the Project. These reimbursements shall be pre-financed from the Polish state budget. Switzerland shall reimburse pre-financed funds upon receipt and approval of the reimbursement requests as well as the reports pursuant to Art. 8 and 9, with a reservation of the provisions of Article 4.6.
- 4.3 The payments are made by the Switzerland not later than within 45 calendar days after receiving both the reports pursuant in Article 8.1 and the reimbursement requests. The period might be prolonged in case when additional clarifications as regards the submitted Reimbursement Requests and/or the mentioned reports are needed. Those clarifications should be delivered within 15 calendar days after submission of a request of clarification, thus Switzerland payment procedure does not exceed 60 calendar days after receiving both the reports pursuant in Article 8.1 and the Reimbursement Requests.

- 4.4 The Reimbursement Requests based on payment claims of the Executing Agency sent to Switzerland by the Paying Authority shall be in Swiss Francs, whereas the Paying Authority shall convert the local currency into Swiss Francs at the purchase exchange rate of the National Bank of Poland prevailing at the date of issuing the Reimbursement Request.
- 4.5 Reimbursement Requests referred to in Article 4.4 must be received by Switzerland within six months after the end of the covered reporting period.
- 4.6 At Project completion:
A final reimbursement of maximum CHF ... shall be made by Switzerland after fulfilment of all contractual obligations of the Republic of Poland, after the receipt of the final Reimbursement Request submitted to Switzerland by the Paying Authority as well as the corresponding final Interim Report, the Project Completion Report and the conclusion of Final Financial Audit Report conducted.
- 4.7 All payments related to this Project Agreement shall be transferred by Switzerland in Swiss Francs to the Government of the Republic of Poland, National Economy Bank account no. ...
..., Swift N°GOSKPLPW , IBAN°

Article 5 **Procurement**

- 5.1 Procurement within the framework of the Project Agreement is to be made by the Executing Agency in accordance with the respective national law and regulations of the Republic of Poland, in compliance with the respective EU directives and with the Framework Agreement, Annex 2, chapter 3.3. A confirmation of compliance with the relevant procurement rules shall be provided to Switzerland by the NCU within 30 calendar days after the award of the contract. To increase transparency and to prevent corruption, tender documents shall contain an integrity clause.
- 5.2 According to Annex 2, Article 3.3 of the Framework Agreement, an English translation of the official tender evaluation report shall be provided to Switzerland for information at the latest 30 calendar days after the award of contract by the competent authorities.
- 5.3 If the public tenders are above the threshold of CHF 500`000, according to Annex 2, Article 3.3 of the Framework Agreement, the English translation of the tender documents and the contracts shall be submitted to Switzerland for information at the latest 20 calendar days before commencement of tendering and 20 calendar days after the signing of the contracts, respectively. The respective translation costs will be borne by the Project and financed under the Grant.
- 5.4 Switzerland shall have the right to participate in the tender evaluation committee as an observer.

- 5.5 If, according to the respective national law and EU directives, the public procurement law does not apply to contracts concluded within the framework of the Project Agreement, the NCU shall ensure fair competition and equal treatment of potential contractors.

Article 6 **Responsibilities of NCU**

- 6.1 The NCU shall take or delegate all actions within its field of competences and responsibility, including coordination, the provision of advanced payments, control of the co-financing, construction permits and other measures, necessary or appropriate, for carrying out the Project.
- 6.2 The NCU supervises and steers the implementation of the Project.
- 6.3 The NCU is responsible for the implementation, controlling and evaluation of the Project as well as for the use of the Grant in accordance with this Project Agreement, and as stated in the Annex 2 of the Framework Agreement. The NCU ensures the compliance of the Executing Agency and other entities with this Project Agreement as well as with the Framework Agreement.
- 6.4 The NCU shall ensure that an Implementation Agreement is concluded with the Executing Agency. This Implementation Agreement shall comply with the Project Agreement and with the Framework Agreement. The same shall apply to any other contract subscribed in the framework of the implementation of the Project.
- 6.5 The Implementation Agreement referred to in Art. 6.4 shall state that the maximum amount which the Executing Agency may spend is PLN (total eligible costs), but that in any case the Project will not receive a Swiss co-financing which is higher than the maximum Grant amount indicated in Art. 3.2.
- 6.6 In case when the maximum amount indicated in the PLN in Article 6.5 above is spent by the Executing Agency but at the same time not the whole Grant in CHF indicated in Article 3.2 is spent, the Article 3.8 shall apply to use of the unutilized portion of the Grant.
- 6.7 The NCU undertakes to support, advise and inform the Swiss Embassy – Swiss Contribution Office (or SDC) with regard to project-related issues. The NCU undertakes to inform the Swiss Embassy immediately in writing with regard to any developments that could seriously jeopardise the implementation of the Project. In the event of the threat of any irreparable disadvantage, the NCU shall immediately undertake to apply the requisite precautions.
- 6.8 The NCU and the Executing Agency will at all time clearly state that they are acting within the framework of the Swiss-Polish Cooperation Programme to reduce economic and social disparities within the enlarged European Union. All publications must refer to the Project as a “Swiss-Polish Project”. The general public in Poland will be informed adequately about the Project and the support provided by Switzerland.

- 6.9 All communications to SDC with regard to this Project Agreement shall be directed to the Swiss Embassy – Swiss Contribution Office in Warsaw which generally represents SDC towards the NCU (and the Intermediate Body).

Article 7

Monitoring and Review

- 7.1 The NCU shall ensure the establishment of a monitoring system that allows to assess periodically the status of achievement of the proposed objectives. Results and conclusions have to be part of the project reports as mentioned in Art. 8 below and should be the base of the annual reports on the Swiss-Polish Cooperation Programme as stipulated in Art. 8 of the Framework Agreement.
- 7.2 A review shall be organised by the NCU at the end of the second year of the implementation of the Project. The purpose is monitoring of the project execution and deciding about possible actions to correct weaknesses. The terms of reference for the review shall be consulted with Switzerland.

Article 8

Reporting

- 8.1 Interim Reports shall cover a period of at least 3 months and are due to Switzerland not later than 3 months after the end of the period covered. The first Interim Report covering the period of ... is due not later than Interim Reports support payment claims and are therefore to be presented to Switzerland with the corresponding Reimbursement Request. They include information on financial and physical progress, compare actual with planned expenses and provide an update on progress status, while confirming the co-financing. Any deviation has to be justified and corrective measures suggested. Interim Reports are elaborated by the Executing Agency in PLN and verified by the NCU.
- 8.2 Annual Project Reports are due to Switzerland not later than 4 months after the end of the calendar year. The first Annual Project Report covering the year ... is due not later than Annual Project Reports have an operational part that describes the progress of the Project and include a financial part (Financial Report) having a summary data on financial progress for the reporting year as well as cumulative data to date. They compare actual with planned expenses and progress, based on quantified targets for output and where possible outcome indicators. Any deviation has to be justified and corrective measures suggested. Annual project reports are not linked to Reimbursement Requests.

- 8.3 The Project Completion Report is due not later than 6 months after the end of the Project completion, meaning not later than ... for this Project. The Project Completion Report - together with the last Interim Report and the conclusions of the Final Financial Audit - is the base for the payment of the final reimbursement. The Project Completion Report has an operational part that documents and comments the overall achievement of outputs and outcomes against the original plan, the compliance with principles such as cross cutting themes and sustainability, and suggests lessons learned and conclusions. It contains a financial part (Final Financial Report) having a summary of financial data for the whole project and compare effective with planned expenses.
- 8.4 The financial parts of the Interim Reports, Annual Project Reports and of the Project Completion Report, based on invoices or documents of equivalent value, are to be presented in local currency. Summary and cumulative financial data in the Annual Reports as well as in the Project Completion Report shall additionally be presented in Swiss Francs, calculated at the exchange rates indicated in the Reimbursement Requests pertaining to the covered reporting period.

Article 9

Audit

- 9.1 In accordance with the annual audit planning agreed upon with Switzerland, the Audit Institution established at the level of the Ministry of Finance and the entitled Audit Organisations (e.g. control unit of the Intermediate Body) shall perform control and audits in accordance with the respective national law of the Republic of Poland. In doing so, they shall verify the correct use of funds, make recommendations to strengthen the control system and report any actual or alleged fraud or irregularity.
- 9.2 Audit Organisations shall ensure that the Audit Institution has access to the documentation elaborated by them during their control and audits carried out within the Swiss-Polish Cooperation Programme.
- 9.3 An internal or an external certified Audit Organisation will carry out an intermediary Financial Audit covering two years of the implementation. The conclusions and recommendations shall be transmitted to the Swiss Embassy – Swiss Contribution Office by the NCU at the latest three months after the termination of the year in question.
- The Intermediary Financial Audit should cover the period of Conclusions and recommendations have to be presented to Switzerland by the NCU not later than
- 9.4 At Project's physical realization completion, an internal or external certified Audit Organisation will carry out a Final Financial Audit. The conclusions and recommendations shall be transmitted to Switzerland, together with the Project Completion Report, by the NCU at the latest 6 months after the termination of the Project, not later than

9.5 The NCU shall ensure that an Audit Organisation for the Project will be appointed. The NCU confirms that the selected Audit Organisation is a public institution (or an external certified company) of recognised professional reputation and in line with the International Standards on Auditing (ISAs) issued by the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants.

In case of external audit: The costs are eligible for reimbursement and are included in the Project budget. In case of internal audit: Costs are borne by the respective internal Audit Organisation.

9.6 The objective of the audit of financial statements of the Project is to enable the Audit Organisation to express an opinion whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework (ISA 200, point 3). Thus, financial statements need to be prepared in accordance with one, or a combination of the international accounting standards, the national accounting standards or another authoritative and comprehensive financial reporting framework which has been designed for use in financial reporting and is identified in the financial statements. The Audit Organisation shall conduct the financial audit in accordance with International Standards on Auditing (ISA), issued by the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants (IFAC), to obtain reasonable assurance that the financial statements taken as a whole are free from material misstatement, whether due to fraud or error (ISA 200, point 11a). Results of any previous audits shall be taken into consideration. The Audit Organisation shall take into account additional requirements that may be suggested by the NCU or by Switzerland.

9.7 In addition to the Audit Organisation's report on the financial statements, the Audit Organisation is expected to provide the Executing Agency with a management letter concerning any material weaknesses in accounting and internal control systems detected by the Audit Organisation. The copy of such letter shall be presented to the NCU. Audit arrangements with the Audit Organisation shall be effective for the whole Project duration unless it is terminated, amended or superseded with appropriate justifications.

9.8 The NCU shall comment the result of the audit and the proposed recommendations.

9.9 Switzerland shall have the right to request additional external financial reviews.

Article 10

Right of Examination

Switzerland, as well as any third party appointed by it, shall have the right to visit the Project, conduct a comprehensive assessment or evaluation, and shall be granted full access to all documents and information related to the Project settled by this Project Agreement, during its implementation and 5 years after its completion. The NCU shall, upon request, ensure that the above mentioned authorised representatives are accompanied by the relevant personnel and are provided with the necessary assistance.

Article 11

Project Material

- 11.1 For the duration of the Project, goods procured under the Grant shall remain at the unrestricted disposal of the Project and shall not be diverted without prior written approval of Switzerland. No ownership transfer is allowed within five years after the completion of the Project, unless the Contracting Parties agree otherwise. SDC shall assume no liability whatsoever in connection with said goods.
- 11.2 For project material procured under the Contribution and used only during the Project implementation but not necessary for the purpose of the Project after its Completion, the Contracting Parties shall decide before the termination of the Project about post-completion ownership and use of the goods provided with the Contribution. Switzerland shall assume no liability whatsoever in connection with said goods.

Article 12

Liability

SDC does not assume any risk or responsibility whatsoever for any damages, injuries, or other possible adverse effects caused by the Project, including, but not limited to inconsistencies in the planning of the Project, other project(s) that might affect it or that it might affect, or public discontent. It is the full and sole responsibility of the NCU to satisfactorily address such issues.

Article 13

Common Concern

The Contracting Parties share a common concern in the fight against corruption, which jeopardises good governance and the proper use of resources needed for development, and, in addition, endangers fair and open competition based on price and quality. They declare, therefore, their intention of combining their efforts to fight corruption 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 the Project 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 the Project Agreement, the annulment of the procurement or resulting award, or for taking any other corrective measure laid down by the Polish law.

Article 14

Suspension of payments

- 14.1 SDC may decide on a suspension of payments if the implementation of the Project is not in compliance with the Project Agreement. SDC shall communicate such a decision and the underlying reason(s) immediately to the NCU in writing.

14.2 SCD, before making the decision referred to in Article 14.1, shall consult the NCU to ensure that the decision is based on accurate facts.

14.3 The decision referred to in Article 14.1 shall be cancelled if the reason(s) communicated to the NCU do not longer exist and / or the problems referred to have been resolved to the satisfaction of the Contracting Parties and, consequently, the payments shall be resumed. SDC shall immediately communicate the cancellation of the decision to the NCU in writing.

Article 15

Refund of payments

15.1 SDC may decide to request the NCU to refund the payments disbursed in accordance with the provisions of Article 4, if the suspension referred to in Article 14.1 is not feasible or not likely to be sufficient.

15.2 SDC before making the decision referred to in Article 15.1 shall consult the NCU to ensure that the decision is based on accurate facts.

15.3 SDC shall immediately inform the NCU about the decision referred to in Article 15.1 providing detailed justification.

15.4 The requested amount shall be refunded within three months from the date of receiving the information referred to in Article 15.3, subject to settlements of the decision referred to in Article 15.1.

Article 16

Post-Completion Obligations

16.1 The NCU shall ensure that the Project is operational at least 5 years after it has been completed. An ex-post evaluation of the Project may be carried out by Switzerland.

16.2 Switzerland has neither responsibility for nor obligation to ensuring the maintenance, the repair or the undertaking of any measures for ensuring the safety and protection of persons, equipment, installations, of all objects on site or in the vicinity.

16.3 The Contracting Parties shall keep all documents concerning this Agreement and its implementation for 10 years after completion of this Project.

Article 17

Language

All correspondence with Switzerland, including operational, financial and audit reports as well as project documents and any other papers related to the Project, shall be in English.

Article 18
Competent Authorities

For the Government of the Republic of Poland:

Minister of Regional Development

Ul. Wspólna 2/4

00-926 Warszawa

Poland

For the Swiss Government:

Swiss Agency for Development and Cooperation (SDC)

Freiburgerstrasse 130

CH - 3003 Bern

Switzerland

Tel: +41 31 / Fax: +41 31

Swiss Contribution Office

Embassy of Switzerland

Al. Ujazdowskie 27

00-540 Warszawa

Poland

Article 19
Settlement of Disputes

In accordance with Art. 11 of the Framework Agreement, any dispute which may result from the application of this Project Agreement shall be solved by diplomatic means.

Article 20
Project Modifications and Amendments to the Project Agreement

20.1 Any amendment to this Project Agreement and its Annexes shall be made in writing with the mutual agreement of the Contracting Parties and according to their respective procedures.

20.2 Any increase of the Project total eligible cost, any significant changes within the total eligible cost as well as any strategic changes or conceptual adjustments to the Project shall be discussed with and approved by Switzerland.

20.3 The provisions of Article 20.1 and 20.2 do not apply to the modifications specified hereafter:

- a. transfers between categories referred to in updated Budget as mentioned in Article 2.3 lit. c (Annex 3) which amount to maximum 15% of the category the transfer is made from.

Increases of the management cost shall always be discussed with and approved by Switzerland

- b. changes of the reporting periods for the Project Interim Reports referred to in Article 8.1, in conformity with the Framework Agreement.

The NCU shall inform SDC in writing about any modification of the Project according to Article 20.3 lit a and lit. b above.

Article 21

Termination, Suspension

21.1 This Project Agreement can be terminated at any time by one of the Contracting Parties upon a six-month prior written notice. Prior to making such a decision, the Contracting Parties shall enter into a dialogue to ensure that it is based on accurate and correct facts. The Contracting Parties shall decide by mutual agreement on any consequences of the termination.

21.2 If either Contracting Party considers that the aims of the Project Agreement can no longer be achieved or that the other Contracting Party is not meeting its obligations, it shall have the right to suspend immediately the application of this Project Agreement by giving the other Contracting Party a written notice on the grounds.

Article 22

Entry into Force, Duration

22.1 This Project Agreement shall enter into force on the date of its signing by the Contracting Parties and shall remain in force until 5 years have elapsed after the date of the completion of the Project.

22.2 The physical scope of the Project shall be implemented in ... months, starting on ... and ending on ... The project completion date ... corresponds with the final date for eligibility of costs for reporting, auditing and evaluation.

Done in Warsaw on, in two authentic copies in the English language.

For the Swiss Embassy
in Warsaw

For the Ministry of
Regional Development

Ambassador of Switzerland in Poland

Adam Zdziebło
Secretary of State