



European Maritime Safety Agency

## **Workshop Report**

**Functioning of Directive  
99/35/EC related to a system of  
mandatory surveys for the safe  
operation of regular ro-ro ferry  
and high speed passenger craft  
services,**

**Brussels, 14/15 March 2006**

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**Workshop Report: Functioning of Directive 99/35/EC related to a system of mandatory surveys for the safe operation of regular ro-ro ferry and high speed passenger craft services.**

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**Background**

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As part of its on-going task to monitor the implementation of Directive 99/35/EC, on 11<sup>th</sup> April 2005 EMSA produced an assessment report on the application of the system of mandatory surveys required by this Directive.

The EMSA report prompted concern in DG TREN G over a number of its conclusions.

Accordingly, DG TREN G proposed to hold a meeting with Member States in order to resolve some of the issues raised (i.e. lack of information on ferries which are currently operating, in EU waters and ports interpretations of the Directive which vary among Member States).

An EMSA workshop was seen as an opportunity to improve the quality of the information stored in the "ro-ro" database, hosted and administered by EMSA, as well as to resolve uncertainties and to establish best practices.

The EMSA PSC monitoring team prepared - in consultation with the Commission - the event agenda (annex 1) and a working paper (Annex 3) outlining problems and possible solutions in relation to the various issues. Prior to the workshop the Commission collected data related to regular passenger Ro-Ro and High Speed Craft (HSC) services from Member States. An analysis of these data was carried out by EMSA and presented during the workshop.

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**Workshop Objectives**

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- a) To consider findings and possible solution regarding the following problems:
  - survey reports are not regularly posted on the database;
  - survey reports posted with excessive delay;
  - lack of centralized information on which vessels are actually in operation under the regime set up by the Directive.
- b) To take note of practices, comments and possible problems met by MS in checking and recording compliance with requirements to be verified before the initial survey and prior to the vessel beginning operations.
- c) To agree to a consistent understanding and application of common procedures by the Member States regarding specific controversial issues.
- d) To take note of needs and requirements that could improve the performance of the existing ro-ro ferry database.

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## Workshop Programme

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The workshop was chaired by Mr. Panagiotis Petropoulos Head of Unit D (Implementation of EU Maritime Legislation).

Mr. Jacques de Dieu and Mrs. Beatrice Thomas, from European Commission (DG TREN G1) gave a welcome address and a short introductory speech.

The 2 day workshop covered all 4 main issues on the agenda and as detailed in the working paper.

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## Workshop Conclusions

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The workshop met all the objectives listed in 2.

Conclusions and recommendations on all the agenda items are summarised in "Workshop Conclusions" (annex 4) and have been unanimously agreed with the delegations.

As a result of the above conclusions these follow-up actions will be undertaken by EMSA:

Follow up actions	Actor	Target timetable
1. Establish a correspondence group (CG) of EC/EMSA and willing Member States (MS).	EMSA	May
2. Define specifications for a new function in the ferry database to record whether or not a vessel is in service (as a passenger ship) and to remind MS when surveys are due.	EMSA/CG	July
3. Introduce the new function into the ferry database.	EMSA	After 1 and 2
4. Develop a model checklist based on those of MS and make this model available for all MS to use.	EMSA/CG	May
5. Develop guidance on the appropriate use of prevention of operation and detention powers on ferries	EMSA/CG	May
6. Check and solve defects reported by MS in the functioning of the database	EMSA	asap
7. Compile a list of specific improvements suggested by MS for the functioning of the ro-ro ferry database.	EMSA	July
8. Make an estimate of cost and timing to implement the suggested improvements to the database.	EMSA	After 7
9. Provide a facility within the ferry database site for MS to post their interpretations on any issue relating to the performance of the ferry surveys for the information of others.	EMSA	May

Annexes:

1. Workshop Agenda
2. List of Participants
3. Workshop Working Paper
4. Workshop Conclusions

**Workshop on the  
functioning of Directive 99/35/EC related to a system of  
mandatory surveys for the safe operation of regular ro-ro ferry  
and high speed passenger craft services.**

Brussels 14-15 March 2006

**AGENDA**

**1. Missed vessels**

There is a lack of information on vessels that have been or are currently operating under the directive.

- Is the fleet operating reflected in the database?
- Is the survey frequency complied with?
- Possible solutions

**2. Non survey items**

Monitoring compliance with Directive's requirements not covered by the survey scheme

- Application of the equivalence rules by Member States
- Carrying of VDR
- Compliance with stability requirements
- Company agreement to allow access to VDR information in case of accident
- Contingency planning for shipboard emergencies

*Member State may wish to comment on if and how they record vessels compliance with these requirements.*

**3. Clarification of certain provision**

Combination of the annual specific and annual in-service survey

- Use of the detention and prevention of operation power
- Level of integration between the mandatory survey regime established by Directive 99/35/EC and the PSC system
- Notification of casualty reports to Commission
- Aspects not covered by SOLAS or STCW e.g Loadline and MARPOL
- Use of "Occasional Survey"

**4. Possible evolution of the ro-ro ferry application**

**5. Any other business**

EMSA WORKSHOP  
ON THE FUNCTIONING OF DIRECTIVE 99/35/EC

## List of participants

Name	First Name	Country	Organisation	E-mail
Claeys	Els	Belgium	Public Service Mobility and Transportation	<a href="mailto:els.claeys@mobilif.fgov.be">els.claeys@mobilif.fgov.be</a>
De Ketelaere	Jan	Belgium	Public Service Mobility and Transportation	<a href="mailto:jan.deketelaere@mobilif.fgov.be">jan.deketelaere@mobilif.fgov.be</a>
Kovachev	Boris	Bulgaria	Bulgarian Maritime Administration	<a href="mailto:pvc_vn@marad.bg">pvc_vn@marad.bg</a>
Krilic	Tatjana	Croatia	Ministry of the Sea, Tourism, Transport and Development	<a href="mailto:tatjana.krivic@pomorsvo.hr">tatjana.krivic@pomorsvo.hr</a>
Palates	Yiannis	Cyprus	Department of Merchant Shipping	<a href="mailto:ipalates@dms.mcw.gov.cy">ipalates@dms.mcw.gov.cy</a>
Bauchy	Philippe	Denmark	Danish Maritime Authority	<a href="mailto:pb@dma.dk">pb@dma.dk</a>
Batycki	Andrzej	EMSA	EMSA	<a href="mailto:Andrzej.Batycki@emsa.eu.int">Andrzej.Batycki@emsa.eu.int</a>
Owen	Paul	EMSA	EMSA	<a href="mailto:Paul.Owen@emsa.eu.int">Paul.Owen@emsa.eu.int</a>
Petropoulos	Panagiotis	EMSA Chairman	EMSA	<a href="mailto:Panagiotis.Petropoulos@emsa.eu.int">Panagiotis.Petropoulos@emsa.eu.int</a>
Riley	Finn	EMSA	EMSA	<a href="mailto:Finn.Riley@emsa.eu.int">Finn.Riley@emsa.eu.int</a>
Zini	Maurizio	EMSA	EMSA	<a href="mailto:Maurizio.Zini@emsa.eu.int">Maurizio.Zini@emsa.eu.int</a>
Somer	Armand	Estonia	Estonian Maritime Administration	<a href="mailto:armand.somer@vta.ee">armand.somer@vta.ee</a>
Thomas	Béatrice	European Commission	DG TREN	<a href="mailto:Beatrice.Thomas@cec.eu.int">Beatrice.Thomas@cec.eu.int</a>
De Dieu	Jacques	European Commission	DG TREN	<a href="mailto:Bernardo.Urrutia@cec.eu.int">Bernardo.Urrutia@cec.eu.int</a>
Gardemeister	Tapio	Finland	Finnish Maritime Administration	<a href="mailto:tapio.gardemeister@fma.fi">tapio.gardemeister@fma.fi</a>
Cornillou	Jean-Charles	France	ROPAX point of contact for France	<a href="mailto:jean-charles.cornillou@equipement.gouv.fr">jean-charles.cornillou@equipement.gouv.fr</a>
Kiesow	Wilfried	Germany	See-Berufsgenossenschaft	<a href="mailto:Wilfried.Kiesow@see-bg.de">Wilfried.Kiesow@see-bg.de</a>
Papaspyrou	Gerasimos	Greece	Ministry of Mercantile Marine	<a href="mailto:klimakio@yen.gr">klimakio@yen.gr</a>
Snelgrove	James	Ireland	Marine Survey Office	<a href="mailto:jamesnelgrove@transport.ie">jamesnelgrove@transport.ie</a>
Donadio	Gianluca	Italy	Italian Coast Guard Headquarters	<a href="mailto:009@sicnavge.it">009@sicnavge.it</a>

Oss	Arturs	Latvia	Maritime Administration	<a href="mailto:arturs_o@lja.bkc.lv">arturs_o@lja.bkc.lv</a>
Jakstas	Rimvydas	Lithuania	Lithuanian Maritime Safety Administration	<a href="mailto:rimvydas.jakstas@msa.lt">rimvydas.jakstas@msa.lt</a>
Tavanti	Nicholas	Malta	Merchant Shipping Directorate, Malta Maritime Authority	<a href="mailto:nicholas.tavanti@mma.gov.mt">nicholas.tavanti@mma.gov.mt</a>
Frotvedt	Otto	Norway	Norwegian Maritime Directorate	<a href="mailto:otto.frotvedt@sjofartsdir.no">otto.frotvedt@sjofartsdir.no</a>
Kristiansen	Knut	Norway	Norwegian Maritime Directorate	<a href="mailto:knut.kristiansen@sjofartsdir.no">knut.kristiansen@sjofartsdir.no</a>
Wojtasik	Tadeusz	Poland	Urząd Morski w Szczecinie	<a href="mailto:twojtasik@ums.gov.pl">twojtasik@ums.gov.pl</a>
Moreira	Antonio	Portugal	IPTM	<a href="mailto:antonio.moreira@imarpor.pt">antonio.moreira@imarpor.pt</a>
Palao	Manuel	Spain	Ministerio de Fomento	<a href="mailto:mpalao@fomento.es">mpalao@fomento.es</a>
Nordström	Per	Sweden	Swedish Maritime Safety Inspectorate	<a href="mailto:per.nordstrom@sjofartsverket.se">per.nordstrom@sjofartsverket.se</a>
Harts	Peter	The Netherlands	Netherlands Shipping Inspectorate	<a href="mailto:peter.harts@ivw.nl">peter.harts@ivw.nl</a>
Sahinoglu	Omur	Turkey	Undersecretariat for Maritime Affairs	<a href="mailto:omursahinoglu@yahoo.com">omursahinoglu@yahoo.com</a>
Dolby	Patrick	UK	Maritime and Coastguard Agency	<a href="mailto:pat.dolby@mcga.gov.uk">pat.dolby@mcga.gov.uk</a>
Meare	Eric	UK	Maritime and Coastguard Agency	<a href="mailto:eric.meare@mcga.gov.uk">eric.meare@mcga.gov.uk</a>

**Workshop on the  
functioning of Directive 99/35/EC related to a system of  
mandatory surveys for the safe operation of regular ro-ro ferry  
and high speed passenger craft services.**

Brussels 14-15 March 2006 –

**WORKING PAPER**

**1. Introduction**

This Working Paper has been prepared by EMSA to help focus the discussion in the workshop on technical and operational issues. It is also intended to serve as a draft record of the workshop conclusions prior to a final report being issued.

**2. Agenda item 1 “missed vessels”**

*Background –*

Ro-ro ferries and high speed passenger crafts on regular routes operate a specific transport mode, which is regarded by citizens as the seaborne sector of the public transport network. EU has produced specific legislation for this sector in response to serious concerns over accidents which led to massive loss of life and as part of the overall desire to improve maritime safety.

The regime introduced by Council Directive 99/35/EC and enforced since 2001, provides for specific surveys and verifications of ro-ro passenger ferries and high speed passenger crafts and their companies which operate in regular trades to or from EU ports.

This specific regime applies before the vessels enter into operation and at regular interval thereafter.

The Directive also envisages that the regime is monitored on the basis of the information derived from the surveys that Member States are required to send to the European Commission.

In order to facilitate the centralization of these data and to improve their consultation, an on line database has been made available. The so called “ferry database” has been operational since February 2003 and is administered by EMSA since September 2004.

As source of information however, the database is lacking in two main areas:

- a. It is not regularly fed with survey reports;
- b. It does not reflect which vessels are currently operating under the directive.

*Findings -*

Prior to the workshop the Commission collected the data related to regular passenger Ro-Ro and HSC services from Member States.

Member States submitted the lists of ships which operated under the Directive in 2005. All ships in the lists have been aggregated and checked against the survey reports in the database.

This analysis showed that:

- **466** individual ships have been reported as in operation in 2005.
  - **105 (22,5%** of all reported ships) **do not have any** survey report posted in database.
  - **137 (29,5%** of all reported ships) do not have survey reports posted according to the frequency and type of survey envisaged by the Directive in article 8.
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In conclusion the database properly reflects the Directive survey regime for only **224** out of the **466** ships reported as operational in 2005 (**48%**).

It has been also found that some reports are posted several weeks after the completion of the survey. This delay could be a problem. On December 2004, in the 4<sup>th</sup> meeting of the Committee on Safe Seas (COSS), Member States decided that data from surveys reports should be published on Equasis. Timely update will soon become critical for the quality of information provided to the public.

The application where survey reports are stored is an historical database, which inevitably shows discrepancy between vessels reported and vessels currently in operation. The information on regular ferry services that the competent authority for PSC transmit to the Commission can only partly serve the scope of identifying currently operating ships. The lack of reliable and up to date centralized information on regular ferry service is not consistent with the principles of the directive.

#### Possible solutions

The database could be integrated with an "early warning" function capable of informing the relevant users when the next survey is due.

This warning would apply only to ships in operation.

The user could disable this function when they know that a ship is no longer in operation.

This information can be presented in a separate page of the database in the form of a list of ships in operation with the next survey date. A separate list of ships no longer in operation would complete the information.

The solution could have two advantages for administrations:

- National centralized information on ships in operation would be improved;
- The possibility to trace the survey schedule envisaged by the Directive, reminding when the next inspection is due, would also facilitate the national supervision of the survey activity;
- The function would also prompt for the inspection report to be inserted into the database in due time.

#### Expected outcome -

It is expected that workshop consider findings and possible solution bearing in mind the following needs:

- How to ensure, that all survey reports are posted in database?
- How to ensure, that reports are posted without too much delay?
- How to improve the centralized information without placing additional burden to the administrations?

## 2. Non survey items

### Backgrounds-

The Directive requires host states to verify prior to the start of operations that vessels, companies and, under some conditions, the flag state, conform to certain requirements. These verifications, envisaged in articles 4 and 5 of the Directive, include:

For ships:

- To have statutory certificates issued by a EU recognized organization or the flag state; (art.4a)
- To be in class with a EU recognized organization(art.4c);
- To be fitted with a VDR meeting the performance standards of IMO Assembly Res. A861(20) and complying with IEC testing standards (Art.4d);
- To comply with stability requirements adopted at regional level and transposed into their national legislation (Art. 4e)

For companies:

- To provide evidence that requirements listed in annex I of the directive are met (art.5.1(a))
- To agree to allow access to VDR information in case of accident (Art. 5. 1b);
- To be able to maintain and implement an integrated system of contingency planning for shipboard emergency (art. 13.4)

For flag state (if non EU):

- To accept as equivalent the construction and maintenance rules of a non EU recognized organization which classed the ship (art.4c)
- To concur with the companies commitment to cooperate with the host state in case of investigation of a marine casualty or incident (art.5.1.b)

### Findings-

Compliance with the requirements in article 4 and 5 is not recorded in the survey reports and the potential lack of standardization in the application of these specific provisions can go unnoticed in the periodic assessment of the directive.

#### Expected outcome

Member State may wish to comment on if and how they check and record compliance with these requirements.

### **3. Clarification of certain provision**

#### Background

The implementation of certain provision of the Directive requires a higher degree of harmonization in the surveying activity.

#### Findings

EMSA has identified some issues for which common understanding and practices would be beneficial. These issues include:

#### **a. Combination of the annual specific and annual in-service survey.**

Some member States tend to carry out the annual specific survey and the annual in service at the same time, while others separate the two surveys. There are also examples where the annual in service and the annual specific are posted with a short interval of one or two days. Combining both surveys in one visit is not forbidden by the Directive, however it is noted that the guidelines for each type of survey (annex III and IV) suggest that each survey has a different nature: the annual in service being an un-announced en-route inspection while the annual specific requires arrangements to be agreed with companies in advance. Furthermore the combining inevitably leads to an interval of one year between visits to vessels. If the Directive had foreseen one annual visit there would have been no need to specify two distinct types of survey.

#### **b. Use of the detention and prevention of operation power**

A prevention of operation notice is issued by host States in four cases listed in article 10; however the obligation to notify the database with this measure is foreseen only following an initial or regular specific survey.

The agreed format of the inspection report gives the possibility to record in the database whether the host State issued a *prevention of operation order*, a *detention order* or both.

At the time before the inspection database became operational, the introduction of an additional field (ship detained yes or no) reflects the discussion on a possible integration of the ferry database with the procedures in place under the inspection regime set up by Council Directive 95/21/EC on port state control.

Looking at the current practice of reporting to the database, the distinctions between prevention of operation and detention could be confusing and would need specific guidance that is currently missing. The detention can only reflect the provision of article 10.1(b) that, in the terms of the Directive should trigger a prevention of operation. Other cases where a prevention of operation should be served (pursuant article 10.1, 10.3 and 10.4) seems to be not recorded in any survey format and consequently they are not downloaded into the database.

The picture from the database is more confused:

- in **19** cases a detention but not a prevention of operation was recorded.
- in **9** cases a detention was accompanied by a prevention of operation.
- in **3** cases a prevention of operation was recorded but no detention.

It can be concluded that the introduction of the detention field in the survey report format was not accompanied by the development of a clear and shared concept of what is a detention under the Directive and how it differs from a prevention of operation. Specific instructions on the issue and on the relevant reporting procedures would be beneficial.

### **c. Recording of the surveys report in the PSC database**

Host States are required to record in the ferry database the findings of the specific surveys carried out in accordance with Articles 6 and 8 of the Directive. However there is no legal requirement for a system to share these results with the information system that supports the port State control regime established by Council Directive 95/21/EC (SIRENAC). This raises a number of problems.

The equivalence of specific surveys with expanded inspections under the PSC Directive is not implemented in the SIRENAC system. This means that ferries may be identified as eligible to an expanded inspection, possibly on a mandatory basis, even though they have been surveyed under the ferry Directive.

As specific surveys are not credited in SIRENAC, the target factor that regulates the selection of the ships to inspect can indicate the ferries should be boarded.

Likewise the findings of the specific surveys are not counted against the vessels or the responsible parties (flag, classification societies and company). This has an obvious impact in the PSC statistics and on the implementation of the refusal of access provision in the PSC Directive for multiple detentions which is based upon the inspection records of the flag and the ship.

In order to cope with this situation the Paris MOU has agreed an internal policy for recording the results of specific surveys carried out on foreign ro-ro ferries or HSC both in the ro-ro ferry database and in the Sirenac. This policy however is implemented by a part only of the Paris MOU members.

### **d. Notification of casualty reports to European Commission**

The Directive requires (Art. 12. 5) that the reports on investigations conducted on marine casualties involving ships covered by the Directive are made public and notified to the European Commission.

From data forwarded by member states prior to the workshops on ferries involved in a casualty in 2005 which required an accident investigation and on ferries for which an investigation report was finalized, it results that **11** casualties' investigations have been completed and **38** are still in progress. These indicative figures appear to be in contradiction with the fact that the Commission has received, since the entry into force of the Directive, no notification pursuant article 12.5.

Clarification and common understanding on what a marine casualty is and when it should trigger an investigation in the terms of the Directive would be beneficial.

**e. Aspects not covered by SOLAS or STCW e.g. Load line and MARPOL**

The scope of the regular surveys envisaged by the Directive is indicated in annex I, III and IV which mainly cover the international requirements in Solas or STCW conventions. Certain areas where defective items could be spotted against Load line, MARPOL or ILO 147 do not appear to be listed in the above annexes. The database however gives the opportunity to record these deficiencies in the survey report.

**f. Use of "occasional survey".**

There are **24** reports in the database recorded as "*Occasional Survey*". Such term is not used by the Directive. Art. 8.2 refers to a specific survey (identical in scope to the annual specific survey referred o in Art. 8. 1) which is supposed to be executed in special circumstances listed in this Article. Is it assumed, that such a survey, is the "Occasional Survey"? A standardized understanding on the use of the term would be beneficial.

Possible solutions

The development of the guidelines agreed upon and accepted by all the Member States could be a solution enhancing the level of standardization in the application of the directive and would also provide more clarity on certain provisions whose implementation still appears rather nebulous.

Expected outcome

It is expected, that decision will be taken to apply consistent understanding and common procedures by the Member States in respect to the all above quoted issues.

## ANNEX 4

**Workshop on the  
functioning of Directive 99/35/EC related to a system of  
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and high speed passenger craft services.**

Brussels 14-15 March 2006 –

**WORKSHOP CONCLUSIONS**

**Agenda item 1 “Missed Vessels”**

*Expected outcome -*

It is expected that workshop consider findings and possible solution bearing in mind the following needs:

- How to ensure, that all survey reports are posted in database?
- How to ensure, that reports are posted without too much delay?
- How to improve the centralized information without placing additional burden to the administrations?

*Conclusions –*

1. Member States will review their own record and ensure that all surveys are posted on the database.
2. A function will be provided for MS to record in the ferry database whether or not a vessel is in service (as a passenger ship).
3. An advisory function will be established in the database which will remind MS when surveys are due.
4. To establish a correspondence group consisting of EC/EMSA and willing MS to consider the details of items 2 & 3 above.
5. MS agreed that reports should be entered into the database as soon as possible and at most within 10 working days.

**Agenda item 2 “Non survey items”**

*Expected outcome*

Member State may wish to comment on if and how they check and record compliance with these requirements.

*Conclusions*

1. Most MS have checklists for recording that these items have been verified.
2. The correspondence group mentioned above will develop a model checklist

based on those used already by MS. This model will be available for all MS to use.

3. Most MS keep a hard copy of their checklist and the accompanying paperwork with a file for the individual ferry. Some also keep electronic records.

4. MS considered that the recording of an initial specific survey in the database was sufficient confirmation that the verifications required under Articles 4 and 5 had been completed. Their internal record keeping would enable them to confirm that the individual requirements of Articles 4 & 5 had been met.

5. MS reported no particular difficulties in verifying these articles.

### **Agenda item 3 "Clarification of certain provision"**

#### Expected outcome

It is expected, that decision will be taken to apply consistent understanding and common procedures by the Member States in respect to the all above quoted issues.

#### Conclusions

1. MS agreed, in principle, specific surveys and in-service surveys should be separated as far as possible, especially for vessels operating all year round. However for vessels in short seasonal operation it may be necessary to shorten the period and, in exceptional cases, combine the two surveys.

2. MS agreed that the correspondence group mentioned in Agenda item 1 should develop guidance on the appropriate use of "prevention of operation" and detention powers on ferries.

3. Most MS follow the policy agreed in the PMOU to also record ferry directive surveys in SIRENAC. However most considered that this was an unwelcome administrative burden. Those MS which are not currently following this policy were invited to do so in future.

4. The Commission confirmed that the obligation under Article 12.5 to be notified by MS of casualty investigations could be met by informing it of the publication of the report on the MS website. MS were invited to comply with Article 12.5 requirements in future.

5. MS reported that in practice they applied the requirements of all relevant conventions (under PSC) during ferry surveys. Some felt that the Directive should be redrafted to make it more explicit that these items form part of the survey.

6. MS reported that they use the "occasional specific" option on the inspection form to cover the surveys mentioned in Articles 7.3 and 10.2 and other visits on board in response to complaints or incidents. None had used it to record a specific survey under Article 8.2.

**Agenda item 4 "Possible evolution of the ro-ro ferry application"***Expected outcome*

Member States may wish to indicate additional needs that could be covered by specific evolutions of the existing ro-ro ferry application.

*Conclusions*

1. EMSA took note of a number of specific improvements to the current functioning of the database and invited MS to confirm their suggestions in writing to EMSA. These included a facility to download data from an electronic ferry survey report into the ferry database.
2. Many MS expressed a wish for the ferry database and PSC database to be combined in the future. In the interim it was proposed that the PMOU NIS project should consider the feasibility of the ferry database feeding the NIS with relevant ferry survey reports.

**Agenda item 5 "Any other business"***Expected outcome**Conclusions*

1. EMSA will provide a facility within the ferry database site for MS to post their interpretations on any issue relating to the performance of the ferry surveys for the information of others.