

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**

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|---|---|--------|
| Name of Company: | Insurance 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 | Insurance Europe appreciates the opportunity to provide input to the EIOPA advice on infrastructure corporates and would like to thank EIOPA for organising a call for evidence. Insurance Europe welcomed the Commission's delegated act that created infrastructure as an asset class and it supports the | |

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recognition that infrastructure investments are less risky than implied by the charges for corporates under Solvency II. However, Insurance Europe also believes that the scope of the new asset class is too narrow to achieve the Commission's objectives for growth in the European Union.

Insurance Europe supports the inclusion of infrastructure corporates in the scope of the infrastructure asset class under Solvency II. The distinction between special purpose vehicles (SPVs)/limited purposes entities (LPEs) and corporate-like entities is independent of the underlying infrastructure assets, meaning that both can develop and operate the same type of infrastructure activities and meet the criteria of qualifying infrastructure. Therefore, substance over form should prevail in qualifying eligible infrastructure transactions. The following points are relevant for the investigation pursued by EIOPA:

- The infrastructure definition should not depend on the legal form, ie SPV/LPE vs traditional forms of corporates.
- Underlying infrastructure assets would not need comply with the criteria for qualifying infrastructure as adopted by the Commission.
- Much more relevant than the legal form is the protection of investors: the insurer should have senior-priority access (excluding the super senior counterparties as per the EIOPA definition) to the underlying infrastructure cash flows.
- The protection of the insurer as investor should be assessed on a case-by-case basis within the robust risk assessment and stress-test analysis

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| | <p>required under the criteria for qualifying infrastructure.</p> <ul style="list-style-type: none"> ■ Eligible transactions should include situations where one single infrastructure asset or multiple infrastructure assets are financed. ■ The financing of ancillary activities should be included in the scope of eligibility provided that the following conditions are met: <ul style="list-style-type: none"> ■ The ancillary activities relate to a primary infrastructure activity, ie the ancillary activities would not exist without a primary infrastructure activity. ■ The ancillary activities do not materially reduce the stability, predictability and robustness of the cash-flow generation by the primary infrastructure activity. ■ The proposed calibration for infrastructure project finance should also be applied to infrastructure corporates. | |
| Question 1 | <p>The infrastructure borrowers/debtors' universe is divided into two types of entities, LPEs or SPVs and corporate-like entities. This distinction is independent of the underlying infrastructure assets, meaning that both types can develop and operate the same infrastructure activities and meet the criteria of qualifying infrastructure. Therefore, substance over form should prevail in qualifying eligible infrastructure transactions.</p> <p>Infrastructure corporates are common and well-established means of carrying out infrastructure investments. A project can often be established either as a corporate or a project entity with the same level of security for the investor. This decision is based on a range of business and capital efficiency</p> | |

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considerations. The regulatory framework should avoid incentivising one over the other.

Therefore, the form of the company/entity in charge of operating or constructing the infrastructure assets should not be part of the definition. Depending on the jurisdiction and the maturity of the infrastructure activity, there are some infrastructure sectors for which the corporate structure is more prevalent, such as: transport, utilities, energy.

The corporate structure, as opposed to an LPE/SPV structure, is often used to operate or develop multiple infrastructure assets together rather than on a stand-alone basis. This often gives more financial capacity or is simply much easier from an operating and legal standpoint. From this perspective, eligible transactions should include situations where one single infrastructure asset or multiple infrastructure assets are financed.

Question 2

Infrastructure entities as defined in the response to question 4 and which meet the qualifying criteria have a more favourable risk profile than implied by the standard formula treatment for traditional corporates.

As the risk profile of a traditional, non-infrastructure corporate will closely depend on underlying business activities (cyclicality, business volatility), the risk profile of an infrastructure corporate depends to a large degree on the underlying infrastructure assets.

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Corporate-type structures are common in a number of sectors, including transport and energy distribution. The underlying assets ensure stable cash flows and enhanced predictability for the long term, which reflects in a better risk profile of these assets compared to traditional corporates.

The regulatory treatment should be based on substance, rather than form, to prevent distortions. Insurance Europe therefore strongly believes that projects with the same characteristics and risk profiles should be treated in the same way, irrespective of whether one is structured as project finance and another as a corporate.

Question 3

- a. See response to question 2.
- b. Infrastructure can be found in all OECD countries.
- c. The legal form depends on the local jurisdiction's legal framework.
- d. Not all infrastructure corporates have a rating. Some countries such as the UK, Canada and Australia have many rated infrastructure bonds. Others, such as those in continental Europe, have few rated infrastructure bonds. Therefore the vast majority of the debt is not rated. Many of the projects are also too small in order to justify the cost of a rating by an ECAI.

Question 4

Insurance Europe supports the following definitions:

- 'Infrastructure assets' mean physical structures or facilities, systems, or networks that provide or support essential public services. – This is definition 55a of the Solvency II Delegated Act, adopted by the European

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| | <p>Commission on 30 September 2015.</p> <ul style="list-style-type: none"> ■ 'Infrastructure entity' means an entity that owns, finances, develops or operates infrastructure assets, where the primary source of payments to debt providers and equity investors is the income generated by such infrastructure assets being financed. – This should replace definition 55b of the Solvency II Delegated Act. Any reference to infrastructure project entity should be replaced with a reference to infrastructure entity. | |
| Question 5 | <ul style="list-style-type: none"> ■ In order to avoid any ambiguity, Insurance Europe refers to the delegated act adopted by the Commission on 30 September. The definition 55b ("infrastructure project entity") requires that the infrastructure project entity may only engage in owning, financing, developing or operating infrastructure. Insurance Europe believes that this criterion is not needed. In the contractual framework, the criterion c) (of Q6) may be not applicable, as some infrastructure corporates may be listed. Therefore, an equity pledge granted to the debt providers may not be as relevant as for a privately held company, if at all technically possible. ■ Similarly, criterion d) may be adjusted so that the infrastructure corporate may use its financial resources to pay the equity investors. The set of the covenant and cash sweep mechanism will protect the service of the debt by diverting the cash flow from the equity investors if such covenants are triggered. ■ Finally, the sufficient coverage (see criterion f)) for the service of the debt may not be insured by a reserve fund <i>per se</i> in a corporate-type entity, but by the cash coming from its operating infrastructure activities. | |

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| Question 6 | See response to question 5. | |
| Question 7 | No additional distinction between new or existing, debt and equity issued by infrastructure corporates is needed as long as they meet the qualifying criteria and the proper set of covenants are in place so that the lenders have senior-priority access to the underlying infrastructure asset cash flows. | |
| Question 8 | <p>A comprehensive covenant package should be in place. This ensures that the risks stemming from ancillary activities are not material for the infrastructure investor:</p> <ul style="list-style-type: none"> ■ The ancillary activities relate to a primary infrastructure activity, ie the ancillary activities would not exist without a primary infrastructure activity. ■ The ancillary activities do not materially reduce the stability, predictability and robustness of the cash flow generation by the primary infrastructure activity. | |
| Question 9 | <p>Ancillary activities should be subject to the same standards as the core business of the infrastructure corporate, ie the stress scenarios and risk-management requirements apply.</p> <p>As a general principle, the protection of the insurer as investor should be assessed on a case-by-case basis within the robust risk assessment and stress-test analysis required under the criteria for qualifying infrastructure.</p> | |
| Question 10 | Insurance Europe agrees that there should be some kind of privileged access to the cash flows or the asset pertaining the infrastructure activity in place for investors. However, there are many ways to legally structure this privileged access and the choice will depend on the specifics of the local legal framework. | |

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| | Insurance Europe believes that the existing qualifying criteria for the contractual framework are sufficient with the modifications mentioned in the response to question 5. | |
| Question 11 | It is sufficient to require the investor to verify the compliance of the investment with criteria for qualifying infrastructure. | |
| Question 12 | See response to question 13. | |
| Question 13 | Moody's study on infrastructure corporates is a very good starting point. The study contains evidence that infrastructure corporates perform better than other corporates. Since the infrastructure corporates study includes infrastructure project finance, there is some overlap between the data sets for the infrastructure corporates study and the data set for Moody's project finance study, which EIOPA referred to in its final advice on infrastructure published on 29 September. Insurance Europe therefore believes that the same calibration can be used for infrastructure project finance and for infrastructure corporates. | |
| Question 14 | Insurance Europe notes that corporates would need to meet the qualifying criteria set out by EIOPA in order to benefit from the lower capital charges. This includes the criteria relating to the contractual framework and the predictability of cash flows, which should help to address EIOPA's concerns about the creditors' position. For example, creditors' rights should be secured through a covenants package. | |
| Question 14 | Insurance Europe does not expect there to be concerns about the | |

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| | restriction/delineation of activities if the corporates have to meet the definition above (the business model entails the financing or operation of infrastructure assets) for the duration of the investment (whether in debt or equity). This restriction could be the result of a covenant, regulation, law, statute or another means. Indeed, it is quite common for corporates' activities to be restricted to infrastructure and ancillary activities by their contractual covenants, licensing requirements or other means. However, there is no need to require this in the prudential framework. | |
| Question 15 | | |
| Question 16 | | |
| Question 17 | | |