COUNCIL OF THE EUROPEAN UNION

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Novel foods - statement of the Council's Legal Service

At the EP plenary debate on novel foods held on 11 May 2011, the rapporteur on the file, Ms Liotard, with a reference to the Council Legal Service opinion, said that "The bans [on] food from cloned animals and [...] food from offspring of clones could be justified on the basis of the consumers' ethical considerations".

This reference to the opinion of the Legal Service of the Council is not correct because it is neither precise nor complete.

The Council Legal Service concluded that all measures under discussion at the time (including bans of food from cloned animals and from their offspring) entail risks as far as their compatibility with the WTO rules is concerned.

It went on to consider that only in the case where a WTO panel would decide that food from cloned animals and from their descendents were not 'like' products, the envisaged measures would not amount to a violation of Article III:4 of the General Agreement on Tariffs and Trade ("GATT") or of Article 2.1 of the Agreement on Technical Barriers to Trade ("TBT Agreement").

The Council Legal Service, however, underlined that in the case where the EU was unable to prove that food from cloned animals and from their descendents are not 'like' products as compared to food from conventionally bred animals, all measures under discussion would violate Article III:4 of the GATT as well as Article 2.1 of the TBT Agreement. The Council Legal Service indicated that the EU might be able to justify the infringement of the GATT under its Article XX, but might face condemnation under the TBT Agreement which, contrary to the GATT, provides for no exception for public morals considerations.