

****EMBARGOED until Tuesday 6 July 12:00 CEST****

LEAKED DIPLOMATIC CABLES

Two documents below are leaked email sources from two different EU member States, and translated by Climate Action Network Europe into English [own emphasis]. Both are diplomatic cable reports reporting from a meeting of the EU Council's Working Party on Energy on 6 June 2021 – in which the European Commission gave a summary of the fifth round of negotiations on the modernisation of the Energy Charter treaty (1 to 4 June 2021).

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REPORT 1:

The EC reported on the fifth round of negotiations on the modernisation of the Energy Charter Treaty, which took place from 1 to 4 June. **No substantial progress was made on the definition of economic activity in the energy sector.** As a next step, the EC announced its intention to examine possible compromises, such as *conditional reciprocity*. The negotiations will be continued at the beginning of July. In addition, the EC reported on the extraordinary meetings of the Working Group on Governance and the Budget Committee.

EC reported on the 5th round of negotiations on the modernisation of the Energy Charter Treaty (ECT), which took place from 01 to 04 June. **The atmosphere was constructive, but progress was limited, especially on energy issues.** The definition of economic activity in the energy sector had been put on the agenda at the request of the EU. **Only six contracting parties had expressed their views on this. None of them had a final official position, except KZ, which openly rejected the proposal.** The other five Parties had been open in principle and had argued for flexibility. Each of the parties had different ambitions and energy mixes. The UK had made only a limited contribution to the discussion. From bilateral talks, however, the picture emerged that the UK was still considering allying itself with the EU. CH had been critically constructive. Questions mainly concerned concerns about security of supply. The most recent IEA study of 18 May had been put forward by the EU. **For the time being, however, there had been hardly any reaction to this. After two hours of negotiations, it was clear that the EU proposal did not have enough support. None of the larger contracting parties was prepared to support the EU proposal in its current form. It would be necessary to examine where the EU's flexibility could lie.** In view of the sunset clause, a compromise should perhaps be sought. However, none of the contracting parties had submitted a counter-proposal so far. There were internal consultations on various scenarios: *Deadlines could be postponed or an "à la carte" approach with reciprocity could be considered.* In the run-up to the next round, the MS would be approached to explore flexibilities. The Balkan countries would also be contacted bilaterally to get support. None of these countries had come forward to support the EU. **The discussion would be continued in the next round of negotiations from 6 to 9 July.**

With regard to transit, discussions would be held with those contracting parties that had submitted comprehensive proposals. (KZ, TM, AZ) There had been an exchange of views on this at the June round. The proposal by KZ, TM, AZ was aimed at a new version of Art. 7. The EU had no interest in this, as the proposal contradicted the internal market rules. It was agreed to hold an informal workshop for further consultations. This should take place around 10 September. They are currently trying to find out what is behind the proposal of the three.

The EU does not have much room for compromise. The publication of tariffs could be agreed to. There was also a certain degree of flexibility on virtual flows.

FR renewed its demand for an EU exit plan. They were still sceptical about the developments. Many contracting parties would not get involved. There is little progress on important issues. We have to **work on weighing the consequences of a failure of the negotiations.** When will there be a proposal on this? However, they are willing to look for flexibility. However, the EU should not give in on fundamental positions. (+ PL)

DE declared that it was open to consider compromise proposals. However, one should not make any major concessions in terms of ambition.

ES referred to the ministerial letter of February. It is important to bring the content of the Charter in line with the Paris Climate Agreement. Europe must not be prevented from becoming the first climate-neutral continent. **We wish the EC every success in the further negotiations.**

AT also suggested that possible compromises should be considered. For example, the option of conditional reciprocity could be examined more closely. From today's perspective, **the modernisation of the treaty was still the preferred path for AT.** However, a lot of convincing of the contracting parties is still necessary.

CZ was also open to alternative proposals. It was disappointed that many contracting parties were inactive. It would help if, for example, Ukraine were more active. If Kiev could be brought on board, that would be helpful and possibly have a knock-on effect for other Parties.

LU thanked the EC for the work done so far and asked to continue the efforts in the framework of further negotiations.

EC explained that withdrawal was not option A. He added that there was an *expert report which was currently being considered by Cabinet.* The positive list and conditional reciprocity were something they were happy to look at. The challenge is how to put this into a treaty text. More work is needed on this. One should not expect progress too quickly. Negotiations with third countries in the trade area would always take time.

EC reported on the extraordinary meeting of the working group on governance issues on 31.05. First, a draft for the structure of the Secretariat had been discussed. JP had argued that the legal department should be independent. The issue would be returned to in the next meeting. The applicability of the Staff Handbook to the Deputy Secretary General was also

discussed. Comments had been submitted to the Secretariat. The guidelines for whistleblowing were also discussed again. The document is to be adopted by the Conference by the LIMITE written procedure. The item on the amendment of the Staff Regulations concerning teleworking had been postponed to the next meeting.

EC reported on the extraordinary meeting of the Budget Committee, which had also taken place on 31 May. At the meeting, E&J's application to become an external auditor was considered. The EU had proposed to approve it. The application would be approved by written procedure. At negative interest rates, it was decided to include these costs in the Part 1 budget.

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REPORT 2:

Summary:

Energy Charter Treaty (ECT): feedback modernisation process et al.

ECT debriefings

5th Round of Modernisation Negotiations

COM described the atmosphere during this fifth round (1-4 June) as constructive, but nevertheless made little progress. Only in the area of dispute settlement did the debate develop favourably, less so in the areas of sustainability and energy.

Regarding the definition of economic activity in the energy sector, COM primarily wanted to elicit reactions from the non-EU contracting parties. However, **only 6 members took the floor and none of them supported the EU proposal, which made it painfully clear that this is not considered a priority outside the EU.** Nor was there any counter-proposal. **The EU's negotiating position is therefore rather weak here.** Work will continue informally for the next round on 6-9 July.

The discussions on transit were also not concluded. There was an agreement that consensus would be sought through an informal workshop on 10 September. COM will prepare a written proposal of questions for the workshop and submit it in advance to the Council energy working group.

PL and FR reiterated their position to look at the consequences of a possible failure of the modernisation process, and they wish to concretely study the option of a coordinated EU exit.
