



## Template for comments

### Public consultation on the Guide to on-site inspections and internal models investigations

#### Institution/Company

European Association of Public Banks (EAPB)

#### Contact person

##### Mr/Ms

Mr

##### First name

Jeroen

##### Surname

van der Donck

##### Email address

[jeroen.vanderdonck@eapb.eu](mailto:jeroen.vanderdonck@eapb.eu)

##### Telephone number

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#### General comments

The EAPB welcomes this guide that specifies framework, processes and principles on on-site inspections. Yet it would like to remark that although useful in general the guide seem to have a bias towards the obligations and responsibilities of the supervised institution. The rights of the institution or the responsibilities of an inspection team receive considerably less attention. Some examples include:

- On page 18 the HoM can seek assistance with the NCAs, but no escalation is provided for institutions.
- On page 21, The institution should strive to ensure a professional and courteous attitude towards the inspection team, but the guidelines do not prescribe the same from the inspection team towards the institution.
- In general, timelines are mostly specified for institutions and are often (too) short, while for the inspection team few timelines are prescribed.
- On page 23, no designated person will be able to be 'always available' and this would in fact trigger violation of labor laws.

It would then be good to bring more balance to the guide with respect to obligations and responsibilities of both the supervisors and the supervised.

## Template for comments

### Public consultation on the Guide to on-site inspections and internal models investigations

Please enter all your feedback in this list.

When entering your feedback, please make sure:

- that each comment only deals with a single issue;
- to indicate the relevant article/chapter/paragraph, where appropriate;
- to indicate whether your comment is a proposed amendment, clarification or deletion.

Deadline: 15 September 2017

ID	Chapter	Paragraph	Page	Type of comment	Detailed comment	Concise statement why your comment should be taken on board	Name of commenter	Personal data
1	1	Introduction	3	Clarification	The statement "This Guide is not, however, (...)." must be amended. It must be clarified that also national law will prevail.	If national law (especially such implementing EU law) provides different requirements, national law has to prevail.	van der Donck, Jeroen	Publish
2	1	Introduction	3	Clarification	In our understanding that securities law is a major topic that remains within the responsibility of the participating Member States. Therefore this should be clarified	It should be clear which competencies are on member state level.	van der Donck, Jeroen	Publish
3	1			Clarification	We are missing information on what data and documents the examiners should provide for the onboarding of company identity cards and system rights or is the provision of the name sufficient? Should the examiners legitimatise with only their names or rather business cards, head of mission, etc.?	Provide practical advise for institutions	van der Donck, Jeroen	Publish
4	1			Clarification	Data exchange – transfer of customer-specific information and entire portfolios: Which data can be released and which transmitting media can be used? Use of data rooms like Brainloop?	See detailed comment	van der Donck, Jeroen	Publish
5	1			Clarification	Use of examiner's software and application of non-bank computers: A uniform specification would be very helpful here. Currently it appears that examiners want to install software on bank computers.	In order to prevent misunderstandings	van der Donck, Jeroen	Publish
6	1.1		1	Clarification	In general the structure of the Guide is not fully clear. There are several parts that are stated more than one time in - slightly - different words. All redundancies should be removed. Furthermore there are some key elements missing. The term finding is not included/described in part 2.3 inspection outcomes.	This would contribute to a common understanding of the Guide.	van der Donck, Jeroen	Publish
7	1.4 / 2.2.1 / 2.2.2			clarification	In several instances reference is made to the independence of the inspections. We understand the importance of this independency within the organizational set-up of the SMM. However, we do note that it is the responsibility of this inspection team to familiarise itself with available information within ECB. Institutions must be able to assume that previously shared information and views with ECB are taken into account in the on-site inspections. This can be clarified in for example section 1.4 / 2.2.1 / 2.2.2	Ensure full use of available information and prevent misunderstandings.	van der Donck, Jeroen	Publish
8	1.2		5 and 6	clarification	A supervisory decision is only needed for self-induced OSI and IMI but not for IMIs upon application, this should be clarified	It can not be that the supervisor "decides" upon the question whether to execute an IMI wich is application induced or not. The supervisor is bound by the legally set timelines to achieve a decision. So it can only be a kind of "internal" decision within the supervisory authority on the exact timing of the IMI.	van der Donck, Jeroen	Publish
9	1.2		5	clarification	The decision-making process could be elaborated further. E.g.: - who is responsible for drafting this planning; - how are institutions involved in the annual planning process and how are they informed of any adjustments.	Transparency of banking supervision	van der Donck, Jeroen	Publish

10	1.3		6	clarification	Reference is made to the predefined scope and timeframe of an inspection as well as the possibility of any changes to this. For institutions to plan the required resources adequately, scope and timeframe should be clear and changes should (under normal circumstances) be an exception. However, no criteria are provided on how a scope and timeframe should be defined and the reasons for any changes in this. We suggest to incorporate more details on these criteria to assure a clear understanding by all stakeholders and a harmonized application in all inspections. <del>In the second bullet (of the first listing on this page) reference is made to the nature of the business which should be taken into account in the assessment of the governance and control framework.</del>	Assurance of a harmonized and transparent approach to inspections.	van der Donck, Jeroen	Publish
11	1.3		6	clarification	In our opinion the nature of the business should also be taken into account in the assessment of the other items. The explicit inclusion of 'proportional' as a principle (in the second listing on this page) has therefore been well received. However, we suggest to elaborate on this principle somewhat to clarify that inspections should not only be organized in a proportionate manner, but the assessments within an inspection should also be proportional and take into account the nature of the business and risks of an institution.	Ensure proportionality is taken into account	van der Donck, Jeroen	Publish
12	1.3		7	clarification	We appreciate the fact that inspections should be action-oriented which should lead to actual improvements. However, we do note that actions should be material and that institutions need to prioritise these actions in conjunction with other activities that are outside the scope of the inspection. We suggest to clarify this as the current wording might suggest goal-seeking behaviour in which the aim is to report a maximum number of findings and remedial actions instead of taking into account the materiality of a finding.	Ensure resources from institutions are deployed accurately.	van der Donck, Jeroen	Publish
13	1.3		7	amendment	The principle of "intrusive" is somewhat disturbing on as "intrusion" has a negative connotation to our understanding. To put intrusion as a principle seems to be somewhat odd. Please reconsider the phrasing of "intrusive"	Ensure that there are no negative connotations associated with words in the guide.	van der Donck, Jeroen	Publish
14	1.4		9	clarification	The case of an withdrawal of an application is not addressed: clarification would be helpful, if an institution can receive a draft report in this instance or not	It seems unclear if the institution can expect a - draft - audit report in the case of the withdrawal of an application. In case that the withdrawal is executed at a point in time when the IMI already generated a - draft - report, we would find it very useful to receive it.	van der Donck, Jeroen	Publish
15	1.5		7	amendment	The JST should always be a part of the inspection team for at least three reasons. Firstly, the JST is aware of all specificities of an individual institution, this knowledge and experience should be taken into account in each review and can only be assured by full participation of the JST in the inspection. Secondly, the JST will be responsible for monitoring of any follow-up actions. In our experience misunderstanding might arise in the handover of findings from the inspection team to the JST. To ensure everyone has a shared understanding of the findings and expected follow-up JST should participate in an inspection from the start. We suggest rephrasing to '... a JST member <u>must</u> be part of an inspection team,...'. And thirdly, the JST is in a better position to assess any required prioritisation of activities during or after the inspection.	Ensure full use of available information and prevent misunderstandings.	van der Donck, Jeroen	Publish
16	1.6		8	Clarification	According to paragraph 1.6 the inspection team can be composed of consultants. From our point of view it is important that consultants should be experienced certified accountants to guarantee a high level of quality.	Ensure high quality supervision	van der Donck, Jeroen	Publish
17	1.6		8	amendment	About "composition of assessment team": In the case of external parties the question arises how the institution can ensure that these persons are fully in scope of the application of the secrecy requirements set out in the regulatory framework, whereas in view of staff members of the supervisory authority the general assumption is that these staff members are in scope. A formal letter with the identification details of the externals would be needed e.g. and a statement that they are part of the IMI/OSI and are entitled under section xxx of the SSM Framework Regulation)	From the institution's perspective external members of a OSI or IMI, persons which are not staff members of a supervisory authority, either need to sign an NDA or the institution needs a written statement, setting out the identification details of these persons, that these persons are entitled to participate in an IMI/OSI based on the current regulatory framework and have been nominated by a supervisory authority, meaning that they are fully bound by the existing legal framework on data protection, banking secrecy and professional secrecy, whereas these persons have been instructed in detail and writing what exactly their duties are in this respect.	van der Donck, Jeroen	Publish

18	1.6		8	amendment	JST members should always be a part of the inspection team, see our comment at section 1.5 for more elaboration.	Ensure full use of available information and prevent misunderstandings.	van der Donck, Jeroen	Publish
19	2.1		9	amendment	The commenting phase should be more clearly set out in the table	As for institutions this is a very important phase, this would qualify for a special mention in table in 2.1	van der Donck, Jeroen	Publish
20	2.1.		9	amendment	On page 9 an overview of steps of an inspection is provided. "Inspection" is meant either as an on-site inspection (OSI) or internal model investigation (IMI), whereby IMI can start in relation to the submission of an application for internal model approval. It can be said that the current overview of inspection steps does not take into account the situation when the application is withdrawn by an applicant or when the application is rejected (model change is not approved) by the regulator.	The Guide should indicate the steps of inspection process when the application for internal model approval (IMI case) is withdrawn by the applicant or the application is rejected. From the proposed overview is not clear e.g. whether a draft report will be delivered to the applicant when the application is to be withdrawn after the on-site fieldwork phase (i.e. before exit meeting) or when the application is rejected by the regulator due to several findings if there will be the follow-up phase in order to address the entity requested actions (considering the fact the ECB decision will be issued).	van der Donck, Jeroen	Publish
21	2.2	2.2.1	10	Amendment	Notification of the commencement of an inspection. "This usually happens a few weeks, but in any case at least five working days (...) i.e. five days before the kick-off meeting". The kick-off presents the official start of the inspection. A notification five days prior to a kick-off meeting will generally not allow for the best preparation by the institution and it can be assumed that the inspection team itself would also need more time to prepare. Potential disruptions for the start of the inspection might occur. <b>Therefore, it should be in any case at least four weeks to prepare.</b>	Tight timeframes for setting up all required operational or technical issues is a key aspect for a sound start into the inspection. Especially in the light of regulatory or compliance restrictions for the onboarding, we would see this point critical to provide a smooth and sound process for setting up everything requested and required by the HoM and/or inspection team (e.g. access or system rights)	van der Donck, Jeroen	Publish
26	2.2	2.2.1	9	amendment	It is mentioned that the availability and readiness of all parties with respect to an on-site inspection is always a purely internal procedure. In our opinion the availability and readiness of the institution should also be taken into account to prevent an undue burden on the institution. This is best done in an early stage of the preparatory phase.	Prevent undue burden on the institution.	van der Donck, Jeroen	Publish
27	2.2	2.2.1	10	Clarification	About the "preparatory phase" is this a readiness/ pre-application phase? What is the goal of this phase? It is not clear whether in this phase the ECB plans to apply the pre-application phase or not and only initial meetings will be in place. It seems to be a mix up of organisational and content wise issues. It should be clearly set out if a pre-application phase in the case of application induced IMIs should take place and what the function of this phase is. Regarding confirmation of the legal entity's readiness to submit an application: The assessment of such readiness may involve initial meetings at the inspected legal entity's premises at an early stage. In such cases the inspected legal entity receives feedback about the ECB's views on whether or not it is ready to submit an official application. From this wording it is not clear whether the regulator plans also to apply a pre-application phase in order to assess the readiness of the official application.	We would recommend to more clearly differentiate between the function "organisational preparation" (i.e., checking availability of resources, staff, technicalities, etc), and "content wise preparation", meaning a phase where the institution can expect - preliminary - feedback from the supervisor before - officially - applying. To our understanding the first aspect would qualify for all OSI/IMI, whereas the second one would be only relevant for application induced IMIs. Further, according to the current practice, an application for internal model approval can be subject to a pre-application phase in order to pre-assess the readiness for a submission of the official application. In the Guide it should be clarified whether those initial meetings are replacing the pre-application phase or there is still a possibility for the regulator to assess the readiness also in the pre-application phase. In the Guide should be a clear guidance by which means the readiness can be assessed in order to reflect in the preparation phase (preparation of the application package), particularly from the timing perspective (as the length of the pre-application phase can be 6 months).	van der Donck, Jeroen	Publish
28	2.2	2.2.1	10	amendment	Notification of the commencement of the inspection: Our proposal is to send in any case the notification to the affected legal entity (as stated by Art. 145 par. 1 SSM Framework Regulation) and to the parent undertaking.	We recommend specifying that the parent undertaking - if a subsidiary is affected - is only the receiver of a copy of the original notification, which should in any case be addressed to the affected entity as this is required by Art. 145 par. 1 of the SSM Framework Regulation.	van der Donck, Jeroen	Publish
29	2.2	2.2.1	10	amendment	The information requested includes, among other things, the organisation chart, procedures dealing with the scope of the inspection and any other necessary information. Any other necessary information should still be relevant to the scope of the inspection. <b>Therefore add 'pertaining to the scope of the inspection'.</b>	Any other necessary information is very broad while the focus should be on the defined scope of the investigation.	van der Donck, Jeroen	Publish

22	2.2	2.2.2	11	Proposed amendment	We request that a senior representative could also be a head of the (relevant) division and not only a CEO or a member of the executive board.	If the guide wants to address seniority aspects (CEO or board member) it might be also the case for heads of division. Regarding the short timeframe for announcements of a review (5 days) it gives a bank more flexibility to send a senior representative (if it is e.g. a head of division). If necessary the SSM could also get in contact with the CEO or a member of the executive board after the kick-off was held.	van der Donck, Jeroen	Publish
23	2.2	2.2.2 / 3.3.3	11, 23	Clarification	From our point of view there is a contradiction between the statement on page 11 "Kick-off meeting" and page 23 "Seniority of the inspected entities' representatives". Concerning page 11 the ECB expects that the CEO or a member of the executive board attends the kick-off meeting. Whereas the statement on page 23 gives the possibility that the CEO can be represented at a sufficiently senior level, which we prefer.	See detailed comment.	van der Donck, Jeroen	Publish
30	2.2	2.2.2	12	amendment	We understand the need to grant an inspection team access to all requested information. However, in our opinion this does not automatically mean that access to IT systems is necessary. Considering privacy regulations, the accountability of institutions for any available information and acts on public access to government information we want to monitor the information which is being shared with the inspection team. Access to IT systems should then only be granted upon specific request in dedicated cases and not in general, if this is technically feasible. Only if an institution would not cooperate with the inspection team, then access to all relevant IT systems would be necessary. We propose to adjust the text accordingly.	Respect accountability of institutions	van der Donck, Jeroen	Publish
31	2.2	2.2.2	12	amendment	We would suggest to have intermediate status meetings by the inspection team with the institution as the standard and not just as a possibility.	Transparency of banking supervision	van der Donck, Jeroen	Publish
32	2.2	2.2.2	11	amendment	About "The inspection team may also use the opportunity to set deadlines for receiving any outstanding information requested": In general we propose in view of setting of deadlines, be it for data/information request be it for meeting requests, that these are set bilaterally after confirmation by the institution, but not unilaterally. Only in the case of an indication of non-cooperation the unilateral setting of deadlines should be used. This should underline the cooperative setting of such OSI/IMIs.	We propose the following rewording: "The inspection team may also use the opportunity to set deadlines for receiving any outstanding information requested after alignment with the institution." This principle same should apply throughout the whole Guide for all settings of deadlines.	van der Donck, Jeroen	Publish
33	2.2	2.2.2	11	amendment	The guide states that during the kick-off meeting the HoM introduces the team to the inspected legal entity's management, presents the objectives and scope of the inspection and details the various steps involved, notably the planning of the first meetings. We believe the objectives, scope and details of the various steps should be made known before the kick-off meeting. This will provide the inspected legal entity with the needed time to prepare the materials and meetings to let the inspection run as <u>efficiently as possible</u> .	To make sure relevant people are present during the inspection and documents are prepared the inspected legal entity should be made aware of the objectives, scope and details of various steps before the kick-off meeting takes place.	van der Donck, Jeroen	Publish
34	2.2	2.2.2.	11	amendment	Regarding the kick-off meeting ("The HoM may also ask the inspected legal entity to identify the main contact persons for each topic, if applicable.") we recommend applying this provision only in exceptional cases or deleting it completely as the communication for all inspection relevant topics needs to go through the institution's <u>senior contact point</u> .	The creation of parallel communication channels should be avoided.	van der Donck, Jeroen	Publish
25	2.2	2.2.3	13	Clarification	In our view it must be re-assessed whether a sharing of the report with the parent company of the inspected subsidiary is allowed under national law (inter alia data protection law).	See detailed comment.	van der Donck, Jeroen	Publish

35	2.2	2.2.3	13	amendment	<p>Timelines for information or data flow from regulator to inspected legal entities are non-specific, whereas a number of timelines for information or data flow from the inspected legal entity to the regulator are fixed ("...within two weeks" (see page 13, 20)).</p> <p>Also, timelines included for the institutions in the reporting phase are too short. Depending on the topic, timing and outcome this might not allow the institution enough time to prepare a response. To allow for sufficient time for internal discussions we suggest the draft report should be sent at least two week in advance of the exit meeting and written feedback should be provided within three weeks after that exit meeting.</p>	<p>Institutions need a sufficient period of time to prepare the meeting. Therefore, it is crucial that they will have enough time between transmission and meeting.</p> <p>The concrete timeframe will make it possible to implement a stringent process-driven workflow for all thematic reviews, which are related to the guide. Ideally, a technical solution will be in place as a helpful tool to monitor the work status based on the timeframe.</p> <p>Clear and transparent communication of deadlines/ timelines should be a commitment for all involved parties.</p>	van der Donck, Jeroen	Publish
36	2.2	2.2.3	13	amendment	<p>There is no timeline included for the head of mission to finalise the report and in practice final reports are delayed as inspection teams are already starting on their next inspection. Any momentum present at the institution will then slowly fade away.</p> <p>Therefore we propose to include a timeline for the final report as well (e.g. four weeks after the receipt of written feedback by the institution) providing the head of mission with a clear guideline as well.</p>	<p>Ensure resources from institutions are deployed accurately.</p>	van der Donck, Jeroen	Publish
37	2.2	2.2.3	13	clarification	<p>Regarding reporting phase: report "can" be shared with the parent. Our proposal: "should" be shared with the parent. However, in our view it must be re-assessed whether a sharing of the report with the parent company of the inspected subsidiary is allowed under national law (inter alia data protection law).</p>	<p>Ensure good communication as well as correct application of national laws.</p>	van der Donck, Jeroen	Publish
38	2.2	2.2.3	13	amendment	<p>The HoM finalises the draft report based on the feedback received.</p> <p>It would be very helpful to have the opportunity to be able to review the adjusted draft to see if comments have been incorporated in the right way. Two days would be sufficient after which it can be made final.</p>	<p>To make sure the feedback has been understood correctly.</p>	van der Donck, Jeroen	Publish
39	2.3	2.3.1	14	Proposed amendment	<p>We are of the opinion that the right to be heard must also be observed in case were ECB expresses its expectations via an "informal letter" as at least the practical implications for the institution are similar to supervisory measures.</p>	<p>ECB requires specific actions to be taken by the institutions within a specific timeframe and expects remedy. In case the institution will not fulfill the required actions supervisory measures will follow (see page 16 of the Guide). Therefore at least the practical implications "adherence" are similar to formal supervisory measures. Due to the similar burden for the institution we consider it to be a matter of fairness that the right to be heard would also be observed in this kind of remedial measures.</p>	van der Donck, Jeroen	Publish
40	2.3	2.3.1	15	Clarification/ Proposed amendment	<p>(ii) Limitations: It might be a problem if restrictions or modifications of the use of a model becomes effective immediately. It could lead to frictions due to technical or process-driven circumstances as well as regulatory circumstances (with focus on model-change requirements).</p>	<p>See detailed comment.</p>	van der Donck, Jeroen	Publish
41	2.3	2.3.2	16	Clarification/ Proposed amendment	<p>The follow-up phase Recommendations and action plan &amp; Follow-up of the inspected legal entity's action plan</p> <p>Follow-up process and action plans require regular (quarterly) updates from the inspected legal entity. Following these updates a review is performed by the regulator. Past experiences have shown that feedback from the regulators to the inspected legal entity are delayed. This feedback was received only after the interim deadline/ quarterly update cycle. This resulted in additional interim updates of the inspected legal entity before the regular update cycle.</p>	<p>Dedicated timelines for updates to recommendations/ action plans for the inspected legal entities as well as dedicated feedback timelines for the regulator should be implemented to avoid overlapping feedback cycles as well as double work or ambiguous updates from the inspected legal entities.</p> <p>This should provide for all involved parties a transparent process including a consequent cycle of updates and feedback.</p>	van der Donck, Jeroen	Publish
42	2.3	2.3.1	15	clarification	<p>It is mentioned that the ECB supervisory decision might take the form of a recommendation. However, it is unclear how this is different from the supervisory expectations that are mentioned as well in this section. Please clarify any differences, or otherwise we would suggest referring to expectations instead.</p>	<p>Shared understanding of action plans.</p>	van der Donck, Jeroen	Publish

43	2.3	2.3.1	15	clarification	The findings classification currently used (F1-F4) is currently not mentioned at all. Findings as inspection outcomes should be described in general, in addition a finding classification as the one currently used in the on-site practice should be reflected in the Guide as well as the aspects underlying the classification.	We would kindly request to take up also the issue of classification of findings: Findings are to be classified, the classification-logic should be standardised and set-up transparently. It should be specified who classifies and who reviews the classification in view of a harmonised treatment. It should be clarified what is concretely classified: finding/obligation/condition? How does the table on page 15 interrelate to the classification logic? For decisions: does that mean that condition = F4, obligations = F1-F3? Are also type 1 findings to be classified? If yes, this should be concretely mentioned.	van der Donck, Jeroen	Publish
44	2.3	2.3.2	16	clarification	In our understanding the action plan might only need adjustment if the institution has not completed the actions which have been agreed upon. Perhaps this could be clarified as the current wording could suggest that ECB is allowed to adjust the actions at will. This could prevent actions from ever being closed as new insights continue to develop. Of course these new insights can (and should) be incorporated by the JST in their day-to-day supervision, but closing of the inspection follow-up phase needs to be assessed on the original agreed-upon actions.	Shared understanding of action plans.	van der Donck, Jeroen	Publish
45	2.3	2.3.2	16	amendment	In view of findings management and follow up treatment of findings we observe a wide variety of practices even within the SSM. The Guide could be used to specify the treatment of follow-up to findings concretely. In that sense the following questions could be clarified: What is the concrete policy in view of setting deadlines for the closure of findings? How is the closure process concretely set up? Should closure documentation be provided to the SSM? When should the closure documentation be provided? What concretely is expected? I.e., in some instances Internal Audit involvement is required, in others not. It would be very much appreciated that when the institution provides a closure package, that the JST then also officially confirms the closure from supervisory side. Here in some instances the JST does, in others not. In view of a proper findings handling in institutions a standardisation in this view would be very much appreciated. What concerns concretely interim deadlines: We would very much appreciate not to set up a "milestone-interim-tracking" process, but only a reporting at the point of closure of a finding, interim steps and reporting on them could be very burdensome. If interim DL are set, they should be aligned with the institution, this should be clearly stated. We also recommend setting up a framework regarding the classification of findings which in our view would increase transparency and strengthen predictability for the inspected entities. This should also apply for deep dives, thematic reviews and other findings from supervisory assessments that need to be addressed.	Details on follow-up in view of findings management are missing.	van der Donck, Jeroen	Publish
46	2.3	2.3.2	16	amendment	We recommend introducing within the chapter "The follow-up phase" a sub-chapter dealing with the closure of findings. It should be foreseen that the supervisory authority needs to make a clear statement regarding the closure of findings. If the involvement of Internal Audit is intended to be required as a rule, it should be expressly stated by the Guide.	This is to confer a higher degree of legal certainty to the inspected entities.	van der Donck, Jeroen	Publish
47	2.3	2.3.2	16	amendment	Subsequently to the comment above the Guide should state what role and responsibilities are assumed by Internal Audit in on-site inspections.	The involvement of Internal Audit units should be expressly stated by the Guide.	van der Donck, Jeroen	Publish

48	2.3	2.3.2.	14-16	amendment	Within the final phase the regulator can present any recommendations or required supervisory measures to the legal entity in the form of one of two different types of instruments. The first type is a letter expressing supervisory expectations which is not legally binding. The second one is in the form of a legally binding decision. Such a follow-up letter describes the required actions which are a trigger for an action plan. According to the Guide, if the inspected entity has not implemented the agreed action plan, the ECB has the power to enforce supervisory measures. We propose to formulate the follow-up phase in that sense that the non-binding nature of supervisory expectations will be considered and thus no supervisory measures will be applied in case of non-implementation of the action plan resulting from the required actions stated in the follow-up letter. Specifically the set out missing of the right to be heard underlines the non-binding nature of the "supervisory expectations". Otherwise a situation would be created where solely by not meeting of a deadline of a non binding finding could create a sanctioning process. This would not be in line with fundamental legal principles (legal certainty).	Following the wording of the Guide, the inspected entity can be sanctioned (the ECB can apply supervisory measures and administrative sanctions) for non-compliance with supervisory expectations described in the follow-up letter which are not legally binding. We understand that such supervisory expectation does not constitute a finding i.e. a breach of the regulation. Following the SSM Regulation, we understand that such powers can be used in case of breach of regulatory requirements (or when conditions stipulated in Article 16 SSM Regulation are met), but not in the situation when the inspected entity fails to meet supervisory expectations. More generally it is unclear how chapter "follow-up-phase" (2.3.2) interrelates to the different typing in chapter 2.3.1. This should be clarified in detail.	van der Donck, Jeroen	Publish
49	2.3	2.3.2.	16	amendment	Regarding the official response to the follow-up letter/decision: we recommend setting a deadline of 30 days for this purpose.	This would allow inspected entities to adequately prepare an action plan and corrective steps.	van der Donck, Jeroen	Publish
50	3.1		17	Clarification/Amendment	In our view it must be clarified that at least the principle of proportionality sets limits for any data /information request. First of all in cases where relevant information is already available within another unit of ECB, JST or a NCA this information should be used and a request from the institution should be avoided.	Various extensive information requests impose already now an enormous administrative burden for the institutions and should therefore be limited to the essential minimum.	van der Donck, Jeroen	Publish
51	3.1		18	amendment	As already indicated under comment 19, we understand the need to grant an inspection team access to all requested information. However, in our opinion this does not automatically mean that access to IT systems is necessary. Considering privacy regulations, the accountability of institutions for any available information and acts on public access to government information we want to monitor the information which is being shared with the inspection team. Only if an institution would not cooperate with the inspection team, then access to all relevant IT systems would be necessary. We propose to adjust the text accordingly.	Respect accountability of institutions	van der Donck, Jeroen	Publish
52	3.1		18	amendment	We do not debate the right of the head of mission to exchange information with the statutory auditors. In our opinion the head of mission should, however, inform the institution fully about such exchanges to allow a complete picture on how the inspection team comes to their conclusions.	Transparency of banking supervision	van der Donck, Jeroen	Publish
53	3.1.		17	amendment	Right to request any information or document: The documents should be requested generally in a written form.	The requests for documents should be done in the written form to minimise possible misunderstandings.	van der Donck, Jeroen	Publish
54	3.2		19	clarification	It would be worthwhile if ECB would provide more clarification on how their professional secrecy standards hold up in the context of acts on public access to government information	Ensure privacy of information shared.	van der Donck, Jeroen	Publish
55	3.3	3.3.1	20	clarification	Regarding the possibility to comment: commenting should not be limited to executive summary and key findings. In case of misunderstandings or misrepresentation of information, this should be commented as well; the possibility to comment should in any case also exist for type 1 instruments, also for the simple reason to avoid any misunderstanding or mis-interpretation by the on-site team, a kind of quality assurance function.	The wording should be reformulated accordingly.	van der Donck, Jeroen	Publish
56	3.3	3.3.1	21	clarification	We note an absence of closing meetings in the case of type 2 instruments, it could be clarified why this is the case.	This is somewhat unclear and seems not to be the practice. It should also be taken into account, that type 2 instruments could be self-initiated by the supervisor, meaning that an on-site investigation starts, but the results then end up in type 2 instruments. The clarification which type will be used at the end of the process could change over time, and can also evolve after a potential closure meeting. Therefore we would kindly invite the ECB to revisit this issue.	van der Donck, Jeroen	Publish



57	3.3	3.3.1	21	clarification	The guide shows that the institution is informed of any findings through a final report and the draft follow-up letter is discussed in the closing meeting. We would like to see some further clarification on the possibilities to object to a final report or the final follow-up letter. Especially with non-legal binding recommendations it not clear how any disagreements between the JST and the institution will be solved.	Transparency of banking supervision	van der Donck, Jeroen	Publish
58	3.3	3.3.2	21	Clarification	How should the institution preserve the required confidentiality in case the inspected entity is a subsidiary? This remains unclear.	See detailed comment.	van der Donck, Jeroen	Publish
59	3.3	3.3.3	22	Clarification/Amendment	We understand the need that requests from the inspection team are answered in a timely manner. But we also expect that the regulatory authorities understand that this supervisory requirement is hard to fulfill permanently, as on-site-inspections can last up to four months and the banks are exposed to a lot of OSIs/IMIs over the year, sometimes even parallel. It is not realistic that over such a long period of time, the entity's staff is always permanent available, e.g. because of holiday or illness absence or just because they have to fulfil their daily operative work. We therefore propose to make the expectation more open.	Transparency of banking supervision	van der Donck, Jeroen	Publish
60	3.3	3.3.3	22	Deletion	This supervisory expectation to inform the inspection team members of any relevant related information, even if it is not explicitly requested by them can not be fulfilled in a realistic way and it will put unnecessarily high pressure on the involved entity's staff as they will be exposed to the risk of maybe having forgotten some information that's possibly important to the inspection team. We suggest to delete this statement.	See detailed comment.	van der Donck, Jeroen	Publish
61	3.3	3.3.3	23	Clarification/Amendment	See comment number 24.	See comment number 24.	van der Donck, Jeroen	Publish
62	3.3	3.3.3	23	Deletion	The right to contact any staff of the inspected legal entity should be deleted or at least be limited to cases when nobody services the inspection team in a timely matter. If in this case, the HoM wants to have a meeting explicitly without a contact person being present, the HoM should clarify the reasons for this.	The central contact person should coordinate the requests of the inspection team. The right to contact any staff should therefore be deleted or at least be limited to cases when nobody services the inspection team in a timely matter. .	van der Donck, Jeroen	Publish
63	3.3	3.3.3	23	clarification	With respect to meetings with stakeholders we note that the institution has no direct control over external stakeholders. Especially the timing of these external meetings will depend on these external stakeholders themselves as well. The institution should still facilitate the organisation of these meetings, but it might be appropriate to include a distinction between internal and external meetings more clearly.	Practical considerations	van der Donck, Jeroen	Publish
64	3.3	3.3.3	22	clarification	The submission of documents on paper should be avoided and allowed only in exceptional cases.	In our view this kind of submission is outdated and does not reflect the current established practice.	van der Donck, Jeroen	Publish
65	3.3	3.3.3	22	amendment	Regarding internet access and set up of multiple e-mail addresses, we comment that the access to internet and technical set-up of e-mail addresses should be made subject of alignment with the institution. The guide should be amended accordingly.	To align the guide with what is technically feasible.	van der Donck, Jeroen	Publish
66	3.3	3.3.3	23	clarification	Regarding the right of the HoM to request a point of contact with enough seniority within the inspected entity's organisation we do believe that in fact it is the clear responsibility of the inspected entity to define its senior point of contact	From organisational reasons this should be the responsibility of the inspected entity.	van der Donck, Jeroen	Publish
67	3.3	3.3.3.	22	amendment	Deadlines should not be set unilaterally in general. We propose the following rewording: "The inspected legal entities are expected to provide the required documents and files as soon as possible, when available immediately, or otherwise within a reasonable timeframe – as requested by the HoM and agreed with the inspected legal entity".	Practical considerations	van der Donck, Jeroen	Publish
68	3.4		24	Deletion	On the one hand, the ECB emphasizes the right of the institutions to communicate in the EU official language they choose. On the other hand, however it is asked to use English for communication. From our point of view, it is problematic if an inspected entity is asked by the inspection team to refrain from a legally anchored right, even if this is in the form of a request. Therefore this sentence should be deleted.	See detailed comment.	van der Donck, Jeroen	Publish