

## The Perils of Committee Governance: Intergovernmental Bargaining during the BSE Scandal in the European Union

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European Integration online Papers (EIoP) Vol. 10 (2006) N° 2;  
<http://eiop.or.at/eiop/texte/2006-002a.htm>

Date of publication in the  : 9.5.2006

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### Keywords

BSE crisis, comitology, expert committees, intergovernmentalism, policy analysis, risk regulation, Single Market, law, political science

### Abstract

This paper contributes to the ongoing debate between principal-agent theory and the concept of deliberative supranationalism regarding the functioning of the EU committee system by analysing regulatory policy-making in the BSE case. The BSE crisis can be seen as a critical instance for committee governance. This paper argues that the EU's mismanagement of the BSE crisis was mainly due to the prevalence of member states' parochial interests, which clearly supports a rationalist perception of the EU committee system. Whereas the committee system might lead to deliberative problem-solving in more favourable circumstances, the distributive consequences of BSE regulations were asymmetric and too large to permit individual concessions. Consequently, the EU committee system institutions were too weak to prevent reversion to intergovernmental politics. The UK initially downplayed the problem in order to protect its beef industry against a likely ban in the Single Market. After the BSE health risk became evident in 1996, the other member states reacted by banning British beef imports. Throughout these episodes, scientific evidence indicated that neither the British nor the other member states' strategies were sustainable. Only when BSE became 'Europeanised' in 2000 were the member states able to adopt common policies to fight the disease. Whether the new European Food Safety Agency will be able to prevent such crises in the future is an open question, but is doubtful in light of its institutional weakness.

### Kurzfassung

Dieses Papier trägt zur laufenden Debatte zwischen der Prinzipal-Agenten-Theorie und dem Konzept des deliberativen Supranationalismus im Hinblick auf das EU-Ausschusswesen bei, indem es die Regulierungspolitik der EU im BSE-Fall analysiert. Die BSE-Krise kann für das Regieren im Ausschusswesen als kritischer Fall angesehen werden. Dieses Papier argumentiert, dass das Missmanagement der EU in der BSE-Krise hauptsächlich Folge der Dominanz kurzfristiger Einzelinteressen der Mitgliedstaaten war, und bestätigt dadurch eindeutig eine rationalistische Perspektive auf das EU-Ausschusswesen. Während das Ausschusswesen unter günstigeren Rahmenbedingungen zu deliberativer Problemlösung führen könnte, waren die Verteilungswirkungen der BSE-Regulierungen zu asymmetrisch und zu bedeutend um individuelle Zugeständnisse einzelner Mitgliedstaaten zu erlauben. Infolgedessen waren die Institutionen des EU-Ausschusswesens zu schwach, um eine Rückkehr zu intergouvernementaler Politik zu verhindern. Großbritannien hat folglich das BSE-Problem anfangs hinuntergespielt, um seine Rindfleischindustrie vor einem wahrscheinlichen Exportverbot im Binnenmarkt zu schützen. Nachdem das Gesundheitsrisiko von BSE im Jahr 1996 evident wurde, reagierten die anderen Mitgliedstaaten mit einem solchen Verbot britischer Rindfleischexporte. Die ganze Zeit hindurch deuteten wissenschaftliche Beweise darauf hin, dass weder die britische Strategie, noch jene der anderen Mitgliedstaaten nachhaltig waren. Erst nachdem sich BSE bis zum Jahr 2000 in ganz Europa verbreitet hatte, waren die Mitgliedstaaten in der Lage, gemeinsame Regulierungen zur Bekämpfung der Tierseuche zu beschließen. Ob die Europäische Agentur für Lebensmittelsicherheit in der Lage sein wird derartige Krisen in Zukunft zu verhindern, ist eine

offene Frage, kann aber angesichts der institutionellen Schwäche der Agentur bezweifelt werden.

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## 1. Introduction <sup>↑</sup>

When the first case of Bovine Spongiform Encephalopathy (BSE) was detected in Southern England in 1986, nobody treated it as the advent of a disease that would ultimately affect the whole of Europe and cost 154 human lives to date(1). In the course of the 1990s, BSE became not only a veterinary concern, but also an issue of food safety policy. Furthermore, it became not only a British, but also a European problem. However, the EU regulatory regime for foodstuffs dealt extremely inefficiently with the regulation of so-called ‘mad cow disease’. It was neither able to prevent an epidemic across the borders of the United Kingdom (UK), nor was it able to adopt strong common regulatory measures in order to combat the crisis and protect consumers until Autumn 2000 (Krapohl 2003). These failures resulted in a major public scandal, which damaged European consumers’ confidence in the EU’s regulatory capacity (Majone 2000, Vogel 2001, Vos 2004) . In response, and under increasing pressure from international trade agreements (e.g. Skogstad 2001), the EU regulatory regime for foodstuffs was fundamentally reformed. The European Food Safety Authority (EFSA) was set up (Kelemen 2002) to provide systematic scientific advice on regulatory policy-making in the sector. The success of this authority has yet to be proven, but seems unlikely in light of its institutional weakness (Chalmers 2003, Krapohl 2004, Szawlowska 2004).

The EU's failure to regulate BSE can be seen as a critical instance for the study of the EU committee system(2). In the BSE case, the Commission was put in charge of implementing broader EU legislation on behalf of the member states and the European Parliament (EP). Thereby, it was advised and controlled by several committees. Scientific committees provided the necessary expert input, whereas Comitology committees supervised the proposals in accordance with member states' interests. Two different theories about this committee system compete with each other within the academic literature. They stand on opposing sides of the constructivist-rationalist divide within the social sciences and come to different conclusions regarding policy-making within the committee system (Krapohl 2003, Pollack 2003a): Firstly, the concept of deliberative supranationalism is based on a constructivist conception of actors. Joerges and Neyer (1997a, 1997b) argue that the EU committee system carries the potential to transform intergovernmental bargaining into 'deliberative problem-solving'. Accordingly, it brings together various experts and stakeholders who, as a result of repeated interaction and community building, do not try to exploit each others' good-will, but instead learn to solve policy problems in a cooperative manner. As a result, the efficiency as well as the legitimacy of regulatory policy-making within the EU committee system should increase. In contrast, principal-agent theory is based on a rationalist conception of actors. Here Comitology committees are seen as a control mechanism (e.g. Franchino 2000, Pollack 1997, 2003b), and expert committees are thought to be less important. Accordingly, the principals, i.e. the member states, delegate competencies to the Commission, i.e. their agent, for functionalist reasons, e.g. the need for a credible and independent regulator (Pollack 1997). In order to scrutinise the Commission during the implementation of these competencies, the member states establish committees that vote on Commission proposals. As a result, decision-making within Comitology committees should be characterised by intergovernmental bargaining instead of deliberative problem-solving.

In the following, this paper will contribute to the debate between deliberative supranationalism and principal-agent theory by analysing whether regulatory policy-making in the BSE case was distinguished by deliberative problem-solving or intergovernmental bargaining. This paper does not scrutinise decision-making within the different EU committees themselves, because such a research design would have several methodological and practical shortcomings (see also Gehring et al 2005): Ex post interviews would be in danger to reflect wishful thinking of the involved actors, while participatory observations are, as a matter of fact, not possible anymore. Instead, the paper analyses the interests of the involved actors, the incentive structure of the regulatory regime and the regulatory policy-outcomes during different phases of the BSE scandal. If the final policy-outcomes show the interests of the involved actors to be constrained by the regulatory institutions instead of demonstrating the search for a sensible regulatory solution, this can be seen a strong case supporting the hypothesis of intergovernmental bargaining and a rationalist view on the EU committee system.

The first part of this paper is an analysis of the interests of the member states in risk regulation within the Single Market and the incentive structure of the EU regulatory institutions. This paper argues that EU member states face an intergovernmental cooperation problem: All member states share an interest in establishing the Single Market in order to profit from the welfare gains of increasing inter-European trade, and to regulate this in order to avoid scandals. However, each member state also encounters incentives to protect its own domestic industry against the costs of new regulation and foreign competition, or to protect consumers against health risks from imported goods. Common problem-solving in the EU committee system will only be successful if member states abstain from following their individual interests. However, mutual recognition and partial harmonisation by the EU committee system are not strong enough to guarantee cooperative behaviour if important interests of the member states are at stake. Consequently, the probability of cooperative behaviour declines when the benefits of regulatory measures are asymmetrically

distributed – as was the case for BSE. The analysis of member states' interests and the EU regulatory institutions will result in some hypotheses about member states' behaviour in EU risk regulation.

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The second part of this paper will demonstrate that EU regulatory policy-making in the BSE case supports the hypotheses derived from the rationalist analysis. Decision-making in the BSE case was in fact always dominated by member states' parochial interests, and these interests were constrained by the incentive structure of the EU regulatory institutions: From 1986 to 1996, the UK played down the risk of BSE to human health in order to protect its beef industry against stronger regulations and against a probable ban in the Single Market. In 1996, when Britain had to admit that BSE might be harmful to humans, the other member states banned British beef, but did not succeed in adopting any strong common regulation. Only after the 'Europeanisation' (3) of the disease in autumn 2000 were the member states able to take this step and reform the EU regulatory regime for foodstuffs. Following these findings, the paper will develop some hypotheses as to whether the latest reforms of the EU's regulatory regime for foodstuffs will prove capable of preventing future reversion to intergovernmental decision-making and guarantee effective problem-solving.

## 2. Risk Regulation in the Single Market

The aim of the following section is to develop hypotheses about member states' behaviour in the BSE case from a rationalist-institutionalist perspective. The paper will analyse the interests of the member states in the establishment and regulation of the Single Market, as well as the incentives set by the regulatory institutions at EU level. Thereby, it proceeds in three steps. Firstly, the intergovernmental cooperation problem within the Single Market and its interaction with the mutual recognition principle is analysed. Secondly, it asks to what extent the existing regulatory institutions, i.e. the EU committee system, could help to solve this intergovernmental cooperation problem. Thirdly, the preconditions and limits of deliberative problem-solving within the EU committee system are discussed. Finally, three hypotheses are formulated. These hypotheses would be disproved by the policy analysis of the following section if the rationalist perspective would not prevail.

### 2.1. Intergovernmental Cooperation Problem and Mutual Recognition

EU member states engaging in the Single Market inevitably face a cooperation problem. They act in tension between common and parochial interests. Member states share an interest in establishing the Single Market, notably in order to profit from the welfare gains of inter-European trade. But the Single Market can also impose significant costs for domestic industry or consumers: It may endanger domestic industries' competitiveness, or it may impose risks of deregulation to the lowest common denominator. Consequently, the preferred situation for each member state would be to profit, i.e. to be able to export its competitive products, while still protecting domestic industries and consumers against imports. But if all member states sought to be free-riders, the Single Market could not be established. This is a classic collective action problem in which a preferred common solution is difficult to achieve because each individual member state faces incentives to deviate from common solutions (see the lower part of [figure 1](#)). In order to stabilise cooperation, member states could choose to establish institutions (Moravcsik 1998: 73-77, North 1993, Shepsle 1991), which might indicate a credible commitment by individual member states and prevent future deviation from established common agreements.

Figure 1

After tariffs and quotas were abolished in the EU, different regulatory standards in the member states, constituting potential non-tariff barriers to trade, remained the main obstacle to the exchange of goods across borders. The main tool to abolish these barriers and to establish a Single Market has been the mutual recognition principle, according to which all member states must open their markets to products which meet the regulatory standards of at least one other member state. However, if the mutual recognition principle is widely applied, the member states to some extent lose regulatory sovereignty over their own territory and have to rely on the safety levels adopted by other member states. If levels of health and consumer protection differ between the member states, the mutual recognition principle would have deregulatory effects for states with higher standards. Because of the danger of systematic deregulation of the Single Market, the Treaties and the case law of the European Court of Justice (ECJ) allow member states to deviate from the mutual recognition principle in specific circumstances (Alter and Meunier-Aitsahalia 1994). Accordingly, Article 30 (formerly 36) of the Treaty states that trade restrictions based on protection of life and health of humans and are legitimate. A result of these exceptions is that member states may implement their own product standards, as long as they can be justified by reasons of health and consumer protection and do not constitute a means of arbitrary discrimination.

Keeping the intergovernmental cooperation problem in mind, it is evident that the mutual recognition principle leads to a problematic incentive structure for the member states. Scientific reasoning about the consumer health risks of specific products is always at risk of being politicised. Accordingly, each member state has an interest in arguing that products from its own territory are safe, whereas products from other member states are risky. Room for such arguments increases if not only scientific evidence but also the application of the precautionary principle justifies individual measures (Majone 2002). If a member state is successful with this strategic rhetorical action (Schimmelfennig 1997), it protects its own industry or consumers while it still enjoys the advantages of the Single Market (points 0/4 or 4/0 in [figure 1](#)). That state would thereby achieve an asymmetric distribution of benefits and would be able to exploit the other states' cooperation. And even if a member state does not try to protect its domestic industry or consumers, it must still be aware that other member states face this incentive. Consequently, in order to defend itself, every member state must at least argue that products from its own industry are safe.

## 2.2. Risk Regulation by the EU Committee System

Another method used to establish and regulate the Single Market is the harmonisation of regulatory standards at the EU level (points 2/3 or 3/2 in [figure 1](#)). In many regulatory areas, including foodstuffs regulation, the competencies to set up such measures are delegated to the Commission. The Commission does not fulfil this task alone, but is embedded in the EU committee system (e.g. Vos 1999: 110-187): scientific committees, and in some cases regulatory agencies, advise the Commission with regard to scientific aspects of risk regulation. The Commission develops policy proposals on the basis of this advice. Policy proposals are then forwarded to Comitology committees consisting of representatives of member states. These committees decide whether to accept the proposals or not. In the latter case, the matter is forwarded to the Council, which makes the final decision. In terms of principal-agent theory (e.g. Franchino 2000, Pollack 1997, 2003), the Comitology system works as a police-patrol control, scrutinising whether the policies proposed by the agent (i.e. the Commission) are in the interests of its principals (i.e. the member states). Hence, the strictness of control differs according to the decision-making rules in each Comitology committee. The committees have either only advisory competencies (advisory procedure), or can reject a proposal by qualified majority (management procedure), or have to accept it by qualified majority (regulatory procedure). Of these possibilities, the last, namely the regulatory procedure,

obviously implies the strongest control by the principals over the agent (Steunenberg, Koboldt and Schmidtchen 1996).

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If strict control procedures are applied, Comitology brings the cooperation problem between the member states back into the decision-making process. Within the regulatory procedure, a qualified majority of member states has to favour a common policy proposed by the Commission, against unilateral measures. If the consequent problem is only governed by the mutual recognition principle, the member states' willingness to accept common policies is likely to depend on their fallback position under the respective regime. If a specific member state is able to show that products from another member state are a health risk for consumers, whereas its own domestic products are safe, it has no interest in agreeing to harmonised regulatory standards. Under these circumstances, the costs of higher regulatory standards can be imposed on the member state whose products are deemed to be unsafe, while harmonisation would mean that the costs are shared (i.e. the member states fall back from the upper to the lower part of [figure 1](#)).

The mutual recognition and partial harmonisation regime carries the risk that scientific knowledge becomes politicised and that the problem of member states' cooperation arises within the Comitology committees. Despite this unfavourable incentive structure, Joerges and Neyer (1997a, 1997b) claim that the EU committee system could nevertheless be a forum for 'deliberative supranationalism'. They state that repeated meetings of experts and stakeholders lead to trust, as well as the emergence of common norms and belief systems among actors. This network structure allows participants to leave power-based bargaining behind and to concentrate on 'deliberative problem-solving'. However, the analysis of the intergovernmental cooperation problem suggests that the room for deliberative political processes is restricted by the preferences of member states represented in the Comitology committees. If their interests are at stake, they are able to block unwanted policies. Thus, the question arises: under what circumstances will the preference constellation of the member states be sufficiently open to allow for common problem-solving.

### 2.3. Common Problem-Solving and its Preconditions

Within the regulatory procedure (which is widely applied in the area of foodstuffs regulation) a qualified majority of the member states is required in order to pass a common regulatory measure. Consequently, a policy-window for common problem-solving opens if at least a qualified majority of states believe that they will be better off with a harmonised policy than under the mutual recognition regime. Whether this is the case depends on the spread of the regulatory problem across the Single Market. If only a minority of member states are affected by a health risk, the other states will prefer to ban risky products from the Single Market and impose the regulatory costs on the affected countries. If, however, a qualified majority is affected, they might vote for common regulations in order to share the burden. In the latter situation only the form of the newly agreed standards may be contested and the final policy outcome might be influenced by deliberative political processes (for a more detailed analysis of this point see: Krapohl 2003). In other words, the distribution of the costs and benefits of regulatory measures among member states must not be too asymmetrical, so that at least a qualified majority can expect to benefit from common policies. Here the crucial point is that decision-making in the network structure of the EU committee system remains vulnerable to distributive conflicts between the member states (e.g. Eberlein and Grande 2005).

There are generally two ways to increase the problem-solving capacity of the EU committee system in situations where costs and benefits are asymmetrically distributed. First, the economic impact of regulatory measures could be reduced. This could be achieved by financial transfers between the member states, e.g. compensations for industries which are highly affected by EU regulations.

However, the scope and success of such compensations is likely to be rather limited. With the exception of the common agricultural policy and the structural funds, where resources are tied to the respective policies, the central budget of the EU is quite small (Majone 1996: 47-60). Further fiscal centralisation in the form of a drastic increase in the EU budget seems neither to be on the agenda, nor politically feasible in the near future. Furthermore, the question remains whether such financial transfers would be regarded as legitimate by EU citizens. Typically, regulatory measures affect industries which previously caused harm to consumers. It is expected that people ask why the industry should be compensated for such regulatory measures. There would likely be even less sympathy for such measures if addresser and addressee of compensations are citizens of different member states. To formulate it more drastically: it is unlikely that European consumers would have agreed to pay higher taxes in order to compensate the British beef industry for economic losses in consequence of the BSE crisis. Summing up all these arguments, transfers of money to reduce the distributive impacts of regulatory policies are likely to remain an exceptional measure.

If the option of reducing the distributive impact of regulatory measures is largely unavailable, a second way to increase the problem-solving capacity of the EU is to establish stronger regulatory institutions at supranational level. Such institutions indicate a deep commitment of the member states to abide by certain regulatory objectives instead of economic interests. Two institutional designs are possible to achieve this goal. One option is that regulatory decision-making is made more independent from direct political influence of the member states (Majone 1996: 28-46). According to this logic, the principals (i.e. the member states) delegate competencies to an agent (e.g. an expert committee or regulatory agency) which determines regulatory policies on their behalf and according to their common interests. However, the problem arises that independent regulatory bodies violate basic principles of the *Meroni* case law,<sup>(4)</sup> which does not allow delegation of decision-making competencies to bodies that are not mentioned in the Treaty. Consequently, the regulatory bodies set up in the EU thus far are not independent, but are always controlled by the Commission and Comitology committees.

A second possibility to strengthen regulatory institutions at the supranational level is to have member states commit themselves to specific regulatory objectives by a legalisation of the respective policy area. As it is used here, the term legalisation describes the phenomenon of constraining decision-making by means of previously adopted decisions, agreements or laws. According to Abbott et al. (2000), the degree of legalisation can be measured along three interdependent dimensions, namely the obligation which rules impose on actors, the precision of these rules and the independence of their review. The more obligatory and precise the procedural and substantive rules are and the more independent their review is, the smaller is the room for the involved actors to follow parochial interests. In the context of EU regulatory policy-making, legal frameworks would thereby provide precise rules regarding which decisions must be based and render those decisions subject to judicial scrutiny. As a consequence, decision-making within the different committees would take place in the shadow of European law, which would fundamentally distinguish their role from an institution-free bargaining system (compare Joerges 2002, 2003). Here, credible commitment to specific regulatory goals is not based so much on the independence of the regulator as on judicial review by independent courts (Stone Sweet 2002). However, the fundamental problem was that no general food law existed in the EU before the BSE crisis (Nentwich 1994: 200-206). Many regulations for various aspects of food safety existed, but their scope was either restricted to certain foodstuffs (e.g. the chocolate Directive), or to some particular aspects of foodstuffs (e.g. food additives). Thus, even if a lot of supranational legislation existed, the policy area was not systematically legalised.

## 2.4. Hypotheses <sup>↑</sup>

Altogether, two hypotheses about member states' behaviour can be derived from this analysis of the intergovernmental cooperation problem and the regulatory institutions of the EU. Firstly, as long as fundamental scientific uncertainty exists, a single member state that is affected by a regulatory crisis will try to downplay the risks for consumers. The state has to act this way to protect its domestic industry against a ban from the Single Market. Secondly, as soon as the risks are evident, the other member states will ban the respective products of the member state from the Single Market. This way member states can protect their consumers against the risks and may achieve additional competitiveness for their domestic industry. Common regulatory measures will only be adopted as soon as a majority of the member states are affected by the regulatory problem. Common problem solving in the case of asymmetric distributive consequences can only be achieved by stronger regulatory institutions, i.e. by an independent regulatory agency or by a strong legalisation of the respective policy area. If these hypotheses are substantiated by empirical evidence in the BSE case, it can be assumed that the member states tended to follow their parochial interests and did not engage in the search for a common regulatory solution, i.e. in deliberative problem-solving. Thus, the BSE case would support a rationalist view on the EU committee system.

## 3. The European Story of the BSE Scandal <sup>↑</sup>

The following section supports the hypotheses by analysing Community activities during the BSE crisis. It has four parts, corresponding to clearly identifiable periods of the process. The first period starts in 1986, when the disease was first detected in Great Britain, and covers the developments until 1996. In 1996 a link was discovered between BSE and a new variant of Creutzfeld-Jakob-Disease. This discovery marks the beginning of the second period. It became clear that consumption of BSE contaminated beef might be risky for humans. This discovery raised consumers' concerns and forced the EC and the member states to redirect their activities. But it was only during the third period, after 2000, when cases of BSE infected animals started to appear in most European countries, that the member states decided to take significant common measures. In the aftermath of the crisis, the EU food safety regime was fundamentally reformed. The fourth section therefore presents the new institutional framework and analyses its appropriateness for tackling future challenges in the food sector.

### 3.1. Britain against the Rest: 1986 – 1996 <sup>↑</sup>

Bovine Spongiform Encephalopathy (BSE) is a degenerative brain disease affecting cattle. When 'Cow 133' died at a Sussex farm because of a peculiar combination of pathological syndromes of no previous veterinary record, no one was aware of the impact that BSE would have on the European Single Market and on European consumers. Initially there was the hope that the 'Mad Cow disease' would behave like scrapie, which is not transmissible to humans. This opinion was also held by the British Southwood Working Party, named after its chairman and set up in 1988 by the British government in order to give advice on the regulation of BSE. In its final report, the Working Party stated that "from the present evidence, it is likely that cattle will prove to be a 'dead-end host' for the disease agent" (House of Lords 2000: Vol. 4, 9:18), i.e. that BSE cannot be transmitted from cattle to other species, including humans. Most of the measures recommended by the Working Party – a feeding ban of meat- and bone-meal to ruminants, a slaughter and compensation policy and a suggestion of further research – were aimed to prevent a further spread of the disease across cattle. Only the proposed ban of specified bovine offal in baby food was a precautionary measure to protect consumers – albeit only a small group of them.

The fundamental problem with the Southwood report was that its basic assumption, namely that BSE would behave like scrapie and would consequently not be transmissible to humans, was by no means undisputed knowledge, but was more an educated guess (House of Lords 2000: Vol. 4, 10:31). This assumption becomes even more striking if one keeps in mind that, at the time of the report, it was already proven that BSE is transmissible to mice (later it was also detected in cats and swine), and that it can consequently cross the species barrier at least to some mammals. However, this qualification became lost in the political process following the report. In the following years, the report, its findings and its policy advice became the basis of regulatory policy-making on BSE in the UK, and all its recommendations were implemented. Whenever asked for stricter measures, the UK government, especially the Ministry of Agriculture, Fisheries and Food, hid behind the Southwood report, which was presented as objective and up to date scientific knowledge (Dressel 2002: 65-129, House of Lords 2000: Vol. 4, 11:1-13, Little 2001, Millstone and van Zwanenberg 2001).

As a 1997 European Parliament report later revealed, the UK government successfully set the agenda for regulatory policy-making concerning BSE in the EU during the time period from 1989 to 1996. Measures relating to BSE were passed under the regulatory procedure. In these cases, the Scientific Veterinary Committee was supposed to develop scientific opinions about the regulatory problem<sup>(5)</sup>. The committee established a working group on BSE that was dominated and chaired by British experts, as they were thought to have the most expertise on the disease. However, these experts did not work independently, and consequently “the Scientific Veterinary Committee tended to reflect current thinking at the British Ministry of Agriculture, Fisheries and Food” (European Parliament 1997: I.2.5). On the basis of these biased scientific opinions, the Commission developed its policy proposals. In effect, as later criticism revealed, the Commission, especially the Directorate-General for Agriculture, tended to give priority to the management of the market instead to the protection of consumers’ health (European Parliament 1997: I.5.1). The Commission proposals were then forwarded for adoption to the Standing Veterinary Committee<sup>(6)</sup>. If qualified majority was not obtained in the Standing Committee, the Commission placed the matter before the Council, which took final decision, also by qualified majority. If no decision was reached in the Council, the Commission was empowered to adopt the proposal under its own responsibility. This complex institutional design of the EU committee system with its various bodies involved in regulatory policy-making led to a lack of transparency and diffusion of responsibilities (European Parliament 1997: I.3.2). Consequently, one body did not always know what the others were doing and everyone was able to hide behind the non-action of others. Collective irresponsibility flourished.

As a consequence of the dominance of British interests in the committee system, the EU’s response to BSE took some time to emerge and was far from comprehensive. The first significant European anti-BSE measure was only taken in July 1989, namely a ban on exports of British cattle born prior to the UK imposed ban of meat- and bone-meal as feedstuff for cattle, and on the offspring of cattle with confirmed or suspected BSE infections<sup>(7)</sup>. Half a year later, this was followed by the introduction of compulsory notification of BSE to the European Commission<sup>(8)</sup> and restrictions on the dispatch of tissues and organs from cattle aged over six months at slaughter<sup>(9)</sup>. It then took another four years before the next significant regulation was introduced. These four years between 1990 and 1994 provide the main evidence of mismanagement of the BSE crisis (Frewer and Salter 2002, Little 2001, Vincent 2004). Community legislative activity in the field of BSE was practically suspended (with the exception of the regulation of bovine embryos<sup>(10)</sup> and the Council held no debates on BSE. Meanwhile, instances of the disease peaked in the UK, with approximately 0,3% of the national herd infected (House of Lords 2000: Volume 16). The first significant legislative breakthrough following this period of blockage was the EU-wide prohibition on the use of meat- and bone-meal for feeding ruminants,<sup>(11)</sup> a legislative response to scientific expertise on the link between BSE infection and the consumption of such feedstuffs.

Another problem that significantly complicated efficient management of the crisis was the lack of proper veterinary control by the European authorities. The EU generally has to rely on the administrative bodies of the member states for the implementation of its regulatory decisions, which can delay implementation or result in misuse of areas of discretion left by EU decisions. Thus, even though some EU legislation was passed during the time-period in question, the effectiveness of its implementation was not guaranteed. A good example of implementation problems was the ban on the use of meat- and bone-meal as feedstuff for ruminants, which was introduced in the UK in 1988, but only introduced in the rest of EU in 1994. This regulatory gap led to a situation where meat- and bone-meal forbidden in the UK since 1988 could still be exported to other member states until 1990. Furthermore, this meal could be fed to ruminants in those states until 1994. These factors were among the major causes of the wide spread of the disease throughout the whole single market. Nevertheless, even after the introduction of the ban, feedstuff for ruminants was still widely produced in the same factories as feedstuff for other farmed animals. Efficient controls on ruminant feedstuffs were missing and, as a consequence, cross-contamination of different feedstuffs with BSE could not be prevented.

To conclude, with regard to the first period, neither of the major preconditions for common problem-solving identified by the analysis of member states' interests were met. There was very strong asymmetry in distribution of risks and costs with only one member state affected by the disease. Consequently, the UK had a strong interest in avoiding a real evaluation of the risk, because they were aware that this would probably lead to a Single Market ban on British beef. The institutional decision-making structure was weak, as neither regulatory independence nor legalisation and judicial review applied. In the end, British interest successfully dominated the political agenda. This finding clearly supports the first hypothesis developed in section 2.4: as long as fundamental uncertainty exists, a single member state that is affected by a regulatory crisis will try to downplay the risks for consumers in order to protect its domestic industry against a ban from the Single Market.

### **3.2. The Rest against Britain: 1996 – 2000** ↑

On 20 March 1996, the British public was informed about a possible link between BSE and CJD (Neyer 2000). Consequently, the UK was no longer able to downplay the risks which BSE contaminated beef imposed on consumers. Seven days later, the Commission and the other member states responded to this new situation by introducing a total ban on the dispatch of live cattle and all cattle products from the UK(12). While the other member states tried to protect their consumers from the risks of the mad-cow disease, they also supported their national beef industries. Other states did not have to face British competition anymore, but were still able to export their products to the UK. Naturally, this strict measure was immediately contested by the British Government. An action challenging the validity of the ban was brought before the ECJ, but it was not successful (Westlake 1997)(13).

Even more pressing for the Commission than British criticism was the awareness of the consequences which this ban would have for trade in the Single Market. The initial ban, though introduced for an indefinite period, was from the outset meant to be temporary. The Florence European Council envisaged the possibility of gradual relaxation of the restriction only three months after the introduction of the ban, once a general eradication framework had been established. The implemented measures were supposed to remain under constant revision by the Commission, which would consider progressive cancellation or moderation of existing restrictions on the basis of the results of controls and scientific analyses.

In June 1996, the Commission adopted a decision<sup>(14)</sup> authorising the conditional and partial lifting of the ban on a very limited number of British bovine products<sup>(15)</sup> and established detailed prerequisites to be met in order for this authorisation to be effective. Two years later the review clause was invoked and, in light of new scientific and empirical data, the Council lifted the ban with regard to certain meat and meat products from bovine animals in March 1998, under the strict conditions set in the Export Certified Herds Scheme<sup>(16)</sup>. A few months later, in light of new inspections and scientific opinions, the Commission further enhanced the UK's export possibilities by authorizing the export of meat and meat products from bovine animals eligible under the newly established Date-Based Export Scheme<sup>(17)</sup>. However, the full removal of the ban became a source of long-lasting disagreement between some member states and resulted in a nationally introduced division of the Single Market for the next couple of years. France's refusal to lift the ban on British beef resulted in the *Commission v. France* case before the ECJ,<sup>(18)</sup> and illustrates the ongoing prevalence of national interests dominated by distributive concerns (Szawłowska 2004).

In reaction to the EU's mismanagement of the BSE crisis between 1986 and 1996, the EP set up a temporary committee of inquiry in July 1996<sup>(19)</sup>. The results of the inquiry and its recommendations for the future were submitted in February 1997. The report (European Parliament 1997) identified a series of problems at different levels of the EU administration (see also part 3.1). First, the report urged the Commission to improve overall transparency of Community actions in the field of health and consumer protection. This required reforming the work of scientific committees assisting the Commission by providing clear rules concerning their independence, as well as transparency of their procedures and the results of their work. Secondly, it was suggested that the EU's public health protection competencies, which were at that time dispersed between DGs III, V, VI and XXIV, should be brought together within a Public Health Protection Unit. This unit could either be a separate DG or operate under the umbrella of an existing DG not directly liable to pressure from agriculture or industrial interests. Thirdly, the report recommended reform of the monitoring measures to combat BSE so as to ensure compliance with Community law and the protection of public and animal health within the member states. To that end, it was suggested that the Commission set up a European Agency for Veterinary and Phytosanitary Inspection. The fourth and final set of recommendations concerned the need to provide a clear legal basis for Community action in the field of public health. The report advocated several amendments to the Treaty and the introduction of a general foodstuffs law with a vision to improve environmental protection and human health (Chambers 1999, Vincent 2004). All together, the EP suggested strengthening the independence of scientific assessment and implementation controls, as well as further legalisation of the regulatory area.

In light of the committee report the Commission declared it would immediately initiate relevant action, starting with reforming its own organization. In order to avoid dangerous conflicts between industrial and consumers' interests, all relevant committees dealing with public health measures were placed under the authority of DG XXIV,<sup>(20)</sup> which was renamed the Directorate-General on Consumer Policy and Health Protection (Vos 2000). Additionally, a Scientific Steering Committee was established in June 1997 in order to coordinate the work of the other scientific committees and to assist the Commission in obtaining the best possible scientific advice<sup>(21)</sup>. The newly-established committee was also entrusted with the special task of dealing with the BSE problem. This 'New Approach to Consumer Health and Food Safety', communicated by the Commission in Spring 1997, and the subsequent 'Green Paper on the General Principles of Food Law in the EU',<sup>(22)</sup> signalled the first major step towards a more general reform of European food safety policy. This reform took account of the need to restore consumer confidence, as well as to separate the responsibility for health and consumer protection from agricultural interests.

Confronting problems with the afore mentioned implementation of European veterinary measures by national authorities and lack of proper control of their effectiveness, the Commission decided to reinforce its inspection capacity. To that effect, the Office of Veterinary and Phytosanitary Inspection and Control in Dublin was reorganised and repositioned under the supervision of DG SANCO. With a new name – Food and Veterinary Office (FVO) – the Office became the major inspection body within that sector, working to assure effective control systems and to evaluate compliance with EU standards.

Despite these first reforms, the general assumption that shaped European legislation throughout the period between 1996 and 2000 was that BSE remained entirely a British, and to some extent a Portuguese<sup>(23)</sup>, problem. The member states therefore considered the existing ban on cattle and beef originating in these two countries a sufficient protective measure. Consequently, other substantive regulations were not adopted. The costs of the ban were borne mainly by the affected countries, since it was their own internal economy and export that were disadvantaged. As a result, other member states were not particularly interested in introducing common regulatory measures, which would have spread the costs among them. In the end, several substantial regulatory measures were blocked due to lack of stable majorities to support them.

The best example of this failure to adopt common regulatory measures is the unsuccessful attempt to introduce a Community-wide regulation on specified risk materials (SRMs). Precisely this measure was proposed by the newly established Scientific Steering Committee. However, the first proposal from the Commission did not receive a qualified majority in the Standing Veterinary Committee and was rejected by the Council. The Commission managed to push a new proposal through the decision-making procedure half a year later,<sup>(24)</sup> but even though it was successfully enacted, its application was suspended several times and in the end it was never become operational. Only after the spread of BSE throughout Europe became a fact, and the relevance of such additional protective measures became evident to all member states, were they willing to accept this specific regulatory measure (for details see: Krapohl 2003).

Concluding the analysis of the second period, it appears that although the institutional structure was slightly strengthened in comparison to the first period, uneven distribution of risks and costs remained an obstacle to the adoption of common substantive measures. On the one hand, the reforms undertaken in consequence of the EP report significantly strengthened the independence of scientific risk assessment. However, regulatory measures were still subject to control by a strong Comitology committee and member states' interests still restricted the room for common problem solving. These national interests, on the other hand, remained determined by the asymmetric distribution of risk, since it was still only the UK that was affected by the disease. The difference to the former period from 1986 to 1996 was that Britain was no longer able to protect its interests, but rather it was the other states which sought to avoid regulatory costs. This finding supports the second hypotheses of the rationalist analysis of the EU committee system: as soon as the risks are evident, the non-affected member states will ban the respective products of the member state from the Single Market. In this way they can protect their consumers against the risks while achieving additional competitiveness for their domestic industry.

### 3.3. Europeanisation and the Open Policy-Window: 2000 and 2001 <sup>↑</sup>

The situation changed again when BSE became a European problem. Although some EU member states had encountered cases of BSE on their territory before, and BSE had already influenced the European beef market and regulatory policies of the member states, the year 2000 nevertheless marked a turning point in the BSE saga. In July of that year, a Scientific Steering Committee opinion on the geographical scope of BSE risk<sup>(25)</sup> stated that in almost all member states (except Austria, Finland and Sweden) the risk of internal BSE infections was high, due to previous imports of British cattle and feedstuffs. This prediction proved right only a few months later, after a reinforced testing programme was implemented in the EU. Several cases of BSE were discovered in member states that had previously been considered 'safe' (e.g. Germany), and in other member states (e.g. France) the number of BSE cases increased significantly. This destroyed the widespread perception in Europe that BSE outside the UK was only a sporadic event that could be traced back to imports of British cattle. Instead, BSE became a widespread epidemic rooted in cattle populations outside the UK. Only at this point did the European countries accept the necessity of comprehensive and common measures, which they had previously been trying to avoid. Thus, by the end of 2000, the situation at the EU level changed fundamentally, which resulted in the adoption of several regulatory policies.

The Commission acted swiftly on the most pressing measures. This was possible because the spread of the disease reduced the asymmetric distribution of risks between the member states, facilitating the adoption of common measures. The epidemic-surveillance programme was reinforced with the introduction of rapid post-mortem BSE monitoring tests<sup>(26)</sup>. The programme was accompanied by financial support from the EU in order to reduce the economic impact of the new provisions and facilitate enforcement<sup>(27)</sup>. Moreover, the Commission finally managed to successfully regulate the problem of SRMs, which was repeatedly delayed before. This was done by introducing a prohibition on the use of SRMs and regulating a procedure for their safe destruction<sup>(28)</sup>. Furthermore, the use of meat- and bone-meal was temporarily completely prohibited in feedstuffs for all farm animals<sup>(29)</sup>, with the aim of preventing the cross-contamination of different feedstuffs within the same plant (Krapohl 2003).

The most recent step relating to BSE law reform was taken in May 2001, when the EP and the Council adopted the so-called 'TSE Regulation'<sup>(30)</sup>. It brought all previously existing BSE measures, adopted by more than sixty Commission Decisions over the years, into a single, comprehensive framework, and updated them in view of scientific advice and international standards. It consolidated the rules for the monitoring of TSE in bovine, ovine and caprine animals, the removal of SRMs and the prohibitions concerning animal feeding. It also introduced new legislation for areas which had not previously been covered by EU rules, such as eradication of TSE and trade rules covering the domestic market, intra-community trade, as well as imports and exports. Furthermore it provided adequate procedures, criteria and categories for the classification of countries according to their BSE status.

Summing up the analysis of the third period, the interests of the EU member states changed fundamentally during 2000. It became obvious that BSE was no longer only a British problem, but that most EU member states were already affected. Consequently, the costs and benefits of common regulatory measures became more symmetric. Common regulatory measures were not blocked by qualified majority of the member states; on the contrary, a qualified majority of them had strong interests in EU regulations in order to fight the disease more efficiently and to spread the regulatory costs. Again, this finding confirms the second hypothesis of the rationalist analysis: Common regulatory measures will only be adopted when a majority of the member states is affected by the

regulatory problem.

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### 3.4. Fundamental Institutional Reforms: The Sequel to the Crisis [↑](#)

The introduction of the most pressing anti-BSE measures on the Community scale was followed by a general reform of the European regulatory regime for foodstuffs (e.g. Buonanno et al. 2001). One of the first steps was the creation of a strong legal basis for EU actions in this field. An amendment to the Amsterdam Treaty introduced a requirement for all Community policies and actions to ensure a high level of human health protection<sup>(31)</sup> (Vos 2000). This means that the aim of such measures is no longer merely to mitigate the side-effects of implementing the Single Market, but rather to deal with public health and consumer protection as fully acknowledged objectives of the European integration process (Lafond 2001).

A second step towards a new approach in food safety regulation was announced by the Commission in its Green Paper,<sup>(32)</sup> followed and further developed in the White Paper on Food Safety<sup>(33)</sup>. The new policy aimed to cover the whole food chain and all stages of the decision-making process. Three pillars of risk regulation in the field of food safety were identified – risk assessment, risk management, and risk communication – and the creation of a European Food Authority was proposed. Finally, these policy ideas resulted in the adoption of a new Regulation on food law<sup>(34)</sup>. The Regulation treats food production as a continuum from the primary production of animal feed to the supply of food for the end consumer, and introduces principles of food law, including the precautionary principle. Further, the European Food Safety Authority (EFSA) was set up, which subsumed the old scientific committees in its administrative structure. EFSA is expected to provide the Commission with scientific advice in an independent, objective and transparent manner. It will also be the center of a network of national scientific institutions. Altogether, the Regulation indicates the division of responsibilities among food and feed business operators, the Member States, and the Community institutions (Hagenmeyer 2002, Kelemen 2002, Chalmers 2003).

The new EFSA may be conceived as an answer to the failure of the old EU committee system during the BSE crisis. The question remains as to whether the new Food Safety Authority will indeed make up for the shortcomings of the previous system, and whether it will be able to deal effectively with the introduction of regulatory measures in case of future crises – especially if regulatory measures imply unusually high and asymmetric distributive consequences. During the first phase of the BSE crisis from 1989 to 1996, the committee system with its diffusion of responsibilities allowed British economic interests to prevail, which led to a lack of independent and transparent scientific advice of regulatory policy-making. The main mission of the EFSA is to improve scientific advice in order to contribute to a high level of health and consumer protection. EFSA was established as a discrete organisational structure detached from the Commission in order to make its advice more independent and its responsibilities more transparent to consumers. However, it can also be argued that this reform falls short of solving all the problems that occurred during the BSE crisis. Even if EFSA is more independent and stronger than the old scientific committees, it is far from being an independent regulatory agency. The mission of EFSA reflects the artificial tension between risk assessment, risk management and risk communication. Because risk management is left completely to the Commission and a member states committee, the authority is only responsible for tasks which belong to risk assessment and risk communication. The most important task is probably the issuing of scientific opinions in matters of foodstuff regulation. However, the final responsibility for risk management matters is left to the Commission and a member states committee. To that effect, it appears that the reform has strengthened the risk assessment phase of the decision making, but does not directly constrain member states where risk management is concerned. There again, the member states may face a cooperation problem similar to that from 1996 to 2000, when they were unable to

adopt common regulatory measures against BSE. Strengthening the scientific basis for Community decisions in the foodstuffs sector will strengthen the decision-making as such, but it is doubtful whether, in face of big distributive discrepancies, this will be enough to discipline the member states.

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## 4. Conclusion <sup>↑</sup>

Because of all the public interest in the BSE case, it can be seen as a critical instance for the study of the EU committee system. The success in handling this crisis is likely to influence political and academic thinking about the committee system in the future. As the above analysis demonstrated, the BSE case supports a rather sceptical, rationalist view on the committee system against a more optimistic, constructivist perception. Accordingly, decision-making in the different committees was constrained by the interests of the member states and distinguished by intergovernmental bargaining. Deliberative problem-solving and convergence of interests only occurred when the costs and benefits of regulatory policies became less asymmetrically distributed, so that a majority of the member states preferred common regulatory solutions.

The analysis of the intergovernmental cooperation problem has shown that the EU member states always act in tension between common and parochial interests when regulating the Single Market. They all have an interest in enjoying the benefits of increased inter-European trade, but at the same time they all face incentives to protect their domestic industries and consumers. Under these circumstances, deliberative problem-solving within the EU committee system cannot be taken for granted, but depends on the particular preference constellation of the member states. If the costs and benefits of common measures are not too asymmetrically distributed, harmonised EU policies can be expected to provide an answer to regulatory problems. But in cases of great asymmetry, there is need for independent regulatory institutions acting within a strong legal framework to overcome the resistance of the member states. If these preconditions are not met, decision-making in the committee system remains vulnerable to distributive conflicts.

In the BSE case, these preconditions for common problem-solving were not fulfilled until autumn 2000: On the one hand, the risk of BSE, and consequently the costs and benefits of regulatory measures, was asymmetrically distributed among the member states. And on the other hand, the regulatory institutions were not independent from political influence, nor did judicial review of regulatory policy-making play a role. The result was that common problem-solving did not take place and protectionism prevailed instead. Until 1996, the UK tried to protect its domestic agricultural industry against a likely ban from the Single Market by downplaying the risks of the disease. Collective irresponsibility within the committee system facilitated the success of this strategy. When the BSE risk to consumers was proven, the EU was still not able to adopt adequate common regulatory measures and the other member states banned British beef from the Single Market instead. The other member states thereby protected not only their consumers against the risk of BSE, but also their domestic industries against imports from the UK while avoiding strong EU regulations. Only after the disease became 'Europeanised' did the member states agree to harmonise regulatory measures.

In consequence of the BSE crisis, the EU regulatory regime for foodstuffs was separated from the agricultural field and fundamentally reformed. EFSA was established to replace the scientific advisory committees. However, it remains questionable whether these reforms will prove strong enough to prevent a reversion to intergovernmental decision-making in all future circumstances. The creation of EFSA contributed to strengthening the position of independent scientific expertise in the decision-making process. But even if the role of scientific expertise is strengthened, regulatory decisions still have to pass a Comitology procedure. During the Comitology procedure, regulatory

decisions are scrutinised by the member states, which may still cause intergovernmental cooperation problems if the distribution of costs and benefits is asymmetric. Consequently, it is to be presumed that the institutional structure of the new regulatory regime for foodstuffs could again prove insufficient to prevent further problems of regulatory policy-making.

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## Endnotes

(\*) The authors would like to thank Christian Joerges and Thomas Gehring for their helpful comments.

(1) February 2006, see the Homepage of the British National Creutzfeld-Jacob Disease Surveillance Unit for the latest numbers: <http://www.cjd.ed.ac.uk/figures.htm>.

(2) There exists some confusion about the terms ‘committee system’ and ‘Comitology’ in the academic literature. Hereafter, ‘committee system’ refers to all scientific and member state committees, which advise or control the Commission during the implementation of broader framework legislation. In contrast, the term ‘Comitology’ is more restricted, and refers only to member state committees, which control the Commission according to the procedures laid down in Council Decision 1999/468/EC.

(3) The term ‘Europeanisation’ refers to the spread of the BSE disease all over the European Single Market (with the exception of Austria, Finland and Sweden) (see section 3.3). Of course, some EU member states already had some BSE cases on their territory before 2000, and BSE had already influenced the European beef market and regulatory policies of the member states. However, the year 2000 marked a turning point in the BSE saga. A scientific opinion of the Scientific Steering Committee and increased efforts to test cattle for BSE, led to the perception that BSE outside the UK was not only a sporadic event, which could be traced back to imports of British cattle, but a widespread epidemic, which was rooted in cattle populations outside the UK. Member states which previously thought to be ‘BSE-free’ (e.g. Germany) found the first BSE cases in their domestic cattle, and in other member states (e.g. France), the number of BSE cases increased significantly. Thus, in the end of 2000, the situation at EU level had changed fundamentally, which resulted in the adoption of several regulatory policies around Christmas.

(4) See C-9/56, *Meroni & Co., Industrie Metallurgiche, S.p.a. v High Authority of the European Coal and Steel Community*, (1957-1958) ECR 133. For further discussion on the so-called ‘Meroni doctrine’ see e.g. Majone and Everson 2001, Vos 1999: 200-203.

(5) Commission Decision 81/651/EEC setting up a Scientific Veterinary Committee, Official Journal L 1981, no. 233, 32.

(6) Council Decision 68/361/EEC setting up a Standing Veterinary Committee, Official Journal L 1968, no. 255, 23.

(7) Commission Decision 89/469/EEC of 28 July 1989 concerning certain protection measures relating to bovine spongiform encephalopathy in the United Kingdom, OJ L 225, 03/08/1989, 51.

(8) Commission Decision 90/134/EEC of 6 March 1990 amending for the second time Council Directive 82/894/EEC on the notification of animal diseases within the Community and temporarily amending the frequency of notification for bovine spongiform encephalopathy, OJ L 076, 22/03/1990, 23.

(9) Commission Decision 90/200/EEC of 9 April 1990 concerning additional requirements for some tissues and organs with respect to Bovine Spongiform Encephalopathy (BSE), OJ L 105, 25/04/1990, 24.

(10) Commission Decision 92/290/EEC of 14 May 1992 concerning certain protection measures relating to bovine embryos in respect of bovine spongiform encephalopathy (BSE) in the United Kingdom, OJ L 15, 04/06/1992, 37.

- (11) Commission Decision 94/381/EC of 27 June 1994 concerning certain protection measures with regard to bovine spongiform encephalopathy and the feeding of mammalian derived protein, OJ L 172, 07/07/1994, 23.
- (12) Commission Decision 96/239/EC of 27 March 1996 on emergency measures to protect against bovine spongiform encephalopathy, OJ L 07, 28/03/1996, 47.
- (13) C-180/96, United Kingdom v. Commission and Council, [1998], ECR-2265.
- (14) Commission Decision 96/362/EC of 11 June 1996 amending Decision 96/239/EC on emergency measures to protect against bovine spongiform encephalopathy, OJ L 139, 12/06/1996, 17.
- (15) Decision 96/362 concerned the following products: bovine semen; gelatine, tallow and similar or derived products obtained using the specified manufacturing methods; products of which they are in gradients.
- (16) Council Decision 98/256/EC of 16 March 1998 concerning emergency measures to protect against bovine spongiform encephalopathy, amending Decision 94/474/EC and repealing Decision 96/239/EC, OJ L 113, 1998, 32.
- (17) Commission Decision 98/692/EC of 25 November 1998 amending Decision 98/256/EC as regards certain emergency measures to protect against bovine spongiform encephalopathy, OJ L 328, 1998, 28.
- (18) C-1/00, *Commission v. France*, [2001], ECR I-9989.
- (19) Established by: Decision setting up a temporary committee of inquiry, (1996) OJ C 261/132.
- (20) Commission Decision 97/579/EC of 23 July 1997 setting up Scientific Committees in the field of consumer health and food safety, OJ L 237, 28/08/1997, p.18. On the basis on this Decision, there were eight scientific committees of that kind, dealing with the following issues: food, animal nutrition, animal health and welfare, veterinary measures relating to public health, plants, cosmetics and other non-food products intended for consumers, medicinal products and medicinal devices, as well as toxicity, ecotoxicity and the environment.
- (21) Commission Decision 97/404/EC of 10 June 1997 setting up a Scientific Steering Committee, OJ L 169, 27/06/1997, 85.
- (22) Commission Green Paper on the general principles of food law in the European Union, COM (97) 176 final.
- (23) In response to rising number of cases of mad cows disease in Portugal, the Commission adopted Decision 98/652/EC introducing an export ban on cattle, beef and beef products originating from Portugal.
- (24) Commission Decision 97/534/EC of 30 July 1997 on the prohibition of the use of material presenting risks as regards transmissible spongiform encephalopathies, OJ L 216, 08/08/1997, 95.
- (25) Final Opinion of the Scientific Steering Committee on the Geographical Risk of Bovine Spongiform Encephalopathy (GBR) of 6 July 2000, available at: [http://www.europa.eu.int/comm/food/fs/sc/ssc/out113\\_en.pdf](http://www.europa.eu.int/comm/food/fs/sc/ssc/out113_en.pdf) (31/10/2005).
- (26) Commission Decision 2000/374/EC of 5 June 2000 amending Decision 98/272/EC on epidemio-surveillance for transmissible spongiform encephalopathies, OJ L 135, 08/06/2000, 27.

(27) Commission Decision 2000/639/EC of 13 October 2000 on the list of programmes for the monitoring of BSE qualifying for a financial contribution from the Community in 2001, OJ L 269, 21/10/2000, 54. and Commission Decision 2000/773/EC of 30 November 2000 approving the programmes for the monitoring of BSE presented for 2001 by the Member States and fixing the level of the Community's financial contribution, OJ L 308, 08/12/2000, 35.

(28) Commission Decision 2000/418/EC of 29 June 2000 regulating the use of material presenting risks as regards transmissible spongiform encephalopathies and amending Decision 94/474/EC, OJ L 158, 30/06/2000, 76.

(29) Council Decision 2000/766/EC of 4 December 2000 concerning certain protection measures with regard to transmissible spongiform encephalopathies and the feeding of animal protein, OJ L 306, 07/12/2000, 32.

(30) Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies, OJ L 147, 31/05/2001, 1.

(31) After the Amsterdam Amendment, the first sentence of Article 152. 1 EC reads: "A high level of human protection shall be ensured in the definition and implementation of all Community policies and activities." Amendment of Articles 95 and 193 EC follows the same direction.

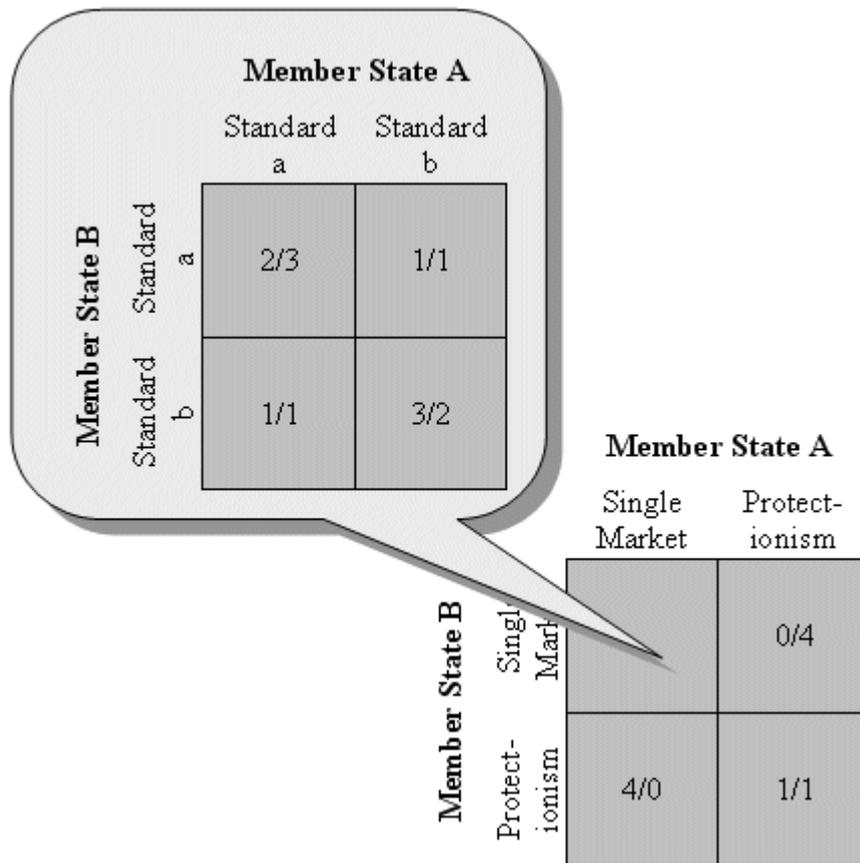
(32) Op. cit, note 21, referred to in part 3.2 of this paper.

(33) White Paper on Food Safety COM (1999) 719 final.

(34) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ L 31/1, 1.2.2002.

# Figure 1

## Risk Regulation in the Single Market



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