<table>
<tr><td colspan="2">Comments Template on EIOPA-CP-15-003
Discussion Paper on
Infrastructure Investments by Insurers</td><td>Deadline
26.April.2015
23:59 CET</td></tr>
<tr><td>Company name:</td><td colspan="2">CNP Assurances</td></tr>
<tr><td>Disclosure of comments:</td><td>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.</td><td>Public</td></tr>
<tr><td></td><td colspan="2">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>.
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The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-15-003.</td></tr>
<tr><td>Reference</td><td colspan="2">Comment</td></tr>
<tr><td>Question 1</td><td>The capital requirement is the main element in the Solvency II framework preventing insurers form investing in infrastructure.
Regarding S2 SCR calibrations, we recommend :
-For equity infrastructure investment : a specific asset class with the same capital charge as real estate, and no or low correlation with other classes
-For unrated debt infrastructure investment : a specific asset class with lower charges as</td><td></td></tr>
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	unrated debt	
Question 2	We believe that equity investment in unlisted infrastructure, in particular project finance transactions (PFI/PPP) and regulated utilities, has a different risk profile than the one implied by the current standard formula. This is also valid for infrastructure debt investment, in particular for project finance transactions.	
Question 3	Infrastructure investment is by nature long term and we believe any investor has to consider its activity in this space over such a horizon. Illiquidity is therefore not a major issue in itself and can in fact, to a certain extent, provide significant advantages (including limited correlation with other asset classes).	
Question 4	We believe that an ECAI rating can in some situations bring clarity and the leading ECAIs have clearly maintained and developed an infrastructure expertise. However, an ECAI rating should not be a must-have when assessing the risk profile of an investment. Small transactions in particular may not be compatible with a systematic rating. In addition, some insurers have, directly or indirectly, developed appraisal skills and corresponding internal scorings that enable them to invest without an external rating which does not necessarily mean than the "quality" of the investment is lower. We therefore do not recommend the introduction of a systematic difference in capital treatment for infrastructure debt with an ECAI rating and that without it but to work on "fundamental" criteria to have all infrastructure debt investments qualify for a preferable treatment.	
Question 5	We believe the definition for project finance from Basel II could indeed be used and remains to date one of the most comprehensive definitions.	
Question 6	We consider that the Basel II definition is appropriate even if other regulations have attempted to consider and define infrastructure.	
Question 7	Approach A could be considered (see a suggestion along these lines in question 9). We agree that any definition under this approach, including the one suggested in question 9, would eventually be broad and subject to interpretation. We believe that Approach B is not appropriate as a sector definition and may lead to the exclusion of investments delivering the infrastructure narrative (see question 8) and perhaps even include investments that fail to deliver this narrative. Approach C is also extremely interesting, particularly if the term 'contractual' can be interpreted in a	

	broad manner (i.e. by including assets with regulated revenues such as utilities).	
Question 8	One suggestion, that to a certain extent corresponds to a mix of Approaches A and C, could be to define infrastructure through its narrative : - Low price-elasticity of demand for service or guaranted offtake, hence low correlation with the business cycle - Monopoly power, hence pricing power and inflation hedge - Predictable and substantial free cash flow, available over long periods - Access to unlisted, illiquid financial assets. Whatever the eventual choice, insurers should be able to justify the contemplated investment falling into this infrastructure definition. Additionally, the introduction of specific and objective enonomic, legal and financial criteria having to be at least partly fulfilled by an investment in order for it to benefit from preferable treatment will mean that not too much weight is put on the definition itself.	
Question 9	Not to our knowledge.	
Question 10	As explained above, we do not believe that a sector approach is relevant when it comes to defining infrastructure. Even projects with high technological risk, if carefully structured and carried on with the appropriate partners, can be “transformed” into assets that deliver the infrastructure narrative. These projects are, however, rarely developed under project finance schemes if the technology cannot be considered as proven. On the revenue side, it also depends on the structuring and the risk allocation. As an example, some ports or locks can be developed under availability-type structures that offering significant revenue protection for investors in that project.	
Question 11	We believe that the already identified sources of criteria are relevant. It will be however important to keep in mind that, in general, an individual investment is rarely perfect, i.e. fulfils all criteria at the same time. Eventually, the investment decision (as for the rating decision) has to integrate various dimensions and is the result of a balanced choice.	

	If many detailed criteria (as opposed to focusing initially on general criteria) are introduced in the Solvency II framework for infrastructure, it will be important not to consider their “absolute” satisfaction as being a pre-requisite and leave minimal room for a qualitative discussion.	
Question 12	We believe that the most important criteria correspond to the stability of the revenues. The second most important critieria is a robust financing structure with low refinancing risk. Equity infrastructure investments with limited uncertainty on revenues (e.g. PFI/PPP) have demonstrated a strong stability, well in excess of the one implied by the current treatment in the standard model of infrastructure for unlisted equity.	
Question 13	We believe the criteria in Basel II are an appropriate basis, in particular to assess investments in project finance transactions (both for equity and debt). Mutatis mutandis, these criteria could also be applied to investments in infrastructure that are not structured under project finance schemes (e.g. regulated utilities in Europe) but there is a need for flexibility and the adaptation of some specific criteria (such as relevant financial ratios or analysis of operating risk for instance) for these assets.	
Question 14	The Basel II criteria are globally all useful. Some criteria may however not be relevant for equity investments. This is in particular the case for the strength of sponsors (that could be replaced by the strength of industrial partners on the project) or the one corresponding to a lender’s control over cash flows.	
Question 15	We believe that the Basel II criteria are already well specified. As previously mentioned, it will be important, whilst relying on sufficiently clear criteria which we believe would be the case with Basel II, not to adopt an over-specified approach when assessing infrastructure investments.	
Question 16	We are not aware of any other criteria in legal texts that could be more useful than the Basel II criteria.	
Question 17	<u>Political risk</u> We believe this criterion is meaningful. In addition to considering primarily OECD countries, specific attention should be paid to projects financed elsewhere but benefiting from political risk insurance coverage, for instance offered by the World Bank Group. <u>Structural requirements</u> Separation with industrial sponsors should be considered and is typically the case as SPVs are in general incorporated, in particular to enable equity investment from financial investors alongside industrial sponsors willing to invest equity in these projects (which is not always the case).	

	We agree that restricting the use of derivatives in "labelled" infrastructure projects to risk mitigation purposes could make sense. Any other use is extremely rarely considered in the infrastructure universe. Finally, the active monitoring criterion is particularly valid for debt but would also be relevant, from most of our members' experience as equity investors, for equity investment (the corresponding concept being the one of active shareholder).	
Question 18	Please refer to Question 17	
Question 19	Please refer to Question 17	
Question 20	The need for specific risk mitigation depends on the project and the level of complexity of the construction. The good structuring of the process, the quality of the contractors and their financial capacity are among the main concerns. While construction risk varies on a project-by-project basis, there are well-established procedures of mitigating this risk. The first step is to ensure that there is a clear risk sharing arrangement between the public authority (grantor) and the SPV (concessionaire). Any risk which is better managed or controlled by the public sector will remain with the public sector. For instance, environmental approval, public consultations, delivery of permits, interfaces with other utilities as well as any change order from the public side will often remain the responsibility of the public sector. The concession contract will clearly identify those risks and deals with the financial consequences of their occurrence. Once this split is done, the remaining risks for the concessionaire will be entirely transferred to the construction contractor on a back-to-back basis through a robust contractual structure between the project SPV and the construction contractor (the design and build agreement, often called engineering, procurement and construction – EPC – contract). This contract protects the SPV and ensures that all the obligations of the SPV related to construction under the concession contract are entirely the responsibility of the contractor including cost overruns, performance and delays.	

The SPV will enter into a firm or fixed-price, time-certain design and build contract that incorporates milestones for deliverables that warrant timely performance. These contracts will include robust so-called security packages that indemnify the project SPV against liabilities that may arise due to construction phase defects and delays.

The SPV will in addition incorporate significant warranty periods protecting it against defects that may occur post construction. Furthermore, the contractor, or the concessionaire on its behalf, will be required to take out the appropriate insurance policies, adding an increased layer of protection for unexpected events that may arise during the construction period.

A construction security package provided by the construction contractor will typically include:

- Liquidated Damages: The contract will include liquidated damages as a performance security to make certain that the contractor fulfills its obligations in line with agreed timing milestones. For every day of delay on a milestone, the contractor will pay a significant amount covering all the costs and losses of the concessionaire. This typically amounts to an amount available to the SPV ranging from 10% to 20% of the contract price.

- Guarantees to support overall contractor's liability: this could be either a parent company guarantee or a letter of credit from a supporting financial institution depending on the credit worthiness of the contractor. This typically ranges from 30% to 100% of the contract price.

These contractual mitigants would allow the SPV to replace a defaulting contractor and, using the liquidated damages, to recover delay and additional costs incurred. In a worst case scenario, it would in general ensure at least the recovery of the nominal value of the equity and quasi equity investment in the SPV.

Similar provisions as regards operating and maintenance to be provided by the facilities management operator enable a proper management of the risks associated to these activities (notably for availability based projects, the risk of non-availability or non-performance triggering penalties by the

	grantor).	
Question 21	Please refer to Question 20. Having a date certain, fixed or firm price EPC contract from an experienced contractor (having already delivered X M€ of projects under project finance schemes) in place with a minimum cap of liability of 30% for instance could correspond to the requirements, even if there is no unique value.	
Question 22	Credit enhancement or public guarantee mechanisms have to be considered as part of a global package enabling the management of construction risk. The presence of such mechanism should alter positively the risk profile of the investment. Given the variety of these mechanisms, it is however difficult to provide a one-size-fits-all criterion.	
Question 23	We believe that the approach as regards revenue risk assessment should be as simple as possible while respecting the general principles laid down in the Annex. Low revenue risk should be assumed when there is protection against a decrease in revenues in place – such as a guarantee (this protection should be either embedded in a regulatory regime or in a contract). We agree that this criterion should be fulfilled only over the duration of the contractual or regulatory arrangement. However, defining general values for the x and y coefficients introduced in the Annex seems ambitious and in addition any drop in value is highly dependent on the definition of the worst case scenario and the valuation methodology used. Another more straightforward approach, reflecting the “buy and hold” approach of investors in infrastructure, could be to require that the nominal value of the initial investments is at least recovered should the revenues be limited to the minimum contractually or regulatory guaranteed value of these revenues.	
Question 24	Please refer to Question 23.	
Question 25	We believe that the Annex captures most contractual arrangements. Regulatory arrangements where the revenues are calibrated by the regulator to remunerate at an agreed rate the investment made under the assumption of an efficiently managed utility (so called RAB model) should also be considered.	

Question 26	Non-public off taker should be considered. This may correspond to large utilities or oil and gas companies for instance. A simple criterion could be to consider rated off-takers with an investment grade rating (including off-takers benefiting from a parent company guarantee guarantee or any other guarantee of their financial obligations provided by an investment grade entity).	
Question 27	For project finance entities, debt to equity and Debt Service Coverage ratio (DSCR) are probably the most relevant ratios (the Loan Life Coverage Ratio (LLCR) being also used). In the case of regulated utilities, other ratios may be more relevant such as the ratio of Net Financial Debt to EBITDA, Net Financial Debt to Regulated Asset Base, or equivalent, or of Funds from Operations to Total Adjusted Debt.	
Question 28	Ratios cannot alone justify an investment grade rating and appropriate ratios also depend strongly on matter such as the type of revenues and operating risks. That being said, in OECD countries, a well-structured investment grade availability based project would typically attract a minimum DSCR and a average DSCR. This can be sourced for instance from Moody's Generic Project Finance Methodology.	
Question 29	Insurers are investors in equity which is junior to mezzanine debt, therefore, there is no argument to limit debt investments to senior loans. A "fundamental" approach would need to be taken to consider junior instruments. If the insurer can demonstrate that the junior debt instrument used in a specific transaction benefits from protection (e.g. an investment grade equivalent rating) similar to a senior debt instrument, it would not necessarily be economically sound to exclude such junior instrument.	
Question 30	The refinancing risk is part of the credit analysis of each project and should not be limited per se. Moreover, the refinancing risk is present in other types of investments well known by insurers (eg: standard bonds, real estate, etc.). We agree that limiting refinancing risk is important. It is however important to note that this not necessarily incompatible with having a minimum tail (i.e. a useful life exceeding the tenor senior debt).	

	A criterion could be to assess the dependency of the expected internal rate of return (IRR) on junior funds to any refinancing assumption or to assess simply if the recovery of the initial equity investment is still made in case of no refinancing is implemented. Another simple approach for project finance transactions could be to consider as eligible to a preferable treatment an equity investment in a project for which the ratio between amortizing senior debt tenor and offtake or PPP contract is in excess of [75]%. Otherwise, utility assets regulated by the RAB model necessarily need to be refinanced over time given that they may have a very long life. In the RAB model, tariffs are set periodically so that they can incorporate the current market pricing of debt enabling to manage the refinancing risk.	
Question 31	There are a broad range of financing structures for the prepayment risk (pre-agreed penalty, calls, puts, mark-to-market, etc) and investors assess their unsefulness deal by deal. There are also other asset classes invested by insurance companies which duration is uncertain, due to options owned by the issuer (callable obligations), or by the investor (convertibles). For these assets, this risk is already taken into account in the existing pillar 2 regulations. Prepayment risk is not considered as significant. Even in a context of particularly low interest rates, refinancing by sponsors has been in general considered and implemented only when maturity of initial debt in place was too short. As a consequence, long term infrastructure debt providers are not in our view significantly exposed to a prepayment risk. Therefore we do not recommend to have standard contractual mechanisms in addition to traditional “make whole” clauses that are embedded in the financial documentation of most transaction involving insurers as lenders.	
Question 32	The proof of a given technology is an ad hoc assessment which is difficult to specify. Otherwise, investment decision relies often on the advice of an independent technical advisor (typically a leading engineering firm). We are in favor for that reason not to include such criterion. Should EIOPA considers such criterion as essential, a rather straightforward criterion could therefore see all qualifying investments having been made on the basis of an independent technical assessment undertaken by a reputable engineering firm or equivalent.	
Question 33	We believe that these criteria that are “difficult to validate” are already captured to a large extent in the Basel II criteria. We do not consider in particular that a rating criteria on the senior debt can be a criterion for a preferable treatment of an equity investment.	

Comments Template on EIOPA-CP-15-003 Discussion Paper on Infrastructure Investments by Insurers		Deadline 26.April.2015 23:59 CET
Question 34	We have no other suggestion.	
Question 35	The focus at stage should be on refining the Standard Formula. Partial internal models will have to be considered at a later stage following the outcome of the work on the Standard Formula.	
Question 36	Cash flow data can be extracted from public accounts of numerous infrastructure companies that are accessible publicly (in particular for PPP).	
Question 37	Historic cash flows data, when combined with an appropriate valuation framework, as the one developed in the EDHEC Risk Instituted recent article[1], enables to derive valuation series to be tracked to extract relevant metrics such the quarterly 99.5% value at risk.	
Question 38	Consistently with the EDHEC publication "*Towards Efficient Benchmarks for Infrastructure Equity Investments*" already analyzed by EIOPA, we believe that "traditional" listed infrastructure indices (e.g. MSCI World Infra, S&P Global Infra, FTSE Macquarie Global Infra or UBS World Infra) cannot be considered as an appropriate proxy for unlisted equity investment in infrastructure to be used for calibrating infrastructure project equity and in particular equity investment in low revenue risk project finance or assimilated transactions. Should EIOPA be willing to rely on listed infrastructure as a proxy to support a reviewed calibration of infrastructure equity investment, we suggest using the listed PFI index as a proxy of unlisted equity investment in infrastructure. We would in particular like to refer to the above-mentioned paper shared by EDHEC Risk Institute on the performance of the PFI portfolio. It includes in particular an estimate of the 1 month 99.5% VaR and tends to demonstrate that the maximum absolute value of such VaR over the March 2006 – April 2015 period for the PFI portfolio is 3 times lower than the equivalent metrics over the same period for the FTSE All Shares. This would tend to imply that taking for instance an SCR inferior to 20% (compared to 39% for type 1 equity) for such infrastructure assets would be justified and, to a large extent, conservative.	
Question 39	Yes and these data have already been contributed directly by EDHEC Risk Institute to EIOPA.	
Question 40	As discussed above, the behavior of the listed PFI/PPP portfolios mentioned shows much more stable	

[1] http://docs.edhec-risk.com/mrk/000000/Press/EDHEC_Publication_The_valuation_of_privately_held.pdf

	behavior than Type 1 (Global) equities. We believe it would therefore be justified to have an *ad hoc* treatment of equity investment in infrastructure.	
Question 41	The listed PFI/PPP portfolios mentioned above have clearly demonstrated a limited correlation with other risks within the standard formula (equity market beta for instance of less than 0.01). In addition, we expect in the coming months a significant contribution from EDHEC-Risk institute in the form a new working paper that will help to substantiate the level of correlation of unlisted equity infrastructure with Type 1 and Type 2 equities and other assets classes in general.	
Question 42	Some listed project bond spreads are available through services such as Bloomberg. However such listed infrastructure bonds represent a small proportion of all project financing in OECD countries, therefore their use as a proxy for all project financing, including for unlisted infrastructure debt purchased by insurers, does not seem appropriate.	
Question 43	To our knowledge, there is no evidence that spreads of infrastructure corporates differ from those of normal corporates with the same rating, even if we considered primarily listed equity for the time being. The situation is however by all likelihhod very different for project finance debt: there is in particular evidence that overall losses due to defaults are lower than average corporates in particular because of higher recovery rates than typical corporates. This supports a) lower capital charges for infrastructure and b) the use of the counterparty default module to determine the SCR.	
Question 44	We believe that there is no evidence of suitable proxies from the corporate world, in particular given the rather limited loss given default of infrastructure debt compared to traditional corporate debt.	
Question 45	We agree that long-term investment when held to maturity are not exposed to any spread risk coming from the volatility of the risk premium. For that reason, we believe spread risk shall not be considered.	
Question 46	The condition which ensures that an insurer is in a position to hold the infrastructure investments to maturity is to check that an insurer is not exposed to fire-sale risk by the structure of its asset-liability profile. There must be however no requirement to hold to maturity as this interferes with the ability to manage risks appropriately and obligations to optimise returns for policyholders. Due to the nature of the liabilities a forced sale is very unlikely. In addition there are typically many sources of cash (new premiums, dividends, rental income, bond interest and redemptions, etc) an insurance company can use. If assets have to be sold then there are many more liquid ones available	

	such as listed shares and bonds that would be sold first and infrastructure is unlikely to be more than a few percent of the total portfolio. Therefore any liquidity concerns could be dealt with by requiring the company to confirm that they can avoid forced sales of their infrastructure assets (e.g. in their liquidity planning) and are therefore in a position to hold the infrastructure investments to maturity. It is very important that the focus is on the ability to avoid forced sales and not on requiring the assets to be held to maturity – while these assets will usually be held to maturity companies must have the flexibility to manage risks appropriately and this includes making changes to their assets for instance to avoid risk concentrations, to improve ALM, to manage credit risk and optimise returns for policyholders.	
Question 47	Calibrations for SMEs should also be looked into to see if they are unnecessarily high and create therefore unnecessary disincentives for investment. Given their illiquidity there may be justification for treating them under counterparty risk approach too. The impact on infrastructure is particularly large because the deviation between a default/recovery based approach used in the counterparty default risk module and spread based approach will be especially large because for infrastructure: - Because infrastructure debt will be among the longest duration of all debt and so a spread based approach will especially penalize infrastructure (while SME debt will tend to be relatively short and less penalised) - SME loans may have lower recovery rates than infrastructure transactions, broadly speaking.	
Question 48	We have not fully explored these aspects in the timing of the consultation.	
Question 49	We have not fully explored these aspects in the timing of the consultation.	
Question 50	We have not fully explored these aspects in the timing of the consultation.	
Question 51	The fact that a project benefits from an ECAI rating should not be a discriminating criteria. A very large portion of the market does not benefit from an ECAI rating since for small and mid-size	

	trasactions, the ECAI rating is costly and is not a requirement to find sufficient financing. Insurers and banks have risk departments that assess and monitor the risks of a project. This will be too complicated to achieve. Debt without a ECAI rating or any equivalent rating (e.g. from a bank) that can be used to assign a credit step should be assigned an equivalent capital requirement equal to a suitably conservative credit step as is done with corporate debt. It is important that the prudential rules do not force use of ECAI. Suitable rating systems other than ECAI, including for example Banks should be also allowed. The relevant distinction is more properly whether or not the risks of a project finance instrument are properly understood by the investor irrespective of ratings as sufficient proxy for credit quality in the best case. An ECAI rating can certainly assist in this case, but it is also perfectly possible that the investor will understand the risks (and therefore generate a risk evaluation) through its own internal model, advisers and/ or a third-party model or scorecard approach. The focus should perhaps be on granting a less favorable capital treatment where the investor cannot demonstrate that it utilises a suitable risk rating / credit risk evaluation methodology.	
Question 52	We may suggest inserting in the points of focus for EIOPA a concept of internal skills and/or support from experienced infrastructure specialized managers.	
Question 53	Yes; such sensitivities (including stree tests) are in general provided directly by the sponsors and their advisors.	
Question 54	Financial models for infrastructure are indeed rather standardized even if they need to be adapted for specific situations. More importantly, the governance in place in these transactions imposes a strong verificiation of these models. These models are in general produced initially by the equity investors / sponsors and/or their financial advisors, and then reviewed by the lenders and the grantor (often itself being supported by an independent financial advisor). The lenders benefit quasi-systematically from an audit by an independent advisor of the financial model used by the parties.	
Question 55	The industry standards in terms of reporting have been extremely developed compared to other	

	financial sectors and cover a very large and complete set of data that may be difficult to summarize in this questionnaire.	
Question 56	This will have to be discussed depending on the list but including the availability of a minimal set of information could help to bring transparency, even if we consider that including such requirements in the prudential regulations may represent a risk of not capturing the specificities of each situation.	
Question 57	To our knowledge, there are no, for the time being, industry-wide standards, even if some may exist in particular for debt products in particular (see for instance the European Financial Services Round Table standardised infrastructure disclosure and reporting standards on their website - www.efr.be). On the equity side, reporting standards are however emerging and have been improving. Many fund managers report extensive data on their portfolio including actual versus planned results and current valuation. Offering documents usually allow investors to evaluate expected returns and the most important qualitative and quantitative risks of investments.	
Question 58	The main added value would be increased transparency for investors acting as limited partners. The main disadvantage is that sensitive information (impacting in some cases listed industrial companies acting as co-shareholders) may have to be disclosed so an amount of flexibility would be required to adapt to such situations.	
Question 59	We believe that relying on the Basel II criteria instead of developing standardized contracts would be appropriate to avoid introducing strong biases in the Solvency II regulations and difficulties in accommodating each specific situation. We believe therefore that relying on well-defined principles is probably more efficient.	
Question 60	Whilst of course positive, we do not consider standardisation of investor information and contractual elements as contributing decisively to a higher liquidity of infrastructure investments, whose nature, again, is to be held over the long term. That being said, standardized and transparent information may allow investors to sell investments if needed without having to compromise on price (as information asymmetry between the seller and the purchaser is mechanically reduced) and, conversely, to improve the quality of investment decisions at acquisition. This is however not identified as a priority.	