

Romania – the new hotspot for solar plants?

For most investors out there concepts like renewable energy, carbon footprint, reduction of greenhouse gas emissions and the like are inherently linked with notions such as green certificates, feed in tariffs, subsidies or other forms of incentives to make it work from a business perspective. As cynical as it may sound, few are interested in investing in green energy solely to ensure that our children live in a world where one can still breathe without an oxygen mask.

Because business is business and, in the world where mandatory renewable energy targets are imposed by the European Union, the Romanian legislator knew it had to do something to generate investor interest in the field.

Romania has taken active steps to ensure compliance with the mandatory renewable energy targets under Directive 2009/28/EC by 2020. The National Energy Strategy for the period 2007-2020 establishes the level of the national targets concerning the share of E-RES in the final consumption of electricity at 35% (for 2015) and 38% (for 2020).

As early as 2004 Romania implemented a green certificate mechanism coupled with a mandatory acquisition quota, on the basis of which all E-RES producers received 1 green certificate per MWh, without distinction based on the type of renewable resource used or technology. While that support scheme certainly built momentum for investments in green energy in Romania (and for a while there wind energy appeared like the more 'fashionable' option), it still was not enough.

So, after a pained and lengthy legislative process, Romania enacted Law 220/2008 which currently serves as the legal framework regulating the support scheme for E-RES. Although it had certainly raised high hopes, especially for investors looking at solar projects, Law 220/2008 remained virtually inapplicable for a long period, due primarily to the authorities' inability to notify the European Commission in time of the state aid measures that were included in the support scheme.

By far the star of the show under the new support scheme is E-RES from solar energy, which receives a number of 6 green certificates per MWh (at a very distant second, E-RES from hydro sources and bio-

mass receive only 3 GCs per MWh while the other sources of E-RES such as wind or geothermal as little as 1 GC per MWh).

It is therefore not surprising that, with GC prices ranging between 28.172 EUR/GC and 57.389 EUR/GC in 2012, solar projects are considered the current hotspot for investments, as the mere minimum price of the GCs ensures bankability of solar projects and, consequently, easier access to financing.

But this is just about where the fairy tale ends, because getting from a project that looks good on paper to one that actually feeds electricity into the grid is a long and often painful process. As a lawyer you always know you have to do your due diligence, and this is where a project is likely to get either the go ahead, or a no-go.

We often find that solar projects are fraught with the same systemic legal issues we see in any real estate due diligence and more. From the classical title issues, stemming from unclear ownership title of the original owners, transactions with land in the restricted period for lands over which ownership was constituted, breach of pre-emption procedures, to more difficult aspects such as unclear localization of the land due to lack of official site plans and risks of overlaps, the real estate due diligence is one of the main, if not the main, point of concern which lawyers and investors alike will do well not to treat lightly. Some of these issues may be mitigated (through title insurance, or seller's warranties), while some pose too great a risk for investors to overcome no matter how alluring the GC support scheme for solar projects may appear from the outside looking in.

And even where title due diligence leads to a clean report on the land, there is always the permitting and authorization section that can be a show stopper. And this is where investors are advised to ensure that their legal advisors team up with their technical consultants.

We have often seen projects that looked perfectly promising on paper, with all required permits and authorizations, right down to the construction phase, grid connection and all, but which were drawn up and designed only for the purposes of being sold at the right price and the right moment, but not with the intention for them to be effectively operational.



And the truth is that many of them would actually not be, in the real world, operational at the efficiency parameters that were contemplated when the project was designed, either because the project developers were too optimistic (euphemistically speaking) in their projections or because they downright misrepresent the benefits of the project for a higher gain. In all cases, technical due diligence on any project that you may be seeking to acquire when the project ball is already rolling (and someone else has rolled it before you in the manner it has seen fit) is crucial. Things like solar potential, type and even number or orientation of solar cells and support systems, leaning angle etc are items which need to be looked at by a technical consultant with a sharp eye for that devil hidden in the details.

All things considered, when after all that trouble, an investor is comfortable that a solar project is a good fit, and there is nothing in the legal or the technical due diligence that will jeopardize a good rate of return on that investment, then he can take it to the bank.

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