

Brussels, 15 September 2017
EBF_028504D

SUBJECT: EBF response to the consultation on the ECB Guide on OSI and IMI

The EBF welcomes the opportunity to give feedback to the European Central Bank (ECB) on the draft Guide to on-site inspections (OSI) and internal model investigations (IMI) in the context of the ECB banking supervision. The launch of the consultation can add transparency to the process in this relevant part of the supervisory exercise which requires the organisation and deployment of significant resources from banks and supervisors alike. The EBF would support the preparation of similar guides for other supervisory activities like thematic reviews or *deep dives*.

The EBF has been collaborating with the ECB from the onset of SSM supervision in the facilitation of information and experience from supervised institutions. This response paper condenses the views of the widest representation of banks supervised by the Single Supervisory Mechanism (SSM) based on the experience gained since the setting up of the SSM in November 2014.

The EBF response is split into two sections as requested by the ECB in the template for feedback. The first section is a summary of 12 general comments that has been included in this document for convenient reading. The second section consists of concrete questions for clarification and suggestions for amendment or deletion that the EBF would like to raise to the attention of the ECB.

GENERAL COMMENTS

1. The Guide should recognise existing domestic legislation so that the ECB requirements should not go above and beyond it.
2. Banks have observed in many instances that the original scope of an OSI can be changed by the Head of Mission during the course of the OSI which gives rise to new data requests and availability of additional resources. The guide should indicate that the OSI should be targeted and its scope formally documented in detail.
3. There is room for improvement in terms of efficiency of data requests. Banks observe that the same information is oftentimes requested by different supervisory missions and/or the permanent members of the Joint Supervisory Team (JST). The guide should recognise a principle that the supervisor should use information that has already been delivered by the supervised banks where available. In the same vein, inspections should also avoid duplicating meetings. We propose that at least one senior member of the JST be part of the OSI team.
4. The role of the point of contact is instrumental for the efficient organisation of banks' resources. The ECB right to interview any person is compatible with the use of the point of contact and can actually benefit from its presence.

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5. The seniority of the bank representatives who attend the meetings should be decided by the bank. The Guide could indicate that meetings should be planned sufficiently in advance and meeting agendas should be provided well ahead of the meeting in order to avoid unintended conflicts with business commitments.
6. There should be confidentiality agreements signed by any external person or company undertaking tasks in the context of an ECB inspection. The confidentiality agreements should be made available to the supervised bank.
7. The 8-step inspection process is illustrated in the ECB guide followed by an explanation of what is expected at each stage. This information should be complemented with the expected timelines for each phase. For that purpose, the EBF is willing to hold an in-depth discussion with the ECB about the partial minimum timelines between phases.
8. Recommendations and corrective actions should be categorised and their severity be included in the report. To this effect, it would be useful to explain the practical differences between a recommendation that is binding and one that is not.
9. The section on the follow-up phase should be more detailed. Banks believe that the most important part of an inspection is precisely the implementation of recommendations and corrective measures. Banks should be given sufficient time to go through approval process of the remedial actions. The Guide should also set the time frame for the action plan to be accepted and a finding to be resolved in the absence of SSM objection.
10. The guide should recognise the importance of the use of memorandum of understanding (MoU) in the cooperation with relevant authorities of non-EU countries.
11. Even if a bank has accepted English as language to deal with the SSM, the Guide could also accept the local language for specific inspections if much of the detailed information is in the local language.
12. There is a need of coordination between on-site and off-site inspections. Such coordination can avoid duplication of reporting requests and improve the allocation of resources both by the ECB and the banks. It can also avoid duplication between thematic or deep dive reviews performed by off-site teams (JSTs) and on-site missions.

Template for comments

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

Please enter all your feedback in this list.

When entering your feedback, please make sure:

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

Deadline: 15 September 2017

| ID | Chapter | Paragraph | Page | Type of comment | Detailed comment | Concise statement why your comment should be taken on board | Name of commenter | Personal data |
|----|---------|---|------|-----------------|---|--|-------------------|---------------|
| 1 | 1 | Introduction | | clarification | In several instances reference is made to the independence of the inspections. We understand the importance of this independency within the organizational set-up of the SSM. However, we do note that it is the responsibility of the inspection team to familiarise itself with available information within ECB. Institutions must be able to assume that previously shared information and views with ECB are taken into account in the on-site inspections. This can be clarified in for example section 1.4 / 2.2.1 / 2.2.2 | Ensure full use of available information and prevent misunderstandings. | EBF | Publish |
| 2 | 1 | Introduction | 2 | clarification | OSIs and IMIs are together defined as 'inspections' in article 12 SSM Regulation, but it is also mentioned that it does not cover Joint Supervisory Team IMIs, which are not performed as on-site inspections under article 12 SSM Regulation. Why are JST IMIs treated differently from other IMIs? | Please clarify distinction between JST IMI's and IMI's as stipulated in Article 12 of the SSM Regulation. Rationale for this distinction is not clear. | EBF | Publish |
| 3 | 1 | Introduction | 2 | deletion | Why does the Guide apply to the inspections conducted in other legal entities because they have a relationship with the supervised entity? Do you aim for 'any other undertaking included in the supervision on a consolidated bases where the the ECB is the consolidating supervisor' or 'parties to which certain business activities are outsourced and under which contractual arrangement the legal entity is obliged to cooperate with information requests of the ECB? | The ECB does not have supervisory powers in relation to other legal entities | EBF | Publish |
| 4 | 1 | Introduction | 2 | clarification | It is stated that both types of inspections are carried out on the basis of a predefined scope. What is meant with a predefined scope? Specifically, to what extent will the scope be determined upfront and to what extent will further refinement and detailing of the scope take place at the start of and during the onsite? | In order to efficiently prepare for the onsite inspection and make the relevant resources available among others, it is helpful to learn about the defined scope as early as possible. | EBF | Publish |
| 5 | 1 | Introduction | 2 | | The Guide does not cover JST IMIs. What process is followed with regard to these investigations? Also other terminologies used in regular supervision like deep dives, thematic reviews, meetings by the JSTs at the bank's premises, supervisory visits conducted by the JSTs, etc. are not covered by this guide. | All supervisory investigations should be regulated by a relevant Guide to ensure common understanding of the process to be followed, especially when their nature involves even more subjectivity than OSIs and IMIs. | EBF | Publish |
| 6 | 1 | Introduction | 3 | amendment | Only limited topics are mentioned as areas which remain under the responsibility of each participating Member State. This is not correct. For instance all topics not included in the CRD/CRR regulation should be out of scope of the SSM, such as integrity or securities law. | The distinction between the power of the ECB/SSM and the responsibility of the participating Member State should be very clear in order to avoid confusion and misunderstanding. | EBF | Publish |
| 7 | 1 | Introduction | 3 | amendment | The statement "This Guide is not, however, (...)" must be amended. It must be clarified that also national law will prevail. | Not only EU law but also national law should prevail over this Guide if it provides for different requirements. | EBF | Publish |
| 8 | 1 | Between Section 1.1.1 and Section 1.1.2 | 4 | Amendment | A subparagraph about the relevant conceptual regulatory interdependencies (e.g. IFRS9) which are significant to the on-site activity should be added. | We believe that with no reference at all to the regulatory toolkit which the on-site inspection/assessment teams will be expected to resort to, the outcome of the on-site activity would bear the risk of mutual inefficiencies (for the supervisor and the supervised entity) due to possible silo-like on-site execution. | EBF | Publish |
| 9 | 1 | 1.1.3 | 5 | Amendment | The JSTs and the NCAs should be jointly responsible for the efficient deployment of supervisory tasks, in order to avoid situations where the supervised bank is subject to unjustifiable requirements (repetitive requests, time-consuming overlaps, etc.). NCA's must not be allowed to ask for additional information in addition to ECB on-site investigations which cover the same topic. | A statement should reflect this responsibility in this section | EBF | Publish |

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| 10 | 1 | 1.1.3 | 5 | clarification | Meetings by the JSTs at the bank's premises and supervisory visits conducted by the JSTs as part of their overall supervisory function (e.g. an in-depth review or "deep dive" on a specific topic carried out at the inspected legal entities' premises over a number of days) are not inspections and fall outside of the scope of this Guide. | Thematic reviews are not mentioned as being in scope. They are however in-depth investigations. Why are they not in scope of this guide? | EBF | Publish |
| 11 | 1 | 1.1.3 | 5 | clarification | The decision-making process could be elaborated further. E.g.: - who is responsible for drafting this planning; - how are institutions involved in the annual planning process and how are they informed of any adjustments. | Transparency of banking supervision | EBF | Publish |
| 12 | 1 | 1.1.4 | 5 | clarification | "high quality standards are applied in all inspections" | It should be more explicit, e.g. referring to recognized audit international standards, and it should include transparency vis-a-vis the supervised bank as a factor of quality standards | EBF | Publish |
| 13 | 1 | 1.3 | 6 | Amendment | "The ECB's supervisory decision specifies the subject matter and purpose of the inspection." Currently the notification letter only includes a very general reference to the subject matter (e.g. a general risk type) and does not include the purpose of the investigation. Including this information would enable the entities to better prepare for the on-site inspection. | Please specify the scope and purpose of the inspection in more details in the notification letter. Reference could be made to the objectives as defined in paragraph 1.3. | EBF | Publish |
| 14 | 1 | 1.3 | 6 | Amendment | "Inspections are conducted on the basis on the ECB's..." This should be Inspections are conducted on the basis OF the ECB's..." | In order to further enhance the legibility of the guide. | EBF | Publish |
| 15 | 1 | 1.3 | 6 | Amendment | Objective of inspections - "However, if deemed necessary the scope and timeframe of the inspection can be changed during the inspection": Should the scope of the inspection need to be changed during the inspection, it could only happen following another ECB decision and not at the HoM's discretion. This change should have to be formalised in writing. | Article 143 (2) of the SSM Regulation 468/2014 mentions that the on-site inspections are based on an ECB decision. | EBF | Publish |
| 16 | 1 | 1.3 | 6 | clarification | Proportional - currently specifically related to size, activities and risk profile. The inspection should also be proportional to the purpose of the investigation. For example if an inspection requires looking into IT systems/applications, it should focus on those applications which are necessary for the purpose of the investigation. In paragraph 3.1, reference is made to having read-only access to all relevant IT-systems, databases, IT tools, electronic files and data. It is not possible to adapt all applications for a specific inspection. For example, not all applications include a 'read-only' functionality. A solution would be to go through the systems/applications together with an IT expert, which would in general increase the efficiency. | Specific attention should be given to a broader definition/application of 'proportional'. | EBF | Publish |
| 17 | 1 | 1.3 | 6 | clarification | <u>Principles of the inspection</u> ; In addition to the principle of proportionality, the ECB should also take the subsidiarity principle into account. The proportionality principle implies that the investigation method should be reasonably appropriate to the objective of the investigation. The subsidiarity principle implies that the investigation method is applied in a manner which is deemed to be the least burdensome to the inspected entity involved. If the inspection team has a less burdensome investigation method at its disposal, it would have to use such method. | Please include that the inspection team will take the principles of subsidiarity into account. | EBF | Publish |
| 18 | 1 | 1.3 | 6 | clarification | The objective of inspections is to assess compliance with the legal requirements pertaining to internal models. How does it relate to the message that the JST IMI's are not considered as inspections under article 12. | There needs to be a consistent and clear description which IMIs are part of the Guide and what the reasoning is to make any distinction between IMIs under the SSM regulation | EBF | Publish |
| 19 | 1 | 1.3 | 6 | clarification | In the second bullet (of the first listing on this page) reference is made to the nature of the business which should be taken into account in the assessment of the governance and control framework. In our opinion the nature of the business should also be taken into account in the assessment of the other items. The explicit inclusion of 'proportional' as a principle (in the second listing on this page) has therefore been well received. However, we suggest to elaborate this principle somewhat to clarify that inspections should not only be organized in a proportionate manner, but the assessments within an inspection should also be proportional and take into account the nature of the business and risks of an institution. | Ensure proportionality is taken into account | EBF | Publish |
| 20 | 1 | 1.3 | 6 | clarification | We suggest that the Guide also addresses the area of inspection team's requirements for obtaining external legal or expert opinions. The Guide should at least broadly define and specify that the inspection team must primarily determine the actual situation and only exceptionally require external independent opinions at the expense of the inspected legal entity. | In our opinion, the inspection team must also endeavor to avoid unnecessary costs which burden the inspected legal entity's operations. | EBF | Publish |

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| 21 | 1 | 1.3 | 7 | amendment | Principles of the inspection: aim is for supervisors to develop more in-depth understanding. We would therefore expect to see this reflected in the wording of this principle. | We would suggest to change 'intrusive' to 'in-depth' | EBF | Publish |
| 22 | 1 | 1.3 | 7 | deletion | Principles of the inspection: we would not expect a supervisory principle aiming for remedial action and/or corrective measures. We would expect a focus on an assessment of adequacy. If this level is not reached, remedial actions may be necessary, but should not be a basic starting point. | Please delete action-oriented as a basic supervisory principle. | EBF | Publish |
| 23 | 1 | 1.3 | 8 | clarification | Cooperation with third-country supervisory authorities. It would help if the guide gave a more detailed description of the issues arising from investigations including third-country jurisdictions. Given the legal restrictions to the supervised entities in certain jurisdictions, direct contact between the ECB and the third-country supervisor would contribute to an efficient and effective investigation. | Please further specify interaction with third-country supervisors. | EBF | Publish |
| 24 | 1 | 1.4 | 7 | amendment | 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 knowledge of the bank is a must. | Further recognition to the JST role | EBF | Publish |
| 25 | 1 | 1.5 | 7 | amendment | Head of Mission - We suggest to add: <i>"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"</i> . | The appointment of a Deputy Head of Mission would support the smooth running of the on-site inspections | EBF | Publish |
| 26 | 1 | 1.5 | 7 | clarification | 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 sections also explains the interaction of the Head of Mission with the JST. However, 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. | What interaction does the inspected legal entity have with the JST and what channel of escalation exists above the Head of Mission? | EBF | Publish |
| 27 | 1 | 1.6 | 7 | amendment | Composition of the inspection team - We suggest that at least one member of the JST should be always part of the inspection team. This ensures that the inspection team knows business model, legal structure, and financial profile of the bank. 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. | Further use of JST resources could facilitate the deployment of the OSI / IMI | EBF | Publish |
| 28 | 1 | 1.6 | 8 | amendment | The number of inspectors is defined at the beginning of the mission and should remain stable during the mission in order to facilitate the organisation of the audited teams. Unless the inspection is driven by exceptional circumstances, the size of an inspection team should be limited to a maximum of [6/7] inspectors . | It is difficult for audited teams to face with inspection team characterized by a variable size. When the number of inspectors increases, the demands increase in the same proportion, while the audited teams have to continue to ensure their business as usual. | EBF | Publish |
| 29 | 1 | 1.6 | 8 | clarification | Composition of the inspection team - External consultants could be included in the inspection team. The Guide does however not specify which regime is applicable to these consultants, for example with regard to confidentiality | Please specify the regime applicable for external consultants | EBF | Publish |
| 30 | 1 | 1.7 | 8 | amendment | Composition of the inspection team - 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 written confirmation of ECB that such agreements were signed). | The institutions have to observe all confidentiality requirements resulting from e.g. data protection law, securities law, and civil law aspects. They are not aware of any confidentiality agreements between ECB and third parties and do not have any contractual relationship with these third parties. Therefore we would appreciate a clarification that all persons authorized by ECB sign a special confidentiality agreement/declaration that is also disclosed to the institution. | EBF | Publish |
| 31 | 1 | 1.7 | 8 | amendment | 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. | The Guide should be explicit about this point | EBF | Publish |
| 32 | 1 | 1.7 | 8 | Clarification | Which data and documents should the examiners provide for the onboarding of company identity cards and system rights or is the provision of the name sufficient? | | EBF | Publish |
| 33 | 1 | 1.7 | 8 | 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? | | EBF | Publish |
| 34 | 1 | 1.7 | 8 | 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 | | EBF | Publish |

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| 35 | 2.2.2.1 | 9 | amendment | It is mentioned that the availability and readiness of all parties with respect to an on-site inspection is always a purely internal procedure. In our opinion the availability and readiness of the institution should also be taken into account to prevent an undue burden on the institution / operational risks (e.g. when major extraordinary events are expected, such as mergers). This is best done in an early stage of the preparatory phase. | Prevent undue burden / additional risks on the institution in case of exceptional event. | EBF | Publish |
| 36 | 2.2.2.1 | 9 | amendment | 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 always sent to the parent, which in turn must inform the subsidiaries concerned of the upcoming inspection" | To facilitate the oversight function, this notification should be always sent to the Parent. | EBF | Publish |
| 37 | 2.2.2.1 | 9 | clarification | In case of internal model investigations the ECB may also involve confirmation of the legal entity's readiness to submit an application. An application is made on the initiative of an institution and the institution should be involved. | An application is made on the initiative of an institution, the institution is in the driver's seat | EBF | Publish |
| 38 | 2.2.2.1 | 9 | clarification | The notification of inspections generally do not include a detailed timeframe of the different steps and substeps of an inspection. Especially the time frame of step 5 to 8 (including follow-up phase by JST) is not clear. | Clarity about the time frame is considered necessary given the profound effect on the capacity, resourcing etc. of departements in scope of the investigation. | EBF | Publish |
| 39 | 2.2.2.1 | 9 | clarification | Confirmation step - <i>"In the initial step of the preparatory phase, the availability and readiness of all parties involved is confirmed. While for on-site inspections this is always a purely internal procedure, in internal model investigations it may also involve confirmation of the inspected legal entity's readiness to submit an application. The assessment of such readiness may involve initial meetings at the inspected legal entity's premises at an early stage. In such cases the inspected legal entity receives feedback about the ECB's views on whether or not it is ready to submit an official application."</i> It is assumed that this step is related to the formerly known as pre-application process, which as far as we were informed is currently being reviewed in order to be simplified and harmonized across institutions practices. We think that this initial step of the preparatory phase should be better clarified e.g in terms of timing (when the so called confirmation of inspected legal entity readiness will take place?), expected deliveries and official material to be submitted to the ECB by that time, expected level of management approval of the relevant documentation. | A material number of model changes applications will be filed in the future in order to comply with incoming new regulation requirements. It is therefore necessary to have clear and transparent rules in place in order to allow the institutions for a proper planning and thus meet the supervisory expectations. These set of rules would even allow level playing field across Banks as currently different practices can be observed. | EBF | Publish |
| 40 | 2.2.2.1 | 10 | amendment | Notification of the commencement of an inspection: "This usually happens a few weeks, but in any case at least five working days (...) i.e. five days before the kick-off meeting". The kick-off presents the official start of the inspection. A notification five days prior to a kick-off meeting 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 several weeks to prepare. | Tight timeframes for setting up all required operational or technical issues is a key aspect for a sound start of 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). | EBF | Publish |
| 41 | 2.2.2.1 | 10 | amendment | Notification of the commencement of an inspection. Resources. | The scope of the inspection should be stated more precisely (it is currently quite generic) so as to allow early engagement of key staff of the inspected legal entity. | EBF | Publish |
| 42 | 2.2.2.1 | 10 | amendment | The Guide states the following as to the first request for information: Once the notification letter has been sent and before the kick-off meeting is held, the HoM should inform the inspected legal entity of the identity of the team members who will participate in the inspection and send a first request for information to the inspected legal entity as soon as possible at least two weeks before the kick-off meeting . | In light of the possibility for the Inspection team to require preliminary documents or information by the inspected institution to be provided before the kick-off meeting, a minimum notification time should be defined, with possible extension should the requests be more cumbersome than ordinary ones (e.g. data tapes). | EBF | Publish |
| 43 | 2.2.2.1 | 10 | amendment | Notification of the commencement of an inspection - It is indicated that the inspected legal entity is notified of an inspection through a letter from the ECB to the inspected legal entity's CEO. Suggestion to also include in the cc the department specifically mandated for ECB/JST/Supervisory interactions (e.g. ECB Office) within the legal entity. | In order to further optimize the communication between the legal entity and the supervisor taking into account the standard communication channels of both parties. | EBF | Publish |
| 44 | 2.2.2.1 | 10 | amendment | 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 inspection. The Head of Mission is encouraged to discuss such large requests with the inspected legal entity to ensure an adequate and timely delivery." | Large data requests are time-intensive. It is helpful to discuss what is required and what can be practicably delivered before the audit. This also allows more time to complete such large requests. | EBF | Publish |

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| 45 | 2 | 2.2.1 | 10 | amendment | The ECB notifies the inspected legal entity of its decision to launch an inspection. This happens in any case at least five working days, before the inspection is due to commence, i.e. five days before the kick-off meeting. | Five working days between notification and kick-off is considered to be far too short, especially considering logistics (meetings with sr management, rooms for the inspectors) and last but not least in the case of data request (eg loan tapes, reports) a longer period is needed | EBF | Publish |
| 46 | 2 | 2.2.1 | 10 | Amendment | First request for information - "The inspected legal entity may be asked to provide documents or information mentioned in the first request for information [...]": an e-mail acknowledgment may be required for all ECB communications to be sure that all the documents have been received by the audited members of the entity. | Indeed, some documents are not received due to the size of the attached files. | EBF | Publish |
| 47 | 2 | 2.2.1 | 10 | clarification | It is stated that in internal model investigations it may also involve confirmation of the inspected legal entity's readiness to submit an application. What are the parameters taken into account in the assessment and when is a legal entity regarded as 'ready'? | It would be helpful for inspected legal entity's to gain further insight in the parameters on which they are assessed regarding their readiness and hence when they are deemed 'ready' for an application. | EBF | Publish |
| 48 | 2 | 2.2.1 | 10 | Deletion | Notification of the commencement of an inspection - "If the inspected legal entity is the subsidiary of a parent located in a participating Member State, the notification is generally sent to the parent [...]" - could the term "generally" be deleted, please? | It remains of great importance to inform the parent company about any on-site inspection performed in one of its subsidiaries. More generally, a harmonisation in the notification to the parent company/subsidiary could be really appreciated. | EBF | Publish |
| 49 | 2 | 2.2.2 | 11 | amendment | Seniority of the inspected entities' representatives ; CEO or executive board member should be present or represented at a sufficiently senior level. This is in line with standard practice. However, on page 11 it states that either CEO or member of the Executive Board should be present. | Please align wording on seniority of inspected entities representatives on page 11 to the wording on page 23 in line with standard practice. | EBF | Publish |
| 50 | 2 | 2.2.2 | 11 | amendment | 'A senior representative of the inspected legal entity should attend the kick-off meeting. This should be either the CEO or a member of the executive board' - It is overly onerous to expect the attendance of the CEO or a member of the executive board at kick-off meetings for every inspection. Also, the ECB has not set out its rationale as to why this should be a requirement. | The request of the CEO or a member of the executive board to participate in an inspection shall be agreed with the inspected entity, sufficiently justified, and based on the proportionality and effectiveness of the process. The guide should also consider that top management meetings 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. | EBF | Publish |
| 51 | 2 | 2.2.2 | 11 | amendment | This section mentions a tentative schedule that might be communicated during the kick-off meeting. In our opinion a tentative schedule is the very least that must be communicated during a kick-off meeting for an institution to be able to plan any resources accordingly. | Transparency of banking supervision | EBF | Publish |
| 52 | 2 | 2.2.2 | 11 | Amendment | It may be mentioned that on-site inspections can be performed by using the maximum of sources of information (for example: shelf-registration document, former on-site inspections, thematic reviews...) | By capitalising on such sources of information, it enables to save time during the on-site inspection. | EBF | Publish |
| 53 | 2 | 2.2.2 | 11 | Clarification | Kick-off meeting - "[...] the HoM contacts the relevant person in the entity [...]: could you provide much precision on the way to identify "relevant persons", please? Is there a difference with "the main contact persons for each topic" mentioned below? | It would be appreciated to have some clear criteria or to define a clearer process of identification of such persons. | EBF | Publish |
| 54 | 2 | 2.2.2 | 12 | amendment | "the inspection team has the possibility shall hold regular status meetings with the inspected legal entity at working level to discuss preliminary facts and findings | We are in favor of a constructive dialogue between the inspection team and the inspected legal entity throughout on-site inspection | EBF | Publish |
| 55 | 2 | 2.2.2 | 12 | amendment | We understand the need to grant an inspection team access to all requested information. However, in our opinion this does not automatically mean that access to IT systems is necessary. Considering privacy regulations, the accountability of institutions for any available information and acts on public access to government information we want to monitor the information which is being shared with the inspection team. Only if an institution would not cooperate with the inspection team, then access to all relevant IT systems would be necessary. We propose to adjust the text accordingly. | Respect accountability of institutions | EBF | Publish |
| 56 | 2 | 2.2.2 | 12 | clarification | 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 in order that validates results can be discussed. | The use of extrapolations could lead to biased results due to the inherent logic of extrapolations. | EBF | Publish |
| 57 | 2 | 2.2.2 | 12 | clarification | Therefore it is necessary to grant the inspection team access to all the requested information and all relevant IT systems (see Section 3.3.3, "Working conditions"). | What are relevant IT systems? And Is this access to live systems? Please specify. | EBF | Publish |
| 58 | 2 | 2.2.2 | 12 | clarification | Significant interviews are attended by at least two inspectors. Please clarify what a 'significant interview' is. | For sake of transparency and informed expectations | EBF | Publish |

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| 59 | 2.2.2.2 | 12 | clarification | By performing a benchmarking analysis or even by requesting counterparty confirmation (circularisation). Is requesting counterparty confirmation within the legal scope? | For sake of transparency and informed expectations | EBF | Publish |
| 60 | 2.2.2.2 | 12 | clarification | With regard to the inspection techniques: Please note that a supervisor is not automatically entitled to request all and any information from the bank. | There should always be a legal and sound basis for the request and the request does not automatically supersede other laws and/or regulations like national data privacy law | EBF | Publish |
| 61 | 2.2.2.2 | 12 | clarification | It is stated a request for a counterparty confirmation is possible. Please specify what is meant by counterparty confirmation. | The Guide should be as clear as possible. | EBF | Publish |
| 62 | 2.2.2.3 | 13 | amendment | We would rephrase "inspection findings" with "preliminary inspection findings" for a better understanding. | 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). | EBF | Publish |
| 63 | 2.2.2.3 | 13 | amendment | We would appreciate the introduction of a maximum period of time for the delivery of the Final Report to the institution. The guide should specify the maximum time between the closing meeting and the final follow up letter sent to the inspected legal entity. | Timeline is not well balanced: currently only Institutions have strict due dates within the process. Setting a maximum period of time for ECB to conclude its internal process would allow the institution to accurately plan the resources, IT environments and processes impacted by the change. | EBF | Publish |
| 64 | 2.2.2.3 | 13 | amendment | There is no timeline commitment for the head of mission to finalise the report and in practice final reports are delayed as inspection teams are already starting on their next inspection. Therefore we propose to include a timeline for the final report as well (e.g. four weeks after the receipt of written feedback by the institution) providing the head of mission with a clear guideline as well. | Ensure resources from institutions are deployed accurately. | EBF | Publish |
| 65 | 2.2.2.3 | 13 | Amendment | Reporting phase - the banking industry would like to be informed of the severity of the different statements / conclusions, so that the credit institutions could adapt their priorities / resources. | | EBF | Publish |
| 66 | 2.2.2.3 | 13 | Clarification | 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 | | EBF | Publish |
| 67 | 2.2.2.3 | 13 | Clarification | ECB should assess in all cases whether the sharing of the report with the parent company of the inspected subsidiary is allowed under national law (inter alia data protection law). | | EBF | Publish |
| 68 | 2.2.2.3 | 14 | | The notification of inspections generally do not include a detailed timeframe of the different steps as described in Figure 2. The draft report could be sent XX working days ahead the closing meeting. | Clarity about the time frame is considered necessary given the profound effect on the capacity, resourcing etc. of departments in scope of the investigation. We would like to discuss about the timeframe. | EBF | Publish |
| 69 | 2.2.3.1 | 13 | | The Head of Mission sends the draft report of the inspection together with as standardised feedback template. The written feedback should be provided within two weeks of receiving the draft. This should be longer and should refer to the exit meeting rather than the date of receiving the draft. | A reasonable timeframe should be applicable, due to the fact that this feedback statement can be used in a procedure with the Administrative Board of Review or the Court of Justice | EBF | Publish |
| 70 | 2.2.3.1 | 13 | | The draft report should be sent sufficiently in advance to enable the inspected legal entity to adequately prepare for the meeting | This phrasing does not provide sufficient clarity. Additionally, the institution should be granted sufficient time for the preparation | EBF | Publish |
| 71 | 2.2.3.1 | 15 | clarification | It is mentioned that the ECB supervisory decision might take the form of a recommendation. However, it is unclear how this is different from the supervisory expectations that are mentioned as well in this section. Please clarify any differences, or otherwise we would suggest referring to expectations instead. | Shared understanding of action plans. | EBF | Publish |
| 72 | 2.2.3.1 | 15 | clarification | Please explain difference between recommendations and corrective measures. | Clarification needed | EBF | Publish |
| 73 | 2.2.3.1. | 15 | clarification | Recommendations are in the opinion of the ECB qualified as a decision but are not legally binding? This should be corrected in line with the first type, a letter expressing supervisory expectations which constitutes an operational act which is not legally binding | The text in the Guide should be corrected | EBF | Publish |
| 74 | 2.2.3.2 | 16 | clarification | It is written that the ECB has the power to enforce supervisory measures if the inspected legal entity has not implemented the agreed action plan sufficiently well or in a timely manner. For the recommendations as a form of supervisory power on page 15, it is not stated that recommendations are provided with a deadline. How can one learn about the definition of a "timely manner"? | It is helpful to learn about the definition of a "timely manner" of the JSTC in order to align expectations. | EBF | Publish |
| 75 | 2.2.3.2 | 16 | clarification | It is indicated that the ECB sends a final follow-up letter/decision to the CEO of the inspected legal entity. Suggestion to also include in the cc the department specifically mandated for ECB/JST/Supervisory interactions (e.g. ECB Office) within the legal entity. | In order to further optimize the communication between the legal entity and the supervisor taking into account the standard communication channels of both parties. | EBF | Publish |

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| 76 | 2 | 2.3.2 | 16 | clarification | In our understanding the action plan might only need adjustment if the institution has not completed the actions which have been agreed upon. Perhaps this could be clarified as the current wording could suggest that ECB is allowed to adjust the actions at will. This could prevent actions from ever being closed as new insights continue to develop. Of course these new insights can (and should) be incorporated by the JST in their day-to-day supervision, but closing of the inspection follow-up phase needs to be assessed on the original agreed-upon actions. | Shared understanding of action plans. | EBF | Publish |
| 77 | 3 | 2.3.2 | 16 | Amendment | The follow-up phase - the wording could be amended by mentioning that it deals with quarterly reporting requirements about recommendations closed before or during the reporting period. | The recommendations with a maturity beyond the reporting date would be naturally excluded from the scope. | EBF | Publish |
| 78 | 3 | 2.3.2 | 16 | Clarification | Follow-up of the inspected legal entity's action plan - "If the inspected legal entity has not implemented the agreed action plan sufficiently well or in a timely manner, the ECB has the power to enforce supervisory measures.": could it be possible to have more details about the notion of "power to enforce supervisory measures", please? What are the outcome if an audited entity does not reply to one recommendation? | More generally, this point raises the following question: is it possible for an audited entity not to reply to a proposal of recommendation? | EBF | Publish |
| 79 | 3 | 3.1 | 17 | Amendment | Inspection team's supervisory and investigatory powers it could be useful to mention the question relative to the translation of documents. The latter should be translated by ECB members, not by the members of the audited entity. | All translation issues should be covered by ECB members or the ECB should be aware to include people speaking the same language as the audited entity. | EBF | Publish |
| 80 | 3 | 3.1 | 17 | clarification | In accordance with the Guide the inspection team may, within the scope of the inspection, conduct all necessary investigations. We observe that in practice inspections usually go beyond the original subject. | The ECB should remain within its mandate and should be able to explain the reasoning behind the requested information in conjunction with this mandate. | EBF | Publish |
| 81 | 3 | 3.1 | 18 | clarification | Carry out the checks by having read-only access to all relevant IT systems, databases, IT tools, electronic files and data used by the inspected legal entity | Is full read only access to live IT systems meant? | EBF | Publish |
| 82 | 3 | 3.1 | 18 | clarification | It should be clarified that at least the principles of proportionality and subsidiarity set limits for any data and information request. First of all in cases where relevant information is already available within another unit of ECB or an NCA, this information should be used and a request from the institution should be avoided. | Various extensive information requests impose already now an enormous administrative burden for the institutions and should therefore be limited to the essential minimum. | EBF | Publish |
| 83 | 3 | 3.1 | 18 | clarification | Inspection team's supervisory and investigatory powers. The section "Right to ask NCAs for assistance in event of opposition" explains the Head of Mission's escalation channels. | What channel of escalation exists for the inspected legal entity? | EBF | Publish |
| 84 | 3 | 3.2 | 19 | amendment | The requests for information should be answered with careful consideration and delivered within agreed timelines. The persons concerned should also inform the inspection team members of any relevant related information, even if it is not explicitly requested by them. | It is worth highlighting that "relevant related information" is an excessively broad concept to be defined, while implicit requests may or may not be identified, even in good faith. Because of the above reasons, no obligation shall reasonably be placed upon the interviewees. | EBF | Publish |
| 85 | 3 | 3.2 | 19 | amendment | Confidentiality agreements with 3rd parties intervening in the inspection should be signed and be accessible to the supervised bank. Only in this way the bank can check that the confidentiality agreement is compliant with the internal and local rules and therefore leaves the supervised entity without any responsibility on the use that others (be it the ECB or its selected consultants) make of the bank information. | Importance of confidentiality and secrecy | EBF | Publish |
| 86 | 3 | 3.2 | 19 | clarification | It would be worthwhile if ECB would provide more clarification on how their professional secrecy standards hold up in the context of acts on public access to government information | Ensure privacy of information shared. | EBF | Publish |
| 87 | 3 | 3.2 | 20 | clarification | It is written that "when required by the <i>proper conduct and efficiency of the inspection</i> ", the ECB may carry out an inspection without notifying the supervised entity beforehand." Please specify or provide an example. The intrusiveness of such procedure needs to be extremely well based on sound reasons. | It is helpful to learn about the definition of a "proper conduct and efficiency of the inspection" of the JSTC in order to align expectations. | EBF | Publish |
| 88 | 3 | 3.2 | 19 | amendment | The inspection teams must comply with the inspected legal entity's internal rules regarding data protection, information systems and physical access to premises, to the extent compatible with the inspection needs? What happens in case of incompatibility? An institution can't be forced to violate applicable data protection rules. | The ECB should be bound to the procedures in order to maintain a prudent organisation and should also be bound by external rules | EBF | Publish |

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| 89 | 3 | 3.2 | 19 | amendment | With reference to provisions of 2nd paragraph of point 3.3.2 which stipulate that the inspected legal entity's staff should strive to ensure a professional and courteous attitude towards the inspection team, we propose to consider inclusion of a similar provision into introductory part of point 3.2 (Inspection team's practices) of the Guide in order to ensure similar behaviour of the inspection team on reciprocal basis. Possible wording might read: "The HoM and other members of the inspection team should strive to ensure a professional and courteous attitude towards the inspected legal entity's staff". | Reciprocity and mutual respect should be warranted. | EBF | Publish |
| 90 | 3 | 3.3.1 | 20 | amendment | We suggest that at least an indicative, instructional deadline for the completion of the draft report after receiving the comments of the inspected legal entity on the received first draft and after completed exit Meeting. Possible text of the relevant sentence would read as follows: "After the exit meeting the HoM finalizes the draft report within XX days , taking the feedback received from the inspected legal entity into account if necessary". | | EBF | Publish |
| 91 | 3 | 3.3.1 | 20 | Amendment | Need to be informed of the inspection outcomes- "During the inspection, the senior management of the inspected legal entity may ask the HoM to have one or several interim meetings on the progress of the inspection or on any related topic.". could the wording be amended in the following way? "During the inspection, <i>the HoM shall, upon request of the senior management of the inspected legal entity, grant one or several interim meetings to review the progress of the inspection or any related topic.</i> " | | EBF | Publish |
| 92 | 3 | 3.3.1 | 20 | Amendment | Need to be informed of the inspection outcomes- "The inspected legal entity can discuss the draft follow-up letter during the closing meeting, chaired by the JSTC and attended by the HoM.". could the wording be amended in the following way? "The inspected legal entity may also formalise in writing its observations on the draft follow-up letter (e.g. : changes in the implementation deadlines, clarification of the expected remedial actions, etc.)" | | EBF | Publish |
| 93 | 3 | 3.3.1 | 20 | clarification | The HoM finalises the draft report, taking the feedback received from the inspected legal entity into account if necessary. | Please specify 'necessary' and please specify what principles of <i>audi alteram partem</i> are used in the investigation phases before the draft report | EBF | Publish |
| 94 | 3 | 3.3.1 | 21 | amendment | "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 and its parent, see Section 2.2.3 "Reporting phase") by the ECB." | The results of the inspection should also be sent to the parent in order to facilitate the oversight function. | EBF | Publish |
| 95 | 3 | 3.3.1 | 21 | clarification | The guide shows that the institution is informed of any findings through a final report and the draft follow-up letter is discussed in the closing meeting. We would like to see some further clarification on the possibilities to object to a final report or the final follow-up letter. Especially with non-legal binding recommendations it not clear how any disagreements between the JST and the institution will be solved. | Transparency of banking supervision | EBF | Publish |
| 96 | 3 | 3.3.2 | 21 | clarification | 'Rules of engagement' - the guide clearly specifies the requirements and expectations of the ECB. It would be helpful to include a guidance on the way inspectors operate in day-to-day practice towards the inspected legal entity and its employees. | The guide should also reflect the 'rules of engagement' to be taken into account by the inspectors. | EBF | Publish |
| 97 | 3 | 3.3.3 | 22 | deletion | The persons concerned should also inform the inspection team members of any relevant related information, even if it is not explicitly requested by them: The ECB should make clear which information they are looking for. | 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. | EBF | Publish |
| 98 | 3 | 3.3.3 | 23 | amendment | Cooperation expected from the inspected legal entity's representatives during the inspection. 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 necessary to add this precision. The bank cannot impose its employees to be readily available whenever the supervisor would like out of their contractual business timetable. | EBF | Publish |

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| 99 | 3 | 3.3.3 | 23 | amendment | As far as the Appointment of a point of contact, the following paragraph should be redrafted as follows: The HoM may request a A point of contact with enough seniority within the inspected legal entity's organisation may be designated by the inspected legal entity itself or requested by the HoM so to ensure that the inspection team's requests are handled correctly and in good time and that the right people are contacted directly by put in contact with the team. The point of contact may will facilitate exchanges between the inspection team and the inspected legal entity and may attend all meetings; any exceptions to this principle should be duly reasoned in advance by the HoM." | With the benefit of hindsight since the outset of SSM supervisory activity in November 2014, we believe that the value-added of having a point of contact within an inspected significant institution to handle the inspection team's on-site activity has been largely proved. | EBF | Publish |
| 100 | 3 | 3.3.3 | 23 | amendment | After the exit meeting the HoM finalises the draft report, taking the feedback received from the inspected legal entity into account if necessary . | The institution's feedback should always be taken into account. | EBF | Publish |
| 101 | 3 | 3.3.3 | 23 | amendment | In the last sentence of the first paragraph of the section "Availability of the inspected entity's staff" the word "reasonable" could be added before the word "speed", so this sentence would read: "They should cooperate in good faith and with reasonable speed and competence on requests for interviews and information." | | EBF | Publish |
| 102 | 3 | 3.3.3 | 23 | Amendment | Organisation of meetings - "These counterparts could be internal or external stakeholders at any level, particularly consultants or outsourced service providers.": could it be precised at the end of the sentence "when legally possible"? | | EBF | Publish |
| 103 | 3 | 3.3.3 | 23 | clarification | We understand that the inspection team needs to have the possibility to contact staff directly if necessary. Under normal circumstances this should be agreed on in mutual agreement by the institution and the inspection team. If the HoM wants to have a meeting explicitly without a contact person being present, the HoM should clarify the reasons for this. | Transparency of banking supervision | EBF | Publish |
| 104 | 3 | 3.3.3 | 23 | clarification | With respect to meetings with stakeholders we note that the institution has no direct control over external stakeholders. Especially the timing of these external meetings will depend on these external stakeholders themselves as well. The institution should still facilitate the organisation of these meetings, but it might be appropriate to include a distinction between internal and external meetings more clearly. | Practical considerations | EBF | Publish |
| 105 | 3 | 3.3.3 | 23 | clarification | It is indicated that the inspected legal entity should appoint a contact person with adequate seniority in functional and hierarchical terms to interact with the inspection team. Please further specify what is regarded as adequate seniority in functional and hierarchical terms. | In order for the inspected legal entity to appoint the most suitable contact person it is essential to learn about the specific supervisor expectations regarding the seniority of the contact person. | EBF | Publish |
| 106 | 3 | 3.3.3. | 22 | clarification | As part of the working conditions the inspection team may require one or several e-mail boxes. The e-mail addresses of the inspectors will need to reflect that they are representatives of the supervisor. This should also be made clear in the information or meeting request the inspectors send out. | Employees of the inspected entity need to be informed that the meeting or information request is sent to them by the supervisor. | EBF | Publish |
| 107 | 3 | 3.4 | 23 | clarification | Referal to the 'operational policy' is made. Please specify what is meant here. | The Guide should be as clear a possible. | EBF | Publish |
| 108 | 3 | 3.4 | 24 | clarification | 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. | Even if supervised entities are making efforts to conduct the supervision in English, in some instances interpretation or translation may be necessary to ensure correct understanding. | EBF | Publish |