

WSG BANKING MEETING VIENNA FEBRUARY 14, 2020
FINANCING PRACTICES FOR RENEWABLE ENERGY PROJECTS



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INTRODUCTION

▶ European Union guidelines on RE :

□ Legal basis :

Article 194 of the Treaty on the Functioning of the European Union: EU energy policy aims to promote the development of new and renewable energies in order to better align with climate objectives and integrate them into the new market organisation.

□ Objectives :

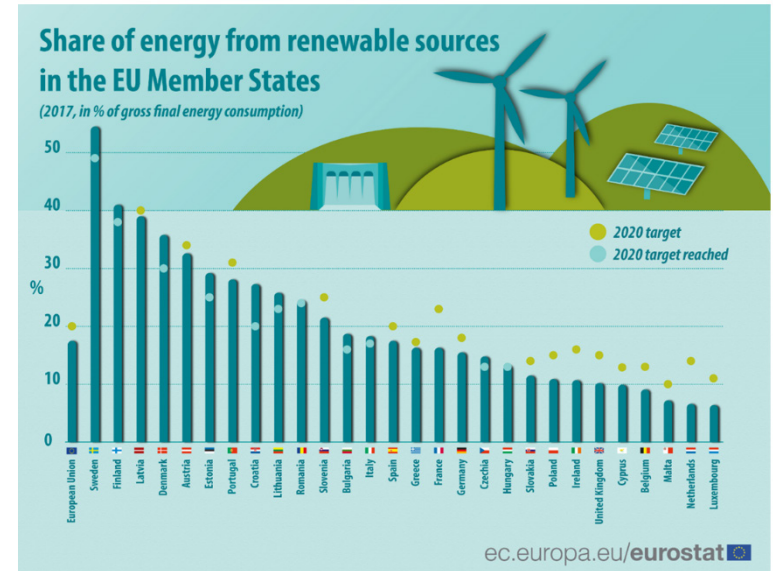
✓ EU :

- ❖ **20% RE before 31 December 2020** (*Climate and Energy Package - 2020 - Approved by the European Parliament on 17 December 2018*); and
- ❖ **27% by 2030** (*Climate and Energy Framework - 2030 - European Council Resolutions, 23-24/10/2014*).

✓ France :

- ❖ The Energy Transition Law sets the target for France to achieve a 32% of renewable energies in its gross consumption by 2030. For the moment, according to the latest figures from the sustainable development commission, they account for only 16.5% of the country's final consumption.

Part de l'énergie provenant de sources renouvelables, 2017
(en % de la consommation finale brute d'énergie)



Les sources des données utilisées pour réaliser ce graphique figurent dans le tableau 2.
Source: Eurostat (code des données en ligne: nrg_ind_ren)

eurostat

THE CLASSICAL SCHEME OF RE FINANCING (1/3)

Setting up a Data Room

- Downloading of documents for carrying out the various due diligence audits (corporate, financial, insurance, contracts, regulations) + request for documents

The technical & legal report

- These reports are a prerequisite for funding. They are commissioned by potential lenders to ensure the feasibility and viability of the project as well as the existence and consistency of the assets to be pledged as security.

- The legal report deals mainly with: the project land (land ownership and registrations, notarised emphyteutic leases, deeds of easements, building permits and administrative operating authorisations), the project contracts (turnkey contract for the study, supply, construction and commissioning of the project, maintenance contract, additional remuneration, aggregation contract and development contract) and the regulatory aspects (building permits, compliance with environmental legislation, financial guarantees for dismantling at the end of operation).

Negotiation and signature of the financing term-sheet

- The borrower and the lenders (usually syndicated financing) will negotiate the main features of the non-recourse financing, namely: the financial model of the loan, the amount of the loan, the financial conditions (interest rate, term, amortization etc.), the lines of credit, the conditions precedent to signature/drawdown, the different fees (arranger, agent, security agent), the guarantees and securities of the project, the representations and warranties of the borrower, etc.

THE CLASSICAL SCHEME OF RE FINANCING (2/3)

1st draft of the credit agreement

- A first draft of the credit agreement is prepared by the lender's advisers (CAUTION: need for coordination and communication between lenders if there are several creditors (i.e. senior/mezzanine))

Negotiation, preparation of financing documents

- The borrower's and lenders' legal advisers negotiate and prepare the financing documents: the credit agreement, the hedging contract [if variable interest rate or credit in a currency other than the euro], the inter-creditor agreement, the security agreement, the credit agreement, the hedging contract [if variable interest rate or credit in a currency other than the euro], the inter-creditor agreement, the security agreement, etc.
- The financing documents shall include specific commitments of the borrower for each issue spotted during the due diligence process.

Signing of financing documents

- Signature of the financing documents by the parties, checking of the conditions precedent to the signing.

Closing and issuance of the draw down notice

- Checking of the conditions precedent to closing and issuance of the drawdown notice

Post-closing

- Registration of the different security documents before relevant authorities;
- Sending original copies to the parties; and
- Sending the "Bible" of the financing.

Execution, monitoring and development of the credit agreement

- 1. **Normal life of the financing:** normal repayment of the credit (calculation of the interest rate, normal payment on the due dates etc.), financial reporting (compliance with debt ratios, exchange of information, renewal of securities etc.) ;
- 2. **Other *scenarii*:** amendment of the credit agreement, waivers, mandatory early repayment, refinancing, collective proceedings, enforcement etc.);

The classic exclusion of personal security interests

- ✓ In practice, personal securities are excluded from RE project financing since :
 - RE financings are without recourse against sponsors;
 - The debt is directly carried by the project company (the "SPV") whose sole activity is to hold the financed assets and manage the construction operations; and
 - Cash flow from operations ensures the repayment of debt maturities and the maintenance of bank ratios;

- ✓ Non-recourse" financing has many advantages, including:
 - ❑ Allows for greater leverage;
 - ❑ Very high flexibility in the arrangement in order to adapt it to the specific needs of the SPV and to the expected cash flows on the project (variable depreciation profiles etc...) ;
 - ❑ Security taken on the project assets and the flows it generates;
 - ❑ When the SPV's accounts are not consolidated with those of the Sponsor (shareholder): the Sponsor's liquidity and debt ratios are preserved and therefore :
 - The Sponsor's incentive to invest in other projects; and
 - Each project is isolated from the others and, in the event of difficulties, does not risk contaminating the other projects of the SPV's shareholders.

Security interests taken in the context of RE financings

- In practice, in senior type financing of RE projects, the borrower provides the lender(s) with the following security interests:
 - a pledge of the shares of the project company (the "SPV");
 - a pledge of bank accounts of the SPV and partners accounts;
 - a pledge without dispossession (Article 2333 of the French Civil Code) of the movable assets making up each Central of the SPV;
 - a Dailly framework agreement, including in particular an assignment by way of guarantee of the PPAs (most important security);
 - a mortgage on the elements of the project that meet the definition of real estate by destination as defined under Article 517 of the French Civil Code;
 - intercreditor agreement.

- Other so-called "alternative" securities may also be taken as part of RE financing, including in particular the French "Fiducie".

Focus on the French Trust “Fiducie-Sûreté”

- **DEFINITION**

- ✓ The French Trust “Fiducie-Sûreté” is a transaction in which a grantor transfers as a guarantee property, rights or security interests owned by it to a special-purpose asset managed by a fiduciary;
- ✓ Upon transfer and throughout the term of the agreement, the grantor is discharged of all rights in the property transferred to the fiduciary, who must keep it separate from his personal assets and manage it on behalf of the beneficiary of the “Fiducie-Sûreté”;
- ✓ When the debt secured by the “Fiducie-Sûreté” has been repaid by the grantor, his property shall be returned to him by the fiduciary. Otherwise, the fiduciary may dispose of these assets in order to satisfy the beneficiary creditor.

- **EXECUTION OF THE FRENCH « FIDUCIE-SÛRETE » AGREEMENT**

- ✓ Conventional freedom regarding the manner the French “Fiducie-Sûreté” is set up and carried out (Articles 2011 and 2018, 6° of the French Civil Code) ;
- ✓ The French « Fiducie-Sûreté » agreement must provide for :
 - the mission of the fiduciary, the extent of his powers of administration or disposal (Articles 2018, 6° and 2027 of the French Civil Code);
 - the terms and conditions for the transfer of the fiduciary assets or, if applicable, their sale, for the benefit of the grantor or the beneficiary [**The agreement will logically refer to the Events of Default provided in the credit agreement**];
 - the organization of the priority ranking between the different creditor-beneficiaries;
 - the termination events of the French “Fiducie-Sûreté” in addition to those provided for in Article 2029 of the French Civil Code.

The French “Fiducie-Sûreté” on SPV’s shares

- The allocation of shares to fiduciary assets can easily replace the pledging of shares in the financing of RE projects;
- The sponsors, shareholders of the SPV, transfer their shares held in the SPV to the fiduciary assets as a guarantee for the repayment of the debt;
- The fiduciary manages the shares of the SPV in the interest of the beneficiaries: It exercises the political (voting rights) and financial (vote on the allocation of net income) rights attached to the shares, unless otherwise stipulated in the “Fiducie-Sûreté” agreement;
- In practice, the SPV and the sponsor will have a common director. The director of the SPV manages the SPV in the interest of the beneficiaries, under penalty of dismissal by the beneficiary-shareholders;
- In the event of default in repayment of the debt, the beneficiary shareholders may freely dispose of the shares of the SPV;
- By allocating the shares of the SPV to the fiduciary assets, the beneficiaries keep :
 - **Operational** control of the project: In the event of default by the SPV carrying out the project, the enforcement of the shares allocated to the fiduciary assets allows the allocation of the latter to the beneficiaries and consequently the allocation of all the assets of the SPV necessary for the continuation of the project; and
 - **Financial** control of the SPV carrying out the project: During the operational phase of the project, the beneficiaries will be able to decide on the allocation of the SPV's net income (e.g. provisioning of resources in order to increase the value of the SPV's shares or distribution of dividends etc.) ;
 - **Control over the allocation** of the SPV's assets: As (temporary) owners of the SPV's shares, the beneficiary shareholders have a right of oversight over the management of the SPV and may, in the event of disagreement with the SPV's management over the management of the assets (assets/contracts), dismiss the SPV's director and instruct the fiduciary to appoint a new director who will comply with the wishes of the beneficiary shareholders;
- The allocation of the securities to the fiduciary assets must be accompanied by an agreement to make the fiduciary assets available to the SPV to enable it to carry out the project.

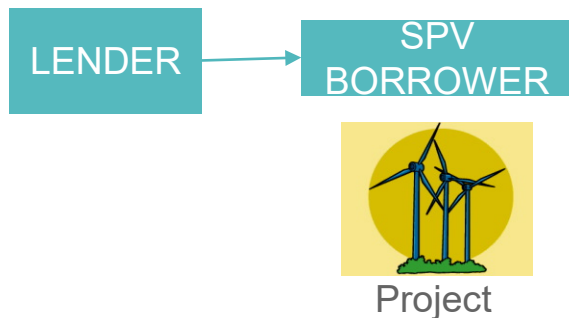
The French “fiducie-sûreté” over project assets/securities

The « Fiducie-Sûreté » allows :

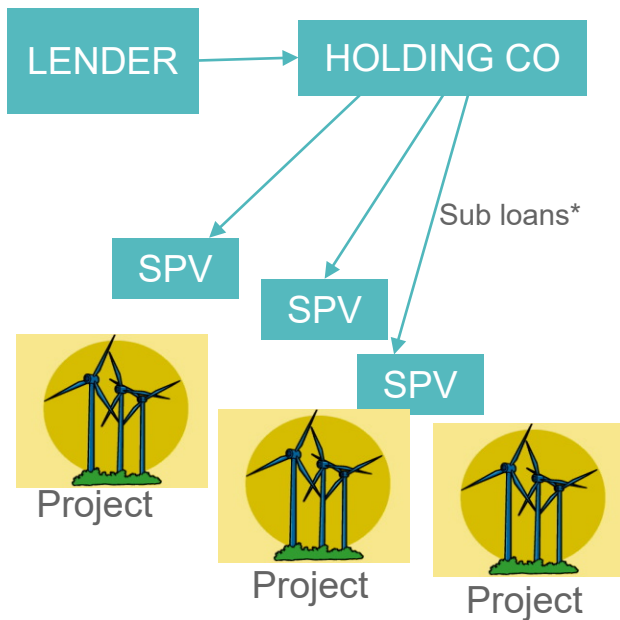
- to accommodate in a special-purpose asset all project assets, contractual rights and all related securities;
- to provide for an uniform security mechanism assets of all kinds, including certain rights not normally eligible for "traditional" security (e.g. concession contract, offtake contracts, right to operate a photovoltaic plant, etc.);
- the beneficiaries, in the event of default of the project-bearing SPV, to substitute it (or designate a third party substitute), in the contracts with the project contractors or negotiate directly with them in order to ensure the completion of the construction/operational phase of the project; and
- transfer ownership of the fiduciary assets to the creditors (or beneficiaries named in the “Fiducie-Sûreté” agreement) in the event of default of the SPV.

ALTERNATIVE PROJECT SCHEMES

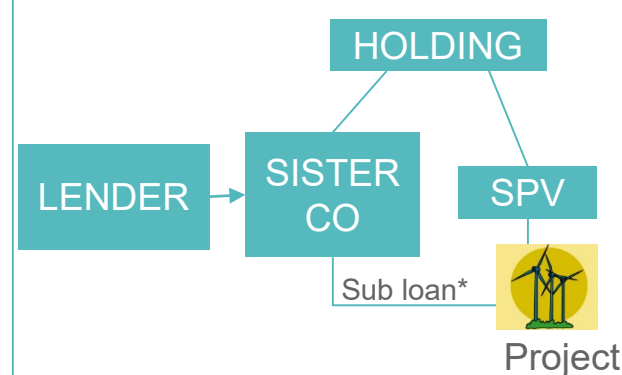
→ CLASSIC



→ HOLCO SCHEME



→ SISTERCO SCHEME



* Repayment of sub loans to be assigned to lender through a Daily assignment agreement



CHRISTOPHE JACOMIN

PARTNER

cjacomin@jeantet.fr



PARIS

11, rue Galilée

75116 Paris - France

Tél. : +33 (0)1 45 05 80 08

Fax : +33 (0)1 47 04 20 41

E-mail : info@jeantet.fr

www.jeantet.fr