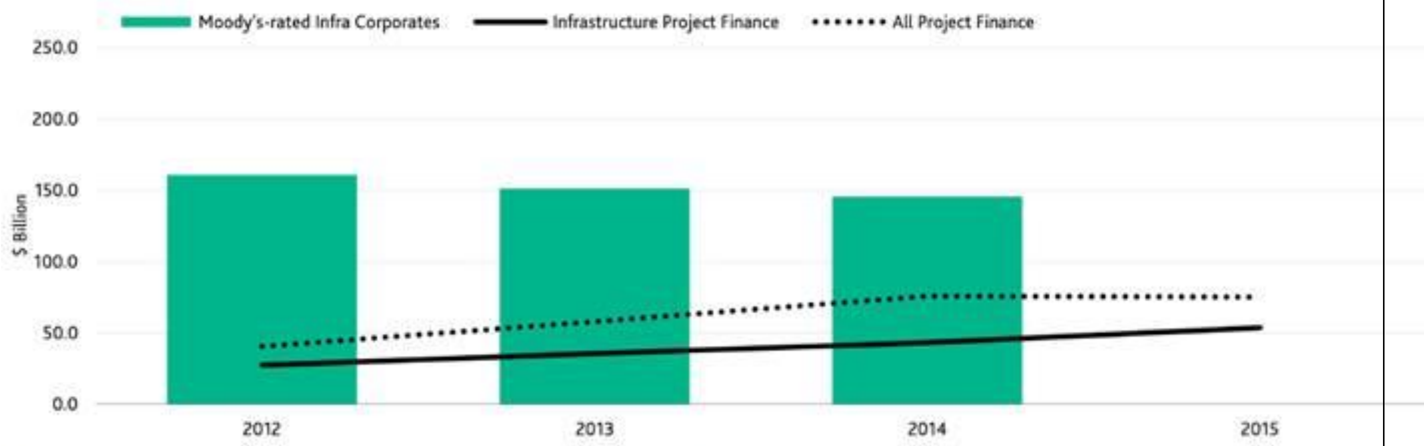
Comments Template on EIOPA-CP-16-005 Consultation Paper on the request to EIOPA for further technical advice on the identification and calibration of other infrastructure investment risk categories i.e. infrastructure corporates		Deadline 16.May.2016 23:59 CET
Company name:	AFME – ICMA Infrastructure Working Group (WG)	
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. ○ 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. ○ 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	The AFME ICMA Infrastructure Working Group (WG) welcomes the opportunity to comment on EIOPA consultation CP-16-005. This is an important consultation in connection with the Commission's Capital Markets Union initiative as well as the Investment Plan for Europe, so appropriate definition and calibration of corporate infrastructure transactions is essential. We welcome EIOPA's initiative to extend the definition of qualifying infrastructure so that it also includes not only project finance structures, but also corporate infrastructure transactions, which represent an important share of the overall infrastructure investment universe. Moody's estimates	

that "... *in Europe over the period 2012-14, [we] estimate that total capex by Moody's-rated infrastructure corporates was more than 4x the combined capital value of the infrastructure project finance transactions (whether rated or not) that reached financial close during the period …"*

Infrastructure Capital Expenditure in Europe: Infrastructure Corporates compared with Infrastructure Project Finance



Note: Infrastructure project finance excludes oil & gas, mining, petrochemical and industrial projects
Source: Moody's, Thomson Reuters Project Finance International

Source: Moody's, *Bridging $1 trillion infrastructure gap needs multi-pronged approach, 24 February 2016*

The WG believes that the current scope limitation to infrastructure project finance SPVs fails to capture a large part of the infrastructure universe. We also believe that the current calibration of infrastructure corporates is based on normal corporates, and there is proof that "normal" corporates are more risky than infrastructure corporates; this makes the current calibration unnecessarily conservative and punitive.

The AFME ICMA WG favors the application of the *criteria* for infrastructure project finance to infrastructure corporates, with appropriate modifications. The WG alsosupports the extension of the *capital treatment* for infrastructure projects to infrastructure corporates. **Where eligible infrastructure corporates ("qualifying infrastructure corporates") and infrastructure project finance entities have sufficiently similar risk profiles, applying the same capital treatment is justified.** In addition, the WG believes that EIOPA's analysis of a wide range of infrastructure corporates justifies an investigation of an additional more tailored capital treatment for *non*-qualifying infrastructure corporates.

For infrastructure corporates that do not fulfill the definition and qualifying criteria, but that do, based on data, exhibit lower risk than other corporates, the WG believes that EIOPA's analysis on the wide infrastructure spectrum would support follow-up work on their recalibration. More specifically, EIOPA's ongoing analysis should be used to inform:

- ☐ A more tailored, risk-based capital charge for non-qualifying infrastructure corporate equity
- ☐ A more tailored, risk-based capital charge for non-qualifying infrastructure corporate debt

Overall, the WG considers that EIOPA's consultation paper refers to appropriate sources of information. In addition, the paper provides a sensible approach by adopting and applying an analytical framework despite a limited amount of objective evidence (and plenty of qualitative subjective evidence). However, we consider in both cases, but particularly that of debt, the conclusions to be overly conservative and technical. We note as per paragraph 1.15 that work is ongoing on the debt side; it would be helpful to get any developing evidence or views on this front.

In line with the broader Solvency II framework EIOPA's focus in this consultation is on price volatility. However, we believe that in this asset class broader questions of probability of default and loss given default are also relevant in the context of insurers' capital requirements. There is very limited experience of infrastructure corporates "going wrong". In the UK the very limited obvious examples are Railtrack and the London Underground PPPs, in both of which cases senior debt holders got their capital back in full. Much of the rationale and thought / evidence for this is in our response to the previous EIOPA consultation on this topic.

Allied to these considerations are the issues of defining clear "in / out" rules and definitions and the potential for these to either be unclear or, even if clear to create the potential for arbitrage and to have a distorting effect in markets, both for insurance company money and for other sources of capital which might be affected

We recommend that the criteria and definitions for project finance infrastructure transactions should be used as a basis for the identification of infrastructure corporates and should be amended where necessary. The safeguards already embedded in the criteria for project finance can justify an alignment between the capital treatment of project finance and qualifying corporate infrastructure; otherwise opportunities for regulatory arbitrage will emerge.

We believe that the lists of securities and indices selected by EIOPA should be adjusted per the recommendations included in this consultation response to include additional securities and indices as well as to review the performance of unlisted securities. We have attempted to propose alternative wording for definitions that we believe will in substance capture the overall policy objective of including corporate form transactions which in substance have risks very similar to project finance structures.

We support EIOPA's proposal to amend the scope of the infrastructure asset class by removing the restriction to SPV financing and by applying the relevant amendments to the security package requirements, while keeping unchanged the approach to risk management. We also recommend changes such as reflection of the revenues of the ancillary activities in the stress scenarios, as long as an insurer can demonstrate that the stress on the non infrastructure cash flows is severe enough and takes into account the more volatile profile of such activities in a worst case scenario. We also recommend removal of the word "project" from the identification of infrastructure assets/entity, as the assumed limited life of a "project" is not suitable to long-term or perpetual infrastructure operating activities nor refinancing of such infrastructure activities.

We have concerns regarding EIOPA's intentions to calibrate capital requirements for infrastructure corporates based on available market data, for a number of reasons. First, in terms of the calibration for equities, we believe that unlisted infrastructure equities exhibit lower (short-term) volatility than for comparable listed infrastructure equities. It is not clear that EIOPA's data demonstrates that equity risk charges based on price volatility for listed transactions also represents the nature of risks for unlisted transactions, which are a significant portion of infrastructure equities' investable universe. **The available data mainly represents public entities and is therefore not**

representative of the predominantly private deals that insurers engage in.

Broad corporate listed bond or listed equity indices/portfolios are not representative of the risk profiles that today form a substantial part of the infrastructure corporates that insurers invest in. Generally, since c. 2004 the population of equity listed infrastructure corporates has reduced significantly. This is mostly driven by those being bought by private unlisted infrastructure equity funds (which have insurance companies and pension funds amongst others as their investors / Limited partners). Limited artners are naturally long-term investors who are able to pay the premium to take the companies private as (a) they value the long-term cashflows more highly than public market equity investors, who are more likely to be driven by short-termist views and (b) this long-term view permitted them (generally) to allow the companies to carry higher debt burdens than listed equity companies. Again, this higher debt was deemed acceptable due to the long-term and stable nature of the company revenues, and the ability of the equity investor to take a long-term view of equity returns.

In those cases where assets have gone into private hands the companies:

1) often agree to some form of financial and operational covenants with their creditors which also reflect the long term approach of the owners and,

2) the owners typically have much more focus on and control of the company than investors in listed equity.

We do not believe that EIOPA has developed a persuasive argument as to why corporate structures entail more risk than projects (or SPVs). The data previously supplied from two separate Moody's reports, including Moody's Infrastructure Finance Default Study (9 March 2015) highlights average recovery for project finance debt of 80%, and for senior secured infrastructure debt of 75%, versus 53% for senior secured corporates and 37% for senior unsecured corporates (see table below). This is acknowledged by EIOPA in para 1.110 in Section 7.4. In addition, in the US transportation industry S&P Global Ratings mention that there were two defaults in S&P's rated infrastructure corporates unidverse. Also, introducing separate capital requirements entails the risk that when choosing the legal vehicle for an infrastructure project, there will be a bias towards the vehicle that is "cheaper" in terms of capital requirements (organizational arbitrage). Prudential regulation should avoid pushing infrastructure business in the direction of one or another type of legal setup unless there is very clear evidence that legal setup does in fact make a difference. EIOPA does not present such evidence.

EXHIBIT 17

Recovery Rates for Defaulted Corporate Infrastructure Debts

Sector	Senior Secured	Senior Unsecured
Utilities	76%	58%
Regulated E&G Utilities and Networks	83%	63%
Unregulated E&G Utilities and Power	80%	55%
Transportation	74%	n/a
Average Corporate Infrastructure Debt Securities	75%	57%
Average Non-Financial Corporate Issuers	53%	37%

Source: Moody's

It should be considered that, over time, an infrastructure project may become incorporated – either as the result of a decision by the owners or as a consequence of the project being sold off to an entity which prefers the corporate setup. It is very important to avoid "cliff edges" where capital charges change from one day to the next simply because of a change in legal setup. It should be considered that the insurer may not always be in a position to influence a change of legal setup. Consequently, as a result of change in capital charges due to a change in legal setup, an insurer might be forced to pull out of the investment at very short notice. This cannot be the intention of prudential regulation.

In addition, EIOPA has recognised that insurers invest in infrastructure with a long-term holding perspective and their risk exposure is a combination of liquidity risk and credit default risk. Recalibrating infrastructure corporates based on the behaviour of listed companies would not be in

	line with these findings and therefore cannot be justified in a risk-based framework. We are not aware of any new findings or economic basis which would justify taking an approach for corporate infrastructure different from the approach taken for non-corporate infrastructure. With regards to the definition of an infrastructure corporate, **the WG strongly believes that "vast" should be replaced by "substantial"**. The word "substantial" is widely understood to imply a much higher percentage than a technical majority of say 51%. The industry agrees that the percentage of revenues received in corporate infrastructure transactions should be materially higher than 50%, however a fixed percentage would be unhelpful and unworkable. Some investors may view "vast" to mean nearly 100%, whereas a workable definition must be sufficiently flexible to result in a percentage material higher than 50% but less than 100%. **Finally, the WG supports Option 2 in terms of security package, which is consistent with market practices in many jurisdictions, given differences in legal frameworks applicable to security, and the relevant costs and benefits.**	
Section 1.1.		
Section 1.2.		
Section 1.3.		
Section 1.4.		
Section 1.5.		
Section 2.	We note that EUR and GBP utilities' spreads were significantly less volatile than for other non financial and financial corporates; however we understand from para 1.22 that the work is ongoing in terms of reviewing the maturities and composition of the non infrastructure bonds selected for comparison. As an aside it is generally the case in UK and EUR markets that utilities and infrastructure companies are the companies most able to access the long end of the maturity spectrum – precisely because of their long-term and stable characteristics which we are asking EIOPA to recognise. Hence it may be difficult to always compare like with like as financials and non- infra corporates have historically been less able to access the long end of the market.	

	We note the comments in para 1.23 regarding price volatility in the year following the period October to December 2007 – clearly this period contained the impact of the early days of the great financial crisi and the fall out from the Lehman collapse in September 2008; it is the case that markets were volatile and spreads widened significantly (a buying opportunity for longer-term investors) in some cases as bank proprietary trading desks (short-term investors) were forced to offload inventory in "fire sale" conditions, a function more of the banks' problems than the underlying credit of the securities being sold. It would be interesting to see (but very difficult to find data on) the amount of actual two way market trading that took place in this period, as opposed to changes in traders' quotes or distressed sales. It would be most helpful to also look at default and recovery statistics to the extent they are available for infrastructure corporates and others, which we believe show less default / higher recoveries. Again, we would refer to Moody's Infrastructure Finance Default Study (9 March 2015) (please see above and also see our response to the earlier consultation on this topic).	
Section 3.	We agree with all of the statements in paras 1.28 and 1.29 as to the case for infrastructure. We also understand that it is the case that it is relatively hard to quantify these arguments given the diversity of the sector and the very limited history of default and loss within it.	
Section 4.	We agree that on your current definition there is a range of "infrastructure corporates" and that these represent a spectrum of risk profiles; we believe it may be appropriate to focus more on the definition of infrastructure corporate in order to include those areas and sectors which are demonstrably better than "standard" corporates. Please see below for our thoughts on definitions. In addition, as far as diversified corporates are concerned, and as mentioned by EIOPA in paragraph 1.73/1.75, there is evidence that cash flows and revenues stemming from infrastructure corporates activities are significantly less volatile than traditional corporates of similar size, leverage and profitability. This is an additional reason why the calibration of infrastructure corporates should reflect	

	this much lower volatility than for traditional corporates, and this cannot be achieved by the approach proposed by EIOPA, which is based on selected market data exhibiting full market volatility, much of which is driven by wider macro issues rather than the creditworthiness of the infrastructure issuers under consideration.	
Section 5.1.		
Section 5.2.		
Question 1.	**(a) Do you agree that in the absence of publicly available data on unlisted infrastructure assets; the data on listed entities analysed by EIOPA are an appropriate proxy?** Broadly, the WG agrees that the data used by EIOPA may be representative of listed infrastructure corporates, but it is not representative of unlisted corporates, which comprise a significant part of investable infrastructure corporates universe. Unlisted infrastructure transactions feature a 'smoothing and lagging effect' similar to that recognised in unlisted real estate (see, for example, an overview in Geltner D, MacGregor BD and Schwann GM. *Appraisal Smoothing and Price Discovery in Real Estate Markets*, Urban Studies May 2003 40: 1047-1064). Generally, since c. 2004 the population of listed infrastructure corporates has reduced significantly. This is mostly driven by their being bought by private unlisted infrastructure equity funds (which have insurance companies and pension funds amongst others as their LPs). These naturally long-term investors were able to pay the premium to take these companies private as (a) they valued the long-term cashflows more highly than public market equity investors more likely to be driven by short-termist views and (b) this long-term view permitted them (generally) to allow the companies to raise more debt than listed equity companies. Again, this higher debt was deemed acceptable due to the long-term and stable nature of the company revenues, and the ability of the equity investor to take a long-term view of equity returns. **(b) If not, please provide a comprehensive justification and supporting evidence, including data, International Securities Identification Numbers (ISIN) codes and examples.** The WG considers that Annex IV lists representative infrastructure bond issuers. However, please note that BAA PLC does not longer exist – rather this is now "HAL" (Heathrow Airport Ltd).	

The WG considers that the bonds in the table below may be a useful addition for EIOPA's analysis of listed infrastructure corporate bonds. Additional information on each of the following listed bonds are available in the bond prospectuses.

ISIN	**Sub-sector**	**Issuer**[1]	**Coupon**	**Country of issuer**	**Volume (EUR million)**	**Denomination**	**Maturity**	**Current rating**[2]
XS0612983121	Rail	The Great Rolling Stock Company Ltd	6.5%	UK	400	GBP	04/05/2031	The transactions in the table are not necessarily rated. If a transaction is rated, the current rating is available from the
XS0526995336	Rail	The Great Rolling Stock Company Ltd	6.25%	UK	300	GBP	27/07/2020	
XS0526993802	Rail	The Great Rolling Stock Company Ltd	6.875 %	UK	500	GBP	27/07/2035	
XS0957321275	Rail	The Great Rolling Stock Company Ltd	Float	UK	60	GBP	31/12/2023	
XS0516704698	Rail	Porterbrook Rail Finance Ltd	6.5%	UK	250	GBP	20/10/2020	

[1] The names of the issuers mentioned in the table are for information only and may not be the legal name of the bond issuer. Please refer to the ISIN of the security for more information.
[2] The transactions in the table are not necessarily rated. If a transaction is rated, the current rating is available from the relevant ECAI.

XS0516704771	Rail	Porterbrook Rail Finance Ltd	7.125 %	UK	270	GBP	20/10/2026	relevant ECAI.
XS1053449028	Rail	Porterbrook Rail Finance Ltd	4.625 %	UK	250	GBP	04/04/2029	
XS0638544840	Rail	Porterbrook Rail Finance Ltd	5.5%	UK	250	GBP	20/04/2019	
XS1208436219	Rail	Alpha Trains Finance SA	2.064 %		360		30/06/2030	
XS0126604726	Water	Sutton and East Surrey Water	2.874 %	UK	100	GBP	31/05/2020	
GB00B1FH8J72	Water	Severn Trent	4.875 %	UK	250	GBP	24/01/2042	
XS0790894355	Electricity	Northern Powergrid	4.375 %	UK	150	GBP	05/07/2032	
XS0218526274	Electricity	Northern Powergrid	5.125 %	UK	200	GBP	04/05/2035	
XS1209166021	Electricity	Northern Powergrid	2.5%	UK	150	GBP	01/04/2025	
XS0165510313	Electricity	Western Power Distribution	5.875 %	UK	250	GBP	25/03/2027	
XS0979476602	Electricity	Western Power Distribution	3.875 %	UK	400	GBP	17/10/2024	
GB0003405460	Electricity	First Hydro	9%	UK	400	GPB	07/03/2021	
XS0187202303	Electricity (pump	UK Power Networks	5.75%	UK	350	GBP	08/03/2024	

	storage							
XS0148889420	Electricity (pump storage	UK Power Networks	6.125 %	UK	300	GBP	07/06/2027	
XS1005287203	Electricity	Elenia Distribution Network	4.102 %	Finland	3,000	EUR	17/12/2030	
BE0002172386	Gas Distribution	Fluxys SA/NV	4.125 %	Belgium	356	EUR	21/12/2015	
XS0942082115	Gas Distribution	Vier Gas Transport GmbH	2.875 %	Germany	1,492	EUR	12/06/2025	
XS0942081570	Gas Distribution	Vier Gas Transport GmbH	2%	Germany	1,492	EUR	12/06/2020	
XS0951155869	Gas Distribution	Vier Gas Transport GmbH	3.125 %	Germany	749	EUR	10/07/2023	
XS1090450047	Gas Distribution	NET4GAS sro	2.5%	Czech Republic	458	EUR	28/07/2021	
XS1090449627	Gas Distribution	NET4GAS sro	3.5%	Czech Republic	458	EUR	28/07/2026	
XS1090620730	Gas Distribution	NET4GAS sro		Czech Republic	269	EUR	28/01/2021	
NO0010649221	Gas Distribution	Solveig Gas	5.32%	Norway	133	GBP	30/12/2027	

XS0718981995	Ports	ABP	6.25%	UK	500	GBP	14/12/2026	
XS0883686650	Water	Affinity Water	4.5%	UK	563	GBP	31/03/2036	
XS0883690090	Water	Affinity Water	3.625%	UK	563	GBP	30/09/2022	
XS0883688516	Water	Affinity Water	1.548%	UK	563	GBP	01/06/2045	
XS0609003701	Water	Bristol Water	2.7%	UK	46	GBP	25/03/2041	
XS0827573766	Electricity	ESB Finance Ltd	6.25%	Ireland	600	EUR	11/09/2017	
XS0856023493	Electricity	ESB Finance Ltd	4.375%	Ireland	498	EUR	21/11/2019	
XS1239586594	Electricity	ESB Finance Ltd	2.125%	Ireland	497	EUR	8/06/2027	
XS0492262844	Electricity	ESB Finance Ltd	6.5%	Ireland	314	EUR	05/03/2020	
XS0992646918	Electricity	ESB Finance Ltd	3.494%	Ireland	300	EUR	12/01/2024	
XS0563639805	Rail	Eversholt Funding plc	5.831%	UK	818	GBP	02/12/2020	
XS0563638401	Rail	Eversholt Funding plc	6.359%	UK	818	GBP	02/12/2025	
XS0593975328	Rail	Eversholt Funding plc	3.697%	UK	473	GBP	22/02/2035	
XS0439818039	Water	Yorkshire Water Services	6.375%	UK	747	GBP	19/08/2039	
XS0504218990	Water	Yorkshire Water Services	6%	UK	747	GBP	14/04/2025	

XS0440541752	Water	Yorkshire Water Services	Var	UK	747	GBP	30/12/2039	
XS0810290832	Water	Yorkshire Water Services	3.625 %	UK	318	GBP	01/08/2029	
XS0436054885	Gas	Northern Gas Networks	5.875 %	UK	232	GBP	08/07/2019	
XS0494932741	Gas	Northern Gas Networks	5.625 %	UK	221	GBP	23/03/2040	
XS0904707287	Electricity	North West Electricity Networks	5.875 %	UK	207	GBP	21/06/2021	
XS0733486848	Water	Northumbrian Water Finance	5.125 %	UK	428	GBP	23/01/2042	
XS0257411297	Water	Northumbrian Water Finance	1.71%	UK	292	GBP	16/07/2049	
XS0257412261	Water	Northumbrian Water Finance	1.75%	UK	292	GBP	16/04/2053	
XS0240294339	Water	Northumbrian Water Finance	1.63%	UK	87	GBP	30/01/2041	
XS0462854687	Gas	Phoenix Natural Gas	5.5%	UK	297	GBP	10/07/2017	
XS0485672405	Water	South East Water	var	UK	149	GBP	03/06/2041	

XS0415065399	Water	Southern Water Services	6.125 %	UK	335	GBP	31/03/2019	
XS0905648621	Water	Southern Water Services	4.5%	UK	285	GBP	31/03/2038	
XS0271386244	Water	Southern Water Services	4.5%	UK	294	GBP	31/03/2052	
XS0497976216	Utilities	Wales & West Utilities Finance	Var	UK	570	GBP	22/08/2035	
XS0497976562	Utilities	Wales & West Utilities Finance	5.75%	UK	570	GBP	29/03/2030	
XS0497976133	Utilities	Wales & West Utilities Finance	6.75%	UK	570	GBP	17/12/2036	
XS0702021311	Utilities	Wales & West Utilities Finance	4.625 %	UK	453	GBP	13/12/2023	
XS0702020933	Utilities	Wales & West Utilities Finance	5%	UK	453	GBP	07/03/2028	
XS0471076876	Utilities	Wales & West Utilities	5.125 %	UK	219	GBP	02/12/2016	

		Finance						
XS0438200361	Utilities	Wales & West Utilities Finance	6.25%	UK	295	GBP	30/11/2021	

While it is difficult to find publicly available granular data to support that listed instruments may not be the best proxies for the reasons mentioned above, using some relevant infrastructure indices such as the Cambridge index for equity clearly demonstrates a much lower volatility of the unlisted European (or worldwide) infrastructure equity market than the listed equity markets.

For debt EIOPA used Moody's Infrastructure Finance Default Study (9 March 2015) to take some additional comfort that infrastructure corporates exhibit a lower risk profile than the conventional corporates. However, there is no evidence that the infrastructure corporate debt analysed in such study is listed. The only tangible evidence of such study is that the infrastructure corporate expected loss profile is far closer to that of infrastructure projects than to that of non financial corporates. Given the size and the depth of the study, this should be enough evidence to justify expanding the treatment of infrastructure projects to corporates.

Section 5.3.		
Section 6.1.	Other indices suitable for EIOPA's analysis are available: **UBS Global Infrastructure & Utilities Index**: This index comprises several sub-components including: - The UBS Global Infrastructure Index designed to track the performance of non-utility related global listed infrastructure (transportation & communication). - The UBS Global Utilities Index designed to track the performance of global utility companies (excluding sub-sector generation utilities). **UBS Global 50/50 Infrastructure & Utilities Index**: The infrastructure sector and the utilities sector each have a 50% weighting in terms of free-float market capitalization, which removes the skew towards utilities found in the UBS Developed Infrastructure & Utilities Index. Constituents of the	

	index are all listed in developed markets. **NMX30 Infrastructure Global, Natural Monopoly Index,** (ISIN (Total Return): CH0032212869): This index offers investors exposure to the 30 largest companies in the infrastructure sector worldwide. Regional sub-index focusing on Europe (ISIN: CH0032213941) is also available. **FTSE Macquarie Global Infrastructure**: The Macquarie Global Infrastructure Index (MGII) Series calculated by FTSE is designed to reflect the stock performance of companies worldwide within the infrastructure industry, principally those engaged in management, ownership and operation of infrastructure and utility assets. Components are listed companies such as Kinder Morgan, Duke Energy Corp, National Grid, Iberdrola... We also recommend looking at the equity performance of listed infra investor funds such as 3i Infrastructure fund, Hastings, Brookfield Infrastructure Fund and others.	
Section 6.2.		
Section 6.3.	Listed private equity firms generally mark-to-market their portfolio companies as follows: at Year 1 of investment, investors will hold their investments at cost. In the following years, on an annual or semi-annual basis, NAVs will be calculated by using the CAPM and prior transaction multiples. In the UK, PPP and renewable funds (such as HICL (www.hicl.com/), JLIF (www.jlif.com), INPP (www.inpp.org.uk)), will usually disclose publicly their yearly NAV calculations. These fair valuations are considerably less volatile than a public equity stake, and reflect the consistent and predictable cash flows of these specific assets without bias to wider market events and noise. In addition to the two portfolios mentioned in the consultation paper, we have identified the following active funds with equity underlyings:	

	UBS Equity fund – Infrastructure: 45% in EEA (ISIN: LU0366711900) Fund information available on UBS Fund Gate: https://fundgate.ubs.com/fioverview.do?lang=en&fmt=pdf&instid=64221&cty=LU&rid=3 **Partners Group Listed Infrastructure:** 42% in EEA (ISIN: LU0263854829) **AMP Capital Global Listed Infrastructure Fund:** 34% in EEA (ISIN: LU0995048385) **CF Canlife Global Infrastructure Fund:** 33% in EEA (ISIN: GB00B7XB4M82) **Brookfield Global Listed Infratructure Fund:** 27% in EEA (ISIN: IE00B63LDC43) **VT UK Infrastructure Fund:** 100% UK (ISIN: GB00BYVB3N35) **Lazard Global Listed Infrastructure Portfolio** Fund information available on http://www.lazardnet.com/us/mutual-funds/lfi-open-end-funds/real-assets-portfolios/global-listed-infrastructure/#tab-perf-1	
Section 6.4.		
Section 6.5.		
Section 7.1.		
Section 7.2.	We note the study on bonds is ongoing but it is important that other currencies such as GBP are taken into account.	
Section 7.3.		
Section 7.4.		
Section 7.5.		
Section 8.1.		
Section 8.2.		
Question 2.	**(a) Do you agree with the assessment of the risks of telecom investments as evidenced by the historical price data?** We generally agree with this assessment with respect to listed telecommunication companies, given that they typically include content and service provisioning businesses, which cannot be qualified as	

infrastructure but materially affect overall performance of the asset.

However, we consider that some telecom investments (ownership and operation of telecom networks and infrastructure which have high barriers to entry) should be incorporated in the infrastructure corporate definition as set out in the EIOPA's proposed definition set out in paragraph 1.132 of the consultation paper (see below, Section 8.4, second paragraph). We do not agree that telecom operators operating under concession should not be treated as infrastructure corporates since their underlying activities can exhibit the same feature as the regulated infrastructure corporates.

(b) Are there any segments within the telecom industry that are safer than other segments, which deserve further granular analysis? If yes, please provide a comprehensive justification and supporting evidence including data, ISIN codes and examples.

Telecommunication assets that can be qualified as infrastructure include mobile telecommunication towers, wired signal distribution networks (backbone cables, fiber-to-home, etc) and satellite networks that service providers are renting in return for a stable fee, often subject to long-term contracts. TDF (France), portfolio of Communication Infrastructure Fund (the Netherlands) and Arquiva (UK) are examples of telecommunication infrastructure assets but the three of them are unlisted as are many of other similar assets in this sector.

Some other infrastructure sectors are not listed because they usually don't have any publicly traded bonds or equities but this does not mean they are not part of the core infrastructure universe:

- Strategic electrical or non electrical energy storage
- Water irrigation systems
- Waste management

Please note that those proposed additional sectors are already covered by the project entity framework for SPVs only as long as they comply with the criteria.

Question 3.	**(a) What is the volume of infrastructure corporates without an ECAI rating?** Our members believe that majority of corporate infrastructure debt has an ECAI rating as most public debt issuance effectively requires such a rating, however, it is not uncommon for lenders in private debt not to require a rating assessment. **(b) What is the typical amount of a corporate debt issuance? How does this relate to the cost of obtaining an ECAI rating?** It depends on sector and issuer. Typically the real minimum of c. £150m for a listed bond but more typically one would see £200m + per issue and in Europe for larger integrated utilites we would see €500m as a typical size for a larger corporate. In most cases, this is driven by the desire of issuers of public listed bonds to issue bonds that would be included in an index (e.g. iBoxx) to ensure liquidity. However, some smaller issuers such as small UK water companies, port companies or European utility businesses have issued privately placed notes for as low as £20m. It is not just the cost of an ECAI rating which is important to a borrower/issuer. The requirement to interact with a third party is, along the with price, something which can make bank debt more attractive than more natural longer-dated capital. **(c) What criteria could be used to identify suitable debt without an ECAI rating and to eliminate unsuitable investments? Please provide specific proposals.** Since the criteria for debt without an ECAI rating have already been developed for project debt, the WG suggests adopting similar albeit tailored criteria to the context of corporates rather than imposing an ECAI rating for corporates as a qualification requirement. The WG does not believe it is in the interest of long-term stability to tie all criteria to ECAI ratings.	
Section 8.3.		
Section 8.4.	**Paragraph 1.132: Definition** **The WG feels strongly that basing a definition on "vast majority" is not sufficiently clear,** and is not consistent with policymakers' intent to include corporate infrastructure transactions which include a substantially similar risk profile as project finance infrastructure. **As an alternative to a "vast majority" definition we propose "substantial majority".** In our view that is consistent with (and more easily understood as complying with) EIOPA's criteria described at paragraph 1.166	

	that "the proportion of infrastructure activities needs to be well above 50%". For example, members are aware of an investment-side association which defines, for their investor members "substantially", "principally" and "significant" as describing a minimum of 80%. In our view the definition should include "owning and operating telecoms networks or infrastructure". In the same way as for airline businesses versus airports, the intention is to exclude telecoms businesses but include telecoms infrastructure corporates. • We note that there are businesses that may be categorised as "infrastructure corporates", such as Thames Tideway Tunnel, that would not satisfy the requirement that "the infrastructure corporate has been active in these lines of business for at least five years". In addition, there are a number of spin-off/privatisation businesses (particularly in continental Europe) that would fail to satisfy this criterion because of the change of legal ownership structure. To partially address these points we recommend amending to "the infrastructure corporate (<u>or the business of that infrastructure corporate</u>) has been active in these lines of business for at least five years". This is to avoid an infrastructure corporate business being ineligible simply because of a change in legal structure. Also, we do not see why corporates operating in OECD should be excluded. In this way, the drafting would follow that used for project financings. **Paragraph 1.139: Revenue predictability** The conditions set for revenue predictability would appear to exclude toll roads. We consider that this may be the effect of the criteria but think that in principle toll roads should not necessarily be excluded. We note that banded tolls can significantly mitigate the impact of traffic risk on revenues. Under limb 2 where the revenues are not funded by payments from a large number of users, none of (i)-(iv) address situations in which the offtake is a local council. The same issue arises in the original drafting for project finance transactions with the upshot that education PFIs or availability-based road transactions based on payments from a European municipality are not included. To exclude these would not seem to be the overarching intention of the Commission and EIOPA.	

	Paragraph 1.148: Financial structure We assume it is the intention that the phrase "very robust assumptions based on an analysis of the relevant financial ratios" is intended to be equivalent to the assumptions that would be used by an ECAI for purposes of assigning to an infrastructure corporate a credit quality step of at least 3. We suggest clarifying this.	
Question 4.	**(a) Do you have specific examples of infrastructure sectors and corporate structures that would inadvertently fall outside this definition?** Telecommunication infrastructure as set out in answering Question 2 above. See also comments to paragraph 1.132 and 1.139 above. Notably, the following sectors would fall outside the current scope and should instead be included in the scope: • Communication towers and other mass telecom (ex: optic fibre, mobile) networks as well as satellite systems financing could be considered as core infrastructure assets • Strategic electrical or non electrical energy storage • Water irrigation systems • Waste management **(b) What volumes would such examples represent?** The volume of telecommunication infrastructure is not significant at this time but may grow as telecommunication companies continue separating their infrastructure and service businesses. Corporate telecommunication infrastructures include Arquiva (UK), Shere Group Transmission (NL), TdF (FR) and Coyage Telecom Network (FR). **(c) Regarding the requirement for a minimum number of years of operation or for an external credit assessment specifically, are there cases where would this lead to the exclusion of safer infrastructure corporates? If so, how would you propose to appropriately limit the construction or operating risks; would the requirements for infrastructure projects be appropriate for example?** This would exclude privately placed debt for unrated transactions such as those for OFTOs, to the extent EIOPA takes this approach. In most but certainly not all cases infrastructure corporates will have a rating of some sort or will have 5 years of operations. New projects such as the Thames Tideway, with significant regulatory support would fall outside of the definition if they did not have a	

	rating (which it does). We are aware of a number of deals e.g. in the Ports sector which have private ratings. There have been recent examples of built solar and wind generation debt issuance which does not have a rating and has less than 5 years operational history. Renewable energy generation is a growing asset class which appeals to insurers not only for its potential for stability but also for its environmental benefits. More broadly, the WG believes that the definition should be extended to include tests on predictability of cash flows similar to those used for infrastructure projects. The five-year test in the current definition can be problematic as it leads to exclusion of new enterprises and also of existing businesses post recent M&A activity. Also, we do not see why corporates operating in OECD should be excluded. Their exposure to country risk is similar to those with exposures to EEA only. In addition, the Commission's delegated regulation on infrastructure projects (Article 146a(1)(f)(i)) considers infrastructure projects located in the EEA or OECD to be relevant. We consider that the infrastructure corporate should be treated similarly. See also response to paragraph 1.132 above.	
Question 5.	**Are there other criteria not covered by this section (Section 8.4) that are used by investors to identify safer infrastructure corporates?** Although we are not proposing additional criteria other than in connection with adjusting the definition as per the previous answer, we want to highlight that investors, as part of their overall credit decision, should be aware of other risks which may arise during the life of the investment. This should include country-specific risks, regulatory risks, political risks, environmental risk and other risks. The WG believes that criterion 3 (diversification of revenue) should be clarified to also exclude revenues which are availability-based or subject to take-or-pay contracts – with the same rationale as stated in Sec 1.143. See also response to paragraphs 1.132 and 1.139 above.	
Section 9.1.		
Section 9.2.	We agree with the necessity to be able to identify the various sources of revenues of a given infrastructure corporate. However, it is not sensible to remove all the revenues coming from the	

	ancillary activities as they are also generating operating and potential capital expenses that have to be taken into account to measure the robustness and sustainability of a balance sheet. Licence restrictions or securities and covenants provided in many cases to the lenders on such non infrastructure activities should protect the lenders/shareholders in case of very adverse scenarios.	
Question 6.	**Do you envisage any difficulties to distinguish between revenues stemming from infrastructure compared to non-infrastructure activities? Please justify your response.** Practical difficulties may arise in some situations – for example, when ‘infrastructure’ and ‘non-infrastructure’ revenues are included in the same contract. It is, however, customary for infrastructure corporates to separate different types of revenue throught their managerial reporting to the extent sufficient for making infrastructure vs non-infrastructure distinction. We would expect that financial statement reporting does not necessarily mean it is always possible to distinguish between revenues stemming from infrastructure compared to non-infrastructure activities. We suggest that the criteria should accommodate equivalent arrangements whereby there are creditor covenant or other restrictions in relation to the nature and levels of non-core/ancillary business activities.	
Question 7.	**(a) Would option 1 (compared to option 2) lead to the exclusion of arrangements which provide an equivalent level of protection to asset security and an equity pledge?** **Please provide specific reasons and examples.** In many jurisdictions it cannot be assumed that a security provider can or will grant full fixed and floating (or equivalent) security. Rather a decision is required as to the level of security that is necessary and proportionate (taking into account the expected enforcement procedures of creditors and therefore not incurring unnecessary stamp duty/registration costs for granting security that is of no expected value). Accordingly, in our view, Option 2 is preferable and consistent with market practice in many jurisdictions. Please change "in the form agreed" to "save in accordance with and as permitted under the finance documents", which we assume is the intention. Certain permitted additional debt may be regulated under the finance documents or creditor consent may be required for any new indebtedness. **(b) Do you consider that a "negative pledge" clause can provides equivalent protection to the security arrangements required by the proposals in Section 9.3?** **(c) If yes, please provide specific reasons and examples of infrastructure sectors and countries where a "negative pledge" should be allowed without compromising the safety and recovery of your investment.**	

Section 9.3.		
Section 10.1.		
Question 8.	**(a) In view of the proposed change to the scope of the infrastructure project asset class, do you agree that the risk management requirements remain appropriate?** Yes, the WG believes that that same risk management requirements are appropriate for infrastructure SPVs and corporates. **(b) In particular, will the information required to comply with the risk management requirements for infrastructure projects be available to insurers?** **(c) If not, how would an insurer satisfy itself regarding the safety of the investment, without an excessive or mechanistic reliance upon external ratings?**	
Section 10.2.		
Annex I		
Annex I Questions	**1. Do you agree with the assessment of benefits? Are there other benefits that have not been identified?** **2. Do you agree with the assessment of costs? Are there other costs that have not been identified?** **3. Regarding policy issue 1, what would be the volume of qualifying infrastructure investments under the different policy options?**	
Annex III		
Annex IV		
Annex V		
Annex VI	We recommend the removal of the word “project” from the reference to the “Infrastructure project entity” in the Delegated Regulation. Given the perception of a temporary nature/limited lifetime of a “project”, which makes sense when one is referring to the financing of the construction/development of an infrastructure asset, it seems sensible to remove this word when it comes to the operating of such assets over a very long period of time, where the word “project” does not add anything to the meaning.	