EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Template for comments

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

Institution/Company

European Savings and Retail Banking Group (ESBG)

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General comments

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	Amendment	We believe that 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.	[redacted]	Don't publish
2			2	Clarification	What would be the difference between internal model investigations (IMIs) within the scope of Article 12 SSM Regulation and IMIs conducted by the JST's, as the latter are not covered by this guide (according to the last sentence of the second paragraph on page 2)?	We consider that there may be a potential risk of overlapping and a double amount of work for the banks' teams. Any clarification would be appreciated.	[redacted]	Don't publish
3	1.2		5 and 6	Clarification	A supervisory decision is only needed for self-induced OSI and IMI but not for IMIs upon application, ESBG thinks that this aspect should be clarified.	It cannot be that the supervisor "decides" upon the question whether to execute an IMI which 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.	[redacted]	Don't publish

4	1.3		5	Amendment	The ECB's draft states that 'inspections are decided upon the basis of planning, which is adopted at least annually and adjusted during the course of the year'. ESBG would really appreciate higher levels of transparency in terms of the ECB's agenda (e.g. regarding specific recurrent inspections) for better internal organisation and resource allocation.	This would allow a better internal organisation and resource allocation.	[redacted]	Don't publish
5	1.3		6	Amendment	The ECB's draft states that "if deemed necessary, the scope and timeframe of the inspection can be changed during the inspection". ESBG considers a change of scope for previously announced missions highly problematic as this poses the risk of on-site inspections (OSIs) ending up as 'fishing expeditions' and it would operationally and administratively be very difficult to handle for the banks' teams.	From experience, ESBG members have noticed that the practical application of the principle of proportionality is subject to the judgement of individual heads of mission. The conclusion that has been drawn is that proportionality is sometimes insufficiently applied. More specifically, we would appreciate to be provided, for transparency reasons, with an argumentation on the choice of the subject of the OSI as well as its scope and size in connection with a bank's business model and risk profile. ESBG thinks that such an argumentation would enhance the comprehensiveness and rationale of the mission by the entity investigated and support effectiveness (and could provide the basis for a legal challenge of such mission, respectively its conclusions, as the case may be).	[redacted]	Don't publish
6	1.3		7	Amendment	The principle of "intrusive" is somewhat disturbing as "intrusion" has a negative connotation in our understanding. To put intrusion as a principle seems to be somewhat odd.	We suggest to reconsider the phrasing of "intrusive".	[redacted]	Don't publish
7	1.3		7	Amendment	Regarding the concept of 'forward looking': why should only future negative impacts, and not also positive impacts, be anticipated? We suggest rephrasing it to "[...] to anticipate possible future impacts".	Generally speaking, we find the word "intrusive" quite martial, as if banks were accused of wrongdoing, which is not, under normal circumstances, the trigger for an OSI.	[redacted]	Don't publish

8	1.4		7	Amendment	We fully respect the principle of independence of OSIs teams, but we would like to underline the importance of a well-functioning coordination of an OSIs team with a JST and their work schedule for the respective banks. In this context, ESBG would welcome to have at least one member of the JST in the OSIs team, to assist the general coordination effort between OSIs and the JSTs.	This would also allow the bank and the OSIs team to benefit from the in-depth knowledge of a supervised bank's JST. Furthermore, under normal circumstances, the ECB should ideally avoid that several inspections affecting the same department take place at the same time (e.g. simultaneous TRIM and IMI inspections affecting the same Credit Risk Models department). This would be highly appreciated by ESBG members.	[redacted]	Don't publish
9	1.6		8	Amendment	External consultants are often associated to OSIs missions. We would appreciate if the ECB could give banks more detailed evidence of their selection and vetting procedure of such external consultants (absence of conflict of interest with the supervised entity, stemming from revenues generated by prior or current work for the supervised entity or from the scope of the mission, trustworthiness of individual members and qualification of these, respect of professional secrecy, revolving door principle,...).		[redacted]	Don't publish
10	1.6		8	Clarification	We would appreciate a clarification that all persons authorised by the ECB in order to inspect the institution must sign a special confidentiality agreement/declaration that will be disclosed to the institution (or at least written confirmation of ECB that such agreements were signed).	The institutions have to observe all confidentiality requirements resulting from e.g. data protection law, securities law, and civil law aspects. They are not aware of any confidentiality agreements between ECB and third parties and do not have any contractual relationship with these third parties. Therefore, ESBG would appreciate a clarification that all persons authorised by ECB must sign a special confidentiality agreement/declaration that is also disclosed to the institution.	[redacted]	Don't publish
11	1.6		8	Amendment	Regarding composition of the inspection team, in our view one member of the JST needs to be member of the inspection team.	This would avoid duplications and double submissions.	[redacted]	Don't publish

12	1.4		9	Clarification	The case of a withdrawal of an application is not addressed: ESBG thinks that a 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, our members would find it very useful to receive it.	[redacted]	Don't publish
13	1.6		8	Amendment	Ad "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. ESBG believes that a formal letter with the identification details of the externals would be necessary (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.	[redacted]	Don't publish
14	2.1.		9	Amendment	On page 9, an overview of the 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.	We believe that 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 it 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).	[redacted]	Don't publish

15	2.1		9	Amendment	There is no specific reference to either the duration or the time allocation for each of the 8-step inspection process.	A formal time framework stating at least the average and maximum duration of inspections would be very valuable allowing a better internal planning (e.g. under normal circumstances, an average inspection can reach up to 25 weeks and each step of the process should last no more than x weeks).	[redacted]	Don't publish
16	2.1		9	Amendment	In ESBG's opinion, the commenting phase should be more clearly set out in the table.	As for institutions it is a very important phase, this would qualify for setting this phase specifically out in the table in 2.1.	[redacted]	Don't publish
17	2.2.1		10	Amendment	Ad ""preparatory phase"": is readiness = pre-application phase? What is the goal of this phase? In our view, 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 the 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. ".	ESBG 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. Furthermore, according to the current practice, an application for internal model approval can be subject to a pre-application phase in order to pre-asses 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 there should be 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).	[redacted]	Don't publish

18	2.2.1		10	Amendment	While we understand from the SSM Regulation that it is possible that OSIs are announced solely 5 days in advance, ESBG would like to stress that, under normal circumstances, it is highly appreciated to make such an announcement well ahead (e.g. a few weeks) of the beginning of an OSI.	This would make the entire OSI more effective.	[redacted]	Don't publish
19	2.2.1		10	Amendment	Notification of the commencement of the inspection: we propose 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. Regulation) and to the parent undertaking..	ESBG recommends 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.	[redacted]	Don't publish
20	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."), ESBG recommends 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 SPOC.	The creation of parallel communication channels should be avoided.	[redacted]	Don't publish
21	2.2.2		11	Amendment	Ad "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.	WIn this regard, ESBG proposes 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.	[redacted]	Don't publish
22	2.2.2		11	Amendment	"A senior representative of the inspected legal entity should attend the kick-off meeting. This should be either the CEO or a member of the executive board."	ESBG considers that each supervised institution should be responsible for choosing the suitable senior representative for the kick-off meeting as it is rather difficult, especially for big institutions, to manage the CEO's agenda or the agenda of any member of the executive board. In combination with the 5 days notification period, this could be challenging. Thus, assuring the attendance of a sufficiently "senior representative" to the kick-off meeting should be enough in order to meet all supervisory needs connected with the inspection.	[redacted]	Don't publish

23	2.2.2		12	Amendment	Regarding execution of the work programme: we believe that access to IT systems should be granted upon specific request in dedicated cases and not in general, if this is technically feasible; in any case read rights only.	The wording should be reformulated accordingly.	[redacted]	Don't publish
24	2.2.2		12	Amendment	In such a case, it would be useful that a bank's interviewee is also assisted by a second participant (as a protection measure towards the person being interviewed)	This would avoid "quid pro quos".	[redacted]	Don't publish
25	2.2.3		13	Amendment	A standardised thematic template for each kind of OSI would be very helpful so as to fulfil supervisory expectations in terms of data, documentation or any other kind of information requested ensuring a minimum quality and comparability level of data provided by institutions.		[redacted]	Don't publish
26	2.2.3		13	Clarification	"Since the draft report is not an official document..." This sentence is somewhat odd and unclear.	In our understanding "not an official document" is the wrong wording, it is a draft of an official document, right?	[redacted]	Don't publish
27	2.2.3		13	Amendment	Regarding reporting phase: ESBG believes that the draft report should be sent two weeks in advance – "few days" is not enough, and it does not really allow for adequate preparation. At least the time period should be specified, because it is essential for the inspected entity.	The wording should be reformulated accordingly.	[redacted]	Don't publish
28	2.2.3		13	Amendment	Regarding the opportunity for the inspected entity to provide written feedback to the draft report ("During the exit meeting, the HoM presents the outcome of the inspection which opens the opportunity for the legal inspected entity to provide written feedback within two weeks of receiving the draft ...") ESBG proposes setting the deadline from the exit meeting and not from receiving the draft. This is also in consideration of the fact that the relevant details are discussed during the exit meeting.	TIn our opinion, this would allow inspected entities an adequate preparation time for formulating their feedback.	[redacted]	Don't publish
29	2.2.3		13	Amendment	Regarding reporting phase: report "can" be shared with the parent. We propose the following rewording: "should" be shared with the parent in any case.	The wording should be reformulated accordingly.	[redacted]	Don't publish

30	2.3.1		15	Amendment	The findings classification currently used (F1-F4) is not mentioned at all. We believe that 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.	ESBG 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.	[redacted]	Don't publish

31	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.	ESBG proposes 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 to us how chapter "follow-up-phase" (2.3.2) interrelates to the different typing in chapter 2.3.1. We believe this should be clarified in detail.	[redacted]	Don't publish
32	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.	In ESBG view, this would allow inspected entities to adequately prepare an action plan and corrective steps.	[redacted]	Don't publish

33	2.3.2		16	Clarification	ESBG would like to stress that details on follow-up in view of findings management are missing.	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 the closure process is 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. For 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. In our view, 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	[redacted]	Don't publish
34	2.3.2		16	Amendment	ESBG recommends 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.	In our view, this would confer a higher degree of legal certainty to the inspected entities.	[redacted]	Don't publish

35	2.3.2		16	Amendment	Subsequently to the comment above, we believe that 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.	[redacted]	Don't publish
36	3.1.		17	Amendment	Right to request any information or document: The documents should be requested generally in a written form.	In ESBG's opinion, the requests for documents should be done in the written form to minimise possible misunderstandings.	[redacted]	Don't publish
37	3.1.		17	Amendment	On-site inspection teams should fully rely on information available delivered to the JST, in order to avoid any duplication of requests. In general we believe there should be full exchange of information between the on-site team and the JST. At least one member of the JST should be part of the on-site team.	This would avoid duplications and double submissions.	[redacted]	Don't publish
38	3.1		17	Amendment	In ESBG's opinion, it should be clarified that the principle of proportionality sets limits for any data/information request. First and foremost, in cases where relevant information is already available within another unit of the ECB or a NCA, this information should be used and a request from the institution should be avoided.	Various extensive information requests already impose an enormous administrative burden for the institutions and should therefore be limited to the essential minimum.	[redacted]	Don't publish
39	3.1		18	Amendment	Regarding the exchange of information with the statutory auditors, we suggest amending the wording "within the scope of the inspection". In greater detail, we propose to phrase it along the lines of "to the extent that such information of points of view are included in the scope of the external audit".		[redacted]	Don't publish
40	3.1		18	Deletion	"Take copies of or extracts from these documents, if not provided electronically" is a point about which ESBG is very sceptical from an internal governance and data protection point of view. Furthermore, it should be noted that electronic transfers to external e-mail addresses could and should only include anonymised data.		[redacted]	Don't publish
41	3.1		19	Amendment	In our opinion, the operating and business constraints of the entity being inspected need to be taken into account as well.		[redacted]	Don't publish

42	3.3.1		20	Amendment	Regarding the possibility to comment: ESBG believes that 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 misinterpretation by the on-site team, a kind of quality assurance function.	The wording should be reformulated accordingly.	[redacted]	Don't publish
43	3.3.1		21	Clarification	Why are there no closing meetings in the case of type 2 instruments?	In ESBG view, 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.	[redacted]	Don't publish
44	3.3.2		21	Amendment	ESBG suggests replacing the wording "the inspected legal entity's senior management and employees should strive to ensure […]" by “bank teams and OSIs teams should strive to ensure a professional and courteous attitude towards each other throughout the inspection."		[redacted]	Don't publish
45	3.3.3		22	Amendment	ESBG believes that 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.	[redacted]	Don't publish
46	3.3.3		22	Amendment	In ESBG’s view, the creation of folders for the inspection teams in the inspected entity´s IT system should also be avoided.	This does not reflect the current practice.	[redacted]	Don't publish
47	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".	[redacted]	Don't publish

48	3.3.3		22	Amendment	Regarding internet access, “several” e-mail boxes?	The access to internet and technical set-up of e-mail addresses should be made subject of alignment with the institution. We would kindly invite you to reformulate the wording accordingly.	[redacted]	Don't publish
49	3.3.3		23	Amendment	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 SPOC.	For organisational reasons this should be the responsibility of the inspected entity.	[redacted]	Don't publish
50	3.3.3		23	Deletion	Regarding SPOC: no limitation of SPOC’s presence in any meetings ("However, whenever the HoM deems it necessary, any team member should have the possibility to contact any other staff of the inspected legal entity directly and hold a meeting without the contact person being present."). We recommend deletion of this provision.	ESBG strongly disagrees that the On-Site Team can define the counterparties and therefore exclude e.g. the SPOC from a meeting. The function of the SPOC is the overall coordination, therefore the SPOC has to be invited to each meeting. Everything else would lead to confusion and creation of parallel communication channels during the inspection.	[redacted]	Don't publish