

**TWINNING COVENANT**

**Reducing Corruption in Estonia**

**EE03-IB-JH-02**

**2003 PHARE National Programme for  
Estonia**

**TWINNING COVENANT**  
**Project No. EE03-IB-JH-02**  
**CRIS Number: 2003/005-850.01.01**

Between the administrative authority of the Republic of Estonia (hereinafter referred to as the "Acceding Country/**AC**") represented by the Ministry of Justice, which entrusts the implementation of the present Covenant for its part to Priidu Pärna, Secretary General,

of the one part,

and the administrative authorities of Germany (hereinafter referred to as the "Member State/**MS**") represented by Mr. Peter-Michael Haebeler, Director of the Berlin Criminal Police Agency (Landeskriminalamt Berlin), who entrusts the implementation of the present covenant for this part to Mr. Jörg Dessin, Head of Department of economic – crime of the Berlin Criminal Police Agency.

# **TITLE I      PURPOSE AND OBJECTIVES OF THE TWINNING OPERATION: ACQUIS COMMUNAUTAIRE UNDERPINNING THE PROJECT AND PRACTICAL RESULT TARGETED**

## **Article 1. Objective**

The Twinning Project is based on the wider objective to support the Acceding Country to achieve the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union. The immediate objective of the project is to reduce corruptive behaviours in Estonia.

The Twinning Assistance aims at completing the transition and implementation of framework and sector legislation on analytical and operational capacities of the Ministry of Justice and other public authorities to reduce corruption in Estonia.

Thus Estonia will be able to obtain and provide relevant information in this field concerned on an adequate EU - level.

The partners agree to achieve the following **guaranteed results**:

### Component 1: Producing the Corruption Map on the basis of the specific research

The Corruption Map should answer the following questions:

1. What is the level of corruption in Estonia?
2. What type of corruption is prevalent in the Estonian public sector?
3. What kind of public sector functions and levels are affected by corruption the most?
4. What is considered as corruption, and which attitudes are prevailing?
5. What is the estimated financial impact of corruption?

### Component 2: Strategic Analysis

The strategic analysis should have two main results:

- 1) Agreed system of co-operation and exchange of information between all responsible authorities, in particular the Courts, the Prosecutor's Office, the Police, the Security Police, the Tax and Customs Board, the Border Guard Administration, and Local Government Authorities
- 2) Strategies for effective detection and investigation of the corruption offences.

### Component 3: Implementation of measures

As a result of the activities of the component 3 the responsible officials are expected to be better prepared for the detection, investigation and prosecution of corruption cases and implementation of anti-corruption measures. They have better knowledge on the ethical infrastructure, which contributes to the internal accountability of the organisations.

## **Article 2. Acquis Communautaire**

The achievement of all results is highly dependent on the political decision making process in Estonia. Institutional development on legislative as well as organisational level relies on the Ministry of Justice and other administrative bodies and the decisions of the parliament to realize the foreseen results, especially to further implement the action plan concerning the fight against corruption, which is combined with the National plan for the adoption of the acquis (NPAA).

**Based upon these objectives the work of the project will support the implementation of the following EU legislation and other relevant international instruments:**

- Council Act of 26 July 1995 drawing up the convention on the establishment of a European Police Office (Europol Convention) (Official Journal C 316, 27.11.1995) and all subsequent instruments relating to Europol;

- Council Act of 3 November 1998 laying down rules governing Europol's external relations with third States and non-European Union related bodies;
- Council Act of 3 November 1998 laying down rules concerning the receipt of information by Europol from third parties;
- Council Act of 3 November 1998 adopting rules on the confidentiality of Europol information;
- Council Act of 3 November 1998 adopting rules applicable to Europol analysis files;
- Council Act of 12 March 1999 adopting the rules governing the transmission of personal data by Europol to third States and third bodies;
- 97/372/JHA: Joint Action of 9 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, for the refining of targeting criteria, selection methods, et., and collection of customs and police information;
- EU-Action Plan on drugs 2000-2004;
- Recommendation of 6 May 1994 for a training module on the operational analysis of criminality;
- Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime;
- Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering and subsequent instruments;
- Council Decision of 28 May 2001 setting up a European Crime Prevention Network;
- Joint Action 98/699/JHA, of 3 December 1998, adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the identification, tracing, freezing, seizing and confiscation of the instrumentalities and proceeds from crime;
- Council Framework Decision 2001/500/JHA of 26 June 2001, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and proceeds of crime;
- Council Decision 2001/887/JHA, of 6 December 2001, on the protection of the Euro against counterfeiting;
- Joint Action 96/747/JHA, of 29 November 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the creation and maintenance of a directory of specialised competencies, skills and expertise in the fight against international organised crime, in order to facilitate law enforcement co-operation between the Member States of the European Union;
- Council Decision of 17 October 2000 concerning arrangements for co-operation between financial intelligence units of the Member States in respect of exchanging information;
- Council Framework Decision 2001/413/JHA of 28 May 2001, combating fraud and counterfeiting of non-cash means of payment;
- Council Act of 28 November 2002 drawing up a Protocol amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol : JO C 312 of 16.12.2002.
- Council Act of 19 December 2002 amending the Staff Regulations applicable to Europol employees, OJ C 24 of 31.01.2003, p.1 ;
- Council Decision 2003/170/JHA of 27 February 2003 on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States, OJ L 67 of 12.03.2003, p.27.
- Council Decision of 28 November 2002 setting up a European Network for the Protection of Public Figures, OJ L 333 of 10.12.2002. Convention of 26 July 1995 on the protection of the European Communities' financial interests: JO C 316 of 27 November 1995 (also relevant for judicial cooperation in penal matters) ;
- Explanatory report on the convention on the protection of the European Communities' financial interests, OJ C 191 of 23 June 1997;
- Protocol of 27 September 1996 to the Convention on the protection of Communities' financial interests, JO C 313 of 23 October 1996 (also relevant for judicial cooperation in penal matters);
- Explanatory report on the protocol to the Convention on the protection of the European Communities' financial interests, OJ C 11 of 15 January 1998;
- Second Protocol to the Convention on the protection of the European Communities' Financial Interests: OJ C 221 of 19 July 1997;
- Explanatory report on the Second Protocol to the Convention on the protection of the European Communities' financial interests, OJ C 91 of 31 March 1999; (4)
- Protocol on the interpretation, by way of preliminary rulings by the court of the European Communities of the convention on the protection of the European Communities' financial interests OJ C 151 of 20 May 1997;

- Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union: JO C 195 of 25 June 1997 (also relevant for judicial cooperation in penal matters);
- Explanatory report on the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union: OJ C 391 of 15 December 1998;
- Council Decision 2003/6642/JHA of 22 July 2003 concerning the application to Gibraltar of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union: OJ L 226 of 10 September 2003, p.27;
- Joint Action on Corruption in the Private Sector, OJ L 358 of 31 December 1998
- Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non cash means of payment, OJ L 149 of 02.06.2001, p.1;
- Council Framework Decision 2003/568/JHA of 22 July 2003 combating corruption in the private sector, OJ L 192 of 31 July 2003, p.54;
- OECD-Convention on Combating Bribery of foreign public officials in International Business Transactions, of 17 December 1997 (also relevant for judicial cooperation in penal matters);
- Council of Europe Criminal Law convention on Corruption, opened to signature on 27 January 1999 (also relevant for judicial cooperation in penal matters);
- Council of Europe Criminal Law convention on Corruption opened to signature on 4 November 1999.

#### **Other European Union instruments:**

- Joint Declaration of Berlin of September 1994 on combating organised crime;
- Action programme of the member States of the European Union and the associated countries of Central and Eastern Europe including the Baltic States, on judicial co-operation against international organised crime (25-26 September 1995);
- Declaration on organised crime (19-20 March 1995);
- Measures to step up the fight against organised crime (12 December 1995);
- Action plan to combat organised crime (adopted by the Council on 28 April 1997);
- Project-based action against trans-national organised crime - practical guidance (adopted by the Council on 4 December 1997);
- Conclusion of 19 March 1998 on G8 principles on high-tech crime, recommendations on organised crime and related matters;
- Pre-accession pact on organised crime between the Member States of the European Union and the applicant States of Central and Eastern Europe and Cyprus;
- The prevention and control of organised crime: a strategy for the beginning of the new millennium;
- European Convention of 8 November 1990 on money laundering, search, seizure, and confiscation of the proceeds of crime (Council of Europe);
- UN Convention against Trans-national Organised Crime, Palermo December 2000;
- Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against Trans-national Organised Crime;
- Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Trans-national Organized Crime;
- Council of Europe Convention on Cyber crime, 8 November 2001

#### **National legal acts relevant for the project**

- The Anti-Corruption Act; 28 February 1999
- The Public Service Act, 1 January 1996
- The Public Procurement Act, 1 April 2001
- The Penal Code, 1 September 2002
- The Surveillance Act, 18 March 1994
- The Money Laundering Prevention Act, 1 July 1999
- The Criminal Procedure Code, 1 July 2004
- The Public Information Act, 1 January 2001

## **Article 3: Contents of the twinning project**

### **3.1. Project Background**

Estonia is widely regarded among the least corrupted countries of the European Union candidate states. However, according to the Transparency International Corruption Perceptions Index, Estonia has dropped to the 29<sup>th</sup> position in the world (from 26<sup>th</sup> position in 1998 and 27<sup>th</sup> position in 1999 and 2000) and, in comparison to most EU Member States (especially Scandinavia), corruption in Estonia is relatively high.

The territorial proximity of Estonia to Russia and Scandinavian countries involves large risks especially upon accession into the European Union. The impact of organized crime on Estonia is first and foremost connected to the illegal trafficking of highly taxed goods (alcohol, cigarettes), drug trafficking and illegal immigration. These kinds of activities depend largely on the level of corruption in certain state authorities like the customs and the border guard. According to the Group of States Against Corruption (GRECO) evaluation group GET, corruption in Estonia in these particular fields is on the rise.

GRECO noted that in Estonia corruptive behaviour characterises mostly lower level officials. According to public opinion, the most corrupt officials are political leaders and police officers, while Estonian authorities regard local government and the Customs Board (from the 1<sup>st</sup> of January 2004 due to the result of the merging of the two agencies, a new institution the Tax and Customs Board was designed) as the main loci of corruption. The European Commission has also repeatedly drawn attention to the need to fight corruption in the police and customs administration. Presumably lack of awareness and tolerance for corruptive behaviour go back to the value system of the Soviet period –i.e. it is a question of lack of public responsibility. The Civil Service Code of Ethics became effective in January 1996. However, there are doubts about its effective implementation. According to the Open Society Foundation EUMAP Report 2002, the Code of Ethics is brief and vague and was not prepared in consultations with the officials it is supposed to affect. Therefore, it is understandable that there are problems with implementation and very little actual awareness of what constitutes corruption among lower level civil servants.

The GRECO Compliance Report on Estonia, which was adopted on 10 July 2003, states that most GRECO recommendations have been fulfilled by Estonian authorities. With regard to recommendation no.1, the steps taken by the Estonian authorities in making existing anti-corruption measures more effective were taken note of. However, GRECO emphasised that the fight against corruption needs to be made more effective and the first round recommendations still needs to be implemented.

Firstly, it is essential to map the actual practices of corruption through research before systematising the coordination of the fight against corruption. A comprehensive research project is necessary to avoid a situation where different ministries analyse a specific corruption risky area while another equally risky area remains without attention. Such research has never been done in Estonia, therefore we do not have an overview of the actual situation regarding corruption.

Secondly the project targets the problem of low administrative capacity and ineffective co-ordination between authorities in charge of dealing with corruption. It seeks to establish a proactive approach in the areas of detecting and prosecuting corruption, and establish effective administrative and co-operation mechanisms between the authorities that deal with corruption cases (instead of just the Security Police). As an example, in order to reduce corruption in all risk areas, the chances of officials to make decisions that have an economic impact on an ad hoc basis without having to justify the criteria for such decisions need to be eliminated. In practice this means the obligation for managers to define potential corruption risks in the work processes of their organisations and organise activities with a risk element accordingly (procedures should be regulated, documented, controllable and as open as possible). The project aims to develop appropriate strategies and methods of dealing with corruption on the basis of the research and analysis, which will also form the basis for the training part of the project. The strategies and methods will focus on issues such as how to detect corruption early, how to identify corruption, how to avoid corruption risk situations, and reporting procedures, etc.

Thirdly, training is foreseen for representatives of the authorities that deal with the problem of corruption in order to introduce them to the effective anti-corruption measures that are based on the

actual Estonian circumstances and build their practical skills in dealing with corruption cases. Also as corruption is not just an economic but also an ethical problem, which is often not acknowledged as such or simply tolerated, the project aims to raise the awareness and understanding of the problem of corruption through training.

The Action Plan of the Ministry of Justice, has been developed for the implementation of the Coalition Agreement from 2003-2007, lists the 'long-term strategy and effective activity to fight corruption and organised crime' as one of the main principles of judicial policy. In addition the National Anti-Corruption strategy "Honest State" was approved by the Estonian Government on the 19<sup>th</sup> of February, 2004. This aims at preventing corruption and strengthening the investigation of criminal offences concerning corruption. Altogether there are 21 measures, among which are those that will be implemented through current Phare project. These are: better implementation of the Code of Ethics and if necessary, the creation of special code of ethics for certain groups of officials (measures no 10&11); the annual corruption research in Estonia (measure no 12); and specialisation of officials (prosecutors, policemen etc) whom additional training will be provided (measure no 14).

### **3.2. Involved Institutions:**

On the side of the Acceding Country the following institutions are involved in the realisation of this project:

- The Ministry of Justice
- The Ministry of Internal Affairs
- The Ministry of Finance
- The Prosecutor General's Office
- The Estonian Police Board
- The Security Police Board
- The Border Guard Administration
- The Tax and Customs Board
- The Public Procurement Office
- The Union of Local Government Units
- The Department of Public Administration of the University of Tartu

On the Member States side the following institution is committed to support the achievement of the project results:

- Berlin Criminal Police Agency (Landeskriminalamt/LKA Berlin)
- Berlin Prosecutor's Office (Staatsanwaltschaft Berlin).

### **3.3. Focus of the Twinning Project**

The Twinning project has been divided into 3 components in order to cover the 3 focal points which reflect the 3 guaranteed results of the project. The 3 elements are closely linked to each other and in subject matter and by continuous involvement of the project leaders and the PAA. The division of the project into 3 components will assist management of the project and achievements of the benchmarks mention in Article 6.

## **Article 4. Conditionality**

### **4.1. Risks**

The following risks regarding the successful implementation of the project have been identified:

#### **4.1.1. Component 1**

- a) The real existing level of corruption is almost impossible to measure because of the latent character of the phenomenon and perceptions and prejudices that accompany those kinds of subjects. The issue is burning especially when trying to measure the level of corruption in local governments because of their smallness.
- b) Unwillingness of the organisations that are researched to co-operate.

#### **4.1.2. Component 2 and 3**

- a) If the involved Estonian Authorities does not provide staff in sufficient number and qualification, some objectives of the Project may not be achieved. The training activities and information exchange is based on and requires professional knowledge and thorough experience in the fields concerned. Successful application of knowledge in Anti-Corruption Work depends on the ongoing evaluation of regulations and arrangements. Availability of all applicable legislation of Acceding Country (laws, rules, regulations and drafts thereof) in German or English is a pre-requisite to achieve the alignment of national legislation and practice with EU standards.
- b) The adaptation of methods and profitable use of knowledge may only be properly accomplished when necessary structural and staff arrangements will be accomplished as foreseen.
- c) Non-availability of MS experts at the time they are required.

## **4.2. Risk Management**

The risks outlined in Article 4.1 above can be reduced or eliminated given the following commitment on both sides for achieving the aims of this project:

#### **4.2.1. Component 1**

- a) The methodology of the research should be designed with special care acknowledging the risks. The deficiencies of the methodology should be taken into account when interpreting the results of the survey and drawing conclusions. It is of essential importance to pay attention to the validity (whether what is said to be measured, is really measured) of the research.
- b) Sufficient amount of time spent on clarifying the aim and background of the research.

#### **4.2.2. Component 2 and 3**

- a) The full support of the Ministry of Justice by providing sufficient and qualified staff as soon as possible after the start of the project. The Ministry of Justice ensures that the required personnel, based on the initial assessment, will be available at least two months after the commencement of the project. Project managing personnel – due to described responsibilities of Estonia as well as of the MS must be ready to put into reasonable action at any time of project duration, if required.
- b) The Ministry of Justice will provide all applicable legislation, rules, regulations presently in force or under development and – if necessary - the PAA will arrange the translation of them, cost of which have been covered within the project budget.
- c) MS project management has obtained commitment from selected experts and/or their organisations and has made arrangements for adequate replacement, if - for unforeseen reasons - the pre-selected experts are not available.

### **4.3 Conditionality**

The parties agree to sign and implement the present Covenant upon notification of endorsement by the Commission in respect of the Phare contribution to the costs of the project in accordance with Article 7 and under the Financing Memorandum 2003/004-347-03-03.

The parties acknowledge that a formal agreement of implementation between the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Finance, and the Union of Local Governments has been signed.

## **TITLE II ORGANISATION AND METHODS, TIMETABLE**

### **Article 5. Human Resources**

#### **5.1 Estonia (AC)**

Acceding Country designates Ms Mari-Liis Liiv, adviser of the criminal policy department, Ministry of Justice, to act as the AC project manager. The Project manager is responsible for the overall management of project implementation. The person responsible for the overall implementation and monitoring is Mr Margus Kurm, Deputy Secretary General on Criminal Policy, Ministry of Justice, who will act as the AC Project leader and Program Officer.

Mr Taavi Annus, Head of the Department of Public Administration, University of Tartu, will be the member of the research group which is responsible for producing the Corruption Map (see Article 6.1).

Mr Norman Aas, Leading State Prosecutor, The Prosecutor General's Office, and Mr Eero Ergma, Chief Superintendent, Economic Crime Department, Central Criminal Police, will actively co-operate with PAA and MS expert in carrying out the strategic analysis (see Article 6.2).

#### **5.2 Member State staff**

Germany designates **Mr Jörg Dessin**, Detective Deputy Commander, Criminal Investigation Department as the responsible **project leader**. For his qualification see attached CV.

The German project leader together with the steering committee runs the entire project and is responsible for achieving the results. Project management including the financial management is carried out by the Berlin criminal police agency to ensure sufficient cover of all activities by the available budget.

**The PAA will be Mr Klaus-Peter Golz**, Detective Deputy Commander. For his qualifications see attached CV. The PAA is the main counterpart for the Estonian project partners. He provides advisory services in all project fields mentioned in the Covenant and is responsible for carrying out the project services in Estonia. He steers the short-term experts involved in the project and is available for advising on all components of the project. Besides, he provides ad-hoc advice on project related issues relevant for the project success. Mr. Golz will be resident in Tallinn/ Estonia in the course of the overall implementation period of the project.

The PAA will be provided with an assistant, who will also act as interpreter and translator. This assistant will be recruited, contracted in PHARE tender procedure in and paid by the project. The successful candidate for this position shall have a good general education, be familiar with the law enforcement administration of the Acceding Country and be fluent both in Estonian, English and German, the latter in order to support German short term experts as well. The assistant also shall have organisational and computer skills. The salary of the PAA assistant will be contracted separately by the CFCU.

The following persons (key experts) will be responsible for the 3 components of the project:

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|--------------|--|
| Component 1: | Project Leader, Mr.Jörg Dessin, Detective Chief Superintendent, Head of Economic-Crime Unit, Landeskriminalamt Berlin<br>PAA, Mr. Klaus-Peter Golz, First Chief Inspector, Section Supervisor Corruption, Landeskriminalamt Berlin<br>STE 2, Prof. Marcus-Sigmar Richter, University of Applied Sciences |
| Component 2: | Project Leader, Mr.Jörg Dessin, Detective Chief Superintendent, Head of Economic-Crime Unit, Landeskriminalamt Berlin<br>PAA, Mr. Klaus-Peter Golz, First Chief Inspector, Section Supervisor Corruption, Landeskriminalamt Berlin   |

STE 2, Prof. Marcus-Sigmar Richter, University of Applied Sciences

Component 3: Project Leader, Mr. Jörg Dessin, Detective Chief Superintendent, Head of Economic-Crime Unit, Landeskriminalamt Berlin  
PAA, Mr. Klaus-Peter Golz, First Chief Inspector, Section Supervisor Corruption, Landeskriminalamt Berlin

- For their qualifications see the attached CV's –

### **5.3. Steering Committee**

A Steering Committee will be set up to oversee the project implementation, and to agree on the corrective actions in order to achieve the results of the project.

AC

The Steering Committee will meet once in a quarter and include the representative from the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Finance, the Tax and Customs Board, the Prosecutor General's Office, the Police Board, the Border Guard, the Public Procurement Office, the Anti-Fraud Co-Ordination Service (AFCOS), and the EC Delegation in Estonia.<sup>1</sup>

**MS**

- MS Project Leader, Mr. Jörg Dessin.
- MS Pre-Accession Advisor, Mr. Klaus-Peter Golz.

The Committee receives, screens and recommends (if required) the project reporting, done at least quarterly by the PAA. Chairman of the Steering Committee is the PO. The PAA is responsible for the organisation of the meeting and will prepare the agenda in co-ordination with the partners involved. The Committee will:

- determine the general directions of the project and ensure the overall co-ordination of the project;
- ensure that the project commensurate with the aims and objectives of the Estonian government and the requirements of EU;
- initiate possible additions and variations to the project and submit them to the EC Delegation;
- monitor the implementation process, to approve actions to be taken and to correct any major deviations from plans;
- monitor expenditure against budgets;
- ensure access to the necessary information and support for the work team of the project.

### **5.4 Working language**

The working language of the project is English. German and Estonian will be used where required and agreed in accordance to the activities; any contracting and reporting has to be provided in English. Professional translators will be employed for some activities; where not, either translation services will be provided by the PAA's assistant, or a common language will be sought, so that translation will be unnecessary. The cost of translation services is included in the project's budget.

### **5.5 Facilities provided by Estonia (AC)**

At their premises the Ministry of Justice of Estonia will provide project facilities consisting of two sufficiently furnished office rooms equipped with two PCs/Laptops with Internet connection, one printer, one copying machine, two telephones with international connection, fax machine available in the building, adequate stationery supplies.

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<sup>1</sup> Please note that the legal chancellor is not included in the Steering Committee resulting from his marginal involvement in the project.

## **Article 6. Work schedule**

The project will commence latest one month after receipt of official notification by the European Commission and will run for one year. See the provisional timetable attached!

The following work schedule is separated in different components, from which each relates to one budget section in Article 7. Results and benchmarks for each work package define the framework of the Member State intervention. Specific activities and related outputs are associated to each work package. The external input provided by the Twinning project is included with the specified activities. The activities range from provision of information by MS experts (as training sessions, as oral and written advice, as information sessions, etc.), study visits of Acceding Country experts in Member States, studies and recommendations by MS long- and short-term experts, workshops and expert panels of Acceding Country and Member State experts oriented at the elaboration of specific recommendations, training programmes by MS (and partly AC experts) for administrative staff. Short-term advice is prepared by Terms of Reference for each Short-term Expert prepared by the PAA or the German Project Leader, where required.

The PAA will submit the training programme to the AC Project Co-ordinator before the arrival of the MS STE in Estonia. The relevance of the training programmes is evaluated by the participants.