



**EUROPEAN CENTRAL BANK**  
BANKING SUPERVISION

## Template for comments

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

**Institution/Company**

German Banking Industry Committee (GBIC)

**Contact person****Mr/Ms**

Mr

**First name**

GBIC

**Surname**

German Banking Industry Committee

**Email address**

[risikomanagement@bvr.de](mailto:risikomanagement@bvr.de)

**Telephone number**

0049 228 509-424

Please tick here if you do not wish your personal data to be published.

**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	Introduction		3	Proposed amendment	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.	GBIC	Publish
2	Introduction		3	Clarification	In our understanding also securities law is a major topic that remains within the responsibility of the participating Member States. Therefore, it should be supplemented.	See detailed comment.	GBIC	Publish
3	1	1.2	5	Clarification	The decision making process for internal model inspections does not specify a maximum amount of time that could pass between approval of material change or findings closure and start of the following on-site inspection. The guide should specify a maximum date for starting the audit.	Banks are experiencing delay in material change requests implementation due to excessive time space needed for ECB to schedule on-site inspections. Institutions could not implement material changes until the closure of the post-implementation audit. This would lead to the risk that the change become outdated before implementation.	GBIC	Publish
4	1	1.3	6	Proposed amendment	A change of scope for previously announced missions is 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.	See detailed comment.	GBIC	Publish

5	1	1.5	7	Clarification	<p>The section "Role of the Head of Mission" states that "The HoM is the main contact person for the inspected legal entity on the topics reviewed during the inspection" The section also explains the interaction of the Head of Mission with the JST.</p> <p>What is not addressed in this section (nor elsewhere in the document) is, what interaction the inspected legal entity has with the JST, and what channel of escalation exists above the Head of Mission.</p>	<p>What interaction does the inspected legal entity have with the JST and what channel of escalation exists above the Head of Mission?</p>	GBIC	Publish
6	1	1.5	7	Proposed amendment	<p>The section explains the role of the Head of Mission and addresses the event of the Head of Mission being replaced. We have experienced examples of a Deputy Head of Mission being named at the start of an on-site inspection and we support this, as it would ease the transition in the case that the Head of Mission becomes unavailable.</p> <p>We suggest to revise the following addition: "The appointment of a Deputy Head of Mission at the start of an on-site inspection is encouraged in order to support an effective handover if necessary"</p>	<p>We believe the appointment of a Deputy Head of Mission would support the smooth running of the on-site inspections.</p>	GBIC	Publish
7	1	1.6	8	Clarification	<p>We would appreciate a clarification that all persons authorized 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 a written confirmation of ECB that such agreements were signed).</p>	<p>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, we would appreciate a clarification that all persons authorized by ECB sign a special confidentiality agreement/declaration that is also disclosed to the institution.</p>	GBIC	Publish
8	1	1.6	8	Clarification	<p>According to par. 1.6, the inspection team can be composed of consultants. From our point of view, it is important that consultants should be adequately qualified, e.g. experienced certified accountants, to guarantee a high level of quality.</p>	<p>See detailed comment.</p>	GBIC	Publish

9	1			Clarification	We are missing some statements how the inspectors will legitimize to enter the company for onboarding issues, e.g. needed personal data and documents for company identity cards and system rights.	See detailed comment.	GBIC	Publish
10	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.	See detailed comment.	GBIC	Publish
11	2	2.2.1	10	Proposed amendment	The section "Notification of the commencement of an inspection" states: "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 might not give enough time to the inspected legal entity to prepare the inspection in an appropriate manner, i.e. to provide operational or technical setups to fulfil the supervisor's expectations concerning i.e. professional working conditions (see 3.3.2). Potential disruptions for the start of the inspection might occur. Therefore, It should be in any case at least four weeks to prepare.	Tight timeframes for setting up all required operational or technical issues is on 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).	GBIC	Publish
12	2	2.2.1	10	Proposed amendment	The section "First request for information" mentions "data tapes with portfolio information". We encourage the Head of Mission to place such large data requests prior to the start of the on-site visit.  We suggest to add a passage: "The Head of Mission should make large data requests (e.g. data tapes with portfolio information) as much as possible prior to the start of the on-site audit. The Head of Mission is encouraged to discuss such large requests with the inspected legal entity to ensure an adequate and timely delivery."	Large date requests are time-intensive. It is helpful to discuss what is required and what can practicably be delivered before the audit. This also allows more time to complete such large requests.	GBIC	Publish
13	2	2.2.1	11	Proposed amendment	The comment: "The JSTC, other (...) DG MS IV may attend the kick-off meeting" is positive and we would encourage this.  We suggest to revise as: "The JSTC, other (...) DG MS IV will attend the kick-off meeting"	We are in favor of close interaction and information exchange between the Head of Mission, the JST and DG IV.	GBIC	Publish

14	2	2.2.2	11	Proposed amendment	<p>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.</p> <p>We suggest to revise as:          "An appropriately senior representative of the inspected legal entity should attend the kick-off meeting."</p>	<p>If the guide wants to address seniority aspects (CEO or board member), it might also be the case for heads of divisions. 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.</p>	GBIC	Publish
15	2	2.2.2 / 3.3.3	11, 23	Clarification	<p>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.</p>	See detailed comment.	GBIC	Publish
16	2	2.2.2	12	Clarification	<p>Regarding to "Sampling/case-by-case examinations": The use of methods of extrapolation could lead to misinterpretation or other problems. We recommend the SSM to get in contact with the bank to discuss the results of extrapolations.</p>	The use of extrapolations could lead to biased results due to the inherent logic of extrapolations.	GBIC	Publish
17	2	2.2.2	12	Proposed amendment	<p>On "Targeted interviews", the draft states "significant interviews are attended by at least two inspectors". 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 in order to avoid "quid pro quos").</p>	See detailed comment.	GBIC	Publish
18	2	2.2.2	12	Proposed amendment	<p>The comment: "the inspection team has the possibility to hold status meetings with the inspected legal entity at working level to discuss preliminary facts and findings" is positive and we would encourage this.</p> <p>We suggest to revise as:          "the inspection team is encouraged to hold status meetings with the inspected legal entity at working level to discuss preliminary facts and findings."</p>	<p>We are in favor of a constructive dialogue between the inspection team and the inspected legal entity throughout on-site audit.</p>	GBIC	Publish

19	2	2.2.3	13	Proposed 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)). In order to enable the inspected entity to prepare adequately, and due to the increasing complexity of the regulatory requirements, the draft report should be made available at least two weeks before the meeting.</p> <p>We suggest to revise as:  "The draft report should be sent far enough in advance, as a minimum two weeks before the exit meeting, to enable an adequate meeting preparation by the inspected legal entity."</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. 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. Clear and transparent communication of deadlines/ timelines should be a commitment for all involved parties.</p>	GBIC	Publish
20	2	2.2.3	13	Clarification	<p>In our experience, the NCAs involved in the on-site-inspections appreciate a clear decision of the institution relating to the language aspects (in order to calculate their inspection period adequately) rather than a case-by-case decision of the institution.</p>	<p>See detailed comment.</p>	GBIC	Publish
21	2	2.2.3	13	Clarification	<p>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>See detailed comment.</p>	GBIC	Publish
22	2	2.2.3	13	Clarification	<p>The comment: "The final report is then sent to the relevant inspected legal entity" is positive and we would encourage this. We are in favor of the final reporting being sent immediately to the inspected legal entity upon completion.</p>	<p>In our experience, the final report is sent to the inspected legal entity shortly before the Closing Meeting by the ECB.</p>	GBIC	Publish
23	2	2.2.3	13	Clarification	<p>We would rephrase "inspection findings" with "preliminary inspection findings" for a better understanding.</p>	<p>Findings are finalized only in the draft follow up letter / draft decision, then it would be clearer to distinguish between "preliminary finding" (before Institution's feedback) and "finding" (revised after Institution's feedback).</p>	GBIC	Publish

24	2	2.2.3	13	Clarification	We would appreciate the introduction of a maximum amount of time for the delivery (from ECB to Institution) of the Final Report - after ECB received Institution's feedbacks. The guide should specify the maximum time (e.g. 2 months) between the closing meeting and the final follow up letter sent to the inspected legal entity.	Timeline is not balanced: Currently only Institutions have strict due dates within the process. Especially for on-site inspections following a material change request, it would be meaningful to set a maximum amount of time for ECB to conclude its internal process. This would allow the Institution to accurately plan the resources, IT environments and processes impacted by the change.	GBIC	Publish
25	2	2.3.1	14	Proposed amendment	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.	ECB requires specific actions to be taken by the institutions within a specific timeframe and expects remedy. In case the institution will not fulfil 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.	GBIC	Publish
26	2	2.3.1	14	Clarification	The comment: "The closing meeting, arranged and chaired by the JSTC, is also attended by the HoM" is positive and we would encourage this. However, in our experience the Head of Mission generally does not attend the Closing Meeting.	We would encourage the Head of Mission to attend the Closing Meeting (but this is generally not currently the case).	GBIC	Publish
27	2	2.3.1	15	Clarification	Referring to "(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).	See detailed comment.	GBIC	Publish

28	2	2.3.2	16	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 updates from the inspected legal entity. Following these updates a review is performed by the regulator. Past experienced showed that feedbacks from the regulators to the inspected legal entity are delayed. These feedbacks were received only after the interim deadline/ 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.</p>	GBIC	Publish
29	3	3.1	17	Clarification	<p>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 or a NCA this information should be used and a request from the institution should be avoided.</p>	<p>Various extensive information requests impose already now an enormous administrative burden for the institutions and should therefore be limited to the essential minimum.</p>	GBIC	Publish
30	3	3.1	18	Amendment	<p>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".</p>	<p>See detailed comment.</p>	GBIC	Publish
31	3	3.1	18	Clarification	<p>The section "Right to ask NCAs for assistance in event of opposition" explains the Head of Mission's escalation channels.</p> <p>As in "par. 1.5 / p7 / "Role of the Head of Mission (...)", what is not addressed in this section (nor elsewhere in the document) is what channel of escalation exists for the inspected legal entity.</p>	<p>What channel of escalation exists for the inspected legal entity?</p>	GBIC	Publish
32	3	3.2	18	Proposed amendment	<p>The comment: "[the inspection team] is to take into account the operating constraints of the entity being inspected" is positive and we would encourage this. To further encourage this we would point to "par, 2.2.1 / p10 / Preparatory phase...". Receiving large data requests ahead of the on-site inspection will improve the conduct of inspections</p>	<p>We encourage Head of Mission to consider the operating constraints of the entity being inspected and to make large data requests ahead of the start of such inspections as much as possible.</p>	GBIC	Publish



33	3	3.2	19	Proposed amendment	We would insist on a written declaration of ECB that all persons authorized by ECB or NCA (not being employees of any authority) signed such confidentiality agreements/declarations	The institutions are obliged to comply with data protection and confidentiality standards and have to ensure that these standards are also observed when information will be provided to third parties. However, as the institutions themselves do not have a contractual relationship with these third parties authorized by ECB, they must otherwise ensure compliance with the mentioned confidentiality and data protection standards.	GBIC	Publish
34	3	3.3.1	20	Clarification/	The comment: "These comments should focus on the executive summary and key findings" is overly restrictive. If the inspected legal entity has the right to comment on the draft report, that right must extend to the entire draft report and not be limited to the executive summary and key findings. This is particularly important as the basis for the executive summary and key findings is contained in the detail of the report.	The inspected legal entity should not be restricted on what portions of the draft report it may comment on.	GBIC	Publish
35	3	3.3.1	21	Clarification	The comment: "The closing meeting, chaired by the JSTC, is attended by the HoM" is positive and we would encourage this. However, in our experience the Head of Mission generally does not attend the Closing Meeting.  (Same issue as par, 2.2.1 / p11 / "Preparatory phase...")	Interim meetings should be an opportunity to exchange views between the Head of Mission and the inspected legal entity.	GBIC	Publish
36	3	3.3.1	21	Clarification	The comment: "The results of the inspection are provided to the inspected legal entity through a final report which is signed by the HoM and sent to the inspected legal entity (...) by the ECB" differs from the comment in par, 2.2.3 / p13 / "Reporting phase".  The comment: "(...) The final report is then sent to the relevant inspected legal entity...", which implied that the Head of Mission send the final report to the inspected legal entity following its completion. As in (new – see above), in our experience the final report is first sent to the inspected legal entity shortly before the Closing Meeting by the ECB.	We are in favor of the final reporting being sent immediately to the inspected legal entity upon completion.	GBIC	Publish

37	3	3.3.2	21	Clarification	We are surprised that the guide explicitly mention the need of being courteous towards the inspection team as this is a matter of course and we expect that it is practiced from both sides.	See detailed comment.	GBIC	Publish
38	3	3.3.2	21	Clarification	How should the institution preserve the required confidentiality in case the inspected entity is a subsidiary remains unclear?	See detailed comment.	GBIC	Publish
39	3	3.3.3	22	Proposed amendment	We understand the need that requests from the inspection team are answered in a timely manner. But we expect also understanding from the regulatory authorities, that this supervisory requirement is hard to fulfil 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.	See detailed comment.	GBIC	Publish
40	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 possibly be important to the inspection team. We suggest to delete this statement.	See detailed comment.	GBIC	Publish
41	3	3.3.3	22	Clarification	Data exchange – transfer of customer-specific information and entire portfolios: which data can be released and with which transmitting media shall this take place? Use of data rooms like Brainloop?	See detailed comment.	GBIC	Publish
42	3	3.3.3	23	Proposed amendment	See comment to par. 2.2.2, p. 11. We suggest to revise as: "An appropriately senior representative of the inspected legal entity should attend the meetings."	See detailed comment.	GBIC	Publish

43	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 manner.	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 manner.	GBIC	Publish
44	3	3.3.3	23	Proposed amendment	The comment: "is always available" is unrealistic and would violate labor laws in most jurisdictions.  We suggest to revise as: "is expected to be readily available during business hours".	It is not realistic to expect the contact person to be "always available".	GBIC	Publish
45	3	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 - and not for the first time - 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. Notwithstanding this, the institutes are under pressure to renounce their language and to use English, in order to make a good impression on the inspection team and to appear cooperative. Therefore, this sentence should be deleted.	See detailed comment.	GBIC	Publish