THE SWISS-ROMANIAN COOPERATION PROGRAMME

THEMATIC FUND AGREEMENT
FOR THE SECURITY FUND

BETWEEN

THE GOVERNMENT OF ROMANIA

REPRESENTED BY

THE MINISTRY OF PUBLIC FINANCE OF ROMANIA,

AS THE NATIONAL COORDINATION UNIT (NCU)

AND

THE SWISS FEDERAL COUNCIL

REPRESENTED BY

THE SWISS AGENCY FOR DEVELOPMENT AND COOPERATION (SDC)

OF THE SWISS CONFEDERATION

CONCERNING

THE GRANT FOR THE SECURITY FUND

TO BE IMPLEMENTED DURING THE PERIOD

1st JULY 2011 – 6th DECEMBER 2019

The Government of Romania (hereinafter referred to as "Romania") through the Ministry of Public Finance of Romania as the National Coordination Unit, hereinafter referred to as "NCU" and,

The Swiss Federal Council (hereinafter referred to as "Switzerland") through the Swiss Agency for Development and Cooperation of the Swiss Confederation, hereinafter referred to as "SDC";

Referring to the Framework Agreement between the Government of Romania and the Swiss Federal Council concerning the implementation of the Swiss-Romanian cooperation programme to reduce economic and social disparities within the enlarged European Union, signed on 7 September, 2010,

Considering the Swiss Grant for the Security Fund in favour of Romania in the context of the Swiss - Romanian Cooperation Programme,

have agreed as follows:

Article 1
Definitions

In this Security Fund Agreement, unless the context or the relevant provisions of the Framework Agreement otherwise require, the following terms shall have the following meaning:

1.1 "Framework Agreement" means the Agreement between the Government of Romania and the Swiss Federal Council concerning the implementation of the Swiss – Romanian Cooperation Programme to reduce the economic and social disparities within the enlarged European Union, signed on 7 September, 2010;

1.2 "Swiss-Romanian Cooperation Programme" (SRCP) means the bilateral programme for the implementation of the above mentioned Framework Agreement;

1.3 "Contribution" means the non-reimbursable financial contribution granted by Switzerland to Romania;

1.4 "Grant" means the non-reimbursable financial contribution provided by Switzerland under the present Security Fund Agreement;

1.5 "Supporting Measure" means a Project, a Thematic Fund, the Project Preparation Facility, the Technical Assistance Fund or other joint activities;

1.6 "Activity" means specific assistance for, inter alia, projects, scholarships, partnerships and knowledge transfer provided within a Thematic Fund;

1.7 "Thematic Fund Agreement for the Security Fund", hereinafter referred to as "Security Fund Agreement", means the present Agreement between Romania, represented by the Ministry of Public Finance, acting as the National Coordination Unit (NCU) and Switzerland, represented by the Swiss Agency for Development and Cooperation (SDC), which lays down the rights and obligations of the Contracting Parties regarding the implementation of the Security Fund;

1.8 "National Coordination Unit" (NCU) means the Romanian unit in charge of the coordination of the Swiss - Romanian Cooperation Programme. In reference to the Framework Agreement, Art. 9.1, Romania has authorized the Ministry of Public Finance to act on its behalf as the NCU for the Swiss - Romanian Cooperation Programme;

1.9 "Contracting Parties" to the Security Fund Agreement are Romania, represented by the NCU on one side and Switzerland, represented by SDC on the other side;

1.10 "Swiss Intermediate Body" (SIB) means any legal public or private entity mandated by Switzerland for the management of a Thematic Fund;

1.11 "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;

1.12 "Executing Agency" means any legal public or private entity, as well as any organisation recognised by the NCU and SDC and mandated to implement Activities;

1.13 "Activity Agreement" means an agreement between the SIB and the Executing Agency on the implementation of an Activity agreed upon as part of the Thematic Fund;

1.14 "Mandate Agreement" means the agreement between SDC and the SIB for the implementation of a Thematic Fund;

Article 2

Objectives and Scope of the Security Fund

2.1 The objective of the Security Fund is to support Romania in addressing Schengen related issues and in enhancing socially related security as well as in fighting against corruption and organised crimes.

2.2 The Security Fund channels the Swiss contribution to the activities aiming at reaching this objective.

2.3 The Security Fund has to be established, managed and implemented by the SIB according to the following documents, forming an integral part of the present Security Fund Agreement and listed by order of precedence in terms of legal applicability:

a) the Framework Agreement and its Annexes, particularly the Annex 4 and its sections A and B1;
b) the present Security Fund Agreement;
c) the Terms of Reference for Fund Management for the Security Fund (Appendix 1);
d) the Budget for the management of the Security Fund including an indicative Disbursement Plan (Appendix 2);.

2.4 The implementation of the Activity "*Schengen related Issues: Development of capacities in Schengen topics*" mentioned in the Framework Agreement, Annex 4, chapter B1, section 3a, in the list of activities retained in the Framework Agreement, is subject of a separate agreement in form of an exchange of letters between SDC and the NCU dated October 1st, 2010, respectively October 13th, 2010 with a budget of CHF 33'830; it is consequently neither covered by the Security Fund Agreement nor managed by the related SIB.

2.5 The Activity "Community service workshops (probation)" mentioned in the Framework Agreement, Annex 4, chapter B1, section 3b, in the list of activities retained in the Framework Agreement, will be financed by Switzerland for the period of 1st July 2011 to 31st December 2011 for an amount of up to CHF 160'000 from the Security Thematic Fund Grant. In this regard, an agreement between SDC and the Swiss partner FPSC/ VEBO will be signed. This activity is covered by the Security Fund Agreement, but not managed by the related SIB during the mentioned period.

Article 3

Amount and Utilization of the Security Fund

3.1 Switzerland shall provide a Grant **in Swiss Francs amounting to a <u>maximum</u>** of **CHF 17'966'170** (seventeen million nine hundred and sixty six thousand one hundred and seventy Swiss francs) in favour of Romania for the implementation and management of the Security Fund as defined in Art. 2.

3.2 The Grant shall be managed in Switzerland and in Romania and its financing is considered as Swiss contribution in favour of Romania.

3.3 Co-financing shall be provided by the Executing Agency. The Grant for the implementation of activities shall cover a **maximum** of 85%, respectively 90% of the total eligible costs, borne in Swiss Francs, of the respective Activities to be co-financed by budget allocations from public sources, respectively by NGOs, as required by the Framework Agreement, Art. 5. This percentage shall never be exceeded during the Security Fund implementation. The terms of co-financing of minimum 15% respectively 10% requested for each Activity shall be agreed upon before the start of its implementation.

3.4 Eligible costs include:

(a) Management and administration of the Security Fund;

(b) Assistance provided for the preparation of Activities by the Executing Agency;

(c) Expenditures on Activities financed by the Security Fund;

(d) Financial audit;

(e) Review and evaluation;

(f) Seminars and public events e.g.; to launch the call for Activity proposals; to inform on procedures; to assess and inform on progress;

(g) Publicity of the Security Fund.

3.5 Not eligible costs include:

(a) Expenditure incurred by an Executing Agency before the signing of the Activity Agreement;

(b) Interest of debt, purchase of land and buildings;

(c) Expenditures on Activities supported from other sources;

(d) VAT, if it could be recoverable by the beneficiary under national regulation.

3.6 The final date for eligibility of costs corresponds with the end of the Security Fund as defined in Art. 20.6. Costs for reporting, auditing and evaluation can be considered eligible after the formal end of the Security Fund. SIB's reimbursement requests must be received by SDC not later than six months after the end of the Security Fund.

3.7 Any unutilised portion of the Grant remaining at the completion of an Activity shall be eligible for re-allocation mutually agreed by the Contracting Parties.

Article 4

Payment Procedures

4.1 SDC shall execute payments to the SIB in Switzerland or in Romania based on the payment claims and related progress and financial reports submitted by the SIB to SDC. SDC shall check the conformity of the payment claims and certify the correctness and legitimacy of the payment claims.

4.2 SDC informs the NCU at latest one month after the end of the year in question on the payments made to the SIB. The payments reported by SDC shall be included in the annual reports on the Swiss-Romanian Cooperation Programme as stipulated in Art. 8 of the Framework Agreement.

Article 5

Responsibilities of SDC

5.1 SDC, with the support of the Swiss Contribution Office in Bucharest, supervises and steers the implementation of the Security Fund. SDC ensures the establishment and operation of a monitoring system for the Security Fund.

5.2 SDC shall take or cause to take all actions within its field of competences and responsibility, including coordination and other measures, necessary or appropriate, for the use of the Grant in accordance with this Security Fund Agreement.

5.3 SDC shall conclude a Mandate Agreement with the SIB. After its conclusion, the Mandate Agreement will be sent by SDC to NCU in informative purposes. In the area of its competence SDC shall secure the management and implementation of the Security Fund by the mandated SIB in line with the stipulations of the present agreement and the Framework Agreement.

5.4 The Mandate Agreement shall be in full conformity with this Security Fund Agreement as well as with the Framework Agreement. It shall stipulate, inter alia, procedures on Activity selection, Activity implementation, disbursements, financial audit, monitoring, steering, reporting, review and evaluation.

Article 6

Responsibilities of NCU

6.1 The NCU shall take or cause to take all actions within its field of competences and responsibility, including coordination and other measures necessary or appropriate for facilitating the implementation of the Security Fund in Romania, according to Article 9.3 of Annex 4 of the Framework Agreement.

6.2 The NCU shall ensure the adoption of the necessary national legal documents for the implementation and monitoring of the Security Fund in Romania.

6.3 The NCU shall at all times clearly state that it is acting within the framework of the Swiss-Romanian Cooperation Programme to reduce economic and social disparities within the enlarged European Union. All publications shall refer to the Security Fund as a "Swiss-Romanian project". The general public in Romania shall be informed adequately about the Security Fund and the support provided by Switzerland.

Article 7

Responsibilities of the SIB

7.1 The consortium constituted by TC Team Consult SA (Leader), Coginta and DCAF, p.a. TC Team Consult SA, Rue des Maraîchers 36, 1205 Genève, acts as the Swiss Intermediate Body (SIB) for the Security Fund in Romania.

7.2 The SIB is responsible for the set-up and management of the Security Fund in Romania, for the establishment of the Activity portfolio, for the contracting and the supervision of the Executing Agencies, for the controlling of the Activities and for the reporting on the Security Fund.

7.3 The main tasks of the SIB are described in the Terms of References for Fund Management of the Security Fund (Appendix 1) and include:

- Draft, in line with the strategic directions and principles stipulated in the Framework Agreement, on the base of the Terms of References for the management of the Security Fund, in the respect of the Mandate Agreement concluded with SDC and the SIB, the Management Document for the Security Fund, including criteria for Activity selection;
- Arrange all legal aspects required for the implementation of the Security Fund;
- Set-up implementation structures;
- Manage and administrate the Security Fund;
- Establish the Steering Committee after consultation with SDC and the NCU and act as member-secretary of the Steering Committee;
- Establish an adequate financial and operational controlling system for Activity implementation;
- Call for and/or collect proposals for Activities and support the development of quality proposals,

- Review compliance with the proposal requirements and establish selection recommendations;
- Elaborate draft credit proposal for each Activity to be approved by SDC;
- Prepare and conclude contractual arrangements with the approved Executing Agencies implementing the Activities;
- Apply controlling systems and intervene if required. Inform SDC on irregularities immediately;
- Report to SDC. Reporting includes at least half-yearly progress reports and financial reports in line with payment procedures and requirements set;
- Ensure the financial audit of the Thematic Fund, submit audit reports to SDC and ensure the follow-up to audit recommendations;
- Launch periodic publicity measures for the Security Fund in Switzerland as well as in Romania.

7.4 Tasks, responsibilities and obligation, including financial parameters for the service provided by SIB are further detailed in the Mandate Agreement.

Article 8

Steering Committee

8.1 The Steering Committee shall provide guidance on strategic matters with a view to meeting the objectives of the Security Fund and with regard to ethics, compliance with applicable laws and regulatory policies, environmental safety and health policies, financial practices, disclosure and reporting. It is responsible for overseeing management and ensuring that systems are in place to manage the risks involved.

8.2 The Steering Committee shall recommend Activities for approval by SDC. It will be consulted in the organisation of reviews and evaluation of the Fund. As a selection function, the Steering Committee shall propose the Activities assessed by the SIB for SDC's approval. The Steering Committee is primarily accountable to SDC and the NCU.

8.3 The Steering Committee is to be established by the SIB after consultation with SDC and the NCU. It shall include representatives of the Romanian Ministry of Administration and Interior, the Ministry of Justice, the Public Ministry, the Superior Council of Magistracy, the National Anticorruption Directorate, the NCU, SDC, the SIB and the civil society. It shall meet at least 2 times per year.

8.4 The lead of the Steering Committee shall be assured by the SIB which shall also secure the secretariat of the Steering Committee.

8.5 Detailed Terms of References and procedures of the Security Fund Steering Committee shall be part of the Management Document for the Security Fund to be elaborated by the SIB in consultation with SDC and the NCU.

Article 9

Selection and approval of Activities

9.1 The Activity portfolio shall include

(a) Activities retained in the Framework Agreement;

(b) Activities proposed by Romania or by Switzerland in a later stage.

9.2 Selection and approval of Activities shall follow the procedure described in the Annex 4 of the Framework Agreement. For each Activity, the SIB concludes an Activity agreement with the Executing Agency.

9.3 Selection criteria for Activities are meant to reflect the need for the Activities to address a social demand in the beneficiary countries, be adapted to institutions in the field and therefore have a good prospect of impacting the local community and produce sustainable results. They shall also take into account the bilateral dimension of the cooperation. Selection criteria shall include:

- relevance for Romania, as well as to the objectives and the scope of the Security Fund;
- possibilities to transfer Swiss knowledge
- possibilities for bilateral institutional partnerships at professional levels
- networking potential
- relevance for the community, civil society or stakeholders involved with the integration of human rights principles
- clarity, feasibility and measurability of Activity's objectives' system (a key element for controlling and evaluation)
- synergies with other projects or initiatives in the region or the country
- sustainability prospects /adaptation to local realities
- local ownership
- innovation
- visibility

9.4 The final list of selection criteria shall be suggested by the SIB and approved by the Steering Committee.

Article 10

Flow of funds, advance payments

10.1 For the operation of Security Fund Grant the SIB shall open a separate bank account. All payments of SDC shall be made directly to this bank account. All payments from the SIB directly to the Executing Agency shall be made from this bank account.

10.2 Based upon request by an Executing Agency, an initial advance payment to the Executing Agency shall be made by the SIB. The initial payment shall amount to a maximum of 20% of the total eligible costs and shall not exceed 75% of the first year's budget.

10.3 Further payments shall take into account the requirements of the Executing Agency for working capital. The final payment of approximately 5% of the overall budget shall be made upon approval of the completion report.

10.4 Any gross interest must be indicated in the respective accounts statement and credited towards the next payment.

Article 11

Monitoring and Reporting

11.1 Monitoring shall take place at the level of the entire Security Fund and at the Activity level. SDC shall ensure monitoring at the level of the entire fund. The SIB shall be responsible for monitoring at the level of the Activities. Articles 11.2 to 11.4 detail monitoring and reporting requirements. These requirements may be adapted in the course of the implementation of the Security Fund provided changes have been accepted by the Steering Committee.

11.2 **At the level of the entire Security Fund**, the SIB will inform SDC and the members of the Steering Committee via regular operational and financial reports as well as a completion report about management activities and progress made in the Activities, including the experience gained through implementing the programme.

(a) Yearly Plans of Operations for the Security Fund and related budget proposals are drafted and submitted to SDC until November of each year for the next year.

(b) Mid-year Operational Reports for the Security Fund (physical and financial progress) with annexes are submitted to SDC.

(c) Annual reports for the Security Fund that allow to asses periodically the status of achievement of the proposed objectives with annexes are transmitted to SDC and to the members of the Steering Committee. Annual Reports shall first provide information on management activities implemented during the past year and on the financial progress of the programme. They will also include a comparison of actual with planned expenses, a progress report and a confirmation of financing. Second, the reports shall cover the progress in security activities and security results. Finally, the reports shall assess achievements of the overall Security Fund.

(d) The Completion Programme Report for the Security Fund shall include also "lessons learnt".

Mid-year Operational Reports and Annual Reports, respectively the Completion Programme Report, shall be transmitted to SDC no later than 3 months, respectively no later than 6 months, after expiry of the given reporting period. Annual Reports are to be discussed with the Steering Committee.

Reports at the level of the entire Security Fund shall support evidence for the payment from SDC to the SIB for management services as well as for financing the Activities.

11.3 **At the level of Activity**, each Executing Agency in charge of the implementation of an Activity will submit at least one **annual report** and a **final report** to the SIB providing information about timeliness and progress made in implementing the Activity and covering all the expenses and revenues of the Activity from the Romanian and the Swiss partners. The financial part of the report will compare expenditures with the approved budgets. Reports will also be checked against the guidelines established at the start of the programme by the SIB.

Reports at Activity level shall support evidence for the payment from the SIB to the Executing Agency for financing the Activities.

11.4 The Executing Agency, together with the possible Swiss partner, must ensure that expenditure reflects the realities and is consistent with the work done. Then, the SIB controls the financial reports of the Activity first in connection with the Activity progress and also on the basis of the supporting documents (receipts, reports, etc.) attached to the reports.

Article 12

Audits

12.1 Financial audits shall be carried out by an accredited international or Swiss audit organisation. The audit reports shall be transmitted by the SIB to SDC and forwarded by SDC to the NCU.

12.2 The Romanian Audit Authority can perform specific audits to Romanian public institutions, at the request of SDC or the SIB, taking in to account the availability of Audit Authority's resources.

12.3 Alleged cases of irregularities shall be investigated by SDC in cooperation with the NCU.

Article 13

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 Security Fund, and shall be granted full access to all documents and information related to the implementation of the Security Fund, settled by this agreement, during its implementation and ten years after its completion. The SIB shall, upon request, ensure that the above mentioned third party representatives are accompanied by the relevant personnel and are provided with the necessary assistance.

Article 14

Common Concern

The Contracting Parties share a common concern in the fight against 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 on price and quality. They declare, therefore, their intention of combining their efforts to fight 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 the present 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 present agreement, the annulment of the procurement or resulting award, or for taking any other corrective measure laid down by the applicable law.

Article 15

Liability

Each party is liable for any damages or injury, or other possible adverse effects caused to the other party for failure or delay in performance and / or malfunction of its obligations under the present agreement.

The contracting parties do not assume any risk or responsibility whatsoever for any damages, injuries, or other possible adverse effects caused by the activities implemented by third parties, financed under the Security Fund in Romania.

Article 16

Settlement of Disputes

Any dispute which may result from the application of this Security Fund Agreement shall be solved by diplomatic means.

Article 17

Irregularities Clause

17.1 "Irregularity" means any breach of Romanian or Swiss law, the Framework Agreement, the Security Fund Agreement and/or related contracts, which has led or could lead to prejudicing the grant of the Romanian-Swiss Programme through unjustified expenditure.

17.2 In case of irregularities, willfully or negligently caused by a contracting party or the SIB or an Executing Agency regarding the execution of the Security Fund Agreement and annexes thereto, Switzerland and/or Romania is entitled to:

(a) Stop payments immediately;

(b) Instruct the other contracting party to stop payments from the Contribution;

(c) Ask repayment of illegitimately paid amounts at any stage of the activities.

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

17.4 In case of irregularities caused by the SIB, SDC will enter into dialogue with NCU in order to find an alternative solution for the continuation of implementation of activities within the Security Fund.

17.5 SDC or the NCU shall immediately and in written form communicate the reasons for their respective instructions to the other party and the other actors involved.

Article 18
Annexes

The following Appendixes, listed by order of precedence in terms of legal applicability, form an integral part of this Security Fund Agreement:

Appendix 1: Terms of Reference for Fund Management for the Security Fund;
Appendix 2: Budget for the management of the Security Fund including an indicative Disbursement Plan.

Article 19
Competent Authorities

19.1 For the Government of Romania:
Ministry of Public Finance
17, Apolodor Street
District 5, 050741 Bucharest
Romania
Tel: +40 21 319 98 58
Fax: +40 21 315 13 66
www.mfinante.ro

19.2 For the Swiss Federal Council :
Swiss Agency for Development and Cooperation (SDC)
Freiburgerstrasse 130
CH - 3003 Bern
Switzerland
Tel: +41 31 32 25 735 / Fax: +41 31 32 41 696

Swiss Contribution Office for Romania
Embassy of Switzerland
16-20, Grigore Alexandrescu Street
010626 Bucharest 1
Romania
Tel.: +40 21 206 16 80
Fax: +40 21 206 16 20

19.3 All communication between Parties with regard to this Security Fund Agreement shall be established in English language and directed to the Swiss Contribution Office in Bucharest, which acts as a contact point for the NCU with regard to the official information referring to the Security Fund.

Article 20

Entry into Force, Amendments, Duration and Termination

20.1 This Security Fund 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 This Security Fund 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.

20.3 If either Contracting Party considers that the objectives of the Security Fund 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 agreement by giving the other Contracting Party a written notice on the grounds.

20.4 Any amendment to this Security Fund Agreement and its annexes shall be made in writing with the mutual agreement of the Contracting Parties and according to their respective procedures.

20.5 The Security Fund shall be operational starting from the date of signing and ending on 6th of December, 2019.

Done in Bucharest, Romania, on 1st of July 2011 in two originals in the English language.

For the Ministry of Public Finance	For the Swiss Agency for Development and Cooperation
Dan Tudor Lazăr Secretary of State	Livio Hürzeler Ambassador