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:	BlackRock	
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: ⇨ Do **not** change the numbering in column "Reference". ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph, keep the row empty. ⇨ 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-15-004@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).** The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-15-004.	
Reference	**Comment**	

General comments	BlackRock welcomes EIOPA's proposals to recognise the specific characteristics of infrastructure investments and the buy-to-hold nature of many these investments. As many of these investments are unrated we also support the ability to use internal assessment and evaluation tools to determine the eligibility of infrastructure assets for more favourable capital treatment We do, however, have a number of concerns regarding the scope of eligible investments and and the difference in definitions of "infrastructure" when compared with with flagship European initiatives which affect infrastructure investment such as the European Fund for Strategic Investments (EFSI) and the European Fund for Long Term Investment Funds (ELTIF). In particular the definition of infrastructure project entity is in our view drawn too narrowly. This appears to exclude two key areas of infrastructure financing: • Projects assets of a type which are generally operated by an operating company such as a transmission grid where operating and asset servicing are operated on an insourced basis • Pooled funds such as closed-ended funds with no or low levels of leverage such as ELTIFs or other national regulated funds which are designed to be bought on a buy-to-hold basis and which provide portfolio diversification benefits. This is particularly important to ensure that the benefits of the infrastructure investment risk categories are not unnecessarily limited. In addition to pooled funds, other types of vehicles such as SPV and balance sheet separately managed accounts (SMAs), which are greatly used by insurers, also seem to be excluded. More broadly, with the finalisation of the EFSI Regulation, we recommend that EIOPA develop with EIB/EFSI a clear matrix of which EFSI financed projects will be eligible for more favourable capital charges under the Solvency II framework. As insurance companies are expected to be key providers of the long-term capital needed to finance EFSI initiatives, clarity on which types and structure of projects are suitable will be key to product design and developing a long term pipeline of projects. We would also highlight the potential disincentive created by OECD's Base Erosion and Profit Shifting (BEPS) project for investments in infrastructure projects via investment vehicles (see our *ViewPoint*	

	"Eliminate Double Non-Taxation Without Impeding Cross-Border Investment", available here).	
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Section 3.1.	In respect of the reference to infrastructure corporates in paragraph 1.52 we note that corporate entities value private debt solutions which can be tailored to their needs as opposed to more standardised fund-raising through public markets. In particular, private debt offerings allow corporates to issue longer maturities and offer sub benchmark size issuances. Longer maturities may be beneficial to investors looking to match maturities of their underlying liabilities. Although some reference is made to diversification and to the benefits of investing in a diversified pool, the Consultation paper does not address a number of practical issues regarding investment in fund structures. Without such clarification, many end investors will avoid the fund structure. We would recommend that EIOPA's work covers not only direct investments into Infrastructure Equity and Infrastructure Debt but also the benefits of investment into both these asset classes through pooled vehicles. This should allow EIOPA to consider recognising the benefits of holding pooled	

	portfolios of infrastructure assets managed by teams with dedicated infrastructure expertise. We particularly encourage EIOPA to consider the benefits of investing in infrastructure through ELTIFs (as a closed-ended fund for buy-to-hold investors with limited leverage and a diversified pool of assets), other similar alternative investment funds (AIFs) and other intermediate vehicles through which an insurer may hold the infrastructure assets. In principle, provided risk and returns are passed through to the underlying investor it should not make a difference if the project asset is held through an AIF or a dedicated SPV. This gives insurers greater flexibility to hold their infrastructure investments in the holding structure which best fits their requirements. For example, an insurer might prefer to hold assets through a SPV rather than a AIF for commercial reasons such as tax efficiency e.g. by allowing income flows from different jurisdictions to accurately account for differing tax liabilities. Further, even where the insurer invests in AIF, the AIF might hold the assets indirectly via SPVs for various reasons. This should not per se have an impact on Solvency II treatment. The position would be different if the economic result is markedly different, for example where a fund is permitted to take on significant levels of additional leverage which would result in a different outcome from investing directlry in the underlying project – in this case a different treatment for Solvency II purposes may be needed. Otherwise this has the implication that the investor would be required to look through to each individual holding in the fund on a regular and as yet undefined time scale. Either way we recommend that EIOPA address the practicalities of investing in infrastructure through AIF structures and indicate whether certain structures should benefit from a more favourable treatment than others. These comments also apply in respect of Section 3.2.2 below. The attactive risk features of infrastructure could be further enhanced by constructing a global infrastructure fund which benefits from a diversified range of geographies and sectors (social, transportation, power & energy etc.), stages of development (greenfield vs. brownfield) and consideration as to the classification of sectors as essential or non-essential. The construction of portfolios taking these features into account can significantly improve the long term performance of diversified funds under normal and stressed conditions.These benefits should be incorporated in the capital model to encourage appropriate behaviours along with consideration of features of the individual assets such as the degree to which they are essential, regulated, contractually fixed and have low demand risk.	
Section 3.2.		
Section 3.2.1.		
Section 3.2.2.	Our experience supports EIOPA's analysis that a portfolio of infrastructure debt should have meaningfully different risk profile to that of a portfolio of corporate debt. We would welcome further	

	clarification as to how insurers should treat holdings on infrastructure debt held in an investment fund, such as an AIF. See comments on Section 3.1 above. This clarification is important as access to these investment opportunities is increasingly going to be through pooled investment vehicles as these permit a wider range of insurers to invest many of which may prefer to delegate the due diligence of asset selection to specialised managers rather than negotiate individually with each issuer. In capital modelling terms, we recommend considering the three core favourable features of infrastructure debt and equity i.e. the low probability of default, low loss giving default and low default correlation. Taken together these features can significantly lower the long term absolute capital requirements but also the often countercyclical long term behaviour of the asset class which serves as an additional buffer in times of stress. These favourable features of "broad" infrastructure are further improved where infrastructure debt has appropriate subordination. Moody's historical studies illustrate the concentration of default in infrastructure portfolios during the initial 3 to 5 years. This feature serves as a useful natural diversifier of default in broad based credit portfolios which typically see increases in default risk over time.	
Section 3.2.3.		
Section 3.3.	Contrary to the comments made by EIOPA in paragraph 1.68, we believe it is important to look at the average risk across risk factors and allow some strong features to compensate for weaker ones. We would support the use of a more granular assessment to achieve this.	
Section 3.3.1.	While we welcome the intention to provide a broad definition of infrastructure assets we are concerned that that the definition proposed may not be consistent with those being used by the OECD as part of G20 initiatives and elsewhere in EU and national initiatives. In particular the definition is narrower than that adopted in the EFSI Regulation. This potentially has the effect that only a sub-section of EFSI initiatives will qualify for the more favourable treatment. While we appreciate that EIOPA is considering specific risk categorisation, we are concerned that there is insufficient synchronisation between these key European initiatives. A border definition will also avoid the risk of crowding out key projects which might not make the cut of a tightly drawn definition and funnelling investor money into too narrow a range of projects. We believe the definition of 'infrastructure project entity' is too narrowly drawn as it assumes a SPV-style entity where many of the core operating functions are sub-contracted to third party service providers. This type of financing is more applicable to the financing or operation of a clearly definable asset such as a toll road. Other asset more complex, networked assets such as an electricity grid supply do not tend to be operated by an SPV but by a more general operating	

	company where the provision of services is insourced. We see significant corporate style issuance in sectors such as airports and ports, gas and oil pipelines, gas distribution, power and telecoms other than for new build assets. The overall effect of excluding these types of operating entities would be to limit investment to private equity style models of financing, - at a time when investors are considering different - term financing models. We believe that developing a range of financing models is beneficial In addition, ass mentioned above, a pooled fund such as a closed-ended AIF or ELTIF or even a SPV would not appear to fit within this definition either. We also believe there are cases where lenders do not require substantial control – for example we could envisage a project being financed by a group of pooled funds, none of which has substantial control. We would recommend the use of a longer, but non-cumulative list of conditions. More generally, it is important to clarify that the requirements meet the qualifying criteria at the time of investment.	
Section 3.3.2.		
Section 3.3.2.1.	Stress analysis We support the aim of allowing the use of stress scenarios where appropriate as this recognises that the relevant scenarios go well beyond scenarios used by rating agencies. Other factors which could be taken into account include indexation and risks related to operating costs.	
Section 3.3.2.2.	Predictability of cash flows In the box on draft advice under paragraph 1.89, we recommend allowing partial merchant risks or off take contract renewal risks when the coverage ratios are adequate to absorb the risks. In sub-paragraph of the draft advice we also suggest giving consideration to the cover ratio level. On cash flow predictability the definition of an offtaker rating of BBB- is too restrictive. We share concerns raised by other respondents that if an offtaker with a CQS of at least BBB- is downgraded that there could be significant cliff effects – to avoid this we recommend stating that these and other criteria should be applied at the time of investment.	
Section 3.3.2.3.	Contractual framework	

	There are a number of conditions which we believe to be too restrictive: These include: • Strong termination and strong security package requirements. Loss severity can be assessed against other factors / other characteristics of the transaction. In the case of corporate style transactions, the relevant contractual framework may not always need to focus on strong termination clauses. • Restriction in activity and additional debt covenants. These are too rigid and we would recommend a more generic control over the leverage and issuance of additional debt, including the maintenance of certain cover ratios, rather than a blanket prohibition. • Reserve funds having a longer than average cover period – we do not see the need for reserves to be longer than the cover period. • Perfected security interests. In certain cases, investors could consider a strong negative pledge as an acceptable alternative to a direct security interest. In certain cases, it may not be possible to take security over assets that belong to the public domain. In addition, share pledges of companies owning infrastructure assets may also be an effective security in certain financing structures We consider that loss severity can be assessed against other factors and characteristics of the transaction.	
Section 3.3.3.		
Section 3.3.4.	Political risk We support the scope of jurisdictions included with the draft advice under paragraph 9 (a) namely the EEA and OECD. We agree that a supportive regulatory environment for buy-to-hold investment in infrastructure would exhibit the characteristics mentioned in paragraph (b). Our experience is that recent tariff changes in a number of EEA jurisdictions could in theory mean these jurisdictions failing to meet the low risk test. As part of recent initiatives to encourage greater investment in infrastructure across the EU, it would be helpful for EIOPA and the European institutions to emphasise the importance to members states of avoiding policies which materially affect cash flows for investors, if they wish to meet European and national targets to increase infrastructure investment. For example, would a project cofinanced with a first loss guarantee under the EFSI programme be seen as having a low risk of being subject to retroactive tariff treatment than a purely private initiative and therefore more likely to meet the eligibility requirements?	

	If not, it would be beneficial if EIOPA could publish a list of jurisdictions where it would be acceptable to be located as a safe harbour – otherwise some institutional investors may take a highly conservative view and avoid a number of EU jurisdictions which have introduced retroactive tax or subsidy changes in the past.	
Section 3.3.4.1.		
Section 3.3.4.2.	Structural risk In respect of the draft advice on structural requirements and as noted in our comments on the definition of "infrastructure project entity", we do not support the rigid requirement for separation. It is not clear how essential infrastructure companies such as airports, certain utilities, etc. which are not strictly structured as SPVs could qualify under the proposed drafting. We do not see the added value in the additional requirements of paragraph (c) of the draft advice given that the sponsor has to show a strong track record and high financial standing. There are also cases where we believe consideration should be given to allowing the ability to replace the sponsor/contractor/operator.	
Section 3.3.4.3.	Financial risk Amortised debt represents the majority of the pipeline in Europe but we estimate that bullet-type financing can potentially represent between 20-40% of a diversified allocation into European infrastructure debt. We therefore support consideration of allowing bullet payment terms. Regulated assets are often financed with balloon or bullet structures. Balloon or bullet maturities in shorter tenor deals (+/- 10 years and in) involving newer assets with sufficient outstanding economic life and long term predictable cash flows can be readily refinanced. In terms of eligibility, it is unclear whether partially amortising debt would be permissible and consequently we also recommend a wider definition in this respect. As noted above, cash flows do not always need to exceed debt maturities. In terms of seniority there are occasions where inflation or interest-rate swaps can be of the highest seniority but we believe that use of such risk mitigation tools should in of itself disqualify a project.	

Section 3.3.4.4.	Construction risk We do not believe that it is essential that insurers should have to use independent third party technical and legal expertise – it could well be more effective for internal experts who better understand the insurer's investment needs to conduct this role.	
Section 3.3.4.5.	Operating risk As noted above, there are a number of operations which can be insourced either in full or in part which should qualify for inclusion. This is more often the case for infrastructure companies than for SPV style structures. As in Section 3.3.4.4, we query whether third party expertise should always have to be used, especially where there is internal resource with appropriate experience.	
Section 3.3.4.6.	Design and technology risk As mentioned above, this seems to run counter to the aims of EFSI to encourage innovation via new technologies. A project which is based entirely on new technology exhibits a very different profile to the application of new technology to existing processes. We recommend allowing insurers to continue to apply a risk-based approach to their investments.	
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Section 5.1.	We consider that a correlation between type 1 and 2 of 75% is high. In practice the probability of default by off takers, construction companies, service providers and derivative providers is much lower. User market assumptions of 30% would be more appropriate for unconnected parties. We would also recommend including - collateral type - in this analysis.	
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