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:	German Insurance Association – Gesamtverband der Deutschen Versicherungswirtschaft e. V. (GDV) Transparency Register of the European Commission and the European Parliament ID-Number: 6437280268-55	
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-16-005@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-16-005.	
Reference	**Comment**	
General comments	GDV welcomes the opportunity to comment on EIOPA's thoughts on the identification and calibration of infrastructure corporates and potential qualifying criteria. Excessive capital requirements unnecessarily restrict investment options for insurers. Capital treatment based on the real risks would	

allow insurers to invest in a risk adequate way, generating additional returns for policyholders and at the same time help stimulate much needed economic growth.

In general, substance should prevail over the legal form in qualifying eligible infrastructure. The current limitation of preferential regulatory treatment to infrastructure projects does not consider the concept of substance over form and fails to capture a large part of the infrastructure universe. Moreover, the current calibration is based on normal corporates, not reflecting that there is proof that these are more risky than infrastructure corporates. Both special purpose vehicles/limited purpose entities and corporate-like entities can exhibit the same infrastructure risks and hence meet criteria of qualifying infrastructure. Therefore certain corporate structures for infrastructure risk should be regarded in the infrastructure asset class under Solvency II.

However due to a wide variety of corporate structures, GDV finds the distinction between riskier and less risky infrastructure corporates difficult to make. Corporate entities often exhibit corporate risks and hence entail other risks than infrastructure projects. Many infrastructure projects for example have a static behavior with little or no change over time while infrastructure corporates on the other hand often aim to grow and therefore accept multiple and sometimes higher risks in their business conduct.

GDV therefore views it as important to find a pragmatic approach that is on the one hand risk adequate but on the other hand not overly complex and cost-intensive for insurers. Core positions are:

- GDV has strong concerns about EIOPA's approach on the calibration of the capital requirement for infrastructure corporates based on the performance of listed infrastructure corporates. Public entities are not representative of the predominantly private deals that insurers engage

	in. Publicly listed entities often exhibit traditional corporate risks such as management risks and growth risks, which insurers aim to avoid with many of the private deals that they invest in. This is in particular true for infrastructure corporates that simply bundle various infrastructure projects. • Calibration for infrastructure projects should be expanded to qualifying infrastructure corporates, provided that risk profiles are identified as being similar; • Qualifying infrastructure corporates should be identified by applying the criteria for infrastructure project finance to infrastructure corporates including necessary modifications for the contractual framework. GDV therefore supports the removal of the restriction to SPV financing and the application of relevant amendments to the security package requirements. Underlying infrastructure assets must comply with the criteria for qualifying infrastructure including necessary modifications for the contractual framework, investors should have privileged access to underlying cash flows of the infrastructure assets. The word "project" should be removed from the identification of infrastructure assets, since it is not viewed as suitable to long-term infrastructure operating activities nor refinancing of such infrastructure activities. Current capital charges for infrastructure projects are already very conservative. Qualifying criteria for infrastructure project entities are viewed as very strict and suitable to ensure that only very low risk profile investments will meet all the criteria. As a consequence the lined out approach will in GDV's view ensure that the risk of insurers' investments are not underestimated. Further investigations should be conducted in the course of the upcoming Solvency II review.	
Section 1.1.		
Section 1.2.		
Section 1.3.		

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Section 1.4.		
Section 1.5.		
Section 2.		
Section 3.		
Section 4.	As lined out previously, substance should prevail over the legal form. Both special purpose vehicles/limited purpose entities and corporate-like entities can exhibit the same infrastructure risks and hence meet criteria of qualifying infrastructure. In many cases infrastructure corporates are very close in terms of investment profile to infrastructure projects and vice versa. GDV sees evidence that cash flows and revenues from infrastructure corporates are often significantly less volatile than traditional corporates of similar size, leverage and profitability.	
Section 5.1.		
Section 5.2.		
Question 1.	(a) Given the the lack of reliable data, the use of listed infrastructure assets could be seen as a best approach. However, GDV does not support the use of data on listed entities in order to measure the risk of infrastructure corporates. Listed entities are not representative of the predominantly private deals that insurers engage in. Publicly listed entities often exhibit traditional corporate risks such as management risks and growth risks, which insurers aim to avoid with many of the private deals that they invest in. This is in particular true for infrastructure corporates that simply bundle various infrastructure projects. Price movements of listed infrastructure assets will also contain “normal” stock/bond market volatility and general market behavor, which is a contradiction to the assumed absence of overall market dependence within infrastructure investments. Moreover the data provided is seen as a proxy. The challenge is less the set of data but the higher volatility of large, publicly traded entities compared to private or small public corporates (see comment to section 7.3). Moreover, the aim/objectives of the investment may materially differ: insurers are often investing in unlisted	

	projects to benefit from the stability and the predictability of the cash flows over the long term, similar to project companies. (b) It is difficult to find publicly available granular data to support that listed instruments are not an adequate proxy. However, the general concerns outlined above should illustrate why the listed entities are not representing an adequate proxy.	
Section 5.3.		
Section 6.1.		
Section 6.2.		
Section 6.3.		
Section 6.4.		
Section 6.5.		
Section 7.1.		
Section 7.2.		
Section 7.3.	GDV does not agree with using observable spreads from listed infrastructure corporate bonds compared to other industries. Volatility in market spreads does only partially relate to credit risk. Other factors impacting spreads are for example central bank intervention, relative value to other asset classes and general market sentiment. As a consequence public corporate bond spreads are often more volatile than justified by observable default rates. Insurers as buy and hold investors, therefore, do not regard credit spread volatility as a good investment guide.	
Section 7.4.		
Section 7.5.		
Section 8.1.		
Section 8.2.		
Question 2.	(a) GDV does not agree that telecom operators operating under concession should not be treated as infrastructure corporates since their underlying activities doe exhibit the same features as the	

	regulated infrastructure corporates. At first sight, some telecoms seem to have a higher risk than other infrastructure investments given the very competitive global environment. However, past volatility is an insufficient guidance for possible future volatility due to the development of the industry. Also, introducing a granular capital charge structure for different infrastructure industries would lead to a very complex setup blurring the benefits from a revised calibration. (b) Communication towers and other telecom such as optic fibre, mobile networks as well as satellite systems financing could be considered as core infrastructure assets.	
Question 3.	(c) GDV believes that compliance with the criteria for infrastructure project finance including necessary adjustments would be sufficient.	
Section 8.3.		
Section 8.4.		
Question 4.	(a) Corporate structures that would inadvertently fall outside the definitions include for example a recent renewable spin-off of a large utility that would not have the sufficient long history of operations. GDV believes that the following sectors should be included in the scope: - Telecom operators operating under concession; - Communication infrastructure such as towers and other mass telecom; - Electrical or non electrical energy storage; - Corporates which generate, transmit or distribute heat; - Water and waste management irrigation systems. Given that district heating is more energy efficient, reduces carbon emission (solar or geothermal sourced heat) and is indirectly incorporated in the European Union energy policy via the Combined Heat and Power (CHP) Directive, GDV would consider the inclusion of district heating coherent with	

	wider EU objectives. GDV has no figures on volumes. However, private investment opportunities in Finland and France have been observed. The risk profile is viewed as very low since pipe system are needed to distribute the heat (monopoly).	
Question 5.		
Section 9.1.		
Section 9.2.	GDV agrees with the necessity to distinguish between various sources of revenues of a given infrastructure corporate. Especially for large utility companies it is often not easy to properly distinguish between revenues stemming from infrastructure and revenues from non-infrastructure activities. However revenues from ancillary activities are generating operating and capital expenses and can therefore improve the robustness and sustainability of a balance sheet.	
Question 6.	Especially for large utility companies it is often not easy to properly distinguish between revenues stemming from infrastructure and revenues from non-infrastructure activities. Stress testing should be suitable to ensure that the robustness of the primary infrastructure activities is not put at risk by ancillary activities.	
Question 7.	GDV believes that option 1 is too tight. A direct pledge of equity is not always granted or legally permitted in infrastructure projects in particular in Continental Europe which makes option 2 more adequate with some fine tuning. Option 2 also provides more flexibility.	
Section 9.3.	Predictability of Cash Flows: Supply risks are not mentioned. GDV however believes that EIOPA should not be stricter here than with infrastructure projects where supply risks also might be a topic in few cases. Contractual framework: Generally a pledge of shares might be provided for BBB infrastructure corporates. Sometimes more if the leverage is run at a higher level. But this requirement would only make highly leveraged infrastructure corporates eligible. Option 2 would require some fine-tuning especially with regard to iii), the use of net operating cash flow might be restrictred if certain trigger levels are reached. More explanation is needed here. iv): Generally, the indebtedness can be limited	

	to leverage levels (FFO/debt, Debt/RAB or EBITDA multiples). However a lender consent will almost never be achieved. Financial risk: GDV would see a clarification as helpful, that the debt can be pari passu with other senior debt but that no other debt is senior.	
Section 10.1.		
Question 8.	(a) GDV agrees that the risk management requirements remain appropriate. (b) For example considering large utility companies in certain instances it could be difficult to receive detailed financial models for future operations in order to conduct e.g. stress tests on the cash flows and collateral values. If in such individual cases specific data is not available the insurer should be able to argue why the investment nevertheless qualifies for a preferential capital treatment.	
Section 10.2.		
Annex I		
Annex I Questions		
Annex III		
Annex IV		
Annex V		
Annex VI	GDV recommends 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”. This would not be adequate when it comes to the operating of such assets over a very long period of time. Similarly, in article 164a “project” should be removed. In paragraph c), “infrastructure project” should be replaced by “infrastructure underlying assets”.	