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:	Association Française de la Gestion financière (AFG)	
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Reference	**Comment**	
General comments		
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Section 3.3.1.	Comment on the “Advice” section We believe that the definition of Infrastructure project entity shall also encompass “corporate type exposures” as discussed in Annex I. Equity and debt investments in such entities shall 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 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.		
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Section 3.3.2.3.	Comment on the "Advice" section 1. The concept of contractual framework shall be extended to regulatory framework to encompass the regulated assets which may not benefit from a "contractual" framework as such. We propose then to complete the first paragraph of the definition of contractual framework as follows "the infrastructure assets and infrastructure project entity are governed by a robust contractual framework including strong termination or operated within a regulated framework. 2. Security package: the requirements in a) and b) shall be qualified to clarify that securities are required to be taken only 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. Please also note that 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 d) for a provision that the project shall not issue new debt is unnecessarily 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.		
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Section 3.3.4.1.		
Section 3.3.4.2.	Comment on the "Advice" section As already highlighted on the previous consultation paper (Question 17) we do not understand exactly the concept of sponsor. This "sponsor" concept is commonly used in greenfield project where the sponsor is the EPC contractor who designs and builds the infrastructure. This structural requirement shall only be applied to such greenfield projects. The way the structural requirements are currently drafted exclude de facto brownfield assets. Wwe strongly believe that greenfield financing may only exist if brownfield investment is also encouraged. With regard to the criteria to be met by the sponsor to be qualified as "strong", we recommend to	

	consider the “high financial standing” of the sponsor in relation to its obligations by amending the b) as follows “the sponsor has a the necessary financial standing to comply with its obligations”. The EPC/sponsor financial standing to build a small local infrastructure shall not be assessed with the same “financial standing” criteria as those required when it comes to design and build a large and complex infrastructure. We recommend having a flexible approach with regards to the requirement 4.a (strong track record, relevant country and sector experience), particularly in terms of country experience. Indeed, a sponsor can be very experienced internationally and committed strategically to support a project in a country, while not necessarily having a direct and relevant experience in such country. We also recommend having a more flexible approach when it comes to evidence that the sponsor is incentivised to protect the interests of the project (cf 3.c.). Note in particular that industrial sponsors may hold relatively small shares in the project equity while proving substantial support and guarantees for the benefit of the project’s financial investors and lenders.	
Section 3.3.4.3.	Comment on the “Advice” section While senior debt generally enjoy the highest level of seniority, the detailed financial structuring in some transactions require 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 are still enjoying a first ranking senior status despite the existence of these marginal “super senior” counterparties.	
Section 3.3.4.4.	Comment on the Advice sections Construction and operating risks criteria listed in the consultation document are relevant only for *greenfield* / pure SPV project. Infrastructures which are operated internally by the asset company itself as for instance in the transportation sector (motorways, airports), in the utilities sectors (gas&electricity distribution networks), the energy sector, etc… does not comply with the defined criteria whereas they are real infrastructure. Outsourcing of operation and maintenance shall only be a requirement for pure project companies not able to demonstrate that they have the internal	

	resources and technical capacities to operate the infrastructure.. 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 as the ones listed in the section related to construction risk in the consultation paper. We recommend limiting these requirements to the construction risks related to the intial building of a greenfield infrastructure. Please also note that third-party technical due diligence may not be systematically required. For example when a large scale construction company is fully undertaking all construction risks related to a simple and small scale project, the strength and extent of such undertaking, together with the creditworthiness of the contractor, may leave lenders comfortable with no external due diligence. The same comment is relevant for third-party legal expertise, which is relevant only when the project requires complex legal structuring, regarless the construction risks aspects.	
Section 3.3.4.5.		
Section 3.3.4.6.	Comment on the "Advice" section We believe that the design risks shall be treated as part of the construction risks, as project stakeholders in charge of construction usually assume the design and construction risks of a project in a bundled manner. With regards to technology risks, we believe it is important to avoid excluding projects featuring new technologies that are key to improve the quality and efficiency of infrastructure in certain European countries (e.g. broadband networks). The qualifying criteria should be, in our view, that unproven technology risks are assumed either by the project's industrial sponsor or the public sector counterparty.	
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Section 6.3.	We believe that further research should be undertaken in the direction of strategic equity treatment for the calibration of equity infrastructure investments. The suggested approach of strategic equity investments as defined in Article 171 of the Delegated Regulation was discarded on basis that in infrastructure projects the business decisions are very limited in scope and by the covenants required by the lenders. It may be argued that investors have limited freedom to structure an upside for equity returns given	

	the above mentioned constraints. Nevertheless, their supervision and management efforts are primary for avoiding the downside. In parallel to higher infrastructure debt recovery rates resulting from active management by lenders, the lesser volatility of infrastructure equity at least partly results from active management by financial investors. Their efforts counterbalance the conflicting interests of construction and operating companies thus limiting possible costs overruns, unavailability and delays. Also in the environment of regulatory risk, the proactive attitude of financial investors has already shown its importance for maintaining of equity value. Also EIOPA did not pursue the argument that insurance companies hold equity investments for longer periods thus reducing the risk of a loss. Nevertheless, it is important to consider sources of lower volatility observed by Blanc-Brude/Whittaker over listed PFI portfolios as compared to general listed equity. Besides lower correlation to GDP, it may also reflect the longer horizon of PFI portfolio investors. The duration based equity sub module targets SCR calculation for life insurance companies providing certain occupational retirement provisions or retirement benefits where the 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 argument is that for long-term equity investments short-term volatility should not be considered, and therefore should lead in turn to a lower capital requirement. Given the illiquid nature of infrastructure investment, the insurance companies do integrate a relatively long holding period into their investment decisions. Consequently, insurance companies meeting the duration-based equity sub module requirements are precisely the investors interested in the buy and hold infrastructure strategies. Thus, it is important to underline the possibility to apply the duration based equity sub module to infrastructure equity.	
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Section 8.		
Annex I	We concur with EIOPA that the scope shall 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 enabled to qualify regardless of their regulated or unregulated status, as revenues can also be contracted of featuring a low and predictable demand risk. We generally believe that the qualifying	

	criteria defined under the "predictability of cash flows" advice are also relevant for such "corporate – type" exposures.	
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