Comments Template on EIOPA-CP-15-004 Consultation Paper on the Call for Advice from the European Commission on the identification and calibration of infrastructure investment risk categories		Deadline 09.August.2015 23:59 CET
Company name:	**AMICE**	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	**Public**
	Please follow the instructions for filling in the template: ⇨ Do **not** change the numbering in column "Reference". ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. o If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies. o If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment itself. **Please send the completed template to CP-15-004@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).** The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-15-004.	
Reference	**Comment**	
General comments	AMICE welcomes the opportunity to comment on the Consultation Paper on the Call for Advice from the European Commission on the identification and calibration of infrastructure investment risk categories. Our issues of primary concern related to this paper are the following:	

	• Infrastructure debt should be treated under the counterparty default risk module and not in the spread risk module as insurance firms are exposed to credit risk and not to short-term volatility of market spreads. A treatment under the counterparty default risk module would recognise the fact that infrastructure assets are not a traded instrument. • We recommend not using listed equity as a proxy for unlisted infrastructure equity, since these assets have proven to be less volatile. • Additional qualitative requirements relating to investments in infrastructure should be avoided. Prescribing additional elements of risk management for a small part of the investment portfolio will stop firms from investing in infrastructure assets. • The requirement that the insurer should hold a well-diversified portfolio of qualifying infrastructure project debt in order to apply a lower capital charge should be removed; as the supply of infrastructure assets is still scarce it will be difficult to find many assets to invest in. Moreover, a small number of assets can also contribute positively to the risk in the total portfolio.	
Section 1.1.		
Section 1.2.		
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Section 3.1.		
Section 3.2.		
Section 3.2.1.		
Section 3.2.2.		
Section 3.2.3.		
Section 3.3.		
Section 3.3.1.	We believe that the definition of infrastructure project entity should also encompass corporate type exposures as indicated in Annex I. Equity and debt investments in such entities should be treated similarly to "Infrastructure project entities" when their main activity is focused on operating infrastructure assets and when they meet the requirements defined in section 3.3.2 in terms of stress analysis and cash flows predictability. Cf also comments on Annex 1.	
Section 3.3.2.		
Section 3.3.2.1.		
Section 3.3.2.2.		
Section 3.3.2.3.	The concept of contractual framework should be extended to the regulatory framework to encompass the regulated assets which may not benefit from a "contractual" framework as such. We therefore propose amending paragraph 1) of the definition of the contractual framework as follows: *The infrastructure assets and infrastructure project entity are governed by a robust contractual framework including strong termination clauses or operated within a regulated framework*.	

	Furthermore on the security package, the requirements in paragraphs 2a) and 2b) should be qualified to clarify that securities are required to be taken on those contracts, assets and accounts that are material and critical for the lenders. For example, dividend accounts hosting excess cash flows freely distributable to the shareholders are typically not assigned to lenders. In some jurisdictions, assets operated by a concessionaire or a PPP company remain legally owned by the public sector and thus cannot be pledged (e.g. a road operated by a concession company). Finally, we believe that the requirement in paragraph 2d) by which the project should not issue new debt is too restrictive. Lenders often allow additional indebtedness subject to certain conditions (maximum amount, ratios to be met…) and specific lenders' consent procedures.	
Section 3.3.3.		
Section 3.3.4...		
Section 3.3.4.1.		
Section 3.3.4.2.	The sponsor concept is commonly used in projects where the sponsor is the EPC contractor who designs and builds the infrastructure. This structural requirement should only be applied to those projects. The way the structural requirements are drafted exclude de facto brownfield assets. We strongly believe that greenfield financing will only exist if brownfield investments are also encouraged. With regard to the criteria to be met by the sponsor to be qualified as "strong", we recommend considering the "high financial standing" of the sponsor in relation to its obligations by amending paragraph 4b) as follows "*The sponsor has the ~~high~~ necessary financial standing to comply with its obligations*". The EPC/sponsor´s financial standing to build a small local infrastructure should not be assessed with the same financial standing criteria as those required when it comes to designing and building a large and complex infrastructure. We recommend having a flexible approach with regards to the requirement in paragraph 4a) (*the sponsor has a very strong track record and relevant country and sector experience*), particularly in terms of country experience. Indeed, a sponsor can be very experienced internationally and	

	strategically committed to supporting a project in a country, while not necessarily having a direct and relevant experience in that country. We also recommend taking a more flexible approach when it comes to showing evidence that the sponsor is incentivised to protect the interests of the project (cf 3c.). Note in particular that industrial sponsors may hold relatively small shares in the project equity while providing substantial support and guarantees for the benefit of the project's financial investors and lenders.	
Section 3.3.4.3.	While senior debt generally enjoy the highest level of seniority, the detailed financial structuring in some transactions requires that swaps counterparties (when the borrower is requested to hedge its interest rate exposure, as an example) enjoy a "super senior" level. Similarly, liquidity reserve facilities that are also sometimes requested by the senior lenders to secure debt service payments can also enjoy a "super senior "status. As these hedging and liquidity facilities are designed to protect the senior lenders and represent small amounts when compared to the quantum of senior debt, it is generally well accepted and agreed that senior lenders still enjoy a first ranking senior status despite the existence of these marginal "super senior" counterparties.	
Section 3.3.4.4.	The Construction and operating risk criteria listed in the consultation document are only relevant for *greenfield* / pure SPV project. The infrastructure projects which are operated internally by the asset company itself like those in the transportation sector (motorways, airports), in the utility sector (gas&electricity distribution networks) or in the energy sector do not comply with the defined criteria although they are real infrastructure projects. The outsourcing of the operation and maintenance of infrastructure assets should only be a requirement for pure project companies which are not able to demonstrate that they have the internal resources and technical capacities to operate the infrastructure project. Some construction works (deployment of CAPEX to refurbish or develop an existing infrastructure, maintenance and renewals capex over a project's lifetime) may be performed with less strict requirements than the ones listed in section 3.3.4.4.related to construction risk.	

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	We recommend limiting these requirements to the construction risks related to the initial building of greenfield infrastructure.	
Section 3.3.4.5.		
Section 3.3.4.6.	We recommend that the design risk is treated as part of the construction risk since project stakeholders in charge of construction normally assume the design and construction risks of a project in a bundled manner. With regards to technology risks, we believe that excluding projects featuring new technologies that are key to improving the quality and efficiency of infrastructure in certain European countries (e.g. broadband networks) should be avoided. The qualifying criteria should be that unproven technology risks are assumed either by the project's industrial sponsor or the public sector counterparty.	
Section 4.1.		
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Section 4.2.5.		
Section 4.2.5.1.		

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Section 4.2.5.2.		
Section 4.2.5.3.		
Section 4.2.5.4.		
Section 4.3.		
Section 4.3.1.		
Section 4.3.2.		
Section 5.1.	Available data indicates that infrastructure debt should be treated in the counterparty default risk module. The infrastructure debt should be treated under the counterparty default risk module and not in the spread risk module as insurance firms are exposed to credit risk and not to short-term volatility of market spreads. A treatment under the counterparty default risk module would recognise the fact that infrastructure assets are not a traded instrument. We therefore propose that EIOPA reconsiders its position with regards the spread risk module.	
Section 5.2.		
Section 5.3.		
Section 6.1.		
Section 6.2.		
Section 6.2.1.		
Section 6.2.2.		
Section 6.2.3.	We believe that prices for listed equities should not be used as a proxy for unlisted equity infrastructure.	
Section 6.3.	**Strategic Investments** We believe that further research should be undertaken with regards to equity investments of a strategic nature for the calibration of infrastructure equity investments.	

	The suggested approach to equity investments of a strategic nature as defined in Article 171 of the Delegated Regulation was disregarded on the basis that business decisions in infrastructure projects are limited in scope and by the covenants required by the lenders. We would like to reiterate that most insurance firms hold equity investments for longer periods thereby reducing the risk of loss. It is also important to consider the evidence provided in a study by Blanc-Brude/Whittaker of a lower volatility observed over listed PFI portfolios as compared to general listed equity. Furthermore the study shows a lower correlation to GDP and the longer horizon of PFI portfolio investors. **Duration-based equity approach** This approach is limited to ring-fenced retirement provision business of life assurance undertakings that satisfy a number of explicit requirements (wherethe typical holding period of equity investments is assumed to be consistent with an average duration of liabilities for such business and exceeds 12 years). The reason behind this is that for long-term equity investments short-term volatility should not be considered, allowing the application of a lower capital requirement. Given the illiquid nature of infrastructure investments, insurance companies consider a relatively long holding period in their investment decisions. Consequently, insurance companies meeting the duration-based equity approach explicit requirements are interested in buying and holding infrastructure assets. Thus, we recommend that EIOPA indicate the possibility to apply the duration based equity approach to equity infrastructure.	
Section 7.1.	Additional qualitative requirements relating to investments in infrastructure should be avoided. Prescribing additional elements of risk management for a small part of the investment portfolio will stop firms from investing in infrastructure assets.	
Section 7.2.		
Section 7.3.	The requirement that the insurer should hold a well-diversified portfolio of qualifying infrastructure project debt in order to apply a lower capital charge should be removed; As the supply of infrastructure assets is still scarce it will be difficult to find many assets to invest in. Moreover, a	

	small number of assets can also contribute positively to the risk in the total portfolio.	
Section 8.		
Annex I	We concur with EIOPA that the scope should be widened to include these entities, when their main activities are focused on operating infrastructure assets and when they generally meet the requirements defined in 3.3.2 in terms of stress analysis and cash flows predictability. Entities should be allowed to qualify regardless of their regulated or unregulated status as revenues can also be predictable as a result of low demand risk. We generally believe that the qualifying criteria defined under the “predictability of cash flows” advice section is also relevant for such “corporate–type” exposures.	
Annex II		
Annex III Sections:		
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Section 2.		
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