

One year ago, Portland Trust, one of the most powerful real estate developers in Romania, announced its intention to create a portfolio of solar projects of over 500 MW and the first project of about 150 MW, in Arges County (central-southern part of Romania). In November 2021, Portland Trust sold the project to Econergy and Nofar Energy. As the project received all its required permits, the commercial operations are expected to begin in Q4 2022.

Vlasceanu, Nyerges and Partners (**VNP**) acted as legal adviser of Econergy from the early stage of the negotiations until the Closing of the transaction. We discuss with Daniel Vlasceanu, Managing Partner of VNP, about the recent acquisition by Econergy and Nofar of the Ratesti project and the future of the photovoltaic industry in Romania (in the context of the increasingly strong European support of renewables).

Q&A with

Daniel Vlasceanu

Managing Partner of VNP

Ratesti Photovoltaic Project and the Future of PV Industry in Romania

by Lavinia Iancu

What are the main coordinates of the Ratesti Photovoltaic Project?

The Ratesti Photovoltaic Project is, for the time being, the largest photovoltaic project developed in Romania with a permitted 153 MW DC capacity.

To put things into perspective, Romania has approximately 1,500 MW installed photovoltaic capacity (and approximately 3,000 MW wind capacity). Therefore, the Ratesti PV Park has about 10% of the whole currently operational solar capacity.

Construction activities will be carried out starting 2022 and considering the connection contract executed in June 2021, (according to Transelectrica's website) the project will experience putting into function (PIF) in early November 2022.

Where will this park be located, and which are the companies that own it?

The Project is located in Arges County, close to the Bucuresti – Pitesti highway, which will facilitate access to it. Following its acquisition

from Portland, the project is currently owned by the two Israeli Groups, Econergy and Nofar; both Econergy (trading symbol ECNR) and Nofar (trading symbol NOFR) are listed on Tel Aviv Stock Exchange (www.tase.co.il/en).

How did the negotiations between partners go and what does the entire process involve, specifically?

As discussions between the Parties initiated before the project reached Ready-to-Build (**RTB**), the acquisition process was conditioned upon meeting certain conditions precedent; closing took place in November 2021. Given that there were two buyers, their position had to be aligned before reverting to the seller (that complicated a bit the timing of the decision-making process, but also laid down the foundation for an enhanced position on the buyers' side). It was a complex process over 9



months comprising the regular phases of a project of this magnitude (a due diligence on all land, corporate, regulatory and ANRE aspects, a sale purchase agreement negotiation, a verification of the fulfillment of the conditions precedent, closing and the subsequent formalities for registration of the new corporate structure brought by the new owners).

From a structure related perspective (and given the still early stage of the new wave of wind & solar projects under development in Romania), most of such transactions entail either (i) the signing of a sale purchase agreement of a special purpose vehicle (**SPV**) which is closed when such SPV holds all the land rights and the permits of the project or (ii) a fast acquisition of the SPV simultaneous with the signing of a development agreement whereby the developer undertakes to

progress the project till RTB. Less used commercial structures imply (iii) an asset deal whereby the investor acquires the land subject to the project being developed till RTB or (iv) a progressive equity acquisition of the SPV developing the project to RTB or (rather rarely) (v) a joint venture between the holder of the land rights and the investor.

How do you see now Romania's potential for the development of renewable energy and what signal does this transaction send regarding the relevant market in Romania?

If one looks at Europe's solar irradiation map, one can easily observe that Romania has a substantial flat surface well placed in terms of kWh/sq.m. Link that with (i) the fact that one can still identify large agricultural areas available and (ii) with Romania

In Romania, the current booming period will likely last for a few years and, afterwards, stabilize on a trend increasing at a smaller pace. Yes, there may be short term hindrances, such as the next year expected long time of equipment delivery/manufacturing (as many projects will enter construction phase) or legal slippages (such as the recently enacted Law no 259/2021 setting forth a compensation formula that does not take into consideration the energy suppliers balancing costs) or the relative lack of workforce on the construction sector, but when all factors add up, I believe that the sector will intensify.

being subject to the larger European 'green' umbrella, than one can easily understand why Romania is seen as one of the last places in Europe where large photovoltaic projects can be robustly developed. The country is still far from its 30,7% RES target set for 2030 (and there are discussions for increasing said target). So, investors coming specifically from Western Europe, but also from Middle East (and some even from the Asia Pacific region eager to expand into Europe) do seriously consider developing, building, and operating projects here.

The fact that two serious investors decided to invest in a project of this size in Romania can only be a positive signal for other interested investors.

Do you believe other investments in the field will be encouraged in the future? Is this a profitable business?

The previous RES projects wave ended in 2013 (throughout Europe, not just in Romania) when the governmental subsidies (in Romania granted in the form of green certificates) were suddenly stopped. Romania experienced afterwards several years when not a single new photovoltaic or wind project was made. All the transactions we assisted until 2019 concerned assets in distress or asset divestments due to changes in business strategy (such as OMV Petrom's sale of Dorobantu wind park in 2017).

I believe investors have learnt their lesson: economics must now fly without state subsidies. After 2019, it seems that all (too rapidly changing) Romanian governments, on the back of the European Green Deal push, support the renewable industry, which is a very good signal for investors in this field.

What is your prediction for the following period regarding photovoltaic energy production at global level and in Romania?

We, at VNP, are part of Ally Law, an international alliance of law firms, and through the active cooperation with other members we can see this trend worldwide: from Chile to Europe, from the US to Australia or from Africa to the Baltic Sea, most countries turn to the eco-friendly route. The PV industry is currently at the crossroad of several stimulating benefits: (i) the learning curve of RES industry

has surpassed the costly early period (ii) panels' efficiency increased significantly, (iii) cost of technology exponentially reduced driving down the time of investment recovery (i.e. faster break-even point) and allowing for a longer period to accumulate profits; moreover, long term predictions show that (iv) cost of energy will increase (= higher revenues) and, also, (v) demand of energy will also increase; add to that (vii) the world's aspiration (with Europe at its forefront) to go green(er). It is only clear that the renewable trend will continue worldwide.

In Romania, the current booming period will likely last for a few years and, afterwards, stabilize on a trend increasing at a smaller pace. Yes, there may be short term hindrances, such as the next year's expected long time of delivery/manufacturing (as many projects will enter construction phase) or legal slippages (such as the recently enacted Law no 259/2021 setting forth a compensation formula that does not take into consideration the energy suppliers balancing costs) or the relative lack of workforce on the construction sector, but when all factors add up, I believe that the sector will intensify also in Romania.

As an energy specialized attorney, I have witnessed in the last 15 years the oil and gas industry's struggle to accept artificially created obstacles: little to no stability and predictability of regulations, unfulfilled promises (e.g., the offshore law, amendment to the petroleum law etc.), laws issued overnight without proper consultations... all happening in a country having declared first industrial oil production (in 1857)! The renewable sector is the golden child of the Romanian energy sector and Romania is excellently placed in order to catch the train of renewable developments. With plenty of financing available, the framework must be designed to enable banks and investors' trust in the regulatory framework (e.g., the PPA framework, setting up the Modernization Fund Unit and related tools, a future CfD clear regulation etc.). We need to be very careful though: investors' trust (especially that of the very large ones with multiple investment territories in sight) is something that is hardly built and easily lost. As such, it is up to us to avoid hindrances observed in other energy sectors and enhance Romania's position on the international map of renewables. ■