

The logo for the Agency for the Cooperation of Energy Regulators (ACER) features the acronym 'ACER' in a large, blue, serif font.

Agency for the Cooperation  
of Energy Regulators



# **The Right to Regulate**

## **Best practices in regulatory reforms to attract investment**

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**Brussels International Energy Charter Forum  
Mobilising Investments for a Sustainable Energy Future  
Brussels, 12 May 2017**

# The **Right** to Regulate or the **Need** to Regulate?

## Introduction: the obvious!

- **Competition** should be the general rule in a modern economy, as it:
  - » promotes **efficiency** and the cost-reflectiveness of prices
  - » Stimulates **innovation** (new products/processes) thus resulting in better prices and greater choice for consumers
- Therefore, **promoting competition**, wherever possible, shall generally be the **priority**, including in the energy sector
- However, as we know, it may be difficult or impossible to develop competition for some activities in the energy sector

## Energy Networks

- (Energy) Networks are:
  - » **essential facilities**, as they are necessary for delivering energy and for competition in other parts of the (energy) sector to develop
  - » often **Natural Monopolies** (at least with the current technology), as they cannot be (economically) replicated
- Therefore, Network activities needs to be:
  - » Unbundled
  - » Regulated
- The boundary between those activities which need to be regulated and those where competition can develop changes over time (e.g. distribution/supply)

## Unbundling

- Unbundling of monopoly (network) activities from other activities where competition can develop is **essential** ...

... to avoid:

- » possible **cross-subsidisation** in tariff setting
- » possible **discrimination** in access
- » possible **distortions** in network development
- Which type of unbundling?

Accounting

Legal

Managerial

**Ownership**

**Inadequate unbundling might deter new entry  
and investment in competitive activities!**

## Regulation (1)

- Different dimensions of Regulation
  - » Price/revenue regulation, to ensure
    - fair and just revenues/return to monopoly activities
    - that prices charged for monopoly activities are as cost-reflective as possible
  - » Access regulation, to ensure:
    - non-discriminatory access to essential facilities
  - » Quality-of-service regulation, to ensure
    - adequate quality of the monopoly activity services
    - consumer protection (commercial quality)

**Regulation is not a goal in itself or an ideology!  
... and it is always a second-best wrt competition!**

## Energy Sector Regulation

- The long-term nature of energy sector investments requires stable and time-consistent regulation
- Regulation can be significantly helped by an appropriate sector structure and market design
- Policy and regulation are separate dimensions ... and should be kept separate. Politics should stay out of the way!
- The independence of the Regulators is key!
  - » from industry and other commercial interests
  - » from Government and other political interests

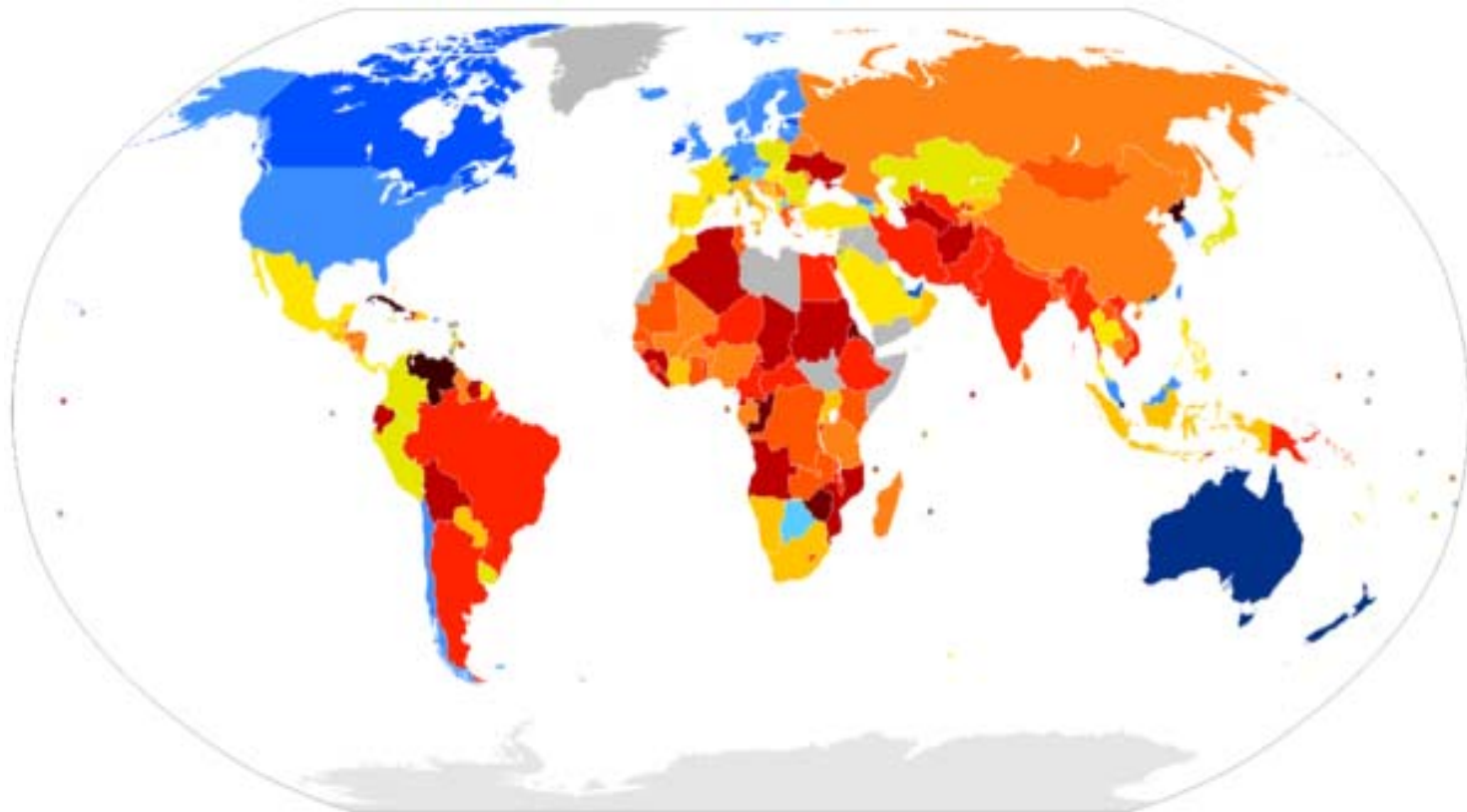
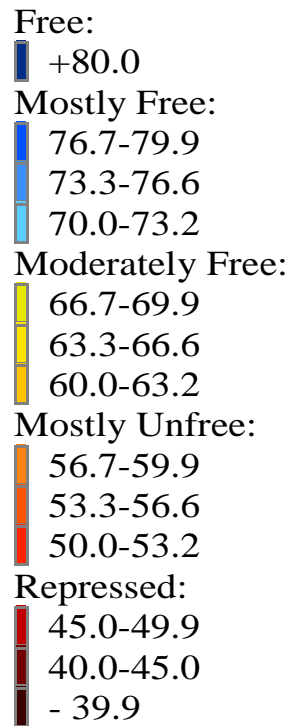
**Proportionate and well-designed regulation promotes economic freedom and competition**

## Index of Economic Freedom (1)

Rank	Country	2016 Score	Δ 2016/5	Δ 2015/4	Δ 2014/3	Δ 2013/2
1	Hong Kong	88.6	-1.0	-0.5	+0.8	-0.6
2	Singapore	87.8	-1.6	0.0	+1.4	+0.5
3	New Zealand	81.6	-0.5	+0.9	-0.2	-0.7
4	Switzerland	81.0	+0.5	-0.6	-0.6	-0.5
5	Australia	80.3	-1.1	-1.1	+0.6	-0.1
174	Turkmenistan	41.9	+0.5	+0.4	+2.2	+0.1
175	Zimbabwe	38.2	+0.6	+2.1	+6.9	+2.3
176	Venezuela	33.7	-0.6	-2.0	+0.2	-2.0
177	Cuba	29.8	+0.2	+0.9	+0.2	+0.2
178	North Korea	2.3	+1.0	+0.3	-0.5	+0.5
Source: The Heritage Foundation, 2015						

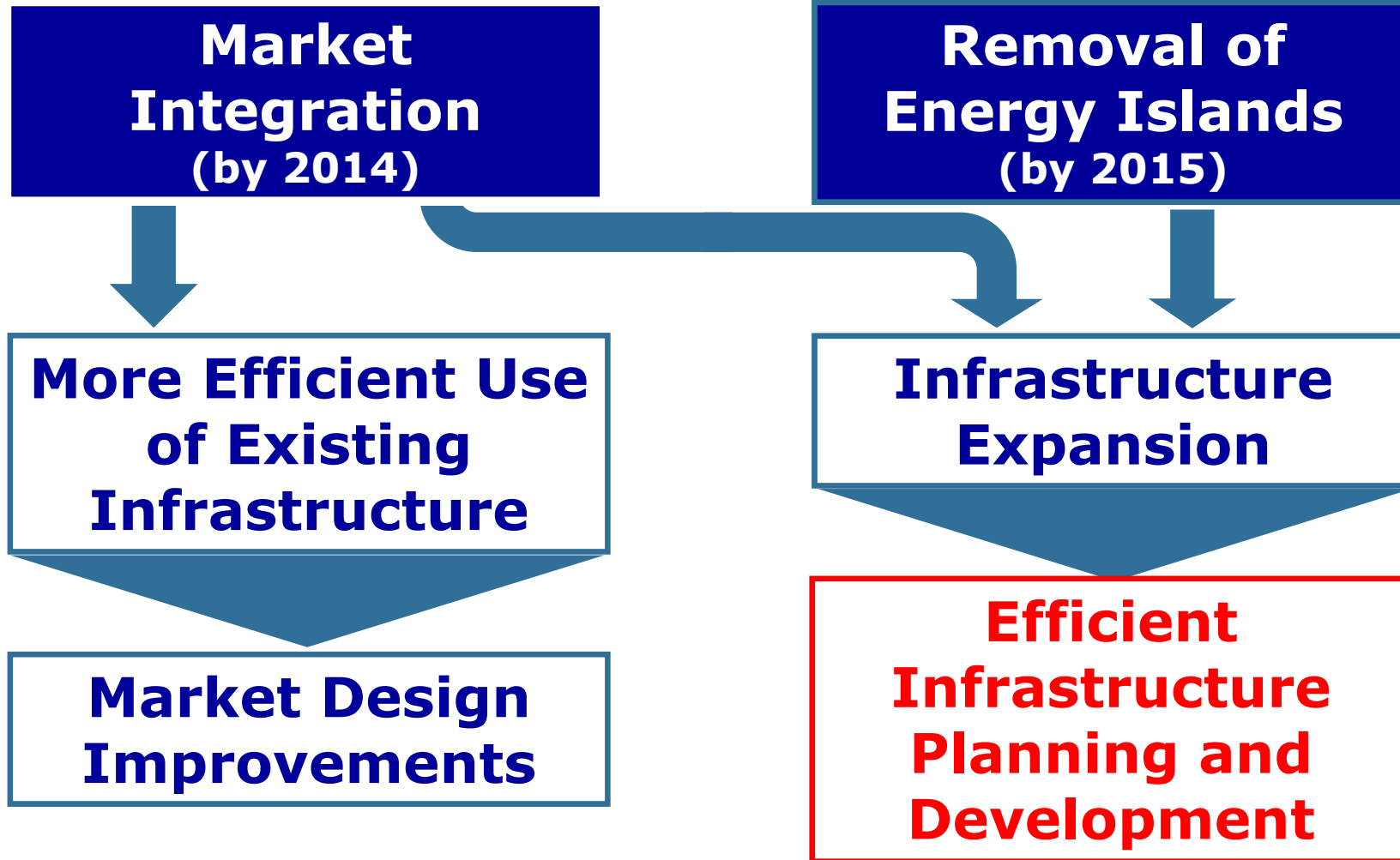


## Index of Economic Freedom (2)



**Source: The Heritage Foundation, 2017**

## Completing the Internal Energy Market



## Infrastructure Planning and Development

### TEN-E Guidelines (2006)

- Projects of Common/European Interest**
- Long list of approx. 550 projects
- Selection based on political agreement
- No revision of the list envisaged in 7 yrs

### Third Energy Package (2009)

- TYNDPs**
- Non-binding, ... but reference for national NDPs
- EU dimension in Network Planning
- TYNDPs updated every two years

### TEN-E Regulation (2013)

**Projects of Common Interest (PCI)**

# A new framework for the development of infrastructure with cross-border relevance

## The “traditional” framework (for cross-border infrastructure)

- TSOs' planning mainly on a bilateral basis
- Cost sharing based on ownership / national territory
- Cost recovery through network tariffs (NRAs)
  - usually RoR for TSOs - with some incentive elements; except for exempted infrastructure
- Permitting typically a long process, involving several authorities

## Current EU framework (for infrastructure development)

- Pan-EU planning, identification of priority projects
  - Cost-Benefit Analysis (CBA)
  - ENTSO Ten-Year Network Development Plans (TYNDP)
  - Projects of Common Interest (PCI)
- Facilitating project implementation
  - Cross-border Cost Allocation (CBCA)
  - Risk-related incentives
  - Use of congestion revenues
- Facilitating third party projects
  - Exemptions from TPA requirements
- Fast-tracked permit granting

## **Cross-border cost allocation (CBCA)**

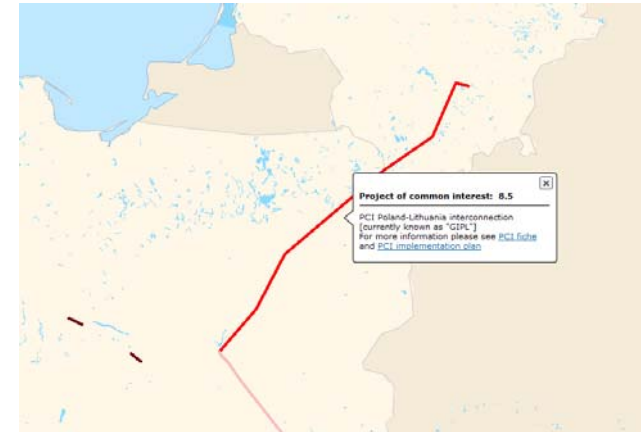
### **Main features of the Agency's approach**

(Recommendation No 05/2015 of 18 December 2015)

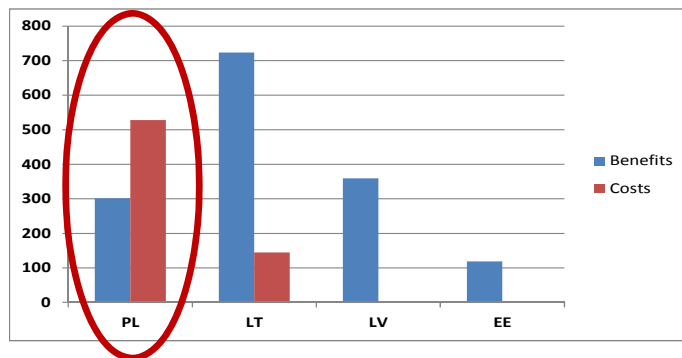
- Economic, social and environmental costs and benefits of the projects to be taken into account
- Compensation provided only if at least one hosting country bears negative net impact
- Compensation should mainly aim at the “elimination of the negative net impact”
- Compensation should be provided by countries to which the project provides a “significant” positive net impact
  - “significance threshold” equal to 10% of the sum of positive net impacts of all net benefiting countries

## CBCA Decision: an Example - GIPL

- Gas Interconnection Poland Lithuania
- 530km pipeline with initial capacity 2.4 bcm/y  
Cost: €558m, Net Benefits €830m
- Aimed at ending isolation of Baltic Member States from EU gas market and at diversifying gas supply



### GIPL Costs and Benefits (€m)



### Cross-Border Cost Allocation

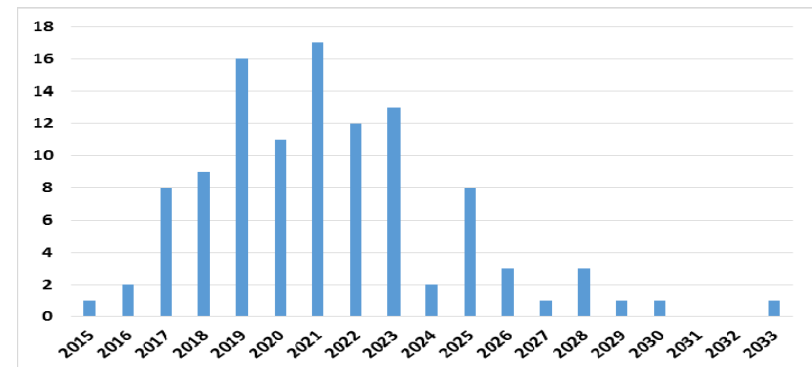
ACER Recommendation No 07/2013 of 25.10.2013

Payer TSO	Recipient TSO	Compensation Payment (€m)
LT	PL	54.9 (64.0%)
LV	PL	29.4 (34.3%)
EE	PL	1.5 (1.7%)
<b>Total Compensation</b>		<b>85.8 (100%)</b>

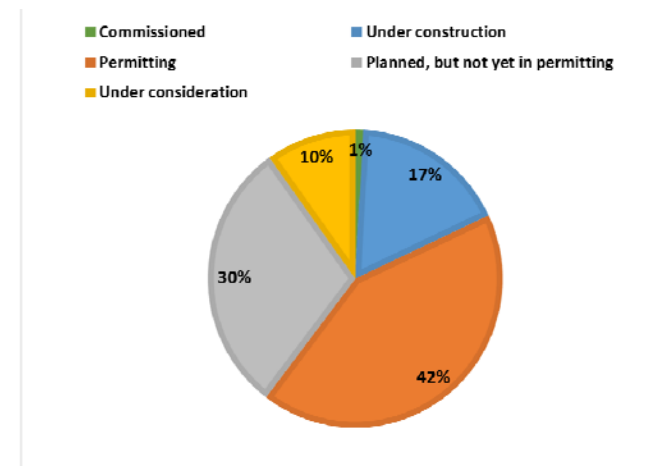
## Project implementation (PCI implementation monitoring 2016)

- **111 electricity PCIs on the 2015 Union list:**
  - 100 transmission
  - 2 smart grids
  - 9 storage
- **Fewer than in the 2013 Union list which included 134 PCIs**
- **40% of the PCIs in the 2015 Union list are in an early stage of advancement:**
  - “under consideration”
  - “planned, but not yet in permitting”

*Number of PCIs per year of commissioning*



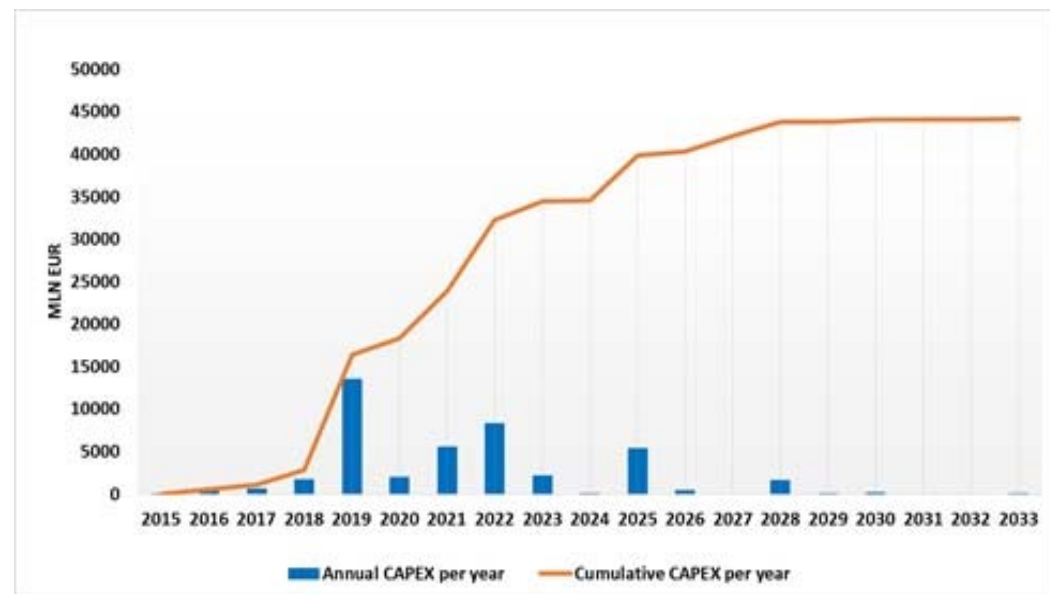
*Implementation status*



## Expected Investment Costs (PCI implementation monitoring 2016)

- **Total expected investment costs of all electricity PCIs over the next decade: €52.5 bn**
- **2015 level of actual CAPEX: €1.2 bn**

*Annual and cumulative CAPEX needs*

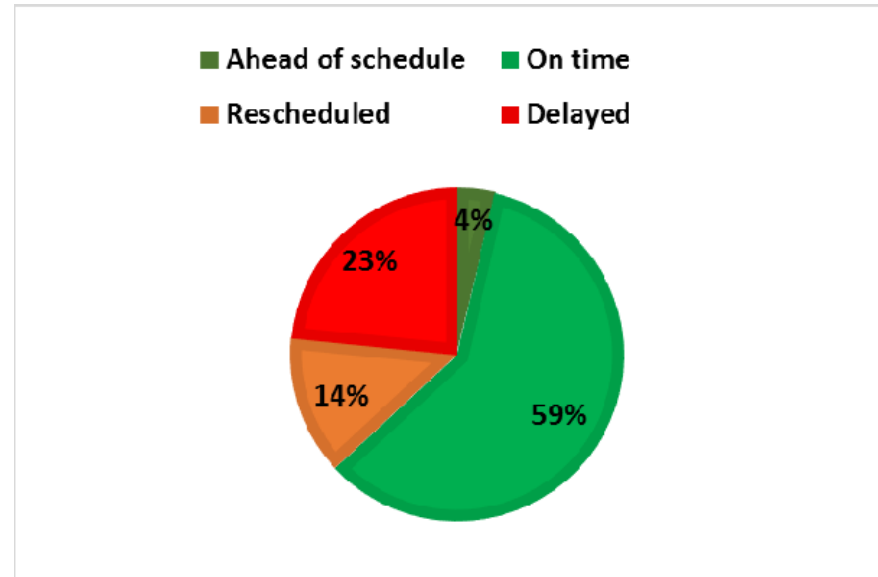


- **No strong interest visible from promoters to use financial and regulatory support tools**
  - 7 CBCA decisions, 3 specific incentives, 7 exemptions\*
  - CEF support: approx. €303m for 28 studies and 4 works  
(source: INEA, May 2016)

\*Not only PCIs. Granting exemptions already started with the 2<sup>nd</sup> Energy Package.

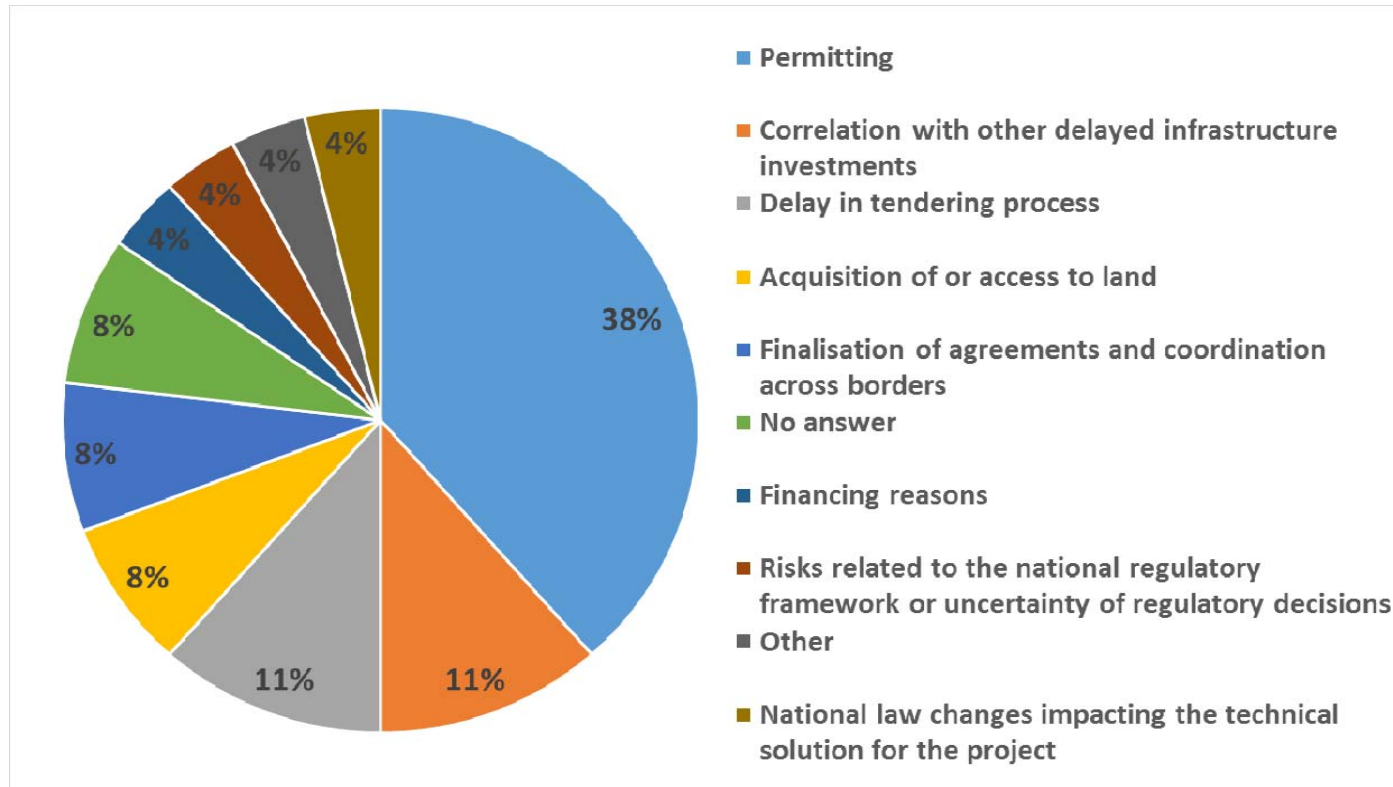


## Progress in PCI Development (PCI implementation monitoring 2016)



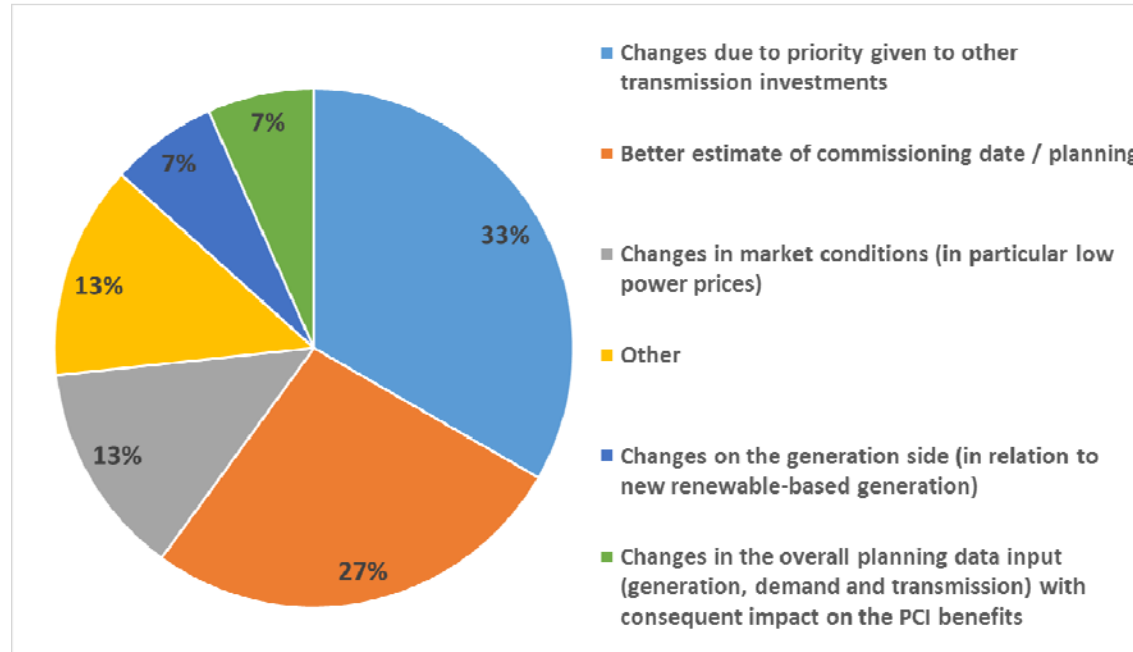
- Approximately **60% of the PCIs are on time**, while approximately **40% are delayed or rescheduled**
- Over longer time-horizon an accumulation of delays and further rescheduling is noticed

## Reasons for Delays in PCI Development (PCI implementation monitoring 2016)



- The most frequently mentioned reason for **delays** is linked to **permitting and licensing**

## **Reasons for Rescheduling of PCI Development (PCI implementation monitoring 2016)**



- **Reasons for rescheduling and delays are diverse**
- **The most common reason for rescheduling is that priority is given to other investments / may be dependent on other network developments**

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**Thank you  
for your attention**

