



21 November 2018

(18-7309)

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**EUROPEAN UNION AND ITS MEMBER STATES – CERTAIN MEASURES RELATING  
TO THE ENERGY SECTOR**

**COMMUNICATION FROM THE APPELLATE BODY**

The following communication, dated 20 November 2018, from the Chair of the Appellate Body to the Chair of the Dispute Settlement Body, is being circulated to Members.

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I am writing pursuant to Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which states that, as a general rule, the Appellate Body will circulate its Report no later than 60 days after the appellant has formally notified the Dispute Settlement Body (DSB) of its decision to appeal. Article 17.5 further states that when the Appellate Body considers that it cannot provide its Report within 60 days, "it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its Report. In no case shall the proceedings exceed 90 days."

The European Union notified the DSB on 21 September 2018 of its decision to appeal certain issues of law covered in the Panel Report and legal interpretations developed by the Panel in this case. As a result, the 60-day period expires on 20 November 2018. The Appellate Body is not able to circulate its Report by that date.

The Appellate Body is also not able to circulate its report within the 90-day timeframe provided for in the last sentence of Article 17.5 of the DSU. In this respect, we refer to the size of the Panel record and the complex issues appealed. We further note that in view of the backlog of appeals pending with the Appellate Body at present, the overlap in the composition of all divisions resulting in part from the reduced number of Appellate Body Members, together with the shortage of staff in the Appellate Body Secretariat, Division Members can currently spend only very little time preparing for this appeal. It will not be possible for the Division to focus on the consideration of this appeal and for it to be fully staffed for some time.

As soon as we know more precisely when the division can schedule the hearing in this appeal, we will inform the participants and DSB Members.

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