



## ECB Public consultation on the draft Guide to on-site inspections and internal model investigations

*EACB Comment Paper (14<sup>th</sup> September 2017)*

<u>ID</u>	Article of the draft Guide	Page	Amendment	Detailed comment	Explanation
			Deletion Clarification		
1	1.1.3 and 1.1.4	5	C	<p>An improved coordination and exchange of information between the JST and on-site inspection teams would be highly appreciated.</p> <p>Furthermore, stronger involvement of the JST within on-site inspections would be a possible way of improving the coordination, e.g. by having a member of the JST present during the entire on-site inspection.</p>	<p>As of now, on-site inspection teams often ask for information, which has already been submitted to JST. A better coordination between JST and on-site inspection teams would increase overall efficiency.</p> <p>Stronger involvement of JST in on-site inspection process would also enhance quality of follow-up tasks.</p>
2	1.2	5	C	<p>It would be helpful to receive information about the main focus for on-site inspections at the beginning of the year in the course of the annual planning of the supervisory examination programme (acc. Art. 99 CRD IV) or in accordance with the yearly ECB Priorities.</p>	<p>Supervised entities could then better allocate resources and improve capacity planning towards the areas, where the main focus for on-site inspections will be.</p>

3	1.6	8	C	<p>The Guide states that the inspection team may also include external consultants. If these external consultants are compensated by time and material, the more questions they ask, the more fees they generate. We would therefore propose to allow the ECB only to hire externals, if their fees are either capped, or otherwise limited (e.g. by a fixed fee per OSI).</p>	<p>In our opinion compensating external consultants by time and material constitutes a conflict of interest and does not foster the efficiency of the execution of the missions.</p>
4		10, 11	A	<p><u>First request for information</u>  Sufficient time and flexibility to deliver the requested information should always be provided for the inspected legal entity. In any case, at least 10 working days should be reserved for the inspected entity to deliver the requested pre-information except under the special circumstances mentioned in Section 3.3.1. A certain flexibility in terms of days to deliver the requested information should also be granted for the inspected entity during the course of the inspection.  The inspection team may also use the opportunity to set deadlines for receiving any outstanding information requested.  <b>Flexibility in terms of deadlines should be granted for the inspected entity.</b></p>	<p>Currently due dates for information requests are sometimes very short (even the same day as the request) and vary depending on the inspector. Guidance should be designed for inspectors regarding this issue also to ensure a certain homogeneity and allow to structure processes.</p>
5	2.2.1	10	A	<p>Five working days are often not sufficient for the inspected legal entity to prepare the inspection in an appropriate manner and to fulfil the supervisors expectations concerning for instance professional working conditions (e.g. secured rooms,</p>	<p>Simply from a logistic and organizational perspective there may be need to prepare structures and accesses in advance.   Especially in consideration of the fact that on-site inspection teams expect appropriate working conditions (secure offices, IT equipment, access to databases, etc.) as laid out in sections 3.3.2 and 3.3.3 of the Guide, being</p>

				computers, etc. see 3.3.2). It should be in any case at least four weeks.	notified only 5 days in advance does not leave sufficient time for a proper preparation of the inspected entity. Also, as the CEO or another member of the executive board is expected to attend the Kick-off meeting and their short term availability is very limited, setting date and time of the Kick-off meeting only 5 days in advance will ultimately create scheduling conflicts.
6	2.2.2	11	C	The Guide states that during the Kick-off meeting, the HoM presents the objectives and scope of the inspection and details the steps involved. This is highly welcomed, however in practice, often this presentation is limited to few sentences. We would appreciate, if an overview presentation document about the inspection' steps could be always provided.	
7	2.2.2	11, 23	C	From our point of view there is a contradiction between the statement on page 11 "Kick-off meeting" and page 23 "Seniority of the inspected entities' representatives". Concerning page 11 the ECB expects that the CEO or a member of the executive board attends the kick-off meeting, which from our perspective seems to be an unnecessarily high hierarchical level. We suggest reducing it to a responsible senior manager (at least for IMI examinations). Whereas the statement on page 23 gives the possibility that the CEO can be represented at a sufficiently senior level, which is a preferable solution.	

8		12	A	Sampling/case-by-case examinations Customer specific identification data is not included in the inspection report.	According to the General Data Protection Regulation, all the customer specific identification data should not be included in the inspection report.
9	2.2.3	13	A	The draft report should be sent in sufficient advance to enable the inspected legal entity to adequately prepare for the meeting, also in consideration of the increasing complexity of the regulatory requirements. Ten working days before the meeting would be appropriate and <b>in any case at least five working days before the exit meeting</b>	Currently the draft report is not always delivered before the exit meeting or it is delivered just before the meeting. In order to prepare for the exit meeting, enough time should be reserved for the inspected entity.
10	2.2.3	13-14	A	The time between the exit meeting and the submission of the final report usually takes too long. It would be highly appreciated, if the time between the exit meeting and final report is limited to 1 month.	Receiving the final report sooner after the end of the on-site inspection would enable the inspected legal entity to start earlier with remediation actions and the findings would be more up to date.
11	2.2.3	13-14	A	The Guide states that the final report can serve as basis for the draft follow-up letter, which is then sent even later to the inspected entity. It would be highly appreciated, if the steps within the reporting phase (as shown in Figure 2 on p. 14) could be streamlined and the report and follow-up letter could be sent at the same time.	Merging these steps the overall process would be more efficient.
12	2.3.1	14	A	We are of the opinion that the right to be heard must also be observed in case were ECB expresses its expectations via an “informal letter” as at least the practical	ECB requires specific actions to be taken by the institutions within a specific timeframe and expects remedy. In case the institution will not fulfil the required actions supervisory measures will follow (page 16 of the Guide). Therefore, at least the practical implications are similar to formal supervisory measures. Due to the

				implications for the institution are similar to supervisory measures.	similar burden for the institution, we consider it to be a matter of fairness that the right to be heard would also be observed in this kind of remedial measures.
13	2.3.1	15	A	(ii) Limitations:  If restrictions or modifications of the use of a model become effective immediately this would create disruptions to operations. It could also lead to frictions due to technical or process-driven circumstances as well as regulatory circumstances (with focus on model-change requirements).	
14	2.3.1.	15	C	It remains unclear what consequences would have a lack of compliance with the Recommendations received by the inspected entity, as recommendations are not legally binding.	
15	2.3.2	16	A	The follow-up phase:  Follow-up process and action plans require regular (quarterly) updates from the inspected legal entity and the Guide also states that the entity may be required to submit updates on the remedial action <i>by interim deadlines</i> . Following these updates a review is performed by the supervisor. Past experienced showed that feedback from the supervisors are often delayed. The feedback was received only after the interim deadline/quarterly update cycle. This resulted in additional interim updates of the inspected legal entity before the regular update cycle. We would suggest	Dedicated timelines for updates to recommendations/action plans for the inspected legal entities as well as dedicated feedback timelines for the regulator should be implemented to avoid overlapping feedback cycles as well as double work or ambiguous updates from the inspected legal entities.  This should provide for all involved parties a transparent process including a consequent feedback loop.

				to streamline the overall process and to require the inspected legal entity to submit updates in half yearly frequency. This way there would be enough time for the supervisor to give feedback and the inspected entity to react on it before submitting the next update.	
16	2.3.2	16	C	The Guide states that the inspected legal entity needs to address the actions requested by ECB in a <i>timely and proper manner</i> . This does not give a very detailed guidance on the expected timeframe and documentation to be provided for implementation of the actions requested.	Having a realistic and specific timeframe for the implementation of requested actions or at least a prioritization of topics would help inspected entities to focus on the most pressing issues and to address the actions required accordingly.
17	2.3.2	16	C	We would appreciate a clear guidance on the expected involvement of internal audit in the follow-up phase.	Currently, a different approach for internal audit involvement is used during the follow-up phase of OSI.
18	3.1	17	C	In our view, it must be clarified that at least the principle of proportionality sets limits for any data /information request. First of all in cases where relevant information is already available within another unit of ECB or a NCA this information should be used and a request from the institution should be avoided.	Various extensive information requests impose already now an enormous administrative burden for the institutions and should therefore be limited to the essential minimum.
19	3.3.1	20	C	According to the Guide, the HoM finalizes the draft report, taking the feedback received from the inspected legal entity into account, if necessary. It is unclear in which cases the HoM deems necessary to take the feedback into account. If the feedback is not taken into account,	

				receiving the reasoning behind would be appreciated.	
20	3.3.1	20	C	The feedback template is almost identical to the Action Plan. Can the Action Plan format (developed by the inspected legal entity) then also be used for submitting feedback?	
21	3.3.2	21	C	We are surprised that the guide explicitly mention the need of being courteous towards the inspection team as this should be business practice and we expect that it is practiced from both sides.	
22	3.3.3	22	A	We understand the need that requests from the inspection team are answered in a timely manner. But we expect also understanding from the regulatory authorities, that this supervisory requirement is hard to fulfill permanently, as on-site-inspections can last up to four months and the banks are exposed to a lot of OSIs/IMIs over the year, sometimes even in parallel, not to mention the standard auditing process. It is not realistic that over such a long period of time, the entities staff is always permanent available, e.g. because of holiday or illness absence or just because they have to fulfill their daily operative work. We therefore propose to make the expectation more open.	Especially during lengthy inspections, the regular processes and activities of the institutions should not be placed under constant pressure.
23	3.3.3	22	A	The supervisory expectation to inform the inspection team members of any relevant related information, even if it is not	

				explicitly requested can not be fulfilled in a realistic way. It will put unnecessarily high pressure on the involved entity's staff as they will be exposed to the risk of possibly overlooking some information that might be important to the inspection team. We suggest to delete this statement.	
24	3.3.3	23	C	The right to contact any staff of the inspected legal entity directly and to hold a meeting without the contact person being present should be limited to cases when nobody services the inspection team in a timely matter. This right should not be used generally. In our opinion, such direct contacts without the point of contact being informed or being present causes difficulties in the overall coordination of the inspection and we would therefore suggest to always inform the point of contact about any such contact or meeting requests.	A too discretionary use of such right bears the risk of impairing daily processes and operations of the entity involved. Difficulties in the coordination may arise especially if such contacts or meetings result in follow-up activities. It can result in delays and conflicting schedules of deliveries asked for by the inspection team via different channels, such as other than the point of contact.
25	3.4	24	D	On the one hand, the ECB emphasizes the right of the institutions to communicate in the EU official language they choose. On the other hand, however it is asked to use English for communication. From our point of view, it is problematic if an inspected entity that did not pick English is asked by the inspection team to refrain from a legally anchored right, even if this is in the form of a request. Institutions are under pressure to renounce their language and to use English, in order to	



				make a good impression on the inspection team and to appear supportive.	
26	3.1	19	C	We believe that a written declaration of ECB stating that all persons authorized by ECB or NCA (not being employees of any authority) signed the confidentiality agreements/declarations is necessary.	Institutions must comply with data protection and confidentiality standards and have to ensure that these standards are also observed when information will be provided to third parties. However, as the institutions themselves do not have a contractual relationship with these third parties authorized by ECB, they must otherwise ensure compliance with the mentioned confidentiality and data protection standards.

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