



Gobierno de España

Frans Timmermans
Executive Vice-President of the European Commission

Valdis Dombrovskis
Executive Vice-President of the European Commission
and European Commissioner for Trade

Kadri Simson
European Commissioner for Energy
Rue de la Loi 200
1049 Brussels, Belgium

Cc: Josep Borrell Fontelles
High Representative and Vice-President of the European Commission
Rue de la Loi 200
1049 Brussels, Belgium

Madrid, 9 February 2021

Dear Executive Vice-Presidents, dear Commissioner,

The mandate given by the Council to the European Commission in July 2019 for the modernization of the Energy Charter Treaty (ECT) aims to modernise its provisions on sustainable development and climate goals and reform investment protection and investor-to-state dispute settlement rules in line with the modern standards settled by the EU. For that purpose, it will be essential to ensure the alignment of the ECT with the Paris Agreement and the objectives of the European Green Deal while preserving our ability to develop public policy measures consistent with our commitment to become the first climate-neutral continent by 2050.

However, the ongoing negotiations for the modernisation of the ECT are difficult and it seems not to be possible to reach a deal consistent with Paris goals. They started in July 2020 and after three rounds - with hardly any participation from numerous signatory countries- no preliminary outcomes have been reached.

Many Contracting Parties seem not to share European ambitions in the field of climate change mitigation, sustainable development and energy transition, despite the fact that all of them are also signatories of the Paris Agreement.

In this regard, it must be highlighted that Spain is extremely concerned about the possibility of not achieving a fully successful alignment with the above mentioned objectives. It must be stressed that the modernisation process of the ECT is currently a matter of great sensitivity not only for the European and the national parliamentary representations, but also for our civil societies, who expect the European Union to place the climate emergency at the heart of all its policies.

The next round of negotiations for the ECT modernisation will take place during the first week of March, and it seems unlikely to obtain consensus on relevant topics although we will keep on working in this direction. This includes crucial items such as the definition of 'economic activity in the energy sector', the proper treatment according to our aspirations of fossil fuels, the addition of renewable / clean hydrogen to the list of protected energy materials or the added definition of biomass as sustainable.

It is also important to have in mind the defence of the integrity and primacy of the EU legal system, and its application in all Member States, as different European institutions, including the Court of Justice of the European Union, have stated on several occasions. In this regard, a structural reform of the investor-to-State arbitration mechanism of the ECT in order to clearly exclude intra-EU arbitration is also required.

In this context, Spain will keep on working with all Member States and the Commission in order to achieve a genuinely and successfully modernised ECT, but a stronger, more robust and more determined position on this issue is essential. The European Union and the Member States must send a clear political signal to the ECT contracting parties according to our specific weight and prominence.


Moreover, if the modernisation process fails within the planned schedule, the EU and its Member States should consider withdrawing from the ECT in the most favourable conditions to our interests. And we should convey our position publicly resoundingly to manifest forcefulness, commitment and ambition.

Please count on our support for the next rounds but considering the withdrawal as the only effective long-term solution unless a truly modernised ECT is finally agreed in full compliance with the Paris Agreement objectives, the European Green Deal, the climate neutrality by 2050 and the defence of the integrity and primacy of EU in legal system in all Member States.

Yours faithfully,


Arancha González Laya
Minister for Foreign Affairs, European Union
and Cooperation


Reyes Maroto Illera
Minister for Industry, Trade and
Tourism


Teresa Ribera Rodríguez
Vice-President and Minister for the Ecological Transition
and the Demographic Challenge