

**THE SWISS-POLISH COOPERATION PROGRAMME**

**AGREEMENT**

**BETWEEN**

**SWITZERLAND**

**REPRESENTED BY**

**THE STATE SECRETARIAT FOR ECONOMIC AFFAIRS (SECO)**

**AND**

**THE GOVERNMENT OF THE REPUBLIC OF POLAND**

**REPRESENTED BY**

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

**ON**

**THE GRANT FOR THE**

**PROJECT PREPARATION FACILITY**

**TO BE IMPLEMENTED DURING THE PERIOD**

**1.07.2008 - 14.12.2011**

The Government of Switzerland (hereinafter referred to as "Switzerland") and the Government of the Republic of Poland (hereinafter referred to as "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 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 establishment of a Project Preparation Facility, in the favour of Poland in the context of the Swiss-Polish Cooperation Programme,*

*have agreed as follows:*

## **Article 1**

### **Definitions**

In this 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 Preparation Facility Agreement" means the Agreement between the State Secretariat for Economic Affairs (SECO) 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 set-up, management and implementation of the Project Preparation Facility;
- "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, Article 9, Poland has authorized the Minister of Regional Development to act on its behalf as the NCU for the Swiss-Polish 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;

- “Executing Agency” means any public authority, any public or private corporation as well as any organization recognized by the Contracting Parties and mandated to implement a specific project financed under this Project Preparation Facility Agreement;
- “Grant” means the non-reimbursable financial contribution granted by Switzerland under this Project Preparation Facility Agreement;
- "Project Outline" means the project proposal submitted to Switzerland in view of the general appraisal of a project to be implemented in the framework of the Swiss-Polish Cooperation Programme;
- “Final Project Proposal” means the project proposal submitted to Switzerland in view of the final approval of a project to be implemented in the framework of the Swiss-Polish Cooperation Programme;
- “Applicant” means any Executing Agency that has submitted a request for financial support for the elaboration of the documentation of a Final Project Proposal under the Project Preparation Facility;
- “Contracting Parties” of the Project Preparation Facility Agreement means the Polish Government on the one side and the Swiss Government, represented by SECO, 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.

## **Article 2**

### **Objective and Scope of the Project Preparation Facility**

2.1 The objective of the Project Preparation Facility (hereinafter referred to as “the PPF”) is to ensure the efficient preparation of Final Project Proposals as defined in Annex 2, chapter 2.4 of the Framework Agreement, by contributing to the costs incurred through their elaboration.

2.2 The PPF shall be used for the elaboration of the documentation for the Final Project Proposals resulting from Project Outlines approved by Switzerland.

2.3 The PPF shall be set up and implemented by the NCU according to the Framework Agreement and its Annexes.

## **Article 3**

### **Amount and Utilization**

3.1 Switzerland shall provide a Grant of maximum CHF 3'000'000.00 (three million Swiss Francs) to Poland to be used exclusively to finance the eligible costs as defined in Article 3.2 below.

3.2 The following costs incurred by the Applicant for the preparation of the Final Project Proposal are eligible for financing:

- a) Expenditures for mandates to external experts to support the preparation of comprehensive Final Project Proposals fulfilling the requirements stipulated in the Framework Agreement, Annex 2, Chapter 2 to be submitted to Switzerland for approval;
- b) Expenditures for mandates to competent experts for preparing studies, e.g. feasibility studies, environmental impact assessments, and/or any other document deemed appropriate to complement the Final Project Proposal in order to allow a thorough appraisal of the project.
- c) Translation costs into English of the documents cited under b).

The minimum amount to be financed by the PPF for the preparation of a Final Project Proposal shall be CHF 10'000 (ten thousand Swiss Francs).

3.3 Not eligible are:

- a) All kinds of mandates that lie within the function and field of competence of the Applicant.
- b) All kind of customs and taxes, including VAT, required for the elaboration of the Final Project Proposal not directly linked with services.
- c) Costs incurred before the date of signing of this Agreement, as well as costs incurred after two months before the end of the commitment period of the Contribution. Therefore, the final date of eligibility of costs of the PPF is 14<sup>th</sup>December 2011.
- d) VAT, which is recoverable, by whatever means shall not be considered eligible even if it is not actually recovered by the NCU or the final recipient.

3.4 The financing by the PPF according to Article 3.2 of this Project Preparation Facility Agreement shall not exceed 85% of the total eligible actual costs for the preparation of a Final Project Proposal.

3.5 The Contracting Parties may decide before the end of the commitment period of the Contribution, if deemed appropriate, by mutual consent, either to allocate additional means to the PPF or to transfer the unutilized portion of the Grant for the financing of other expenses or projects within the Swiss-Polish Cooperation Programme.

3.6 Any portion of the Grant unutilized at the end of the commitment period of the Contribution, shall not be available anymore for the Swiss-Polish Cooperation Programme.

3.7 Costs of the NCU related to the implementation of the PPF, eligible for the financing under categories enumerated in Point C 2, Annex 3 to the Framework Agreement, shall be borne by the Swiss-Polish Technical Assistance Fund.

## **Article 4**

### **Procedures for a PPF application and award**

4.1 The procedure for a PPF application shall fully comply with the procedures of project financing requests defined in the Framework Agreement, Annex 2, Chapter 2.

4.2 The Applicant submitting a Project Outline to the NCU may apply for financial support under the PPF for the preparation of the Final Project Proposal. For this purpose, the Applicant shall fill in the respective part of the Project Outline form provided by the NCU.

4.3 The Project Outline accepted by the NCU shall be submitted to Switzerland for approval.

4.4 The provision of financial support under the PPF is conditional on the approval of the Project Outline by Switzerland. Switzerland may make recommendations or request amendments to the proposed preparatory activities, including the scope, content, methodology and budget, to be financed under the PPF. These recommendations or requests for amendments shall be taken into account by the Applicant.

4.5 Switzerland shall communicate the award of funding under the PPF to the NCU together with the approval of the Project Outline.

4.6 Upon receipt of the decision by Switzerland to award funding under the PPF, the NCU shall inform the Applicant accordingly and make the necessary contractual arrangements with the Applicant for the provision and use of the awarded funds. The contractual arrangements between the NCU and the Applicant shall fully comply with this Project Preparation Facility Agreement.

## **Article 5**

### **Reimbursement Procedures**

5.1 The reimbursement procedure defined in the Framework Agreement, Annex 2, Chapter 4, shall fully apply to the PPF. All disbursements under the PPF shall be pre-financed by domestic sources of Poland. Reimbursements by Switzerland of eligible actual expenditures shall be conditional upon receipt and approval by Switzerland of the reports pursuant to Article 9.2 of this Project Preparation Facility Agreement.

5.2 The transfer of the respective amounts by the NCU to the accounts of the Applicant shall be conditional upon receipt and approval of the quality and completeness by the Intermediate Body and the NCU of the studies and documents (incl. the Final Project Proposal) prepared with the financial support of the PPF.

5.3 Justified expenditures for the preparation of the Final Project Proposal and / or supporting documentation under the PPF shall be reimbursed by Switzerland even if the Final Project Proposal is rejected.

5.4 The Reimbursement Requests sent to Switzerland shall be in Swiss Francs, whereas the Paying Authority shall convert the local currency into Swiss Francs at the daily exchange rate prevailing at the date of finalisation of the Reimbursement Request.

5.5 All payments related to this Project Preparation Facility Agreement shall be transferred by Switzerland to the Government of the Republic of Poland. Details of the bank account shall be provided to Switzerland in a separate declaration which shall constitute an integral part of this Project Preparation Facility Agreement.

## **Article 6**

### **Procurement**

Procurement is to be made in accordance with the requirements provided in Annex 2 (cf. 3.3) of the Framework Agreement and in accordance with the Polish law and regulations and in compliance with the EU directives.

## **Article 7**

### **Responsibilities of the NCU**

7.1 The NCU is responsible for the implementation, controlling and monitoring of the PPF. Furthermore, the NCU is responsible for reporting on the PPF according to Article 9. The NCU ensures that all activities undertaken under the PPF are compliant with this Project Preparation Facility Agreement as well as with the Framework Agreement and its Annexes.

7.2 The main tasks of the NCU include:

- Prepare and make publicly available the Project Outline application form for including the PPF part;
- Decide on relevance and appropriateness of the requests for financial support under the PPF;
- Transmit to Switzerland applications for financial support under the PPF being a part of the respective Project Outline;
- Conclude contracting arrangements with the Applicants for the use of funds from the PPF that fully comply with this Project Preparation Facility Agreement;
- Ensure the verification of the invoices received from the Applicants;
- Submit certified payment claims to the Paying Authority;
- Ensure the verification of and approve the quality and completeness of the studies and documents prepared with the financial support under the PPF before payment to the Applicant of the eligible incurred expenditures;
- Ensure the payment of a maximum of 85% of the eligible incurred expenditures to the Applicant;
- Ensure the timely provision to the PPF of the co-financing of a minimum of 15% from national domestic sources;
- Report periodically to Switzerland;
- Ensure the efficient and correct use of the funds.

7.3 The NCU will at all time clearly state that it is acting within the framework of the Swiss-Polish Cooperation Programme to reduce economic and social disparities within the enlarged European Union. The general public in Poland will be informed adequately about the PPF and the support provided by Switzerland.

7.4 The NCU shall ensure efficient and prompt investigation of any suspected and actual cases of fraud and irregularity. The NCU shall immediately report to the Swiss authorities all suspected and actual cases of fraud and irregularity as well as all measures related thereto, taken by the competent national authorities.

## **Article 8**

### **Monitoring and Review**

The NCU shall ensure the establishment of a monitoring system that allows to assess periodically the status of achievement of the proposed objective of the Project Preparation Facility Agreement (cf. Article 2). Monitoring results and conclusions shall be part of the annual reporting as stipulated in Article 9.3 of this Project Preparation Facility Agreement.

## **Article 9**

### **Reporting**

9.1 Reports shall meet the requirements mentioned in Annex 2 (cf. 3.5) of the Framework Agreement.

9.2 The NCU shall report semi-annually on the allocation of funds under the PPF, including the names of the Applicants and proposed projects as well as the names of the companies / experts mandated for carrying out the preparatory studies and documents. Furthermore, these reports shall include the amount, the scope and the purpose of the contract with such companies / experts as well as a list of all elaborated preparatory studies and documents. The reimbursements to the Government of the Republic of Poland shall be conditional on the receipt and approval of the semi-annual reports by Switzerland.

9.3 The NCU shall submit to Switzerland an Annual Project Report on the PPF not later than four months after the end of each calendar year. The first Annual Project Report on the PPF covering the year 2008 is due not later than 30<sup>th</sup> April 2009. The content of the Annual Project Reports will include information about task realization, the number, budget and duration of the activities funded under the PPF and a financial statement with respect to the PPF.

9.4 The NCU shall submit to Switzerland a Project Completion Report on the PPF not later than six months after the final date of eligibility of costs for the PPF, meaning not later than 14<sup>th</sup> June 2012. The final reimbursement shall be conditional on the receipt and approval by Switzerland of the Project Completion Report on the PPF and the conclusions of the Final Financial Audit on the PPF.

## **Article 10**

### **Audits**

10.1 Two years after the signing this PPF Agreement, an internal or an external certified Audit Organisation shall carry out an Intermediary Financial Audit of the PPF. The conclusions and recommendations have to be presented to Switzerland by the NCU at the latest three months after the respective two years.

10.2 At the completion of the PPF an internal or external certified Audit Organisation will carry out a closing Final Financial Audit of the PPF. The conclusions and recommendations shall be transmitted to Switzerland by the NCU together with the Project Completion Report on the PPF, at the latest six months after the final date of eligibility of costs for the PPF, not later than 14<sup>th</sup> June 2012.

10.3 In case of an internal Financial Audit, the costs shall be borne by the respective internal Audit Organisation. In the case of an external Financial Audit, the costs shall be borne by the Swiss-Polish Technical Assistance Fund.

10.4 The NCU will appoint a public institution or an external certified company of recognised professional reputation. The NCU will communicate to Switzerland the name of the selected Audit Organisation.

10.5 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 2). 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 (ISA 120, Point 3). 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 17). 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.

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

10.7 The NCU shall comment the results of the Audits as well as any recommendations proposed by the Audit Organisation. Furthermore, the NCU shall transmit the results and the proposed recommendations of the intermediary Financial Audit and the Final Financial Audit of the PPF to Switzerland.

10.8 Switzerland shall have the right to request additional external financial reviews. The costs of such financial reviews shall be borne by Switzerland.



## **Article 11**

### **Right of Examination**

Switzerland, as well as any third party appointed by it, shall have the right to conduct a comprehensive assessment or review of the activities implemented under the PPF, and shall be granted full access to all documents and information related to the PPF activities settled by this Project Preparation Facility Agreement, during its implementation and three years after its completion. The NCU shall, upon request, ensure that the representatives of Switzerland, as well as of any third party appointed by it are accompanied by the relevant personnel and are provided with the necessary assistance.

## **Article 12**

### **Liability**

Switzerland does not assume any risk or responsibility whatsoever for any damages, injuries, or other possible adverse effects caused by the activities under the PPF. It is the full and sole responsibility of the NCU to satisfactorily address such issues.

## **Article 13**

### **Settlement of Disputes**

Any dispute which may result from the application of this Project Preparation Facility Agreement shall be solved by diplomatic means.

## **Article 14**

### **Common Concern**

The Contracting Parties share a common concern in the fight against corruption, which jeopardizes 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 this Project Preparation Facility 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 Project Preparation Facility Agreement, the annulment of the procurement or resulting award, or for taking any other corrective measure laid down by the applicable law.

**Article 15**  
**Irregularities Clause**

15.1 In case of irregularities, wilfully or negligently caused by the NCU regarding the execution of the Project Preparation Facility Agreement, Switzerland is entitled to:

- a) stop reimbursements immediately,
- b) instruct the NCU to stop payments from the Swiss Contribution,
- c) ask repayment of illegitimately paid reimbursements at any stage of the activities.

Prior to making such a decision, Switzerland shall enter into a dialogue with the NCU to ensure that it is based on accurate and correct facts.

15.2 Irregularities are notably considered to be all actions or non-actions that are aimed at the illegitimate obtainment and/or usage of the Contribution - notably fraud, misappropriation, misrepresentation, breach of contractual duties, breach of duty of care and the like.

15.3 Switzerland shall immediately and in written form communicate the reasons for the respective instructions to the NCU and the other actors involved.

**Article 16**  
**Termination, Suspension**

16.1 This Project Preparation Facility Agreement can be terminated at any time by one of the Contracting Parties upon a six-month prior written notice containing its justification. 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.

16.2 If either Contracting Party considers that the aims of the Project Preparation Facility 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 Preparation Facility Agreement by giving the other Contracting Party a written notice on the grounds.

**Article 17**  
**Amendments**

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

17.2 Any increase of or reallocation from the PPF budget, any significant changes within the budget as well as any strategic changes or conceptual adjustments to the PPF shall be discussed with and approved by Switzerland.

## **Article 18**

### **Language**

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

## **Article 19**

### **Competent Authorities**

19.1 For the Government of the Republic of Poland:

Ministry of Regional Development  
Department for Aid Programmes and Technical Assistance  
Wspólna Street 2/4  
00-926 Warsaw  
Poland

19.2 For the Swiss Government:

State Secretariat for Economic Affairs (SECO)  
Swiss Contribution (WEKO)  
Effingerstrasse 1  
3003 Bern  
Switzerland

Embassy of Switzerland  
Swiss Contribution Office  
Aleje Ujazdowskie 27  
00-540 Warsaw  
Poland

19.3 All communication to Switzerland with regard to this Project Preparation Facility Agreement shall be directed to the Swiss Embassy in Warsaw, which generally represents Switzerland towards the NCU.

## **Article 20**

### **Entry into Force, Duration**

20.1 This Project Preparation Facility Agreement shall enter into force on the date of its signing by the Contracting Parties and shall remain in force until all obligations under it have been fulfilled.

20.2 The PPF shall be operational from the date of the signing of this Project Preparation Facility Agreement until 14<sup>th</sup> December 2011.

Done in Warsaw on the 1<sup>st</sup> of July 2008, in two authentic copies in the English language.

For the State Secretariat for  
Economic Affairs

For the Ministry of Regional  
Development

Bénédict de Cerjat  
Ambassador

Janusz Mikula  
Undersecretary of State