

## **AEB's comments to ECB's draft guide to on-site inspections and internal model investigations.**

AEB welcomes the approach the ECB has adopted by engaging with the banking industry on a variety of topics, and we take the opportunity to comment on this draft guide on on-site inspections and internal model investigations.

As a brief summary, the two main aspects where room for improvement has been observed are legal certainty and proportionality.

Legal certainty essentially pertaining: (i) the legal entity that will be subject to inspection and, therefore, notifications; (ii) time-frames and deadlines to which requests for information, reports and meetings will be subject during an inspection process; (iii) legal status and effects of non-binding recommendations/letters; and (iv) redress procedures available for the institution.

Proportionality most importantly concerning the avoidance of requests for information not directly related to the subject matter of an inspection or information that has already been provided to JSTs.

Our comments reflect the experience of our member banks built through a considerable number of inspections that have tackled a large range of topics with diverse approaches during the past three years. This paper is divided into two sections. The first one refers to general issues focused on suggesting improvements to the inspection processes and procedures; aspects such as the improvement of the preparatory phase or the need for a better coordination of the OSI team and the JSTs are of utmost importance. The second one comments on specific points referenced in the draft guide.

### **General comments**

As general rule, transparency, homogeneity, proportionality, and effectiveness shall be the cornerstones ensuring that inspections are performed to the mutual satisfaction of both supervisors and banks. In order to contribute to build a more solid and transparent framework that enriches the knowledge of the process, we would like to highlight the following aspects:

- i. **Transparency of the inspection process** – In order to ensure from the very beginning of the process full understanding and collaboration on an inspection, banks should receive, along with the Official Letter of Announcement, an executive document providing an overview of the whole process of inspection, describing the scope and topics to be analysed, together with a tentative timeline with detailed milestones setting the details of the process through its different stages
- ii. **Scope of the inspection** – The scope of the inspection should be clearly defined from the beginning, and any change to such scope should follow an internal validation process, and a formal communication to the bank containing the reasons and justification for such change

One of the main flaws of the different OSI is the changing of the scope of the inspections during the investigation. It is true that once the exercise starts new things might be unveiled requiring therefore changes in the scope of the inspection. However, the scope should not be poorly or very broadly defined to as to lead the HoM to decide a new and more precise scope which is unrelated with the message given during the kick off meeting. This dynamic should be avoided beforehand.

- iii. **Dialogue with the inspection team.** AEB considers that a constant dialogue between the OSI Team and the bank is very positive in order to have a better understanding of the



process. The SSM has put a considerable focus on having an open dialogue with the institution not only during the investigation but also during the drafting phase and after the exit meeting which is a positive feed-back from our members. This open dialogue is the right step in order to understand the supervisory expectations.

iv. **Homogeneity of process** –Homogeneity at every stage of the process of an inspection shall be achieved by observing common rules that should apply with no exceptions to formal aspects, deadlines, and requests, so to minimize room for interpretation of Heads of Missions, which would ultimately lead to confusion and to not comparability across Europe. Also, there should be clear rules on how the JST should perform their follow-up work on the banks' action plans, in terms of calendar, tools, and criteria. And lastly, changes in the inspections teams during the course of an inspection should be minimized.

v. **Proportionality principle** –The SSM should strive a good balance between the need to conduct an inspection, and the consequences on banks in terms of work load and effective allocation of resources. Therefore, intrusiveness of an inspection should always be correlated to the materiality of the topic to be analysed an proportional to the aim of the inspection

The SSM should review that not only the documents/files requested are necessary for an appropriate execution of the inspection, but also the number of meetings and the target executives invited to such meetings. Here, a proper balance must be sought between the scope of the inspection and the normal conduct of business and management of the bank.

vi. **Sharing of basic knowledge within the SSM and exchange of information**–Notwithstanding the independence between the JST and the inspection teams, the SSM should ensure that any inspection team is provided from the start with sufficient knowledge of structure, strategy, business and financial profile of the bank, as well as on any other topic of specific interest to the inspection team which the JST is knowledgeable.

Even if it is clear that the ECB wants to create some sort of *Chinese wall* between the JST and OSI teams, the result in this regard has some room for improvement. To be more precise, OSI teams come with a certain lack of preparation and with an absence of knowledge of the institution they are investigating. This produces the unnecessary repetition of exchange of information (i.e.: files, minutes, etc), but what is worse the repetition of meetings with mid-to senior level executives of banks presenting the same ideas/documents. This is of utmost importance bearing in mind the intensity of supervision that leads to unnecessary supervisory duplicities that should be avoided. In addition, we are not able to find a piece of regulation that backs this separation of activities.

vii. **Timeframe and potential periods of time of each phase.** Even if the Guide does an extraordinary effort in describing the process, deadlines between and during phases are not accurately set. The guide defines a maximum timeline for banks to respond to the SSM's inspection work (two weeks), but it fails to define clear timelines for both inspection teams and the JST on the delivery of their reports to banks. An equitable treatment of both parts in the process would be desired to grant them both with the necessary legal certainty.

viii. **Materiality of findings** – Banks should be provided with an idea of the materiality for each finding/recommendation. This would help prioritization of action plans and sensibilization of top management.

ix. **Appeal process** - Unlike for 'supervisory decision', where the right to be heard is granted and, as last resort, the bank could appeal an SSM decision to the Administrative Board of Review, the guide should also explain what procedure a bank should follow in case of



disagreement on an 'operational act'. Institutions should therefore be granted the right to be heard.

- x. **Interaction with subsidiaries** - When dealing with specific information requests concerning subsidiaries located outside of the Eurozone, inspection teams should take into account possible restrictions in data sharing with the SSM. MoUs between the ECB and such countries should provide for legal coverage of such requests.
- xi. **Language regime** - Notwithstanding the fact that the SSM's working language is English, and that each bank should abide to the language regime agreed with the SSM, the use of local languages should be the default option, when inspections deal with local topics or subsidiaries. In addition, documents requested cannot be expected by OSI to be translated into English for the sake of the inspection as this puts an excessive burden for institutions.
- xii. **Third parties**. According to the draft Guide, OSIs can be done in SI, LSI but also in "other legal entities which are within the scope of the inspections because they have a business relationship with the supervised entity". This remark should be clarified and we suppose this refers to the art 65.3 (a) (iv) third parties to whom the entities have outsourced operational functions or activities when this outsourcing is essential.
- xiii. **OSI should be risk-based**. Some OSIs assess past events that do not affect to the risk profile of the institution. As such the conclusions are completely outdated

## Comments directly related to the Guide

### Chapter 1: General Framework for inspections

- **1.1.3 Role of the JST**. After almost three years under the SSM supervision, it has been noteworthy the prominent role of the JSTs during the supervisory process. Regarding its role during the inspection even if in the draft methodology it is defined as "*communicating with the inspection team*", we consider that this role should be upgraded with one senior member of the JST as participant in the OSI Team. The coordination between the OSI team and the JST is of utmost importance not only during the inspection but also before. In fact, we consider that the OSI team should devote a non-negligible period of time to prepare the inspection in order to gather all the required information but also to gain knowledge of the institution it will have to investigate. Moreover, a more detailed rationale and explanation of the role of the ECB and JST would be desirable in order for institutions to gain a better understanding of the difference between in-depth reviews, thematic reviews, inspections and other procedures in place.
- **1.2 Decision making process for inspections**. We welcome the flexibility included in the Guide where it recognizes the possibility to adjust the number of inspections already included in the annual plan. Here it would be necessary to clearly state that this adjustment could imply not only increasing the number of inspections but also reducing it. Additionally, more detail on the procedure for adopting these decisions would be welcome (i.e. who is entitled to do it, when and how).



- **1.3 Objective of inspections. Scope and timeframe.** We welcome the flexibility in terms of scope and timeframe given. However, this flexibility should not be against the required transparency when the HoM explains the aim of the inspection and the period of time required to pursue it. In case a change in any of these aspects is required, it should be clearly explained to the institution avoiding given an ample degree of discretion to the HoM.
- **1.3 Objective of inspections.** *“...However, if deemed necessary the scope and timeframe of the inspection can be changed during the inspection”.*

Any changes to the original scope and timeframe should be limited to exceptional cases in order to grant the necessary legal certainty to institutions. In case there is a need to broaden the initial scope or timeframe, we consider that the decision and the reason behind it should be clearly and formally communicated by the Head of Mission to the bank, allowing the bank to discuss the decision

- **1.3 Objective of inspections. Principles.** We welcome the definition of some principles guiding the different inspections. However, these principles should take into account not only the risk of the entity but also the aim of the inspection and therefore all the supervisory activities involved in the inspection should be proportionate to the scope of the inspection. On top of this, the inspection should avoid redundant supervisory activities already pursued by the JST (i.e.: requesting the same information or meetings with the same people). For banks, there is just one supervisor, no matter if the supervisor works for the DGIV, is a member of the JST based in Frankfurt or working for the NCA. Avoiding these duplicities is of utmost importance particularly when meeting with Board Members or Senior Executives.
- **1.4 Independence of inspections.** Even if, as stated in the Guidance, the implementation of the inspection is under the sole responsibility of the HoM, the JST should also play a role, at least during the preparatory phase. This is crucial for inspections with a broad scope where a proper and prior knowledge of the bank is a must. The SSM Regulation advocates for the independence of the ECB vis a vis political influence, national authorities, bodies of the European Union and industry interference, necessary to adequately carry out its supervisory tasks,<sup>1</sup> yet does not approach independence between JSTs and other designated inspectors or investigators, rather calls for coordination. In fact the Guide itself, when outlining the role of inspections (Section 1.1.4) recognises that inspections complement ongoing supervision, and JSTs become an active part of inspections at their final phase, with the JST arranging and chairing the closing meeting and responsible for the follow-up of the entity’s action plan.
- **1.6 Composition of the inspection team.** *“The inspection team can be composed of ECB inspectors, supervisors employed by the NCA of the inspected legal entity’s participating Member State, and supervisors from other NCAs, as well as JST members or other persons authorised by the ECB”*

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<sup>1</sup> See introductory paragraphs 75-77 and article 19 of the SSM Regulation.



A lack of detail is observed in the Guide regarding the procedure in place to designate the inspection team. It is unclear whether members of the inspection team will be required to possess any given qualities – i.e., expertise or a certain degree of knowledge in the subject matter of the investigation or inspection, knowledge of the language in which the institution conducts its day-to-day operations, produces its documents, etc.

Likewise, we suggest that at least one member of the JST should be always part of the inspection team. This ensures that the inspection team is aware beforehand of the business model, legal structure, and financial profile of the bank subject to the inspection. The JST presence should ensure that basic knowledge of the bank is transmitted to the inspection team, and that the inspection team can work not only in English, but also on other languages which may be relevant to the inspection.

We acknowledge the need to use external resources (i.e.: external consultants) due to the amount of inspection activities and the lack of sufficient in-house resources to execute them. However, the SSM, and not the institution, should be aware of the confidential nature of the information shared with the OSI teams. In this regard, the SSM should take the required steps to avoid undesired scenarios where OSI member joining other banks or working as consultants for other banks right after the OSI.

Appropriate safeguards should be specified in case the appointment of external experts would be needed, especially, to how the ECB guarantees the confidentiality of the documentation provided during the inspection as well as the liability regime. If requested, the confidentiality agreement shall be subject to be shared with the supervised entity, which can be request for legal advice /validation to the Legal Department.

- **1.7 Cooperation.** *“Inspections decided upon by the ECB take into account any cooperation arrangements or agreements that have been established, in compliance with the relevant applicable legislation, with the supervisory authorities of the jurisdictions where the inspections are to be conducted”*

The ECB should ensure that any request of information/data from the inspection team directed to non-Eurozone subsidiaries, to take into account legal restrictions, and be fully compliant with existing MoUs between the ECB and third countries.

## Chapter 2: Inspection process

- **2.2.1 Description of the main steps of an inspection.** 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, which in turn must inform the subsidiaries concerned of the upcoming inspection”*

Clarification regarding the institution who will be the subject of notifications would be welcome. Article 145 of the SSM Framework Regulation solely envisages the legal person subject to an on-site inspection as being the subject of notifications. The Guide should be clear in this regard, both for the sake of legality and in order for institutions to adequately envisage intra-group procedures and communications if the inspected legal entity is not the entity that will directly and primarily be addressed by the ECB, especially taking into account the short time-lapse (five working days) in which it might have to prepare for an inspection.



In our view, this notification should always be sent to the legal entity subject to the inspection, as well as to the parent company, if applicable, in order to facilitate the oversight function.

As regards the content of the notification letter, it should be noted that, content is more detailed in article 143(2) of the SSM Framework Regulation than what is captured by the Guide, “*shall at a minimum specify [...] the subject matter and the purpose of the on-site inspection.*” More detail in this regard would be desirable.

- **2.2.1 Preparatory phase.** We acknowledge the clarity of all the steps included in this phase. However, there is a lack of reference to a coordination (phase) with the JST. In this regard, in the first request of information the HoM should avoid requesting information that is or has been already available to the JST, as well as information that is public domain. In order to avoid these redundancies, the HoM should have preparatory meetings with the JST in order to understand the issue that should be investigated and the information that justified this investigation taking place.

On a different topic, the Guide seems to have departed from the procedure envisaged in the SSM Framework Regulation as regards the precise moment in which the inspected entity is informed of the identity of the team members. In this sense, article 145(1) of the SSM Framework Regulation clearly states that five working days before the start of the on-site inspection (marked by the kick-off meeting) the ECB shall notify the legal person subject to the inspection of: (i) the ECB decision referred to in article 143(2) and (ii) of the identity of the members of the on-site inspection team. The Guide has departed from the Regulation, with notification of the identity of the inspection members left to a later stage, i.e., to be carried out “as soon as possible” and, moreover, leaving room for discretion as to its obligatory nature (“HoM should inform” as opposed to the term “shall” used in the Regulation).

- **2.2.2 Investigation phase .** Regarding the kick off meeting notification, the SSM should bear in mind that in case the period of time between the notification and the kick off meeting is tight, the degree of seniority in the meeting will be hindered. As such, the SSM should find the proper balance between flexibility and seniority. Having said this, we consider that the required presence of the CEO or a member of the “executive board”, as stated in the Guide, is beyond supervisor and bank expectations. Likewise, the wording envisages alternative attendance solely for dual board systems, where “executive boards” exist, leaving unitary board systems with no alternative but for the CEO to attend the kick-off meeting. Alternatively, and for the sake of harmonized and equal treatment for all institutions and board systems, the Guide should procure that references to the “executive board” are made to the senior management instead.
- Hence, the SSM should delete the required presence of the CEO or a member of the executive board from the Guide and instead ensure the participation of an appropriate level of seniority in the kick-off meeting (i.e. by requesting the presence of a senior executive or member of senior manager, instead).. In fact, it is the entity the one that should decide the degree of seniority attending and not the HoM.



- In addition, according to the Guide the inspection team is granted the option to hold “status meetings”. In this regard, we consider that not only the inspection team but also the inspected entity must have this option.
- **2.2.2 Description of the main steps of an inspection.** 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”*

Notwithstanding the comment made above, the request of the CEO or a member of “senior management” (as should the term “executive board” be understood in one tier systems) to participate in an inspection should be agreed with the inspected entity, sufficiently justified, and based on the proportionality and effectiveness of the process. The guide should also consider that meetings with senior managers need to be requested with sufficient time, with a detailed agenda and be proportional in frequency and stakeholder to the inspection’s scope and impact. In specific cases of IMIs, this requirement could be waived, taking into account the proportionality principle.

Pertaining the request by the HoM to the inspected legal entity for a general presentation “*on its organisational structure, business model, strategy and governance policy and procedures and on its main processes in the areas covered by the inspections*”, we refer to our previous comment on the necessary prior coordination between the JST and the OSIs. Likewise, the Guide should specify that any request of information in those areas should only be made in so far as they are within and directly related to the scope of the inspection.

- **2.2.2 Description of the main steps of an inspection.** Execution of the work programme. *“After the kick-off meeting, the inspection team begins its investigations in the inspected legal entity’s premises. The investigation phase consists of interviews and an examination of procedures, reports and files”*

During the inspection, meetings and information should be requested with one week in advance as a minimum in order to enhance the quality of the information and the dialogue, without collapsing the normal functioning of the bank. Also, if an inspection includes on-site visits to subsidiaries, the request for meetings and documentation needs to be sent at least 1 month before the visit.

- **2.2.2 Description of the main steps of an inspection.** 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 at working level to discuss preliminary facts and findings before the exit meeting is held. For this purpose, the team may share draft documents with the inspected legal entity”*

We agree with the ECB on this point as we consider this continuous feedback as a critical point in any on-site inspection. Nevertheless, in order to enhance the effectiveness of the exit meeting, we think that the Heads of Mission should give transparency of the findings not only before of this meeting but also with at least 7 working days to properly prepare the dialogue.

In any case, all information or interviews requests must be previously formally notified to the institutions (in writing), motivated and specific agendas have to be set and sent in advance and agreed with the institution before any meeting takes place.



- **2.2.3 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”.*

If the Guide is to serve as guidance and enable institutions to garner appropriate understanding of inspection procedures, it should be sufficiently clear and avoid the use of terminology such as *“the draft report **should** be sent **a few days** in advance”*, which leave the institution with uncertainty. The guide should give a clear guidance on how many days, setting a minimum in order for it to be homogenous in all inspections. Moreover, a “few days” is clearly not enough time to properly prepare this meeting and ensure a fruitfully debate. In our view, at least two weeks should be granted for this purpose.

- **2.2.3. Reporting phase.** It is not clear in the Guide whether the two week-notice to present comments to the draft report takes place before the exit meeting or after it. We consider that the exit meeting should be used not only to discuss the draft report but also the comments of the institution to that report and as such, the two-week period should take place before the exit meeting and also two weeks could be very tight depending on the investigation.
- **2.2.3 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”*

In order to facilitate the oversight function, this draft report should be always shared with the Parent. In our view, the draft report should follow the same procedure than the final report when it is then sent to the relevant inspected legal entity. Additionally, if the inspection is conducted on a group of credit institutions with a parent located in a participating Member State, or if the inspected legal entity is the subsidiary of a parent located in a participating Member State, the report should also be sent to the parent.

- **2.2.3 Reporting Phase.** *“After the exit meeting has been held and after the inspected legal entity has been given the opportunity to provide written comments on the draft, the HoM finalizes the draft report based on the feedback received, if necessary. The feedback template is then completed with the HoM’s response and attached to the final report, which is signed by the HoM. The final report is then sent to the relevant inspected legal entity”*

The ECB guide should ensure homogeneity in the conclusions phase of inspections, and provide guidelines on deadlines for Heads of Missions and for JSTs with respect to the delivery of their inspection reports to banks. According to the industry’s experience, each Head of Mission (IMIs and OSIs) follow a different approach to receiving feedback on the draft report from the banks. It is not uncommon to be given very short deadlines, but then take more than 6 months for the Exit Meeting to be held.

- **2.3 Inspection outcomes**

Related to the presentation of the requested remedial actions, the Guide distinguishes between two different types of instruments. The first type, a letter expressing supervisory expectations, is not legally binding<sup>2</sup>; the second type, is an ECB supervisory decision addressed to the inspected legal entity and containing legally binding supervisory measures.

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<sup>2</sup> ... and does not require a decision by the Supervisory Board. Hence, the formal procedure for the adoption of an ECB decision, including the right to be heard, is not followed.



However, in the follow-up phase (Section 2.3.2), the Guide does not differentiate between both types of instruments and doesn't take into account that in one case the content is composed only by recommendations ("supervisory expectations") and in the other case they may also include conditions, limitations and obligations.

In this sense, it should be clearly stated that the supervisory expectations, as they are not legally binding, may not contain legally enforceable deadlines and its "non-compliance" cannot lead to administrative sanctions. Referring to the recommendations included in the letter expressing supervisory expectations, in case the inspected legal entity has not implemented the agreed action plan sufficiently well or in a timely manner, the imposition of sanctions would generate defencelessness, since it is not an ECB decision and the entity has no access to the provisions relating to due process for adopting ECB supervisory decisions under the Regulation (EU) n° 468/2014 of the ECB (the SSM Framework Regulation) and it cannot request an ECB's internal administrative review of Administrative Board of Review.

Therefore, we consider that the Guide should cover the different treatments of the follow-up phase depending on both types of instruments, and it should clarify that the imposition of sanctions can only be agreed for non-implementing an ECB decision, and not for those measures contained in a letter with supervisory expectations, and only if the due process principles established in Article 22 of the SSM Regulation and further elaborated in Articles 25 to 35 of the SSM Framework Regulation, **including the hearing of the affected party**, are observed.

Moreover, the Guide should be clear as to the **legally binding effects of the finalised ECB decision**, i.e., effects commencing from the date in which the inspected legal entity is notified of said decision.

Finally, the Guide should be clear and consistent with respect to the recipient of notifications to institutions.

On top of this, the Guide does not refer to the "person" from the entity that should receive the letter draft or final letter. In addition, there is no reference to the role of the governing bodies.

- **2.3.1 Presentation of the requested remedial actions.** *"The final phase of the inspection enables the ECB to present any recommendations or required supervisory measures to the inspected legal entity in the form of one of two different types of instruments"*

We note that, depending on the severity and materiality of the corresponding findings, recommendations may take one of two forms. 'Operational acts' are non-binding and not subject to the decision-making process involving the Supervisory Board and the Governing Council. On the other hand, 'supervisory decisions' are drafted by the JST Coordinator and approved by the Supervisory Board and the Governing Council under the 'non-objection' procedure. Although the ECB guide provides with a clear view of the different consequences of falling into the first or second type of supervisory measures, it does not contain guidance on the concepts of severity or materiality

We consider that it could be useful to define a ranking severity with an explanatory note to justify it for on-site inspections findings, in order to help institutions to give correct priority to the action plan.



Likewise, the Guide is not entirely clear as to whether letters and decisions encompassing supervisory measures to be taken by the inspected legal entity are the sole way of presenting inspection outcomes, or **whether the possibility exists for inspections to conclude with no corrective measures**, that is to say, when an institution is performing “up to supervisory standards”.

- **2.3.1 Presentation of the requested remedial actions.** *“The first type, a letter expressing supervisory expectations, constitutes an operational act. It is not legally binding and does not require a decision by the Supervisory Board. Hence, the formal procedure for the adoption of an ECB decision, including the right to be heard, is not followed”.*

Unlike the second type the ECB decision (legally binding) where the “right to be heard” is granted and, as a last resort, the Administrative Board of Review could be called upon, it is not clear to us what is the procedure a bank should follow in case of disagreement on a “first type” supervisory expectation. In our view, in this latter case, the principle of defence should be also ruled and explained in the guide, and notwithstanding their configuration as operational acts, **institutions should be granted the right to be heard.**

- **2.3.2. Follow up phase.** Even if the Guide clearly states that is the JST the responsible one during this phase. For those findings that the JST deems are closed/solved, there is no clarity on how this will be communicated to the institution. In this regard, there is no clarity whether the JST will be sent a letter to the senior management of the bank to informing the remedial action has been addressed or this communication will be more informal. In this regard, more clarity would be welcome...

The Guide should likewise clarify that the requirement to submit updates on the remedial action to the JSTC by interim deadlines (follow-up of the inspected legal entity’s action plan) is a requirement that will be included in the follow-up letter/decision.

### Chapter 3. Applicable principles for inspections

- **3.1 Right of access to business premises.** Article 143(3) of the SSM Regulation enables access of the OSI team to the business premises if the OSI follows an investigation conducted on the basis of an ECB decisions and has the same purpose and scope as the investigation. It should be noted that there is no regulatory configuration for extending such right to IMIs.
- **3.1 Right to request any information or document.** References to the principle of proportionality seem to be lacking in the Guide. It has to be borne in mind that requests for information and documents will only be of use for the outcome of investigations and inspections to the extent that they are **directly related to their scope**; excessive requests for documentation will likely consume the institution’s and the inspector’s time and resources, and thus should be avoided. Moreover, the right to request any information or document must not entail the obligation for the institution to translate documents. It must be noted that the legal configuration of this right in the SSM Regulation and SSM Framework regulation is not as broad as the one included in the Guide.



- Moreover, and in line with comments brought forward in the preceding sections, prior coordination between JST and OSI team is a must to prevent unnecessary duplicities.
- **3.1 Right to interview any person.** *“The inspection team has the right to interview any person referred to in Article 10(1) of the SSM Regulation, regardless of their seniority, who could provide it with information and documents useful to its investigations...”*

The guide should consider that any meetings to be held with senior managers and/or directors need to be requested with sufficient time, with a detailed agenda and have a clear rationale with the inspection’s scope and impact.

- **3.2 Inspection team’s practices.** It would be welcome for the Guide to take into account, in addition to the operating constraints already mentioned, **the costs and expenses that an institution incurs in when responding and attending OSIs.** The overall objective of inspections is clear and most-welcome, yet they should not become a means of distorting day-to-day operations of institutions by absorbing their resources while they are being conducted. Likewise, the Guide should avoid the presumption that the **inspection team** will only be **subject to internal rules and data protection** in so far as they are *“compatible with the inspection’s needs”*. Not only can the needs of the inspection not override those rules that are, in turn, the result of national or EU legislation but, additionally, it might not even be (technically) possible (or viable) for the institutional to override certain rules in place (e.g., regarding IT security).

Conversely, and notwithstanding the inspected institution’s confidentiality obligation as regards documents provided by the ECB or the NCAs in the context of the inspection process and follow-up, it has to be taken into account that **the institution might well be under the obligation to disclose certain information related to the outcome of investigations and inspections** (as occurs, for instance, with the result of the SREP), again **in order to comply with EU regulations and national laws.**

- **3.3.1 Need to be informed of the inspection outcomes.** *“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 (or its parent, see Section 2.2.3 “Reporting phase”) by the ECB.”*

As commented on previous points, the results of the inspection should always be sent to the institution subject to the inspections as well as to the parent, if applicable, in order to facilitate the oversight function.

- **3.3.2. Supervisor expectations with regard to the inspected legal entities** (page 21 of the Guide). Even if it is established in the SSM Regulation, the Guide should include a reference in the lines that the inspection team should apply the proportionality principle when asking for information and try to request only those documents and meetings that can be useful for the scope of the inspection. Professional and courteous attitude should also be expected from the inspection team.
- **3.3.3. Cooperation expected.** Notwithstanding prior comments on this matter, the seniority of people attending the meeting should be symmetrical. In this regard, it is hard to expect having a meeting with the CEO or a senior manager of a financial institution and the whole



team of the OSI attends the meeting as well. In this regard, we consider that banks should decide the seniority level attending the meetings and not the HoM. In the same domain, is the bank the one deciding who should attend the meetings and as such we do not understand why this guidance gives the power to the HoM to decide when the point of contact can or cannot attend to meetings.

- **3.3.3. Submission of information required.** All requests of information should be subject to the institution's rules on confidentiality and data protections policies.
- In the part related to the working conditions, we consider that supervisory teams (of the JST, OSI or TRIM) could work in the same rooms and under the policies established by the financial institution.
- **3.4. Language.** Even if the bank has decided to use English as the language to communicate with the SSM, it should be noted that for certain inspections or for certain parts the language should be changed to the domestic language of the bank. In this domain, note that banks can change the language of communication at their convenience. As such, it could be advisable to have certain meetings/documents in local language using official interpreters being this part of the supervisory activities included in the annual fees.
- **Point of contact.** The draft Guide gives the HoM the possibility to contact directly to any employee of the bank. However, this contact should always be done through the designated person as point of contact and only under exceptional circumstances this can be requested to the designated person as point of contact or to her immediate superior.



## 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		1.1.3			<b>Role of the JST.</b> After almost three years under the SSM supervision, it has been noteworthy the prominent role of the JSTs during the supervisory process. Regarding its role during the inspection even if in the draft methodology it is defined as <i>“communicating with the inspection team”</i> , we consider that this role should be upgraded with one senior member of the JST as participant in the OSI Team. The coordination between the OSI team and the JST is of utmost importance not only during the inspection but also before. In fact, we consider that the OSI team should devote a non-negligible period of time to prepare the inspection in order to gather all the required information but also to gain knowledge of the institution it will have to investigate. Moreover, a more detailed rationale and explanation of the role of the ECB and JST would be desirable in order for institutions to gain a better understanding of the difference between in-depth reviews, thematic reviews, inspections and other procedures in place.		,	Publish
2		1.2			<b>Decision making process for inspections.</b> We welcome the flexibility included in the Guide where it recognizes the possibility to adjust the number of inspections already included in the annual plan. Here it would be necessary to clearly state that this adjustment could imply not only increasing the number of inspections but also reducing it. Additionally, more detail on the procedure for adopting these decisions would be welcome (i.e. who is entitled to do it, when and how).		,	Publish
3		1.3			<b>Objective of inspections. Scope and timeframe.</b> We welcome the flexibility in terms of scope and timeframe given. However, this flexibility should not be against the required transparency when the HoM explains the aim of the inspection and the period of time required to pursue it. In case a change in any of these aspects is required, it should be clearly explained to the institution avoiding given an ample degree of discretion to the HoM.		,	Publish



4		1.3			<p><b>Objective of inspections.</b> "...However, if deemed necessary the scope and timeframe of the inspection can be changed during the inspection".</p> <p>Any changes to the original scope and timeframe should be limited to exceptional cases in order to grant the necessary legal certainty to institutions. In case there is a need to broaden the initial scope or timeframe, we consider that the decision and the reason behind it should be clearly and formally communicated by the Head of Mission to the bank, allowing the bank to discuss the decision</p>			Publish
5		1.3			<p><b>Objective of inspections.</b> Principles. We welcome the definition of some principles guiding the different inspections. However, these principles should take into account not only the risk of the entity but also the aim of the inspection and therefore all the supervisory activities involved in the inspection should be proportionate to the scope of the inspection. On top of this, the inspection should avoid redundant supervisory activities already pursued by the JST (i.e.: requesting the same information or meetings with the same people). For banks, there is just one supervisor, no matter if the supervisor works for the DGIV, is a member of the JST based in Frankfurt or working for the NCA. Avoiding these duplicities is of utmost importance particularly when meeting with Board Members or Senior Executives.</p>			Publish
6		1.4			<p><b>Independence of inspections.</b> Even if, as stated in the Guidance, the implementation of the inspection is under the sole responsibility of the HoM, the JST should also play a role, at least during the preparatory phase. This is crucial for inspections with a broad scope where a proper and prior knowledge of the bank is a must. The SSM Regulation advocates for the independence of the ECB vis a vis political influence, national authorities, bodies of the European Union and industry interference, necessary to adequately carry out its supervisory tasks,[1] yet does not approach independence between JSTs and other designated inspectors or investigators, rather calls for coordination. In fact the Guide itself, when outlining the role of inspections (Section 1.1.4) recognises that inspections complement ongoing supervision, and JSTs become an active part of inspections at their final phase, with the JST arranging and chairing the closing meeting and responsible for the follow-up of the entity's action plan.</p> <p>[1] See introductory paragraphs 75-77 and article 19 of the SSM Regulation.</p>			Publish



7	1.6			<p><b>Composition of the inspection team.</b> <i>“The inspection team can be composed of ECB inspectors, supervisors employed by the NCA of the inspected legal entity’s participating Member State, and supervisors from other NCAs, as well as JST members or other persons authorised by the ECB”.</i> A lack of detail is observed in the Guide regarding the procedure in place to designate the inspection team. It is unclear whether members of the inspection team will be required to possess any given qualities – i.e., expertise or a certain degree of knowledge in the subject matter of the investigation or inspection, knowledge of the language in which the institution conducts its day-to-day operations, produces its documents, etc.</p> <p>Likewise, we suggest that at least one member of the JST should be always part of the inspection team. This ensures that the inspection team is aware beforehand of the business model, legal structure, and financial profile of the bank subject to the inspection. The JST presence should ensure that basic knowledge of the bank is transmitted to the inspection team, and that the inspection team can work not only in English, but also on other languages which may be relevant to the inspection.</p> <p>We acknowledge the need to use external resources (i.e.: external consultants) due to the amount of inspection activities and the lack of sufficient in-house resources to execute them. However, the SSM, and not the institution, should be aware of the confidential nature of the information shared with the OSI teams. In this regard, the SSM should take the required steps to avoid undesired scenarios where OSI member joining other banks or working as consultants for other banks right after the OSI.</p> <p>Appropriate safeguards should be specified in case the appointment of external experts would be needed, especially, to how the ECB guarantees the confidentiality of the documentation provided during the inspection as well as the liability regime. If requested, the confidentiality agreement shall be subject to be shared with the supervised entity, which can be request for legal advice /validation to the Legal Department.</p>			Publish
8	1.7			<p><b>Cooperation.</b> <i>“Inspections decided upon by the ECB take into account any cooperation arrangements or agreements that have been established, in compliance with the relevant applicable legislation, with the supervisory authorities of the jurisdictions where the inspections are to be conducted”.</i></p> <p><i>The ECB should ensure that any request of information/data from the inspection team directed to non-Eurozone subsidiaries, to take into account legal restrictions, and be fully compliant with existing MoUs between the ECB and third countries.</i></p>			Publish
9	2.2.1			<p><b>Description of the main steps of an inspection.</b> Notification of the commencement of an inspection. <i>“...if the inspected legal entity is the subsidiary of a parent located in a participating Member State, the notification is <u>generally</u> sent to the parent, which in turn must inform the subsidiaries concerned of the upcoming inspection”.</i></p> <p>Clarification regarding the institution who will be the subject of notifications would be welcome. Article 145 of the SSM Framework Regulation solely envisages the legal person subject to an on-site inspection as being the subject of notifications. The Guide should be clear in this regard, both for the sake of legality and in order for institutions to adequately envisage intra-group procedures and communications if the inspected legal entity is not the entity that will directly and primarily be addressed by the ECB, especially taking into account the short time-lapse (five working days) in which it might have to prepare for an inspection.</p> <p>In our view, this notification should always be sent to the legal entity subject to the inspection, as well as to the parent company, if applicable, in order to facilitate the oversight function.</p> <p>As regards the content of the notification letter, it should be noted that, content is more detailed in article 143(2) of the SSM Framework Regulation than what is captured by the Guide, “shall at a minimum specify [...] the subject matter and the purpose of the on-site inspection.” More detail in</p>			Publish



					<p>this regard would be desirable.</p>			
10		2.2.1			<p><b>Preparatory phase.</b> We acknowledge the clarity of all the steps included in this phase. However, there is a lack of reference to a coordination (phase) with the JST. In this regard, in the first request of information the HoM should avoid requesting information that is or has been already available to the JST, as well as information that is public domain. In order to avoid these redundancies, the HoM should have preparatory meetings with the JST in order to understand the issue that should be investigated and the information that justified this investigation taking place.</p> <p>On a different topic, the Guide seems to have departed from the procedure envisaged in the SSM Framework Regulation as regards the precise moment in which the inspected entity is informed of the identity of the team members. In this sense, article 145(1) of the SSM Framework Regulation clearly states that five working days before the start of the on-site inspection (marked by the kick-off meeting) the ECB shall notify the legal person subject to the inspection of: (i) the ECB decision referred to in article 143(2) and (ii) of the identity of the members of the on-site inspection team. The Guide has departed from the Regulation, with notification of the identity of the inspection members left to a later stage, i.e., to be carried out “as soon as possible” and, moreover, leaving room for discretion as to its obligatory nature (“HoM should inform” as opposed to the term “shall” used in the Regulation).</p>			Publish
11		2.2.2			<p><b>Investigation phase .</b> Regarding the kick off meeting notification, the SSM should bear in mind that in case the period of time between the notification and the kick off meeting is tight, the degree of seniority in the meeting will be hindered. As such, the SSM should find the proper balance between flexibility and seniority. Having said this, we consider that the required presence of the CEO or a member of the “executive board”, as stated in the Guide, is beyond supervisor and bank expectations. Likewise, the wording envisages alternative attendance solely for dual board systems, where “executive boards” exist, leaving unitary board systems with no alternative but for the CEO to attend the kick-off meeting. Alternatively, and for the sake of harmonized and equal treatment for all institutions and board systems, the Guide should procure that references to the “executive board” are made to the senior management instead.</p> <p>Hence, the SSM should delete the required presence of the CEO or a member of the executive board from the Guide and instead ensure the participation of an appropriate level of seniority in the kick-off meeting (i.e. by requesting the presence of a senior executive or member of senior manager, instead).. In fact, it is the entity the one that should decide the degree of seniority attending and not the HoM.</p> <p>In addition, according to the Guide the inspection team is granted the option to hold “status meetings”. In this regard, we consider that not only the inspection team but also the inspected entity must have this option.</p>			Publish



12	2.2.2			<p><b>Description of the main steps of an inspection.</b> Kick-off meeting. <i>“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”</i></p> <p>Notwithstanding the comment made above, the request of the CEO or a member of “senior management” (as should the term “executive board” be understood in one tier systems) to participate in an inspection should be agreed with the inspected entity, sufficiently justified, and based on the proportionality and effectiveness of the process. The guide should also consider that meetings with senior managers need to be requested with sufficient time, with a detailed agenda and be proportional in frequency and stakeholder to the inspection’s scope and impact. In specific cases of IMLs, this requirement could be waived, taking into account the proportionality principle. Pertaining the request by the HoM to the inspected legal entity for a general presentation “on its organisational structure, business model, strategy and governance policy and procedures and on its main processes in the areas covered by the inspections”, we refer to our previous comment on the necessary prior coordination between the JST and the OSIs. Likewise, the Guide should specify that any request of information in those areas should only be made in so far as they are within and directly related to the scope of the inspection.</p>			Publish
13	2.2.2			<p><b>Description of the main steps of an inspection.</b> Execution of the work programme. <i>“After the kick-off meeting, the inspection team begins its investigations in the inspected legal entity’s premises. The investigation phase consists of interviews and an examination of procedures, reports and files”</i></p> <p>During the inspection, meetings and information should be requested with one week in advance as a minimum in order to enhance the quality of the information and the dialogue, without collapsing the normal functioning of the bank. Also, if an inspection includes on-site visits to subsidiaries, the request for meetings and documentation needs to be sent at least 1 month before the visit.</p>			Publish
14	2.2.2			<p><b>Description of the main steps of an inspection.</b> Execution of the work programme. <i>“Over the course of the investigation phase, the inspection team has the possibility to hold status meetings with the inspected legal entity at working level to discuss preliminary facts and findings before the exit meeting is held. For this purpose, the team may share draft documents with the inspected legal entity”</i></p> <p>We agree with the ECB on this point as we consider this continuous feedback as a critical point in any on-site inspection. Nevertheless, in order to enhance the effectiveness of the exit meeting, we think that the Heads of Mission should give transparency of the findings not only before of this meeting but also with at least 7 working days to properly prepare the dialogue.</p> <p>In any case, all information or interviews requests must be previously formally notified to the institutions (in writing), motivated and specific agendas have to be set and sent in advance and agreed with the institution before any meeting takes place.</p>			Publish
15	2.2.3			<p><b>Reporting Phase.</b> <i>“The draft report should be sent a few days in advance to enable the inspected legal entity to adequately prepare for the meeting”.</i></p> <p>If the Guide is to serve as guidance and enable institutions to garner appropriate understanding of inspection procedures, it should be sufficiently clear and avoid the use of terminology such as “the draft report should be sent a few days in advance”, which leave the institution with uncertainty. The guide should give a clear guidance on how many days, setting a minimum in order for it to be homogenous in all inspections. Moreover, a “few days” is clearly not enough time to properly prepare this meeting and ensure a fruitfully debate. In our view, at least two weeks should be granted for this purpose.</p>			Publish



16		2.2.3			<p><b>Reporting phase.</b> It is not clear in the Guide whether the two week-notice to present comments to the draft report takes place before the exit meeting or after it. We consider that the exit meeting should be used not only to discuss the draft report but also the comments of the institution to that report and as such, the two-week period should take place before the exit meeting and also two weeks could be very tight depending on the investigation.</p>		,	Publish
17		2.2.3			<p><b>Reporting Phase.</b> <i>“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”</i>          In order to facilitate the oversight function, this draft report should be always shared with the Parent. In our view, the draft report should follow the same procedure than the final report when it is then sent to the relevant inspected legal entity. Additionally, if the inspection is conducted on a group of credit institutions with a parent located in a participating Member State, or if the inspected legal entity is the subsidiary of a parent located in a participating Member State, the report should also be sent to the parent.</p>		,	Publish
18		2.2.3			<p><b>Reporting Phase.</b> <i>“After the exit meeting has been held and after the inspected legal entity has been given the opportunity to provide written comments on the draft, the HoM finalizes the draft report based on the feedback received, if necessary. The feedback template is then completed with the HoM’s response and attached to the final report, which is signed by the HoM. The final report is then sent to the relevant inspected legal entity”</i>          The ECB guide should ensure homogeneity in the conclusions phase of inspections, and provide guidelines on deadlines for Heads of Missions and for JSTs with respect to the delivery of their inspection reports to banks. According to the industry’s experience, each Head of Mission (IMIs and OSIs) follow a different approach to receiving feedback on the draft report from the banks. It is not uncommon to be given very short deadlines, but then take more than 6 months for the Exit Meeting to be held.</p>		,	Publish



19	2.3			<p><b>Inspection outcomes.</b> Related to the presentation of the requested remedial actions, the Guide distinguishes between two different types of instruments. The first type, a letter expressing supervisory expectations, is not legally binding [1]; the second type, is an ECB supervisory decision addressed to the inspected legal entity and containing legally binding supervisory measures.</p> <p>However, in the follow-up phase (Section 2.3.2), the Guide does not differentiate between both types of instruments and doesn't take into account that in one case the content is composed only by recommendations ("supervisory expectations") and in the other case they may also include conditions, limitations and obligations.</p> <p>In this sense, it should be clearly stated that the supervisory expectations, as they are not legally binding, may not contain legally enforceable deadlines and its "non-compliance" cannot lead to administrative sanctions. Referring to the recommendations included in the letter expressing supervisory expectations, in case the inspected legal entity has not implemented the agreed action plan sufficiently well or in a timely manner, the imposition of sanctions would generate defencelessness, since it is not an ECB decision and the entity has no access to the provisions relating to due process for adopting ECB supervisory decisions under the Regulation (EU) n° 468/2014 of the ECB (the SSM Framework Regulation) and it cannot request an ECB's internal administrative review of Administrative Board of Review.</p> <p>Therefore, we consider that the Guide should cover the different treatments of the follow-up phase depending on both types of instruments, and it should clarify that the imposition of sanctions can only be agreed for non-implementing an ECB decision, and not for those measures contained in a letter with supervisory expectations, and only if the due process principles established in Article 22 of the SSM Regulation and further elaborated in Articles 25 to 35 of the SSM Framework Regulation, including the hearing of the affected party, are observed.</p> <p>Moreover, the Guide should be clear as to the legally binding effects of the finalised ECB decision, i.e., effects commencing from the date in which the inspected legal entity is notified of said decision.</p> <p>Finally, the Guide should be clear and consistent with respect to the recipient of notifications to institutions.</p> <p>On top of this, the Guide does not refer to the "person" from the entity that should receive the letter draft or final letter. In addition, there is no reference to the role of the governing bodies.</p> <p>[1] ... and does not require a decision by the Supervisory Board. Hence, the formal procedure for the adoption of an ECB decision, including the right to be heard, is not followed.</p>			Publish
20	2.3.1			<p><b>Presentation of the requested remedial actions.</b> "The final phase of the inspection enables the ECB to present any recommendations or required supervisory measures to the inspected legal entity in the form of one of two different types of instruments"</p> <p>We note that, depending on the severity and materiality of the corresponding findings, recommendations may take one of two forms. 'Operational acts' are non-binding and not subject to the decision-making process involving the Supervisory Board and the Governing Council. On the other hand, 'supervisory decisions' are drafted by the JST Coordinator and approved by the Supervisory Board and the Governing Council under the 'non-objection' procedure. Although the ECB guide provides with a clear view of the different consequences of falling into the first or second type of supervisory measures, it does not contain guidance on the concepts of severity or materiality.</p> <p>We consider that it could be useful to define a ranking severity with an explanatory note to justify it for on-site inspections findings, in order to help institutions to give correct priority to the action plan. Likewise, the Guide is not entirely clear as to whether letters and decisions encompassing supervisory measures to be taken by the inspected legal entity are the sole way of presenting inspection outcomes, or whether the possibility exists for inspections to conclude with no corrective</p>			Publish



					measures, that is to say, when an institution is performing “up to supervisory standards”.			
21		2.3.1			<p><b>Presentation of the requested remedial actions.</b> <i>“The first type, a letter expressing supervisory expectations, constitutes an operational act. It is not legally binding and does not require a decision by the Supervisory Board. Hence, the formal procedure for the adoption of an ECB decision, including the right to be heard, is not followed”.</i></p> <p>Unlike the second type the ECB decision (legally binding) where the “right to be heard” is granted and, as la last resort, the Administrative Board of Review could be called upon, it is not clear to us what is the procedure a bank should follow in case of disagreement on a “first type” supervisory expectation. In our view, in this latter case, the principle of defence should be also ruled and explained in the guide, and notwithstanding their configuration as operational acts, institutions should be granted the right to be heard.</p>		,	Publish
22		2.3.2			<p><b>Follow up phase.</b> Even if the Guide clearly states that is the JST the responsible one during this phase. For those findings that the JST deems are closed/solved, there is no clarity on how this will be communicated to the institution. In this regard, there is no clarity whether the JST will be sent a letter to the senior management of the bank to informing the remedial action has been addressed or this communication will be more informal. In this regard, more clarity would be welcome. The Guide should likewise clarify that the requirement to submit updates on the remedial action to the JSTC by interim deadlines (follow-up of the inspected legal entity’s action plan) is a requirement that will be included in the follow-up letter/decision.</p>		,	Publish
23		3.1			<p><b>Right of access to business premises.</b> Article 143(3) of the SSM Regulation enables access of the OSI team to the business premises if the OSI follows an investigation conducted on the basis of an ECB decisions and has the same purpose and scope as the investigation. It should be noted that there is no regulatory configuration for extending such right to IMIs.</p>		,	Publish
24		3.1			<p><b>Right to request any information or document.</b> References to the principle of proportionality seem to be lacking in the Guide. It has to be borne in mind that requests for information and documents will only be of use for the outcome of investigations and inspections to the extent that they are <b>directly related to their scope</b>; excessive requests for documentation will likely consume the institution’s and the inspector’s time and resources, and thus should be avoided. Moreover, the right to request any information or document must not entail the obligation for the institution to translate documents. It must be noted that the legal configuration of this right in the SSM Regulation and SSM Framework regulation is not as broad as the one included in the Guide. Moreover, and in line with comments brought forward in the preceding sections, prior coordination between JST and OSI team is a must to prevent unnecessary duplicities.</p>		,	Publish



25	3.1			<p><b>Right to interview any person.</b> <i>“The inspection team has the right to interview any person referred to in Article 10(1) of the SSM Regulation, regardless of their seniority, who could provide it with information and documents useful to its investigations...”</i></p> <p>The guide should consider that any meetings to be held with senior managers and/or directors need to be requested with sufficient time, with a detailed agenda and have a clear rationale with the inspection’s scope and impact.</p>			Publish
26	3.2			<p><b>Inspection team’s practices.</b> It would be welcome for the Guide to take into account, in addition to the operating constraints already mentioned, <b>the costs and expenses that an institution incurs in when responding and attending OSIs.</b> The overall objective of inspections is clear and most-welcome, yet they should not become a means of distorting day-to-day operations of institutions by absorbing their resources while they are being conducted.</p> <p>Likewise, the Guide should avoid the presumption that the inspection team will only be subject to internal rules and data protection in so far as they are “compatible with the inspection’s needs”. Not only can the needs of the inspection not override those rules that are, in turn, the result of national or EU legislation but, additionally, it might not even be (technically) possible (or viable) for the institutional to override certain rules in place (e.g., regarding IT security).</p> <p>Conversely, and notwithstanding the inspected institution’s confidentiality obligation as regards documents provided by the ECB or the NCAs in the context of the inspection process and follow-up, it has to be taken into account that the institution might well be under the obligation to disclose certain information related to the outcome of investigations and inspections (as occurs, for instance, with the result of the SREP), again in order to comply with EU regulations and national laws.</p>			Publish
27	3.3.1			<p><b>Need to be informed of the inspection outcomes.</b> <i>“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 (or its parent, see Section 2.2.3 “Reporting phase”) by the ECB.”</i></p> <p>As commented on previous points, the results of the inspection should always be sent to the institution subject to the inspections as well as to the parent, if applicable, in order to facilitate the oversight function.</p>			Publish
28	3.3.2			<p><b>Supervisor expectations with regard to the inspected legal entities</b> (page 21 of the Guide). Even if it is established in the SSM Regulation, the Guide should include a reference in the lines that the inspection team should apply the proportionality principle when asking for information and try to request only those documents and meetings that can be useful for the scope of the inspection. Professional and courteous attitude should also be expected from the inspection team.</p>			Publish
29	3.3.3			<p><b>Cooperation expected.</b> Notwithstanding prior comments on this matter, the seniority of people attending the meeting should be symmetrical. In this regard, it is hard to expect having a meeting with the CEO or a senior manager of a financial institution and the whole team of the OSI attends the meeting as well. In this regard, we consider that banks should decide the seniority level attending the meetings and not the HoM. In the same domain, is the bank the one deciding who should attend the meetings and as such we do not understand why this guidance gives the power to the HoM to decide when the point of contact can or cannot attend to meetings.</p>			Publish
30	3.3.3			<p><b>Submission of information required.</b> All requests of information should be subject to the institution’s rules on confidentiality and data protections policies.</p> <p>In the part related to the working conditions, we consider that supervisory teams (of the JST, OSI or TRIM) could work in the same rooms and under the policies established by the financial institution.</p>			Publish



31		3.4			<p><b>Language.</b> Even if the bank has decided to use English as the language to communicate with the SSM, it should be noted that for certain inspections or for certain parts the language should be changed to the domestic language of the bank. In this domain, note that banks can change the language of communication at their convenience. As such, it could be advisable to have certain meetings/documents in local language using official interpreters being this part of the supervisory activities included in the annual fees.</p>			Publish
32					<p><b>Point of contact.</b> The draft Guide gives the HoM the possibility to contact directly to any employee of the bank. However, this contact should always be done through the designated person as point of contact and only under exceptional circumstances this can be requested to the designated person as point of contact or to her immediate superior.</p>			Publish