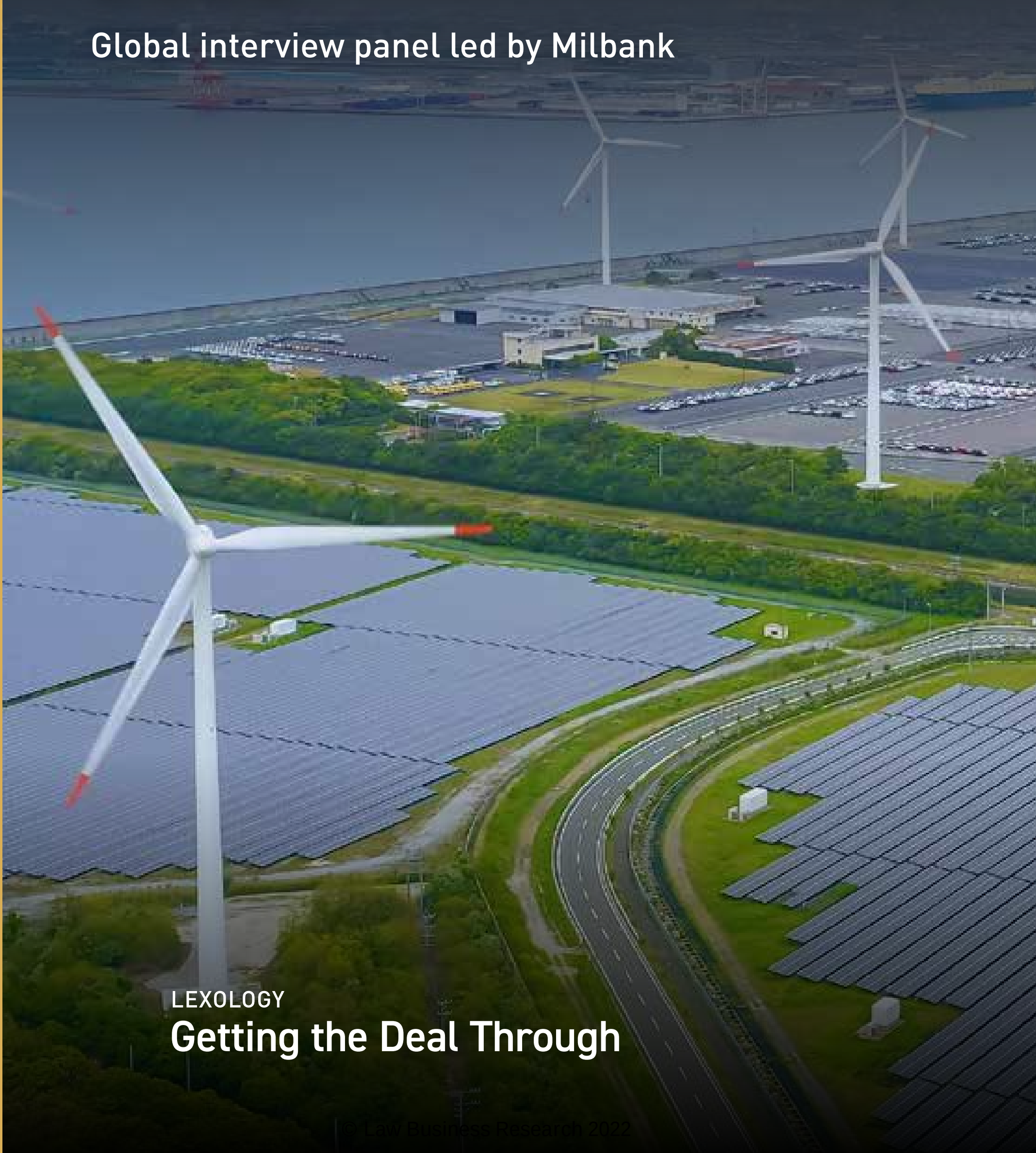
Market Intelligence

PROJECT FINANCE 2022

Global interview panel led by Milbank



LEXOLOGY

Getting the Deal Through

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PROJECT FINANCE 2022

Benelux Overview

David Shearer is a partner in Simmons & Simmons' energy, natural resources and infrastructure group in Amsterdam. He advises on a wide range of corporate matters, with a particular focus on cross-border M&A, joint ventures and project development and financing.

Ivo van Dijk is a partner in Simmons & Simmons' banking and finance practice in Amsterdam. His wide-ranging experience covers, among others, matters from general corporate financings to leveraged buyouts and real estate financing transactions, including project financings. He has a particular focus on syndicated lending, multi-jurisdictional (secured) financing arrangements, warehouse financings and loan portfolio transactions.

Carl Meyntjens is a partner in the Brussels office of Simmons & Simmons and focuses on corporate and financial law. He has nearly 30 years' experience in advising Belgian and international corporate clients, and financial institutions in a broad range of both domestic and cross-border transactions.

Louis-Maël Cogis is head of the Luxembourg office of Simmons & Simmons. He acts for financial institutions and international investment banks in international banking and capital markets work.

1 What have been the trends over the past year or so in terms of deal activity in the project finance sector in your jurisdiction?

DS: Despite the covid-19 Delta variant wave mid-year, 2021 was again a relatively active year for the project finance sector in the Benelux, with deal flow in the Netherlands and Belgium remaining consistent with previous years. This continues the trend we have seen develop over the past couple of years, clearly reaffirming the stability and maturity of the Benelux project finance market. The types of projects that closed in 2021 were, as in previous years, dominated by renewables (eg, photovoltaic solar, on- and offshore wind, energy storage, EV charging infrastructure, biomass, biofuels and hydrogen), but also included telecoms (eg, data centres and mobile), transport (eg, roads and ports), social and defence (eg, schools and prisons) and power (eg, transmission and distribution).

IvD: The Benelux project finance market continues to attract a mix of national and international lenders, public financing institutions (eg, the European Investment Bank), debt funds and institutional investors. The involvement of institutional investors and credit funds continues to be strong.

Some noteworthy debt trends have also continued.

- There is an increasing number of lenders prepared to take large tickets (eg, in the offshore wind and solar energy market) in addition to being involved in more than one deal per year and being willing to take increasing construction risk.
- At present, the more traditional domestic or European institutional investors are often lending alongside institutional investors coming from North America and East Asia that have been looking for opportunities in the Dutch market. In addition, the traditional large Dutch domestic banks have also been increasingly active in transactions that are sustainability or renewables linked as part of their revised strategies.
- The number of refinancings at different stages of development has been steady, which is supported by factors such as:
    - margins being perceived to be low, and the European Central Bank's benchmark rates also remain historically low, which still makes debt cheap;
    - financing structures being relatively stable in terms of ratios and covenants;
    - renewables project costs continuing to come down, with more competition across all the various phases of projects from the development phase to the operational phase; and
    - in the offshore wind market, there is generally a better understanding of the construction risks, which makes for a reduction in the risk premium element.


David Shearer


Ivo van Dijk


Carl Meyntjens


Louis-Maël Cogis

DS: As in previous years, there is a continuing decline in the extent to which projects need to rely on government subsidies and market participants are able to access a variety of types of funding, in addition to project financings (eg, crowd-funding arrangements).

LM: One additional element to note is the increasing use of equity bridge financing when structuring the financing of infrastructure funds. Those financings, although not directly connected to the underlying investments, have a significant impact on the ability of the various players to react quickly to various project finance opportunities. This is an increasing trend, in particular in Luxembourg where a lot of the funds focused on infrastructure are established.

2 In terms of project finance transactions, which industry sectors have been the most active and what have been the most significant deals to close in your jurisdiction?

DS: In the Benelux we have seen transactions close mainly in the renewables sector, whereby photovoltaic solar, on- and offshore wind and energy storage were the most active subsectors. The subsector that continues to receive the most attention internationally is the Dutch offshore wind industry: both during the initial tender phase as well as for M&A deals both before and after parks are operational.

CM: Belgium continues to have an active public-private partnership (PPP) sector with a number of prison financings closing such as the Leopoldsburg prison PPP, roads transactions such as the R4, schools, fibre and biomass transactions with further PPPs in procurement such as the Wissenhage Bus depot PPP.

IvD: Two noteworthy examples of large project finance transactions in the Benelux are:

- the 752MW offshore wind farm project Borssele 1&2, co-financed by Ørsted and Norges Bank Investment Management (NBIM); and
- the €900 million R4 West East road project, for which Besix Group was selected as preferred bidder.

"In the Benelux we have seen transactions close mainly in the renewables sector whereby photovoltaic solar, on- and offshore wind and energy storage were the most active subsectors."

3 | Which project sponsors have been most active in driving activity? Which banks have been most active in providing debt finance?

IvD: As mentioned above, a relatively balanced mix of national and international sponsors, lenders, public financing institutions (eg, the European Investment Bank), debt funds and institutional investors remained active in the project finance market.

DS: The project sponsors most visible in the Benelux market during 2021 included TenneT (power: transmission and distribution), KPN with APG (telecoms: mobile), Besix Group (transport: roads), Proximus (telecoms: mobile), EdgeConnex (telecoms: data centres) and Ørsted with NBIM (renewables: offshore wind) and ArcelorMittal (renewables: biomass, biofuels).

IvD: Projects in the Benelux attract a wide range of national and international lenders, including Rabobank, SMBC, NIBC Bank, ING Group, KfW, DZ Bank, Santander, Belfius Bank and ABN AMRO Bank.

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4 | What are the biggest challenges that your clients face when implementing projects in your jurisdiction?

DS: Although the Dutch government and market is stable, there has been political uncertainty in relation to the action the government needs to take in light of its climate change responsibilities, with the government suffering the defeat of its policies in court on several occasions, most notably on nitrogen emission matters. The permitting process for large projects can also be lengthy. Projects (especially solar due to the NIMBY factor) may be delayed as a result of urban planning and environmental permits being challenged.

CM: What remains a point of interest is the plurality of tendering authorities in the Belgian market, with some being guaranteed by the federal government, some by regional governments and others not guaranteed by any government body. For lenders that are new to the Belgian market, coming to grips with authority counter-party risk might take time, despite this being one of the most important factors in their credit appraisals. Also a number of projects have been announced and then scrapped or retendered, whereas others are delayed for a range of reasons, thus adding to costs.

5 | Are there any proposed legal or regulatory changes that may give rise to new opportunities in project development and finance? Do you believe these changes will open the market up to a broader range of participants?

DS: In December 2021, the new Dutch government put forward a proposal for a new 10-year €35 billion climate fund, in addition to the existing subsidies scheme for renewable energy. The proposed fund has a €15 billion budget for the development of 'advanced energy carriers', which is expected to include green hydrogen. In the collation agreement, the new government also committed €5 billion to the construction two new nuclear power plants.

CM: The previous federal government of Belgium has set a goal of a full nuclear power phase-out by 2025 (if feasibly taking the demand for electricity usage into account), to be attained by, among other means, doubling the number of offshore wind farms. By the end of 2020, a law was accepted that provides for the incremental phase-out of all seven reactors by 2025. A backup-plan that aims to extend the lifespan of the two most recent reactors is still on the table and subject to further debate.

"The stability and maturity of the Dutch project and project finance market, despite its competitiveness, attracts the interest of increasing numbers of international players."

The phasing out of nuclear led the Belgian government to run a capacity auction that will underpin a new wave of combined cycle gas turbine (CCGT) plants in Belgium, with Engie announcing an ambition to add 3GW of CCGT generation power and RWE acquiring the Dils site from Advanced Power on which they are on record of having ambitions to develop a 920MW plant. The auction results were published by Elia on 31 October 2021 and will inevitably underpin new development in generation capacity in Belgium that in many cases will be project financed.

6 | What trends have you been seeing in terms of range of project participants? What factors have influenced negotiations on commercial terms and risk allocation? Are there any particularly innovative features?

IvD: As mentioned, we have seen a balanced mix of different types of lenders, investors (including institutional lenders and credit funds that are looking to deploy their funds in the project finance market) and sponsors, and we are of the opinion that this trend will continue and develop further in the future. The stability and maturity of the Dutch project and project finance market, despite their competitiveness, attract the interest of increasing numbers of international players, and Belgium is also seeing an increase in non-European investors from North America as well as East Asia, both on the sponsor and lender side.

LC: We have also seen that project participants in complex or large-scale projects are increasingly looking to combine different forms of financing and financing structures. As a consequence, projects have been completed through a combination of equity financing, private finance (including global change: crowdfunding financings) and balance sheet financing.

7 | What are the major changes in activity levels or new trends you anticipate over the next year or so?

DS: Dutch market participants are showing a lot of interest in clean energy and renewable energy projects, including EV charging, carbon capture and storage (CCS) and green hydrogen. We are also seeing an increase in the number of large-scale data centre projects in the Netherlands.

The Dutch government recently granted a consortium, that includes oil majors Shell and ExxonMobil, a €2 billion subsidy for a CCS project in the Port of Rotterdam, which is set to become one of the largest CCS projects in the world. Shell has also recently announced that it wants to build the largest green hydrogen plant in the world near Rotterdam, on the Tweede Maasvlakte.

CM: In Belgium, the Flemish Schools of Tomorrow project will continue with the fourth cluster, having been relaunched for tendering towards the end of the year. The roads sector has produced some substantial transactions with the launch of the €3.2 billion ring road PPP, the R4 and the RO XA201, with the Spartacus tram project also due to return to the market.

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The Inside Track

What three things should a client consider when choosing counsel for a complex project financing?

Clients should be looking for in-depth knowledge and experience of PPPs and project finance, local regional knowledge and strong negotiation skills.

What are the most important factors for a client to consider and address to successfully implement a project in your country?

A project must be solid from a planning and regulatory point of view, to limit the possibilities of a project being delayed or derailed. Further, in the case of complex or large-scale projects, today's project finance market requires sponsors to combine different forms of financing and financing structures (eg, a combination of equity financing, private finance (including crowd-funding financings), external debt and balance sheet financing).

What was the most noteworthy deal that you have worked on recently and what features were of key interest?

Last year, Simmons & Simmons advised DZ Bank in relation to the long-term project financing of an innovative 15.7MWp floating solar project located in the Netherlands. The project was developed by GroenLeven BV and BayWa AG and has already been sold to a Luxemburg-based infrastructure fund managed by re:cap global investors ag.

The long-term financing was partially designed to refinance a construction financing between DZ Bank and GroenLeven BV, on which Simmons & Simmons also advised DZ Bank. The financing structure also comprised a crowd-funding element, which is a feature that we see increasingly in solar farm projects in the Netherlands.

This is the sixth project financing deal in the Netherlands that Simmons & Simmons advised DZ Bank on.

Lexology GTDT Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes.

Led by Milbank, this *Project Finance* volume features discussion and analysis of emerging trends and hot topics within key jurisdictions worldwide.

Market Intelligence offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most significant cases and deals.

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