Comments Template on EIOPA-CP-16-005 Consultation Paper on the request to EIOPA for further technical advice on the identification and calibration of other infrastructure investment risk categories i.e. infrastructure corporates		Deadline 16.May.2016 23:59 CET
Company name:	Invest Europe – The Voice of Private Capital	
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: ⇨ <u>Do **not** change the numbering</u> in column "Reference". ⇨ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph, keep the row <u>empty</u>. ⇨ 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-16-005@eiopa.europa.eu, <u>in MSWord Format</u>, (our IT tool does not allow processing of any other formats).** The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-16-005.	
Reference	**Comment**	
General comments	Invest Europe welcomes the opportunity to respond to EIOPA's consultation paper on infrastructure corporates and appreciates that EIOPA is seeking further feedback on the proposed approach before specifying its final advice to the European Commission.	
Section 1.1.		
Section 1.2.		

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Section 1.3.		
Section 1.4.		
Section 1.5.		
Section 2.		
Section 3.		
Section 4.		
Section 5.1.		
Section 5.2.		
Question 1.	Although it may be an appropriate proxy for listed infrastructure corporates, we remain of the view that the risk weighting for unlisted infrastructure corporates should not be derived from an index or list of listed entities. This is a horizontal issue that investors in other unlisted, long-term, illiquid asset classes face within Solvency II. Not only does such an approach fail to reflect the real risk that investors face when investing in such assets, it measures a risk which does not really exist for investors in these assets. We note that EIOPA has stated that *"in principle the (short-term) risk of an entity should not depend on whether it is listed or not"* but we disagree with this view. While listed and unlisted infrastructure assets might share certain characteristics (based for example on the sector or the nature of asset) the very fact that one is in private ownership and the other is traded on a public market has a profound impact on the riskiness of that asset from the perspective of an investor. In the short-term the existence of a market price for an asset, determined in a market that is both liquid and deep, has a profound impact on the investor's risk when investing in the asset. If an asset *does not have* a daily market price then market price volatility is not a relevant measure of the risk faced by investors investing in that particular asset (even if other assets that share certain	

characteristics *do* have such a price).

There are also reasons why listed and unlisted (infrastructure) corporates would have different risk profiles. For example, listed infrastructure corporates might be more volatile than their unlisted equivalents because they are exposed to additional factors such as general market volatility, which is driven by short-term market sentiment, that are unrelated to the underlying characteristics, condition or performance of the assets. Given the diverse nature of infrastructure investing the sectors and sub-sectors in which listed and unlisted infrastructure corporates operate may differ substantially, leading to differences in performance and volatility.

We believe that there are other options that could be used to calibrate a risk charge for unlisted infrastructure corporates. A possible solution could be to use the net asset value (NAV) of such corporates to determine the volatility of such assets. One could also consider analysing the cash flow volatility of unlisted infrastructure corporates or volatility in EBITDA. These alternatives would be much closer to market practice by investors and better reflect the true risk that insurers face when investing in those types of assets.

A mechanism could be found for insurance undertakings and / or infrastructure funds to provide EIOPA with access to an appropriate and representative sample of such data from which the volatility of unlisted infrastructure corporates could be derived with more accuracy.

Invest Europe’s infrastructure members, both fund managers and investors in those funds, would welcome the opportunity to discuss in greater detail with EIOPA how investors are currently measuring the risks of investing in unlisted infrastructure corporates and how an alternative data set of unlisted infrastructure corporates could be constructed, and then used to develop an appropriate risk calibration for this type of investment.

	We recognise that EIOPA needs to make progress in order to meet the Commission's deadline for advice and while in that context listed corporates might be seen as the most attractive and suitable approach we still have serious concerns whether it is the right proxy for unlisted infrastructure corporates. However, even if such approach were taken then the portfolio of entities set out in Annex III of the consultation paper would need to be carefully constructed to provide the best possible (albeit sub-optimal) data set. In our view only pure infrastructure corporates whose primary business is the ownership and operation of (rather than service of) infrastructure assets should be used. In addition, the mix of subsectors represented would need to reflect those invested in by unlisted infrastructure corporates. The list of selected entities should be looked at again in order to ensure that it captures only pure infrastructure corporates as currently it seems to capture companies that might not meet this criterion and are likely to bring additional volatility in to the index (i.e. ALPIQ, BKW, RWE and EDF).	
Section 5.3.		
Section 6.1.		
Section 6.2.		
Section 6.3.		
Section 6.4.		
Section 6.5.		
Section 7.1.		
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Section 7.5.		
Section 8.1.		
Section 8.2.		
Question 2.	While there may be reasons to believe that certain telecoms should be excluded from the definition of 'infrastructure corporates' we think that there are telecom investments that should be included in EIOPA's consideration and able to benefit from a lower risk weight. Telecommunication is an established infrastructure sector and is suitable for incorporation in the scope of the proposed definition of infrastructure corporates. The wholesale exclusion of *all* telecom investments is overly restrictive and has not been justified. We believe that this blanket exclusion should be reconsidered and that EIOPA should allow investment into appropriate telecom infrastructure, particularly those whose business focuses on the provision of infrastructure as opposed to the provision of content (i.e. TV channels, data services, mobile plans, etc.), to fall under the definition of 'infrastructure corporates'. Telecom tower companies could be one example of telecom infrastructure suitable for the inclusion. Publicly traded telecom towers such as American Tower, Crown Castle, SBA Communications, Cellnex, Inwit, and El Towers should be able to provide EIOPA with sufficient evidence to justify overturning a wholesale exclusion of telecoms. Their business model is generally quite close to the profile of telecom infrastructure corporates.	
Question 3.		
Section 8.3.		
Section 8.4.		
Question 4.	The definition of 'infrastructure corporate' should be sufficiently broad to capture a wide range of	

	corporate entities but at the same time it should concentrate on entities whose primary business is the ownership and operation of infrastructure assets. In principle it should not capture infrastructure corporates that are simply 'service providers' and have a high commodity element built into their business. We think however that the new definition and certain criteria proposed in the consultation paper are overly restrictive and might exclude infrastructure corporates that we believe represent suitable infrastructure businesses to qualify as 'infrastructure corporates'. For example the list of activities provided in the definition is too narrow and might fail to capture some (important) parts of the infrastructure universe (see also our response to Question 2). In our opinion the list should only act as a guiding principle and not as a definitive list of sectors/activities that can qualify as infrastructure corporates. The five-year test, which is required in the absence of an ECAI rating, might also be problematic as it excludes new enterprises, also those of already existing infrastructure businesses. For example some infrastructure funds carve out infrastructure assets from larger organisations that they have invested in and put them in a standalone entity or build a platform, which then they grow over time. While those entities have all the characteristics of infrastructure corporates they would fall outside of the definition if they don't have a relevant rating. We do not believe this is justified and maintain that that proposed definition should provide some degree of flexibility to also capture such cases. Also the proposed requirement for infrastructure corporate assets to be located in EEA countries is too restrictive and we do not consider it justified. Although we appreciate EIOPA's explanation and its reference to the policy objective of the CMU action plan to promote investments in Europe, such an approach would discriminate against	

	infrastructure corporates which have substantially the same characteristics, are of equivalent quality, but are simply not located in EEA countries. In our view the mere fact that assets are not located in the EEA should not determine whether they can fall within the definition of infrastructure corporate or not. Such inclusion should be based on other, objective qualifying criteria. We therefore encourage EIOPA to follow the same approach that is already foreseen for infrastructure projects and for type 1 equities under the current Solvency II rules and to extend the geographical scope of the definition of infrastructure corporate to assets located in OECD countries. If this clear precedent is not to be followed then EIOPA needs to give a clear explanation of the justifications for such discriminatory treatment and for the narrower geographic scope for this set of assets. Moreover, we would like to reiterate that all infrastructure assets (both corporates and projects) that are subject to a robust, long-term and stable (EU or national) regulatory framework such as 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. We are concerned however that the consultation paper (but equally the current text of the Commission Delegated Regulation) does not provide enough clarity around this issue and we fear that such renewable assets could be left outside the scope of the proposed definitions, which we think should not be the case. To this end, we would welcome clarification on whether such assets could meet the definition and criteria currently proposed for both infrastructure projects and corporates. At the same time we appreciate EIOPA's amendments to the definition of 'infrastructure projects' and to the relevant qualifying criteria that intend to capture certain type of infrastructure corporates.	
Question 5.	See answer to Question 4	
Section 9.1.		
Section 9.2.		

Question 6.		
Question 7.		
Section 9.3.		
Section 10.1.		
Question 8.	We think that some elements of the risk management system such as the validation process of financial models and cash flow stress testing raise some practical questions given that it is not clear how this process will work in practice. For example the text does not provide sufficient clarity on whether an independent assessment would need to be commissioned by insurance companies to validate their internal financial models or by infrastructure fund managers who then report to their insurance investors. In our opinion the former should be the case and the validation process should not lead to a situation where a third party entity must start to review the financial models of infrastructure funds/infrastructure corporates in which insurers have invested. This would not be justified and too burdensome. In general we believe that insurers will have sufficient information to assess their infrastructure investments. Nonetheless we believe that it is important to ensure that there is a workable reporting framework in place that would facilitate exchange of necessary data/information between insurers and their relevant counterparts but at the same time could be implemented with due consideration of costs and benefits. Typically, all investors (or 'limited partners' in the language used by private equity and infrastructure funds) that have equity stakes in infrastructure funds receive, on a regular basis (i.e. quarterly), information providing details about funds' underlying assets and their on-going performance. The European fund industry has developed reporting guidelines that are designed to provide 'best practice' advice to fund managers on how to report to their investors. These Guidelines - produced by the Invest Europe Professional Standards Committee - are widely used across the industry and are	Public

	reviewed and updated regularly to ensure that they remain appropriate and to take account of changing circumstances, including the changing needs of investors. As Invest Europe's membership includes fund managers (‘GPs’) and investors (‘LPs’) these Guidelines benefit from detailed input from both constituencies, both from those GPs and LPs on the Professional Standards Committee and from consultation of the wider membership. In October 2015 Invest Europe published a revised version of its Investor Reporting Guidelines. Before investors make the decision to invest in an infrastructure fund, they conduct detailed due diligence on the investment manager and investment strategy to be pursued. This will, among other things, include receiving information about the fund’s strategy and its investment parameters (e.g. how much of the fund’s assets will be invested in OECD countries, how much outside OECD, how much will be invested in core/non-core infrastructure activities, etc.) and checking and analysing the fund manager’s previous track record. Detailed information about the actual investments made by the fund and regular information about how the investments are performing only become available once the fund starts investing. Investors will also follow their own internal procedures for monitoring and managing their portfolio of infrastructure funds, which will include assessing the risks of portfolio and the place of these investments in the in investor’s overall investment strategy.	
Section 10.2.		
Annex I		
Annex I Questions		
Annex III		
Annex IV		
Annex V		