

Comments Template on the Consultation Paper on Call for evidence concerning the request to EIOPA for further technical advice on the identification and calibration of other infrastructure investment risk categories i.e. infrastructure corporates

**Deadline
10 12 2015
23:59 CET**

Name of Company:	Invest Europe	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, <u>in Word Format</u>, to CP-15-009@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering refers to the Consultation Paper on the Call for evidence concerning the request to EIOPA for further technical advice on the identification and calibration of other infrastructure investment risk categories i.e. infrastructure corporates.</p>		
Reference	Comment	
General comments	It is very encouraging that the Commission and EIOPA are willing to consider removing barriers to insurers' investments in infrastructure corporates and Invest Europe welcomes the opportunity to respond to EIOPA's "call for evidence concerning the request to EIOPA for further technical advice on the identification and calibration of other infrastructure investment risk categories	

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i.e. infrastructure corporates”.

We believe that all forms of infrastructure investments should be eligible for this bespoke risk weighting and the assessment of an infrastructure asset’s eligibility should be based on its characteristics than on the legal/corporate form by which it is organised.

Unfortunately our response does not address all of the detailed questions in EIOPA’s consultation paper as the very tight timeline has left us with insufficient time to prepare the data and other material needed. But we hope our submission will still provide useful input to the debate on ‘infrastructure corporates’.

We remain at your disposal and stand ready to discuss our position in further detail.

Question 1

The operation of an infrastructure asset or the day-to-day provision of the services that asset provides are often undertaken by a separate legal entity to that which was responsible for the design and / or build phase. But such operating entities are still essential to the provision of infrastructure – without its effective and efficient operation an infrastructure asset will fail to deliver the economic benefits that it is designed to produce.

Infrastructure funds typically invest in existing companies that are engaged in operating infrastructure assets and the provision of services in this area. They usually do not invest in the design and construction phase of an infrastructure project but in those companies/entities that subsequently run and operate the infrastructure.

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	These operating entities are often structured as corporates rather than taking the form of 'projects' and for this reason infrastructure funds will tend to be making their investments into corporate entities. However, the fund's investment choice is based fundamentally on and determined by the nature, quality and characteristics of the underlying infrastructure asset rather than on the legal or corporate form that it takes. The fact that infrastructure funds tend to invest in corporate entities is therefore a <i>consequence</i> or by-product of their underlying investment strategy and not in itself a strategy.	
Question 2		
Question 3		
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Question 5	<p>We generally think that the definition of infrastructure and the criteria that are proposed in the latest Commission's proposal to review the Solvency II delegated act seem reasonable and may well be broad enough to capture many of the assets into which infrastructure funds invest. However, the stated intention to exclude "infrastructure corporates" remains a significant concern for Invest Europe.</p> <p>As explained in our response to Q1 infrastructure funds usually invest in entities that run and operate infrastructure assets, which are often structured as corporate entities. Therefore, if the current text of the Solvency II delegated act remains unchanged the proposed definition of infrastructure will exclude certain investments made into operating entities simply because that operating entity has been structured as a corporate form and despite the fact that the underlying infrastructure assets that it operates meet the infrastructure criteria.</p>	

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We believe that this would be an unfair and inappropriate distinction given that in some cases such an approach may exclude essential, core infrastructure services from the definition. For example, an investment by an infrastructure fund into an electricity distribution business or into a natural gas transmission and distribution business supplying energy to a significant number of customers and end users would not be regarded as an 'infrastructure' investment, simply because the entity receiving the investment was structured in corporate form.

Investments into the operation of infrastructure should be caught by the Solvency II definition, and the fact that that operating activity takes a corporate legal form (as opposed to some other legal form) should not be relevant to its eligibility.

We therefore suggest that the definition of the 'infrastructure project entity' should be amended in the following way, to ensure that 'infrastructure corporates' can also be considered as qualifying infrastructure investments:

*"55b. 'Infrastructure ~~project~~ entity' means an entity **or corporate group whose primary function (including via a concession) is** ~~which is not permitted to perform any other function than~~ owning, financing, developing or operating infrastructure assets, where the primary source of payments to debt providers and equity investors is the income generated by the **infrastructure assets being financed.**"*

There are also other specific issues to which we think EIOPA should give further consideration:

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Paragraph (1c) point (a)

This provision describes elements that should be included in the contractual framework in cases where the revenues of the infrastructure project entity are not founded by payments from a large number of users. Given that infrastructure investments are not homogeneous and might vary significantly we think it would be helpful to provide further clarity about how 'a large number' should be interpreted. For example, how would a regional airport with a small number of large airline customers (e.g. < 5) be considered?

Paragraph 1 points (c) and (e)

The wording of Article 164a (1a) (c) second paragraph starting with "*when investments are (...)*" and Article 164a (1a) (e) does not provide sufficient clarity as to whether those provisions intend to also cover related party or shareholder loans, eg those structured as Eurobonds. However, if it was the intention to exclude them then we would like to underline that these loans are an important instrument in infrastructure investments but they are typically subordinated rather than senior and they do not meet the criteria listed in paragraph (1c) points (i) - (iv).

Paragraph (2b) (i) and (ii)

Currently, there is some degree of uncertainty with regard to the interpretation of the criteria listed in Article 164a (2b), particularly those referred to in points (i) and (ii).

As now proposed it is difficult to assess if certain infrastructure assets can

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qualify as infrastructure, particularly in cases where payments are received from entities that are not explicitly listed in the Regulation adopted pursuant to Article 109a(2)(a) of Directive 2009/138/EC and are not regional governments or local authorities, but are public bodies/authorities that are in some cases wholly owned by or have close links with national/local government (for example *Comision Nacional de los Mercados y la Competencia* in Spain or *Gestore Servizi Energia* in Italy).

In our opinion infrastructure projects or assets that receive payments from these types of public bodies should also be included in the definition of infrastructure provided in the Commission delegated act. Consequently, the criteria in Article 164a (2b) points (i) and (ii) should be amended to provide for that.

We also believe that infrastructure assets that are subject to a robust, long-term and stable (EU or national) regulatory framework, for example renewable energy projects that are backed by a state's overall emissions reduction targets, should by definition qualify as 'infrastructure' under the Solvency II delegated act.

Question 6		
Question 7		
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