



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Feedback Statement

Responses to the public consultation
on the draft ECB guide to on-site
inspections and internal model
investigations

BANKENTOEZICHT

September 2018

BANKTILSYN BANKU UZRAUDZĪBA

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VIGILANZA BANCARIA

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1 Overview and analysis of responses

The aim of this document is to provide an overview and assessment of the comments received during the public consultation on the draft ECB guide to on-site inspections and internal model investigations. It also explains the amendments made to the draft guide as a result of the consultation.

1.1 Context

On 27 July 2017 the European Central Bank (ECB) launched a public consultation on its draft guide to on-site inspections and internal model investigations (“the guide”). While not being a legal requirement, the consultation was conducted with a view to enhancing transparency and in order to collect responses from interested parties. The public consultation ended on 15 September 2017. The ECB has given due consideration to all of the comments received during the consultation period.

1.2 Structure of the feedback statement

This feedback statement presents an overall assessment of the comments received in the public consultation and aims to address the most relevant issues raised by them. Amendments to the draft guide have been made as a result of the comments received.

Part 3 of this document summarises the key comments and the resulting amendments to the guide by topic. However, it only lists the most relevant comments and amendments.

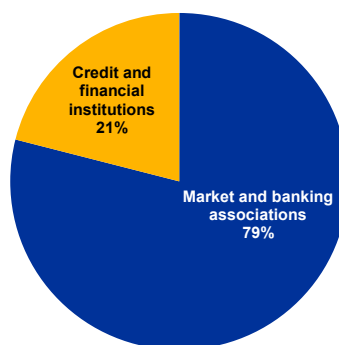
1.3 Statistics on the responses

A total of 445 comments from 14 respondents were received. Contributions were submitted by credit and financial institutions and by market and banking associations, representing a broad cross-section of stakeholders. Table 1 shows the numbers of responses received from each type of respondent.

Table 1

Breakdown of responses to public consultation by type of respondent

| Type of respondent | Number of respondents | % of total |
|-----------------------------------|-----------------------|------------|
| Private persons | 0 | 0 |
| Credit and financial institutions | 3 | 21 |
| Market and banking associations | 11 | 79 |
| Total | 14 | 100 |



1.4 Adoption of the guide

A complete draft proposal for the adoption of the draft ECB guide to on-site inspections and internal model investigations was sent by the Supervisory Board to the Governing Council of the ECB on 13 August 2018. The guide, as adopted by the Governing Council on 20 August 2018, was published on the ECB website on 19 September 2018, together with this feedback statement.

2 Explanation of the proposal and policy rationale

In accordance with Council Regulation (EU) No 1024/2013 of 15 October 2013 (the SSM Regulation),¹ the ECB may carry out off and on-site evaluations. The combination of both is intended to ensure a detailed and thorough analysis of supervised entities' business. On-site supervision is performed through on-site inspections (OSIs), including internal model investigations (IMIs) (hereinafter referred to together as "inspections"), as stipulated in Article 12 of the SSM Regulation. Inspections are a critical tool for banking supervision worldwide. The objective of the guide, which was drafted in close cooperation with the national competent authorities (NCAs), is to explain how inspections are carried out and to provide a useful document for banks subject to such inspections.

An inspection of a bank aims to provide an in-depth analysis of its various risks, internal control systems, business models and governance. It has a pre-defined scope and time frame and takes place on the premises of the inspected bank or a related legal entity. Inspections should be intrusive, while adhering to the principle of proportionality. They are designed to provide a detailed picture of the situation of a given bank, including a forward-looking analysis. The guide provides an overview of the general framework under which inspections are conducted, describes the different inspection phases, and sets out the principles and practices of inspections to foster fruitful cooperation between banks and inspection teams.

¹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

3 Comments and amendments to the draft ECB guide to on-site inspections and internal model investigations

3.1 General structure of the guide, definitions and editorial changes (changed)

The ECB received comments referring to the structure of the guide, asking for additional definitions and for clarifications regarding its application.

Respondents also commented on Figure 1 and Figure 2 of the guide. Figure 1 depicts the main steps of an inspection, while Figure 2 depicts the steps of the reporting phase. Comments referred to steps which, in the respondents' view, should be included in the figures: for example, the withdrawal of an IMI application should be included in Figure 1.

The guide describes the stages of the inspection process that are relevant to inspected entities and does not include internal SSM procedures; therefore not all steps taken by the Head of Mission (HoM) during the process are reflected in the guide. (No change)

As regards the terms used in the guide, a definition of “finding” has been included and the term “JST IMIs” has been removed to avoid confusion. The difference between IMIs conducted as on-site inspections and “JST IMIs” is that the former are conducted on-site by an independent inspection team, while the latter are internal model analyses conducted by the Joint Supervisory Team (JST) as part of ongoing supervision and not on the basis of Article 12 of the SSM Regulation.

Regarding comments received on Figures 1 and 2, these figures are intended to provide an overview of key milestones in the inspection and reporting process and therefore are not exhaustive.

Editorial changes have been taken into consideration and the guide amended accordingly.

3.2 Inspection duration and indicative time frames for inspection phases (no change)

Participants requested that indicative timelines for different steps of the inspection process be included in the guide, in particular the reporting steps as outlined in Figure 2 of the guide.

To establish the most suitable plan to achieve the objectives of the inspection efficiently the HoM and the responsible JST coordinator (JSTC) cooperate closely,

exchange relevant information and prepare an inspection memo setting out the rationale, scope and objectives of the inspection. On the basis of this memo the HoM can provide an initial indicative timeline for the mission during the kick-off meeting and clarify any other questions the institution might have.

3.3 Confirmation step (changed)

Participants requested that, in the case of both OSIs and IMIs, the confirmation step takes into account the readiness of the institution. Several respondents also asked for clarification as to whether the “confirmation step” was formerly known as the “pre-application phase”.

The confirmation step in relation to IMIs is also known as the “pre-application process”. It is intended to ensure, in the context of the informal supervisory dialogue, the institution’s readiness to submit a formal application for model approval.

For OSIs this is a purely internal procedure.

3.4 Use of external consultants (changed)

Respondents commented on the confidentiality regime external consultants are bound to, their qualifications and/or experience to ensure high quality supervision, and their fees.

The ECB has taken note of these comments and can clarify that external firms are obliged, through their framework contracts, to comply with strict professional secrecy requirements. They and any of their staff involved are required to sign individual confidentiality agreements to that effect. Equivalent confidentiality measures are applied to external contractors as are applicable to supervisors from the ECB and/or NCAs.

Possession of the required qualifications is a major criterion in the process of selecting external firms to support inspections. Qualifications are thoroughly checked before each assignment, with the involvement of the HoM and taking into consideration the scope of the mission.

The HoM also decides on the assignments of each team member before the mission starts. This means that the tasks of the external consultants are agreed in advance and cannot influence the duration of the mission and the subsequent fees applied.

3.5 Coordination/cooperation between JST and OSI team and composition of the OSI team (changed)

Respondents stressed the need to further clarify and explain the cooperation and coordination between JSTs and OSI teams. Some respondents provided comments on the composition and size of the OSI teams.

As previously stated, the guide does not include inspection steps which are SSM internal only. Hence not all steps taken by the HoM are detailed in the guide. Cooperation between the JST and the HoM is ensured in a number of ways throughout the inspection process, bearing in mind the principle of independence under which the HoM operates.

When the HoM is appointed, the JST informs him/her in more detail about the scope and objectives of the inspection and provides any supporting information and documents that may be required. The HoM and JST discuss the purpose, rationale and objectives of the inspection. These are formalised in an inspection memo. Where possible, the inspection team draws on the information available from the JST. However, as an inspection is a point-in-time investigation, the HoM may request from the inspected entity any document relevant to the scope of the inspection in order to ensure that the inspection team have the most recent version.

During the whole inspection period the JST should, when necessary, coordinate with the HoM to ensure that a single approach is adopted and the supervisory action is consistent. This is particularly important if meetings are scheduled on topics related to the inspection as part of the ordinary supervisory examination programme or vice versa.

Regarding the composition of the OSI team, it is not always possible or appropriate for a JST member to join the team. This is determined on a case-by-case basis, taking into consideration the scope of the mission and the specific expertise and experience of the JST member concerned.

It is the HoM's responsibility to inform the inspected legal entity of the number and names of the team members (including consultants) at the beginning of the mission, also including any members of the JST. The team size is decided and set at the beginning of the mission and does not change unless circumstances so require (for example, illness of a team member).

3.6 Inspection planning (changed)

Respondents asked to receive information about the main focus of the inspections at the beginning of the year to ensure transparency of banking supervision and to allow for better internal organisation and resource allocation.

Participants also requested clarification of possible adjustments to the planning in the course of the year.

The inspection planning strategy is designed around the targeted engagement level (TEL) for inspections. The TEL is a flexible framework that takes into account supervisory priorities, the outcome of Supervisory Review and Evaluation Process (SREP) reviews and the historical perspective. It provides indicative expectations regarding the number of OSIs and their risk focus.

With respect to potential adjustments during the year, the supervisory examination programme (SEP) establishes supervisory actions and priorities (including inspections) over a one-year time horizon. The annual SEP is approved by the Supervisory Board/Governing Council and is updated at least on a semi-annual basis. At the time of the update, the number of requested inspections can be adjusted, i.e. increased or reduced. The JST also has the possibility to request inspections on an ad hoc basis if necessary.

As stated in the Guide to banking supervision, “[t]he scope and frequency of on-site inspections are proposed by the JST, taking into account the overall supervisory strategy, the SEP and the characteristics of the credit institution (i.e. size, nature of activities, risk culture, weaknesses identified)”. At the beginning of each year, the JSTs share with their supervised significant institution a simplified SEP (a provisional high level timeline of the main planned supervisory activities that require the institution’s direct involvement, including inspections), so that they are aware of the general schedule and purpose of inspections. In general, ECB Banking Supervision seeks to provide the institution with as much advance notice as possible.

3.7 Principle of proportionality (no change)

Comments regarding the principle of proportionality suggested that all inspection activities should be proportionate to the scope and purpose of the inspection. Therefore respondents requested that the principle of proportionality be used to set limits for any data/information requests.

As explained above, the inspection planning strategy is designed around the TEL for inspections, taking into account factors such as the institution’s history and SREP score, and the supervisory priorities. This tool provides for a first check of proportionality, as relevant facts are already taken into account in terms of planning.

During the inspection, the inspection team’s information requests will be in line with the scope of the inspection as communicated in the notification letter. However, if the inspection team needs further information to perform the inspection efficiently within the scope, the inspected legal entity is obliged to provide such information. The inspected legal entity is invited to discuss with the HoM any issues it may have in delivering the requested data within the specified timeline.

3.8 Institution's point of contact (no change)

Participants requested that any communication with the supervised entity be addressed to, or include in copy, the department specifically mandated for ECB/JST/Supervisory interactions (e.g. ECB Office). Other respondents requested that communication for all topics relevant to the inspection go through the institution's senior contact point.

Working practices and expectations regarding the appointment of a point of contact for the inspection team should be agreed by the HoM and the inspected legal entity at the start of the inspection. In most cases the HoM will facilitate the inspected entity's request unless he or she considers it might hinder the progress of the inspection. The inspected entity should raise any concerns regarding communication with the HoM.

3.9 Scope of OSI/notification letter (changed)

Respondents requested further details on the scope of the inspection, in addition to the high-level information currently provided in the notification letter.

Article 145 of Regulation (EU) No 468/2014 (SSM Framework Regulation)² requires the ECB to notify the inspected entity, at least five days in advance of the commencement of the inspection, of the ECB decision authorising it. However, the ECB strives to send the notification letter with more advance notice than established in the Regulation. As stated in the guide, “[t]his usually happens a few weeks, but at least five working days, before the inspection is due to commence”.

The notification letter mentions the name of the HoM, as well as the subject matter and the purpose of the inspection. Further information can be taken from (i) the supervisory priorities, which are publically available and (ii) the simplified SEP, which is shared with the banks at the beginning of the year.

In order to inform the inspected entities of the purpose and subject matter of the inspection as early as possible, the information contained in the notification letter must remain high-level. The inspection memo is agreed by the HoM and the JST shortly before the inspection begins; these details cannot therefore be communicated before the first request for information and subsequent kick-off meeting. Institutions are encouraged on that occasion to request clarification from the HoM if the scope of the inspection is not clear.

² Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ L 141, 14.5.2014, p.1).

3.10 Communication with inspected legal entities (subsidiaries and parents of inspected subsidiaries) (changed)

Respondents commented on the importance of informing the parent company/central body of inspection notifications and/or reports regarding subsidiaries.

In accordance with the SSM Framework Regulation (Articles 143–145), the inspected legal entity is notified, at least five working days in advance of the commencement of the inspection, of the ECB decision authorising it. In exceptional circumstances the ECB may decide to carry out an inspection without notifying the supervised entity beforehand, as specified in Article 145(2) of the SSM Framework Regulation.

The final inspection report will be sent to the parent company or supervised entity at the highest level of consolidation within the Member States participating in the SSM. This principle will also be applied in the case of an on-site inspection at a subsidiary or third party to which the institution has outsourced functions or activities.

3.11 Inspection carried out without notifying the supervised entity (no change)

Several respondents commented that the ECB may carry out an inspection without notifying the supervised entity beforehand when the “proper conduct and efficiency of the inspection” so require, but only for extremely sound reasons, given the intrusiveness of such a procedure. Some participants also mentioned that it would be helpful if the JSTC provided a definition of the “proper conduct and efficiency of the inspection” in order to align expectations.

According to Article 145(2) of the SSM Framework Regulation, the ECB can carry out an inspection without notifying the supervised entity beforehand when so required by the proper conduct and efficiency of the inspection. The NCA should be notified as soon as possible before the start of such OSIs. However, inspections without prior notification do not occur on a regular basis. They are conducted as a reaction to an event or incident which has arisen in a credit institution or group of credit institutions and which requires immediate supervisory action.

3.12 Cooperation across jurisdictions and with non-EU supervisory authorities (changed)

Participants requested that inspections consider cooperation arrangements or agreements with supervisory authorities in non-European Union (EU) countries and that they take into account any local regulation that might impact the inspection process, such as banking secrecy regulations or requirements to inform local regulators, particularly as Memoranda of Understanding (MoUs) may not yet be in place with these countries.

The ECB establishes cooperation arrangements with supervisory authorities in non-EU countries to allow inspections to be conducted in compliance with applicable banking secrecy and personal data regulations. When the ECB conducts inspections in non-EU countries, it always does so with the proper consent and support of the relevant competent authority in the country concerned. The ECB has concluded a number of MoUs with authorities in non-EU countries in order to ensure smooth cooperation in the supervision of cross-border institutions. In cases where an MoU has not yet been concluded, the ECB seeks the authorisation of the relevant authority in the non-EU country concerned before conducting the OSI and may enter into ad hoc arrangements with that authority.

3.13 Seniority of representatives at meetings and point of contact – right to contact any staff (changed)

Respondents stated that it is not proportionate to expect a chief executive officer or other member of the management board to attend the kick-off, exit and closing meeting and that the right to contact any staff member is too discretionary and could impact the daily operations of the inspected institution. Participants also commented on the central point of contact and suggested that any other staff members should be contacted only on an exceptional basis. The question of who should coordinate such requests was also raised.

It is desirable for the member of the management body (with executive function) responsible for the topic to be inspected, and if no member of the management body (with executive function) is responsible for the topic, the relevant senior manager (hereinafter in both cases referred to as the 'respective manager') to be present or represented at a sufficiently senior level at meetings dealing with the strategy or operational policy of the inspected legal entity. However, the HoM can further specify any other persons who need to attend certain meetings. The respective manager should attend, in particular, the kick-off meeting, as well as meetings at which the inspection team's findings and the JSTC's recommendations are presented, i.e. the exit and closing meetings.

The inspection team has the power to contact any staff member of the bank to request any information that is necessary to perform the inspection efficiently. It is at the discretion of the HoM to decide who will be the necessary contact person in order to ensure an efficient inspection.

3.14 Right to request information and documents / requirement to provide any related information (changed)

Respondents mentioned that the information requested should pertain to the scope of the inspection; the requirement to provide any relevant related information is too broad and would put unnecessarily high pressure on the staff of the entity concerned.

The inspection team may request any relevant information relating to the subject matter and scope of the inspection, in accordance with Article 10 of the SSM Regulation; obtain written or oral explanations from the representatives or staff of credit institutions (Article 11(c) of the SSM Regulation); and also interview any other person who consents to be interviewed (Article 11(d) of the SSM Regulation). Therefore, the inspected legal entity is obliged to provide the inspection team with any information and documents requested by the team, within the scope of the inspection, in relation to the entity's activities and operations. As there is no predetermined manner in which the request for information and documents should be communicated, the inspected legal entity can agree with the HoM that the request for documents will be submitted either in written format or orally.

3.15 Access to IT systems and electronic communication with the inspection team (changed)

Respondents commented that the right to request information does not automatically mean that access to information technology (IT) systems is necessary, in view of the privacy regulations. They also commented that access to IT systems should only be granted in response to a specific request in individual cases and not in general, and that checks should be carried out by having read-only access to all relevant IT systems used by the inspected institution.

As a general rule the inspection team should be granted read-only access to the IT systems of the inspected legal entity and will not install its own software on the computers of the entity. However, it is at the discretion of the HoM to decide for which IT systems access is needed, depending on the subject matter and purpose of the inspection.

As regards electronic communication between the inspection team and the inspected legal entity, it is up to the latter to set up the email addresses and channels for electronic communication with the inspection team.

3.16 Unilateral deadlines (no change)

Respondents requested that the deadlines to provide the required documents and files should not be set unilaterally and should be agreed by the inspected legal entity and the HoM.

In practice the HoM and the inspection team are in constant communication with the inspected legal entity's staff, which is aware of the possible information requests. If the requested information cannot be provided within the expected time frame or the information request seems unclear, the entity is welcome to approach the HoM to analyse whether other information would also fulfil the needs of the team and to avoid misunderstandings.

3.17 Exchange of information, obligation of professional secrecy and protection of personal data (changed)

Several commenters pointed out that the ECB should provide more clarification on how its professional secrecy standards hold up in the context of acts concerning public access to government information. Respondents also mentioned that in accordance with EU data protection laws, customer-specific identification data should not be included in the inspection report.

In carrying out its supervisory tasks under the SSM Regulation, the ECB may collect and use personal data. The ECB is the controller of the related data-processing operations and processes personal data in line with Regulation (EC) No 45/2001³ and Decision ECB/2007/1.⁴ Inspection team members are also bound by the obligation of professional secrecy and may not disclose any confidential supervisory information to anyone outside the inspection team without the authorisation of the ECB or the HoM. The processing of any personal data, for example customer-specific identification data, that is required for the purposes of the inspection, i.e. to assess the activities of the inspected entity, should be proportionate to these purposes. If the personal data are not specifically requested by the inspection team the supervised entity should anonymise the data before providing it to the team. As a rule, personal data should not be included in the inspection report. Further information on the way the ECB processes personal data can be found in the [General data protection statement](#) published on the ECB website.

3.18 Draft report and exit meeting (changed)

Respondents requested that the draft report should be sent to the inspected entity more than “a few days in advance” of the exit meeting. Comments included a proposal to set the deadline for providing comments in the three-column table⁵ starting from the date of the exit meeting and not from the date the bank receives the draft. Commenters also requested that the words “inspection findings”, referring to the findings before the institution’s feedback has been incorporated, should be rephrased as “preliminary inspection findings”.

The draft report is sent to the bank a few days in advance of the exit meeting as a courtesy and to give the bank’s management an opportunity to discuss it before the meeting with the inspection team. Individual agreements with the HoM might be possible but should take into consideration that the exit meeting is the last meeting

³ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁴ Decision of the European Central Bank of 17 April 2007 adopting implementing rules concerning data protection at the European Central Bank (ECB/2007/1) (OJ L 116, 4.5.2007, p. 64).

⁵ The first column is used to quote the parts of the draft report that the inspected legal entity wishes to comment on; the second column is used by the inspected legal entity to comment on the report; and the third column is used by the HoM to respond to the comments received. The completed feedback template will be added to the final report as an annex.

with the inspected bank. Meetings at all hierarchical levels of the bank will have taken place during the investigation phase and should have raised the bank's awareness of potential findings.

As stated in the guide the exit meeting gives the bank an opportunity to provide comments on the draft report within two weeks. If the bank received the draft report sufficiently in advance of the exit meeting it may agree with the HoM to submit its comments sooner.

3.19 Possibility to comment on the draft/final report and follow-up letter / need to be informed of the inspection outcomes (changed)

Respondents suggested that the possibility to comment on the draft report should not be limited to the executive summary and key findings and should extend to the entire draft report. They also pointed out that it would be very helpful to have the opportunity to review the amended draft to see if comments had been incorporated correctly. Participants also requested further clarification on the possibility to object to the final report or the final follow-up letter. They commented that, especially in the case of non-legally binding recommendations, it is not clear how any disagreements between the JST and the institution will be solved.

The inspected legal entity is not restricted to commenting only on the executive summary and key findings. However, it is recommended that the key comments focus on these parts of the inspection report as they are the main outcome of the inspection. In this way the inspected legal entity can also ensure that the message it wants to convey to the HoM is clearly understood and taken into account.

The three-column-table is added to the final report as an annex that includes the HoM's answers to the bank's comments. This ensures full transparency for all stakeholders. The HoM is independent and can decide whether to accept, or not, the bank's feedback on the draft report. However, the HoM is required to explain any rejections in the feedback template.

3.20 Cooperation expected from the inspected legal entity's representatives during the inspection – availability of bank staff (changed)

Respondents commented that the inspected legal entity cannot oblige its employees to be readily available whenever the supervisor would like, considering their contractual work commitments and schedules.

The ECB expects the bank's staff to be available to the inspection team, when necessary and with reasonable advance notice, during normal office hours. However, the inspected legal entity should ensure that a replacement is available for

any staff member who is unavailable as a result of holidays or illness, for example, or because of essential work commitments.

3.21 Escalation process for the inspected legal entity (no change)

Respondents asked if information could be provided on a possible escalation process for the inspected legal entities to levels senior to the HoM

In cases of misunderstandings or issues that arise in the course of the investigation phase, the inspected legal entity should always consult the HoM. Both parties should seek to solve the outstanding issues in a spirit of good cooperation. The inspected legal entities also have several possibilities to provide feedback to raise any concerns they might have. These are the feedback template which they receive together with the draft report and which is attached to the final report, and the right to be heard. This right is granted to inspected legal entities in accordance with Article 31 of the SSM Framework Regulation in cases where the outcome of the inspection is an ECB supervisory decision.

3.22 Operational constraints / consideration of inspected legal entity's internal rules (no change)

Participants stressed that the inspection should take into account the operational constraints of the inspected legal entity, such as workload and timelines.

The ECB is empowered to carry out inspections in accordance with the relevant law and cannot be limited by the bank's operational constraints. This would jeopardise the quality of the inspection. However, the inspection team observes those internal rules of the inspected legal entity that do not limit the efficient performance of the inspection.

3.23 Meetings with external counterparts (no change)

Several respondents commented that with respect to meetings with stakeholders the institution has no direct control over external stakeholders.

The OSI team has the right to obtain any information it needs in order to perform the inspection efficiently. This includes information requests to third parties to whom the institution has outsourced functions or activities, in accordance with Article 10(1)(f) of the SSM Regulation.

3.24 Access to ECB information (no change)

Respondents asked for clarification of the ECB's professional secrecy standards and their compliance with the provisions on public access to information.

The ECB is bound by very strict confidentiality rules, as contemplated in its Statute and in the SSM Regulation, among others. In particular, the ECB Decision on public access to European Central Bank documents (2004/258/EC)⁶ provides that the ECB should refuse public access to a document where disclosure would undermine the protection of (i) the public interest as regards the purpose of inspections, and (ii) the commercial interests of a natural or legal person, including intellectual property, and (iii) the confidentiality of information that is protected as such under Union law. Articles 53 et seq. of Directive 2013/36/EU (CRD IV)⁷ provide for the protection of confidential supervisory information.

3.25 Right of access to premises (no change)

Article 143(3) of the SSM Framework Regulation provides for the right of access of the inspection team to the business premises of the inspected legal entity on the basis of an ECB decision. Respondents commented that this cannot be applied to IMIs.

IMIs can be conducted either (i) as an analysis performed by the JST as part of ongoing supervision (referred to in the previous version of the guide as "JST IMIs"), or (ii) as an on-site inspection, subject to an ECB decision pursuant to Article 12 of the SSM Regulation and Article 143(2) of the SSM Framework Regulation.

The inspection team complies with and follows the relevant national laws and the internal rules of the inspected entities with respect to entering their premises.

3.26 Closing meetings when the outcome of the inspection is a decision (changed)

Respondents requested more clarification on the absence of closing meetings in cases where the outcome of the inspection is a decision and on which type of instrument would be used at the end of the inspection.

Closing meetings which are arranged and chaired by the JSTC are always envisaged regardless of the outcome of the inspection, except in those cases where an ECB decision is issued (i.e. in most IMIs, as stated in the guide (Section 3.3.1

⁶ Decision 2004/258/EC of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) (OJ L 80, 18.3.2004, p. 42).

⁷ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

“Right to be informed of the inspection outcomes”)). They are viewed as part of the ongoing supervisory dialogue with the institution. During the closing meeting, the credit institution may express its objections to the measures recommended by the ECB.

The inspection can result in either an operational act, which is the letter expressing supervisory recommendations, or a decision, which sets out binding supervisory measures.

3.27 Document retention and archiving of documents (no change)

One respondent requested that when the inspected entities submit original documents, the inspection team should be required to keep a separate record of the documents received (either in electronic form or in writing).

The ECB keeps an audit trail which includes all written material and documents obtained from the inspected legal entity or third parties. However, all working practices during the inspection need to be agreed with the HoM at the start of the inspection.

3.28 Need to be informed of the inspection outcomes / status meetings (changed)

Respondents remarked that during the inspection the HoM should, at the request of the senior management of the inspected legal entity, agree to hold one or several status meetings to review the progress of the inspection or any related topic. This would help ensure smooth cooperation between the inspected entity and the inspectors.

The inspected legal entity is encouraged to ask for status meetings with the HoM, who will try to accommodate such requests. However, if the HoM deems that the status meeting and proposed topics for discussion are not appropriate for the efficient conduct of the inspection he or she will discuss with the inspected legal entity whether such a meeting is necessary.

3.29 Outcome of an inspection (changed)

Some participants sought clarification from the ECB as to whether the right to be heard is applicable when a non-legally binding letter expressing supervisory expectations is issued to the inspected entity.

Participants also requested further clarification on the consequences of non-compliance with recommendations resulting from an inspection.

After an on-site inspection the ECB may adopt (i) an operational act, i.e. a non-binding act with recommendations for institutions, or (ii) a decision, i.e. a binding act with supervisory measures adopted pursuant to Article 26(8) of the SSM Regulation, which sets out the procedure to be followed. The bank must comply with such measures.

As part of the procedure for the adoption of a decision, and as stated in Article 31 of the SSM Framework Regulation, before the ECB adopts a supervisory decision which has legally binding effects and which would adversely affect the rights of the party concerned, the party must be given the opportunity to submit comments to the ECB in writing on the facts, objections and legal grounds relevant to the ECB supervisory decision.

When the ECB issues a letter which sets out recommendations for the inspected entity, the procedure for adopting decisions does not apply. Nor does the right to be heard pursuant to Article 31 of the SSM Framework Regulation, which is part of this procedure. The inspected legal entity is, however, invited to provide feedback during the exit meeting and in the three-column-table.

If, after the ECB has made recommendations to an inspected legal entity, the entity fails to take action and its situation deteriorates as a result, the ECB may (if there are grounds to do so) transform its recommendations into an ECB supervisory decision. In such cases, the relevant procedure set out in Article 26(8) of the SSM Regulation would be followed, including the right to be heard.

3.30 Language of communication and translation of documents (changed)

Respondents commented that the right of inspected legal entities to communicate in the official EU language of their choice is undermined as they are often asked to use English for communication. Several respondents said that they understood that the language of communication can be changed at the inspected legal entities' convenience for certain parts of inspections. Respondents also mentioned that the language chosen by entities which are not directly or indirectly controlled by the supervised group/parent company (e.g. joint ventures) could be different from the one chosen by the supervised group/parent company

Pursuant to Article 24(2) of the SSM Framework Regulation, the ECB and supervised entity or group of entities may agree to exclusively use one official EU language in their written communications.

As a matter of efficiency the inspected legal entity may, on an ad hoc basis and with no effect on future procedures, waive its right to receive the draft and final report in its chosen language in order to accelerate the process.

The language regime of the inspection should be agreed before the inspection. For reasons of efficiency, it is recommended that the language regime should not be changed while the inspection is in progress. The composition of the inspection team

reflects the language requirements of the inspection. Documents or parts of documents not adhering to the language regime chosen by the inspected legal entity must be translated upon request.

3.31 Timeline between approval of material change or closure of findings and start of the next on-site inspection (no change)

Several respondents commented that the Guide should be more specific with regard to the timeline for the decision-making process for IMIs, as the maximum amount of time that may pass between the approval of a material change or the closure of the findings and the start of the next on-site inspection is not defined.

Banks are experiencing delays in the implementation of material change requests due to the excessive time needed by the ECB to schedule on-site inspections. In such cases, the institutions cannot implement material changes until the closure of the post-implementation audit. This could lead to a risk that the changes become outdated before implementation.

The ECB constantly monitors inspected legal entities' internal models. Requests for permission for material changes should be submitted and provided for in this ongoing dialogue at an early stage. In exceptional cases, delays in the process cannot be completely avoided.

3.32 Draft model assessment report in the event of withdrawal of an IMI application (no change)

Respondents observed that it seems unclear whether the institution can expect a draft audit report in the event that an application is withdrawn. If the application is withdrawn when the IMI has already generated a draft report, the inspected entities would find it very useful to receive this draft report.

If an application is withdrawn, no full assessment report is produced and it is not envisaged that any draft reports that may have been produced will be forwarded to supervised entities.

3.33 Comments outside the scope of the guide (no change)

While we have made every effort to take on board the feedback received from industry bodies and individual institutions on the revised guide and to provide clarification and further context in this feedback statement, it has not been possible to do so for all comments received as some are considered to fall outside the scope of the guide.

These comments mostly relate to the follow-up to an inspection (from the time the final report is sent to the inspected bank until the time when the actions resulting from the inspection are deemed by the JST to have been adequately performed). This process is considered to be part of ongoing supervision as carried out by JSTs.

Some respondents asked for the joint responsibility of JSTs and NCAs for the efficient performance of supervisory tasks to be reflected in the guide. The ECB has taken note of this request. ECB inspections are conducted in close liaison with the JSTs, but in an independent manner on the basis of a coordinated approach steered by the ECB. Responsibility for the conduct of inspections lies with the ECB, although the NCAs are involved in the process, as stated in Article 12 of the SSM Regulation and Articles 143 to 145 of the SSM Framework Regulation.

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For specific terminology please refer to the [SSM glossary](#).