



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Template for comments

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

Institution/Company

French Banking Federation

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General comments

The French Banking Federation (FBF) welcomes the opportunity to share its comments with the ECB on its guide to on-site inspections and internal model investigations. Indeed, this consultation has been expected by the banking industry since the SSM implementation. The FBF also welcomes the recognition of the contradictory principle between the ECB and the audited entities.

Nevertheless, this guidance shall include some precision on the follow-up and the closing of recommendations (timing, responsibilities, resources,...) in order to make the process more efficient for all stakeholders.

Besides, the coordination between on-site and off-site inspections' teams should be improved. This is an important topic in order to avoid duplication of reporting requests, but also to better allocate resources (ECB and banks) and avoid duplication between thematic or deep dive reviews performed by off-site teams (JSTs) and on-site missions.

Last but not least, the banking industry expects from the final guidance a greater formalisation regarding on-site inspections' milestones (i.e. minimum answer delay, scope of intervention, level of confidentiality in case of external consultants).

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	Introduction		2	Clarification	Introduction - "It does not cover Joint Supervisory Teams IMIs [...]: could you explain the concept of "Joint Supervisory Team IMIs", please?"	Article 12 of the SSM Regulation 1024/2013 clearly defines the scope of on-site inspections, so what is the link between this definition and the concept of Joint Supervisory Teams IMIs?	FBF	Publish
2	Introduction		2	Clarification	Introduction - "[...] and (iii) other legal entities which are within the scope of inspections because they have a business relationship with the supervised entity.": it could be relevant to directly mention the list of entities within the scope of the SSM Regulation.	Article 10.1 of the SSM Regulation 1024/2013 reminds the list of entities for which the ECB can require information through its on-site inspections.	FBF	Publish
3	1	1.3	6	Amendment	Objective of inspections - "Inspections are conducted within a predefined scope and timeframe": the scope of the on-site inspections should be more defined and detailed in the notification letter but also during the kick-off meeting.	Article 143 of the SSM Regulation 468/2014 mentions that the subject matter and the scope of the on-site inspections have to be specified.	FBF	Publish
4	1	1.3	6	Amendment	Objective of inspections - "However, if deemed necessary the scope and timeframe of the inspection can be changed during the inspection": should the scope of the inspection need to be changed during the inspection, it could only happen following another ECB decision and not at the HoM's discretion. This change should have to be formalised in writing.	Article 143 (2) of the SSM Regulation 468/2014 mentions that the on-site inspections are based on an ECB decision.	FBF	Publish

5	1	1.6	8	Amendment	<p>Composition of the inspection team - "The inspection team may also include external consultants.": if the recourse to external consultants is necessary, the banking industry would like that external consultants represent no more than 50% of the inspection team to ensure the level of competences and the coherence into the audit methodology.</p>	<p>This request aims at taking into account the legitimate claims of the banking industry relative to the business secrecy and the legal issues to respect confidentiality. The confidentiality agreement between the ECB and the specific teams of the mission should be sent to the bank for the audit trail. We consider that in some cases, the recourse to external consultants can be detrimental to the bank; as a matter of fact, depending on the scope of the mission, if they have access to sensitive business data, strategic processes or proprietary knowledge; there is no way to guarantee that such information is not in one way or another used by the consultants in the context of other missions performed for competitors. We would like to ask the ECB to adopt a strict and clear policy to frame the use of external consultants on on-site mission. This policy should at least provide that:</p> <ul style="list-style-type: none"> - the ECB should inform the inspected bank sufficiently in advance of its intention to use external consultants on a given mission - the ECB should refrain to use external consultants for OSI covering business sensitive areas or highly proprietary processes if the inspected bank opposes such use with legitimate reasons - in cases where external consultants form part of the inspection team, the inspected bank should be given a copy of the confidentiality agreement signed between the ECB and the consultants, and the HoM shall make his best efforts to ensure that sensitive information are adequately protected according to the inspected bank's demands. 	FBF	Publish
6	1	1.6	8	Amendment	<p>Composition of the inspection team - the banking industry would like to amend the wording in the following way: "The number of inspectors is defined at the beginning of the mission and should remain stable during the mission in order to facilitate the organisation of the audited teams. Unless the inspection is driven by exceptional circumstances, the size of an inspection team should be limited to a maximum of 6/7 inspectors."</p>	<p>It is difficult for the audited teams to face with inspection team characterized by a variable size. When the number of inspectors increases, the demands increase in the same proportion, while the audited teams have to continue to ensure their business as usual.</p>	FBF	Publish

7	1	1.7	8	Amendment	Cooperation - "Inspections decided upon by the ECB take into account any cooperation arrangements or agreements [...]": the wording may encompass the need to consider local regulation interfering with the inspection process.	The parent company / central body should not have to collect information at the local level because of potential banking secrecy or personal data issues.	FBF	Publish
8	2	2.1	9	Clarification	Overview of the different steps of an inspection: more detailed timelines on the different phases would be welcome in the final guide.	Indeed, detailed timelines could facilitate the organisation of the mission for the members of the audited entity.	FBF	Publish
9	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, before the inspection is due to commence [...]": the wording should be amended with 10 working days instead of 5.	The 5-day notification period of an inspection seems to be insufficient except for extraordinary circumstances. Indeed, this period is too short to internal mobilisation of teams, the logistical implementation (rooms, IT system,...) and an appropriate answer to the first request for information.	FBF	Publish
10	2	2.2.1	10	Clarification	Notification of the commencement of an inspection - "The inspected legal entity is notified through a letter from the ECB to the inspected legal entity's chief executive officer (CEO)": could it be precised that the notification circuit put in place initially is maintained throughout the process?	This aims at ensuring the readability of the process.	FBF	Publish
11	2	2.2.1	10	Deletion	Notification of the commencement of an inspection - "If the inspected legal entity is the subsidiary of a parent located in a participating Member State, the notification is generally sent to the parent [...]" - could the term "generally" be deleted and add "central body" after "parent", please?	It remains of great importance to inform the parent company about any on-site inspection performed in one of its subsidiaries. More generally, a harmonisation in the notification to the parent company/subsidiary or central body/affiliate could be really appreciated.	FBF	Publish
12	2	2.2.1	10	Amendment	First request for information - "The inspected legal entity may be asked to provide documents or information mentioned in the first request for information [...]": an e-mail acknowledgment may be required for all ECB communications to be sure that all the documents have been received by the audited members of the entity.	Indeed, some documents are not received due to the size of the attached files.	FBF	Publish
13	2	2.2.2	11	Amendment	It may be mentioned that on-site inspections can be performed by using the maximum of sources of information (for example: shelf-registration documents, former on-site inspections, thematic reviews...)	By capitalising on such sources of information, it enables to save time during the on-site inspection. There is no reference to coordination with the other ECB's teams. The Head of Mission should have internally preparatory meetings in order to avoid redundant demands.	FBF	Publish

14	2	2.2.2	11	Amendment	During the kick-off meeting, the HoM should systematically provide to the audited entity an approximative duration of the on-site inspection (at least until the holding of the exit meeting).	More generally, this point takes part to the need of more information about the different milestones.	FBF	Publish
15	2	2.2.2	11	Clarification	Kick-off meeting - "[...] the HoM contacts the relevant person in the entity [...]: could you provide much precision on the way to identify "relevant persons", please? Is there a difference with "the main contact persons for each topic" mentioned below?	It would be appreciated to have some clear criteria or to define a clearer process of identification of such persons.	FBF	Publish
16	2	2.2.2	11	Deletion	Kick-off meeting - "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": the banking industry would like to delete the sentence "This should be either the CEO or a member of the executive board".	For significant banking groups, it could be difficult to ask the CEO or a member of the executive board to attend such meetings. This point is directly linked to that referring to ID35.	FBF	Publish
17	2	2.2.2	12	Amendment	Execution of the work programme - "Over the course of the investigation phase, the inspection team has the possibility to hold status meetings with the inspected legal entity [...]: the status meeting should be formalised (at least once during the inspection)	The banking industry considers that it is important to schedule a formalised meeting with the members of the audited entity to avoid misunderstandings at the end of the inspection. It could also avoid to mislead inspectors at the end of the diagnostic period.	FBF	Publish
18	2	2.2.3	13	Amendment	Reporting phase - "The draft report should be sent a few days in advance to enable the inspected legal entity to adequately prepare for the meeting.": it could be appropriate to replace "a few days" by "10 working days" and specify that the meeting is the exit meeting.	A period of 10 working days to send the HoM draft report before the exit meeting to the audited members of the entity could ensure an appropriate answer of the latter.	FBF	Publish
19	2	2.2.3	13	Amendment	Reporting phase - "During the exit meeting, the HoM presents the outcome of the inspection which opens the opportunity for the inspected legal entity to provide written feedback within two weeks of receiving the draft": could the wording be amended by "Within 10 working days after the exit meeting [...]", please?	Such amendment let the possibility to comment on the facts and findings of the draft report but also those addressed during the exit meeting.	FBF	Publish
20	2	2.2.3	13	Deletion	Reporting phase - "If the inspected legal entity is the subsidiary of a parent located in a participating Member State, the draft report can also be shared with the parent.": could it be possible to replace the term "can" by "should", and to add "affiliate" after "subsidiary" and "central body" after "parent", please?	Shall an on-site inspection be performed with a subsidiary / affiliate, it is important to inform the parent company / central body with a copy of the draft report.	FBF	Publish

21	2	2.2.3	13	Amendment	Reporting phase - the banking industry would like to be informed of the severity of the different statements / conclusions, so that the credit institutions.	The banking industry could therefore adapt its priorities / resources.	FBF	Publish
22	2	2.2.3	14	Amendment	Figure 2 / Steps of the reporting phase - 3) Draft report is sent to the institution: could it be possible to amend and add "10 working days ahead the exit meeting", please? 8) Could it be possible to add that "draft follow up letter is sent to the institution 10 working days ahead the closing meeting", please?	This time period of 10 working days is necessary for the institution to read the draft report / draft follow up letter and make comments before the exit / closing meeting, respectively.	FBF	Publish
23	2	2.3.1	14 to 16	Clarification	Inspection outcomes - it would be useful that the ECB sets deadlines between the different stages: - Draft follow-up letter / draft decision after the exit meeting + 1 month maximum for instance - Inspected entity's response to draft follow-up letter /draft decision + 1 month for instance after receipt - Final follow-up letter or notification of the ECB supervisory decision at the exit meeting + 3 months maximum for instance	Thanks to these maximum deadlines, it could be avoided to send request for remedial actions (recommandations or decisions) 6 to 12 months after the end of the inspection and consequently to inform board members, even though corrective actions have been already put in place.	FBF	Publish
24	3	2.3.2	16	Amendment	The follow-up phase - the wording could be amended by mentioning that it deals with quaterly reporting requirements about recommendations closed before or during the reporting period.	The recommendations with a maturity beyond the reporting date would be naturally excluded from the scope.	FBF	Publish
25	3	2.3.2	16	Clarification	Follow-up of the inspected legal entity's action plan - "If the inspected legal entity has not implemented the agreed action plan sufficiently well or in a timely manner, the ECB has the power to enforce supervisory measures.": could it be possible to have more details about the notion of "power to enforce supervisory measures", please? What are the outcome if an audited entity does not reply to one recommendation?	More generally, this point raises the following question: is it possible for an audited entity not to reply to a proposal of recommendation?	FBF	Publish
26	3	3.1	17	Amendment	Inspection team's supervisory and investigatory powers : it could be useful to mention the question relative to the translation of documents. The latter should be translated by ECB members, not by the members of the audited entity.	All translation issues should be covered by ECB members or the ECB should be aware to include people speaking the same language as the audited entity.	FBF	Publish

27	3	3.1	17	Amendment	<p>Right to request any information or document - "Therefore the inspection team has the right to request from the inspected legal entity any information, explanation, justification": it could be very useful to precise that when the inspected legal entity supervises foreign subsidiaries which are not directly supervised by the ECB, the supervising legal entity is expected to provide documents, explanations that are related to its supervising role, not documents from the local subsidiary that are not required to be reviewed by the supervising entity within its supervisory role.</p>	<p>If the ECB wants to inspect a local subsidiary, it should go to the subsidiary and inform / request authorisation from the local supervisor in line with § 1.7 "Cooperation". The headquarter entity cannot organise a full remote audit of the foreign subsidiary.</p>	FBF	Publish
28	3	3.2	18	Amendment	<p>Inspection team's practices - "The inspection team is to act in an ethical and professional manner in accordance with applicable laws, regulations and professional procedures. It is to take into account the operating constraints of the entity being inspected, insofar as this does not hamper the investigation process." - generally speaking, the guidance may be amended by "the on-site inspection should take into account the workload as well as the timelines and the costs induced, so that the inspection can be performed in a reasonable way".</p>		FBF	Publish
29	3	3.2	19	Clarification	<p>Professional secrecy - "[...] except in the cases contemplated by the law.": those cases may be listed to remind the different cases targeted by the professional secrecy.</p>	<p>This precautionary measure aims at protecting banks against legal and operational risks.</p>	FBF	Publish
30	3	3.2	19	Amendment	<p>Compliance with the internal rules of the inspected legal entity - "[...] to the extent compatible with the inspection's needs.": it may be important to mention that the inspection team takes into account the internal rules of the audited entity in a binding way.</p>	<p>This precision should be compulsory when the internal rules of the audited entity are based on legal and regulatory requirements.</p>	FBF	Publish
31	3	3.3.1	20	Amendment	<p>Need to be informed of the inspection outcomes - "During the inspection, the senior management of the inspected legal entity may ask the HoM to have one or several interim meetings on the progress of the inspection or on any related topic.": could the wording be amended in the following way? "During the inspection, <i>the HoM shall, upon request of the senior management of the inspected legal entity, grant one or several interim meetings to review the progress of the inspection or any related topic.</i>"</p>	<p>The purpose of this amendment is to ensure a smooth cooperation between the inspected entity and the inspectors.</p>	FBF	Publish

32	3	3.3.1	20	Amendment	Need to be informed of the inspection outcomes - "The inspected legal entity can discuss the draft follow-up letter during the closing meeting, chaired by the JSTC and attended by the HoM.": could the wording be amended in the following way? "The inspected legal entity may also formalise in writing its observations on the draft follow-up letter (e.g. : changes in the implementation deadlines, clarification of the expected remedial actions, etc.)"	It is a great importance to formalise comments and observations in writing, not only orally.	FBF	Publish
33	3	3.3.1	20	Amendment	Possibility to comment on the facts and findings: the relative importance of findings identified by the inspectors should be visible.	The banking industry could therefore adapt its priorities / resources as for the point identified in ID21.	FBF	Publish
34	3	3.3.3	22	Amendment	Availability of the inspected entity's staff - "[...] in a timely manner without any necessary delays.": this sentence may be amended in the following way "Inspected entity's constraints duly explained and evidenced should however be taken into account by inspection."	Some requests could be time-consuming and members of the inspected entity have also to ensure their business as usual.	FBF	Publish
35	3	3.3.3	23	Amendment	Organisation of meetings - "These counterparts could be internal or external stakeholders at any level, particularly consultants or outsourced service providers.": could it be precised at the end of the sentence "when legally possible"?	As already mentioned, the recourse to external consultants shall remain compatible with legal constraints.	FBF	Publish
36	3	3.3.3	23	Amendment	Seniority of the inspected entities' representatives - "Their presence is expected, in particular, during the kick-off meeting, as well as at meetings at which the inspection team's findings and the JSTC's recommendations are presented, i.e. during the exit and closing meetings.": the wording may be amended in the following way "Their presence, <i>or the presence of their appropriate representatives</i> , [...]"	It could be difficult for the CEO to always attend such meetings but if he cannot attend, it is important to guarantee the presence of the appropriate representatives.	FBF	Publish

37	3	3.3.3	23	Amendment	<p>Appointment of point of contact - "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.": this sentence may be completed in the following way "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. <i>In such cases, the HoM shall ensure in a timely manner that the contact person is duly informed of the contact which has been organised</i>"</p>	<p>Nevertheless, it would be of great importance to be sure that the contact person is used to discuss with the ECB. If not, this person should be supported by a senior member of the audited entity (for example, a member of the legal or compliance department).</p>	FBF	Publish
38	3	3.4	24	Amendment	<p>Langage of the inspection report - "[...] the ECB will provide a version of the report in the language selected by the entity.": the term "will" could be replaced by "should". The banking industry would also add the following sentences: "The full version of the report should be translated and not only selected chapters. The final follow-up letter or decision should also be written in the language selected by the entity, in accordance to the agreed language regime."</p>	<p>Moreover, could it be possible to have a version of the report in a different langage as for the consolidated group in some specific cases like joint-ventures (in addition to the English version)?</p>	FBF	Publish