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Ms Nadia Calviño
First Vice-President
Minister for Economy and Digitalisation

Ms Teresa Ribera
Third Vice-President
Minister for Ecological Transition and Demographic Challenge

Dear Ms. Nadia Calviño and Ms. Teresa Ribera,

I refer to the letter and attached note that you sent on the 20 September to Executive Vice President Timmermans, Executive Vice President Vestager and myself. Executive Vice Presidents Timmermans and Vestager have asked me to reply on their behalf. In your letter, you refer to the current surge in energy prices and the measures that Spain has taken to face the current situation. You also refer to a number of actions that you consider should be taken at EU level.

Since your letter of 20 September, Spain has adopted on 26 October the Royal Decree-law (23/2021), which amends the Royal Decree-law 17/2021 as regards the temporary measure aimed at reducing the gains coming from the current high gas prices.

Thus, I will address both set of measures in the annex of this letter.

Like you, the Commission is very concerned by the current surge in energy prices and the severe impact it has on households and companies. We also agree that the policy actions taken in response to the high energy prices should be coordinated as much as possible.

The Commission considers it very important that any response is both effective from an economic and social point of view and in line with EU law and with Europe's ambitions under the Green Deal and the Fit for 55 package.

This price spike acutely underlines the need to further increase the penetration of renewables in our energy mix so as to make us less dependent on fossil power-generation. The internal energy market for electricity and gas are Europe's best opportunity to ensure that the decarbonisation we need, and the security of supply that we have to ensure at any moment, are achieved in the most cost-effective manner for the benefit of households and companies across the EU. Any measures that we take now must therefore be compatible with the functioning of the internal energy market.

With this in mind, the Commission issued the Communication "Tackling rising energy prices: a toolbox for action and support" on 13 October, to identify and support appropriate measures to mitigate the impact of temporary energy price rises both in the short and medium terms. The Communication covers some of Spain's ideas for EU action included in your non-paper, for instance actions related to gas security of supply and the European carbon market. The informal European Council in October has welcomed the communication and urged the Member States and the Commission to urgently make the best use of the toolbox. Following the TTE Councils on 26 October and 2 December, the December European Council will review the situation.

The Commission considers that many of the measures announced by Spain can contribute to easing the price pressure on consumers. This concerns in particular the support for vulnerable consumers, as well as the medium and longer-term measures, like increased use of PPAs on market terms or increase of renewables auctions. We note in this context that Spain has decided to use part of its share of revenues from the EU Emissions Trading System (ETS) to reduce levies in the electricity bill by EUR 900 million.

In addition to these measures, your letter also refers to a number of measures on which additional information would be needed in order to allow the Commission services to assess compliance with the internal market. You may find a detailed description of such measures in Annex.

However, I take note that the 26 October Royal Decree-law (23/2021), which amends the Royal Decree-law 17/2021 as regards the temporary measure aimed at reducing the gains coming from the current high gas prices address some of the possible concerns from an EU law point of view. In particular, it excludes the application of the measure to the energy sold under fixed price forward contracts concluded before the entry into force of the Royal Decree-law and under fixed-price forward contracts of at least one year concluded after the entry into force of the Royal Decree-law. This amendment is helpful in that it aims at reducing the distortive effect of the measure in question. A similar approach could also be used for other measures currently under consideration.

We understand that Spain is reflecting on whether some further measures are needed in light of developments and discussions at EU level. In this context, we would see an enhanced dialogue with Spanish authorities most welcome in view of finding the most effective ways to address the rise in energy prices within the EU legal framework. Therefore, the Commission services will contact the Spanish authorities shortly with a series of questions and requests for clarification.

I wish to underline that the Commission and its services remain committed to support you in the best possible way in your efforts to deal with this difficult situation.

Yours sincerely,

Kadri Simson

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Annex

Reduction of the "excess gains" of non-CO2 emitting power plants (gas charge and ETS charge measures)

Spain has taken two different measures in this regard: one permanent measure to reduce the so-called "excess gains" coming from high ETS prices, which is under Parliamentary proceedings (Proyecto de Ley 121/000065) , and one temporary measure aimed at reducing the "excess gains" coming from the current high gas prices, which was included in Royal Decree-law 17/2021 as amended by Royal Decree-law 23/2021 and is already in force.

These two measures may undermine investment incentives for decarbonised forms of electricity generation, whilst bringing relatively limited price relief for consumers. The measures reduce the commercial revenues of non-emitting companies, whilst the EU rules in place and the Emissions Trading System rules are precisely aimed at rewarding such companies for their low-carbon forms of generation and discouraging the use of carbon-intensive production methods.

Both the Electricity Directive and the Electricity Regulation contain clear provisions that market rules are to facilitate the development of flexible generation and deliver appropriate investment signals for decarbonised generation, and that national legislation should not hamper such investments.

As for the impact on the market of the measures already implemented, the fact that installations have stopped producing electricity in certain periods seems to indicate that measures have reduced the competitiveness of renewable energy generation. We are therefore concerned that these measures could undermine the stability of the regulatory framework for renewable energy and thus may have an impact on future investments in the sector.

Finally, the Commission is also assessing whether the measures in question and/or the exclusions to them contain elements of State aid, which would in that case require an approval under Articles 107 and 108 TFEU. We would therefore additional information on/your observations on this point will be requested.

Measures to protect the most vulnerable households

Consumers are at the center of the EU's energy policy and we need to ensure in particular that vulnerable consumers are protected. Tackling energy poverty is a big part of a successful energy transition and vice versa.

Spain's extended ban on disconnection is a measure that is in line with the Electricity Directive, as a guarantee of universal service and protection of the most vulnerable.

The measures adopted to protect vulnerable consumers are also in line with the Electricity Directive. The Royal Decree-law contains measures to increase the discount on the electricity bill granted by the "social bonus" to vulnerable consumers from the current 25% to 60% and from 40% to 70% for the most severe vulnerable consumers until 31 March 2022. Spain has also doubled the budget allocated for the thermal social bonus in 2021 with an additional €100 million, reaching €202.5 million. This represents on average €90 direct aid for each vulnerable consumer.

As regards the Voluntary Price for the Small Consumer (PVPC), we understand that changes are envisaged to reduce the price volatility of the energy component, moving partially away from the spot market towards the forward market. We understand, though, that such change would not alter the tariff's cost reflectiveness, which is welcome. As the Voluntary Price for the Small Consumer is a regulated tariff, Spain should notify this measure under article 5 of the Electricity Directive.

We are also aware of Spain's modification of the Last Resort Rate (TUR) to cap the gas price temporarily until April 2022. Based on the available information, we are not able to confirm that such a change would fully reflect the requirement of proportionality and non-discrimination, as it risks distorting effective retail market competition. Given that the measure seems to concern a public service obligation in the form of a regulated tariff, we would be grateful if Spain could notify this measure in line with the Gas Directive's requirement to notify such measures under article 3(11).

Promotion of forward contracting in the electricity market

While the Commission acknowledges the need for liquid forward markets to offer hedging opportunities to alternative suppliers and facilitate competition in the retail sector, the proposed measures in our view require further investigation for two reasons:

Firstly, it is not clear if any EU companies can participate in the proposed long-term auctions. If this is not possible, the measure could constitute an implicit restriction on electricity exports.

Secondly, the proposed measure restricts the freedom of the companies in question to sell their electricity in the market place they choose. Whilst there may be scope for justifying such restrictions where they are imposed on dominant players, this *prima facie* does not seem to be the situation of any of the electricity generators operating in the Spanish market.

Your observations on these two points would be necessary to finalise the Commission assessment.