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COURT OF AUDITORS

SPECIAL REPORT No 14/2001

Follow up to Special Report No 19/98 on BSE, together with the Commission's replies

(pursuant to Article 248(4)(2) EC)

(2001/C 324/01)

CONTENTS

SUMMARY

I. The Court's Special Report No 19/98 concluded that financing measures taken as a result of BSE were not implemented rigorously or consistently within the Member States, and that the ban on feeding ruminants with mammalian meat and bonemeal (MMBM) was not adequately monitored (see paragraph 2). The report also identified the need for the EU to develop a BSE strategy, as well as the importance of establishing comprehensive and reliable animal registers.

II. The costs borne by the EU for the BSE measures implemented after the 1996 BSE crisis were high (4,7 billion euro) (see paragraph 1). The United Kingdom where 99 % of the BSE cases had occurred (see paragraph 9), has been the largest recipient.

III. The Court's follow up assessed the action the EU took to manage the risk of BSE to animal and human health (see paragraph 5). The Court found that the Commission's BSE strategy is generally sound and based on available scientific knowledge, but its effectiveness has been hampered by inadequate implementation by the Member States and by lack of effective measures available to the Commission to enforce corrective action on Member States (see paragraphs 44 to 46). Through a combination of poor implementation of BSE control measures and a lack of EU–wide definition of specified risk materials (SRMs) (see paragraphs 25 to 27), consumers and animals were exposed to different levels of risk in the Member States.

IV. The Commission services have been reorganised so that consumer health and protection is clearly separated from the beef market management (see paragraph 12(a). The Commission's Food and Veterinary Office (FVO) was reinforced (see paragraph 40), but high staff turnover has caused some problems (see paragraph 41), and the number of BSE–related inspections could be increased (see paragraph 42). The scientific advisory committees have also been reorganised (see paragraph 12(b)) and increased funding has been provided for research into BSE (see paragraph 12(c)).

V. Whilst the major BSE prevention legislation was passed before the 1996 BSE crisis, the acceptance by Member States of certain measures proposed subsequently by the Commission, especially the removal of SRMs was difficult (see paragraphs 24 to 27), and delays have also been caused by the institutional procedures for adoption of legislation (see paragraphs 17 and 18).

VI. The number of BSE cases is likely to have been under-reported in the past. More BSE cases have been reported recently due to better surveillance, with the introduction of compulsory epidemiological surveillance in 1998 (see paragraph 20) and the use of rapid diagnostic BSE tests (see paragraph 19). Animals with BSE born after the 1994 mammalian MBM feed ban provide evidence that the ban has not been properly implemented and controlled, and there is evidence from FVO inspections of lack of controls on trade in MBM. Although the problems of safe sourcing, processing, use and cross contamination of MBM have been known since 1996, and two Member States (Portugal and the United Kingdom) had their own national bans on using mammalian MBM for farmed animals, the Commission, in the absence of a test capable of differentiating between protein of different species, banned the use of animal proteins in feed for all farmed animals in the whole of the EU only from 1 January 2001 (see paragraph 31).

VII. The Court's follow up draws attention to other issues such as modern livestock production and marketing, and support provided through the CAP:

(a) the dangers of using mammalian MBM in feed for ruminants;

(b) promotion of extensive rearing and feeding;

(c) reorienting subsidy payments in the beef and veal sector away from production, while at the same time respecting the need to provide a reasonable standard of living for farmers (see paragraph 16);

(d) animal welfare issues, especially as regards the transport of live animals across the EU, with the resultant risk of spreading disease.

VIII. The follow up report also draws attention to whether the Commission should have additional powers to enforce action against Member States which do not comply with the relevant legislation (see paragraph 51), and whether it requires specific additional powers where Member States do not accept proposals related to animal or human health and protection (see paragraph 50).

MAIN CONCLUSIONS OF THE COURT'S SPECIAL REPORT

1. In 1998, the Court of Auditors produced Special Report No 19/98 on BSE (bovine spongiform encephalopathy) [1] relating mainly to EU income support measures, and specific United Kingdom measures for eradicating animals at risk of BSE. The total cost borne by the EU budget for these market measures, including public intervention and private storage, amounts to 4 696 million euro for the period 1996 to 2000 (see *Figure 1*), of which 1 189 million euro relates to 1998 to 2000. These amounts do not include the costs borne by the Member States themselves, nor the loss in earnings due to the drop in consumption or lost markets. The United Kingdom was the largest recipient, with 43,7 % of expenditure (see *Figure 2*).

2. The main conclusions of the Court's report concerned:

(a) an urgent need for the EU to design and adopt a strategy to deal with this type of crisis [2] (see paragraph 11);

(b) lack of rigour and consistency in the implementation of the measures within and between Member States [3];

(c) failure to adequately monitor the feed ban [4] (see paragraphs 29 to 33);

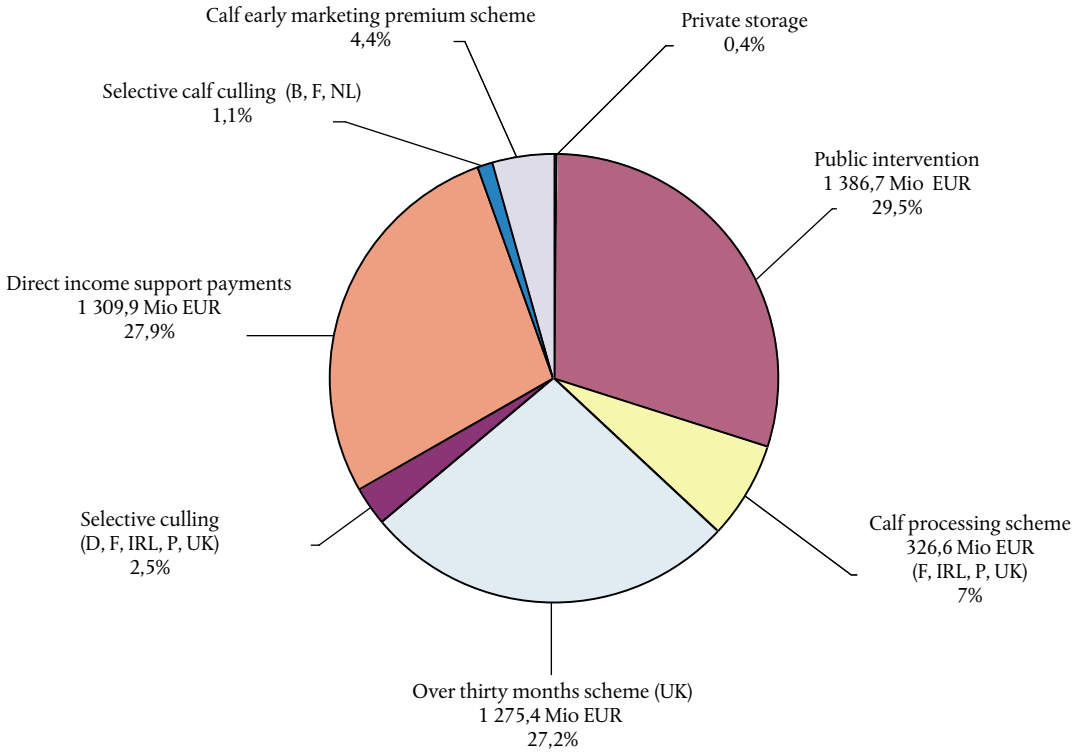
(d) the importance of establishing comprehensive and reliable animal registers in the Member States [5] (see paragraphs 36 to 39).

[1] Special Report No 19/98 concerning Community financing of certain measures taken as a result of the BSE crisis (OJ C 383, 9.12.1998).

[2] Special Report No 19/98, paragraph 96.
[3] Special Report No 19/98, paragraph 93.
[4] Special Report No 19/98, paragraph 92.
[5] Special Report No 19/98, paragraph 91.

Figure 1

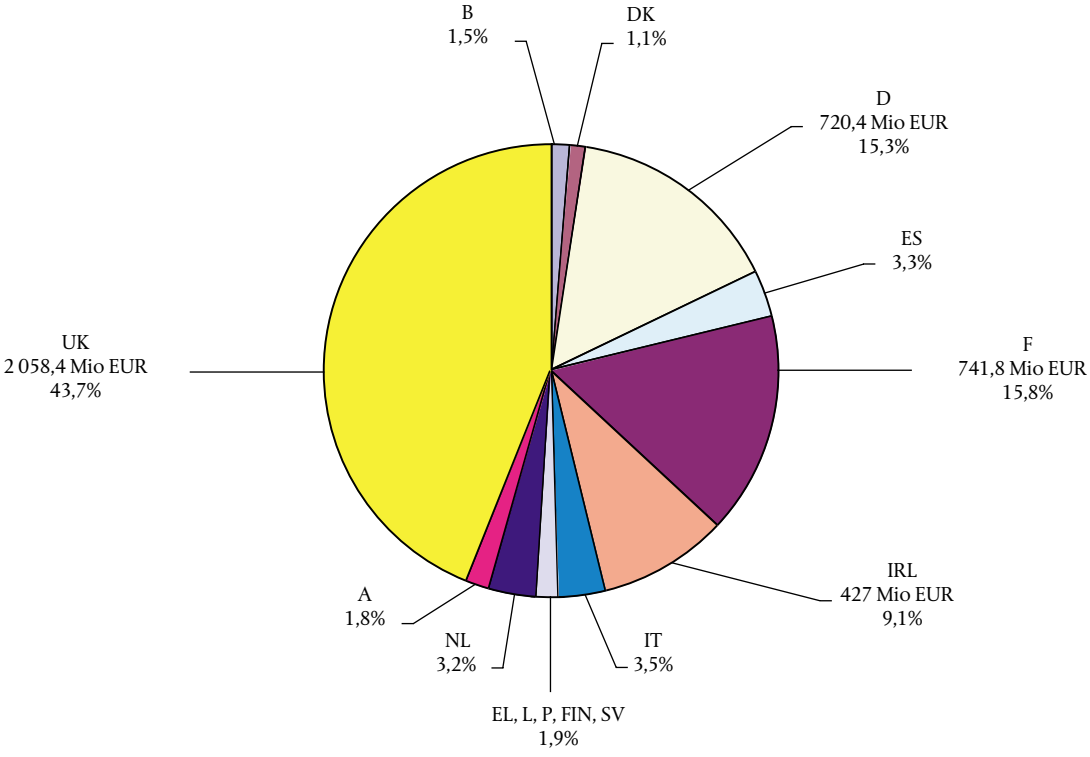
BSE related expenditure from the EAGGF, 1996 to 2000 (Total amount 4 696 Mio EUR)



Source: Court of Auditors review of information provided by DG AGRI.

Figure 2

BSE related expenditure from the EAGGF 1996 to 2000 by Member State



Source: Court of Auditors' review of information provided by DG AGRI.

DISCHARGE AUTHORITY'S RECOMMENDATIONS

3. In the 1997 discharge procedure, the Council recommended [1] that the Commission should formulate a BSE strategy. Parliament noted [2] that the Commission had complied with most of its recommendations [3], but requested the Commission to recover in full the amounts paid out in contravention of the regulations in force and to continue its work on setting up a comprehensive system for the identification and registration of bovine animals.

4. In the United Kingdom, 'the over thirty months scheme' (OTMS) was introduced in 1996 to eliminate cattle over 30 months from the human food and animal feed chains. Due to failures to control and account for the destruction of these animals properly, in May 1999 [4] the Commission excluded 32,7 million euro from Community financing for expenditure up to August 1997 (calculated on the basis of a 10 % disallowance for animals claimed up to 4 July 1996, and a 5 % disallowance for animals claimed between 4 July 1996 and 4 August 1996), and a further correction of about 8 million euro (calculated on the basis of a 5 % disallowance) is foreseen for the final payment. For about half of the other BSE-reporting Member States, smaller financial corrections have been proposed for weaknesses in implementation of income support schemes introduced as a result of the BSE crisis.

SCOPE OF THE FOLLOW UP REPORT

5. In 2001, the Court carried out a review of the BSE measures introduced and implemented by the EU in order to identify and manage the risk of BSE occurring, being propagated and posing a risk to human and animal health. The main Commission services concerned were DG Health and Consumer Protection (DG SANCO), and DG Agriculture (DG AGRI). None of the Member States have been visited.

CAUSES AND CONSEQUENCES OF BSE

6. BSE [5] is one of a number of transmissible spongiform encephalopathies (TSEs), and is a disease of the brain characterised by the presence of an abnormal form of a protein called a prion. BSE was first identified in cattle in the United Kingdom in 1986, and whilst its origins are not known, it is not contagious and scientific evidence to date suggests that it is probably acquired by eating feed containing meat and bonemeal (MBM) contaminated by the infectious agent as well as a low level of maternal transmission (less than 10 %).

7. In 1996, the United Kingdom Government announced that there was a possible link between BSE and a new variant of Creutzfeld-Jacob's disease (NvCJD), a fatal degenerative disease of the brain in humans, similar to BSE in cattle and scrapie in sheep. According to current knowledge [6], the most probable cause is exposure to BSE by eating flesh of infected cattle, although there may be other transmission routes as yet unknown. As at April 2001, there were 99 confirmed or suspected NvCJD cases in the EU [7], mostly in young people.

8. *Figure 3* shows that a wide use is made of animals slaughtered for human consumption. The by-products/animal waste are used for a variety of ends in many different products, but most parts of animals slaughtered end up in the human food chain, either directly or indirectly.

Incidence of BSE

9. The United Kingdom has reported a total of 179 804 confirmed cases up to 31 May 2001, compared to 1 738 cases in other EU countries and 1 673 cases in the rest of the world during the same period. The number of United Kingdom cases peaked in 1992 and has been declining since then. Since 1996, the incidence of BSE in the rest of the EU has been increasing. In 2000 the United Kingdom reported 1 428 cases, compared to 482 in other Member States; while from January to May 2001, this situation reversed, and the United Kingdom reported 246 cases, compared to 323 cases in other Member States (see *Figure 4*). If this trend continues, it would indicate that the reported incidence of BSE in the other Member States is increasing significantly.

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(1) Document 5911/99 FIN 34 PE — L 12.

(2) Document PE 230.646 of 17 March 1999.

(3) The European Parliament's temporary committee of enquiry into BSE, set up in July 1996 soon after the start of the first BSE crisis, was critical of both the Commission and the United Kingdom authorities' response to BSE. In its report of February 1997 (European Parliament document A4-0020/97), it made a series of recommendations on issues mostly related to the public health implications of BSE and the decision-making process and management within the Commission. The European Parliament subsequently set up a follow up committee (on the BSE enquiry recommendations) (OJ C 150, 19.5.1997), which finalised its report in November 1997. This committee reported that the Commission had acted on most of its recommendations.

(4) Commission Decision 1999/350/EC of 4 May 1999 (OJ L 133, 28.5.1999, p. 60).

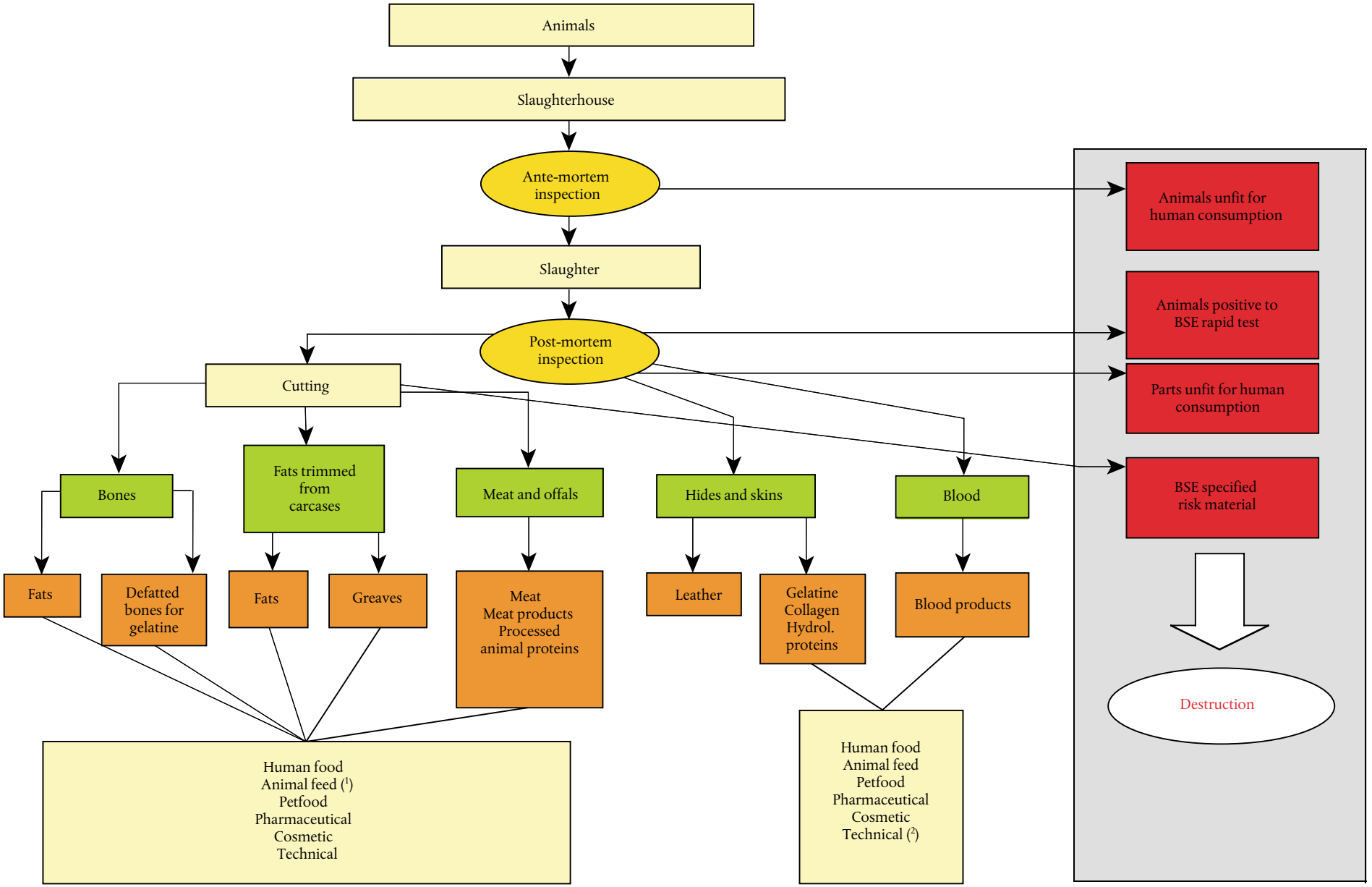
(5) Sources for technical details in this section: various opinions by the Scientific Steering Committee, and Special Report No 19/98.

(6) *Source*: Opinion of the Scientific Steering Committee of 13 and 14 April 2000 'Oral exposure of humans to the BSE agent: infective dose and species barrier'.

(7) All cases have occurred in the United Kingdom apart from three in France and one in Ireland.

Figure 3

Uses of bovine animals slaughtered for human consumption



(1) In case of proteins, following treatment at 133 °C, 20 minutes, 3 bars. In case of fats, following ultrafiltration.
(2) Use other than non-food/ industrial.

Source: DG SANCO.

Figure 4

Incidence of BSE to 31 May 2001

Country	Up to 1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001 (1)	**Total**
United Kingdom	442	2 473	7 166	14 294	25 202	37 056	34 829	24 290	14 475	8 090	4 335	3 197	2 281	1 428	246	**179 804**
Germany	0	0	0	0	0	1 (2)	0	3 (2)	0	0	2 (2)	0	0	7	68	**81**
Belgium	0	0	0	0	0	0	0	0	0	0	1	6	3	9	15	**34**
Denmark	0	0	0	0	0	1 (2)	0	0	0	0	0	0	0	1	2	**4**
Spain	0	0	0	0	0	0	0	0	0	0	0	0	0	2	45	**47**
France	0	0	0	0	5	0	1	4	3	12	6	18	31 (3)	162	86	**328**
Ireland	0	0	15 (3)	14 (3)	17 (3)	18 (3)	16	19 (3)	16 (3)	74	80	83	95	149	55	**651**
Italy	0	0	0	0	0	0	0	2 (2)	0	0	0	0	0	0	15	**17**
Luxembourg	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	**1**
Netherlands	0	0	0	0	0	0	0	0	0	0	2	2	2	2	8	**16**
Portugal	0	0	0	1 (2)	1 (2)	1 (2)	3 (2)	12	15	31	30	127	159	150 (3)	29	**559**
Total excluding UK	**0**	**0**	**15**	**15**	**23**	**21**	**20**	**40**	**34**	**117**	**122**	**236**	**290**	**482**	**323**	**1 738**
Total EU	**442**	**2 473**	**7 181**	**14 309**	**25 225**	**37 077**	**34 849**	**24 330**	**14 509**	**8 207**	**4 457**	**3 433**	**2 571**	**1 910**	**569**	**181 542**
Isle of Man, Jersey, Guernsey	4	41	62	113	157	224	261	146	87	59	58	38	20	14	0	**1 284**
Liechtenstein	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	**2**
Switzerland	0	0	0	2	8	15	29	64	68	45	38	14	50	33	17	**383**
Others (4)	0	0	3	0	0	0	1	0	0	0	0	0	0	0	0	**4**
Total world	**442**	**2 473**	**7 184**	**14 311**	**25 233**	**37 092**	**34 879**	**24 394**	**14 577**	**8 252**	**4 495**	**3 449**	**2 621**	**1 943**	**586**	**183 215**

(1) Date of confirmation of the most recent cases in 2001: Germany (29 May), Belgium (23 May), Denmark (23 February), Spain (25 May), France (30 May), Ireland (25 May), Italy (30 May), Netherlands (2 May). United Kingdom, Isle of Man, Jersey and Guernsey (provisional data as at 25 May), Switzerland (provisional data as at 31May), Portugal (provisional data as at 31 May).
(2) Imported case.
(3) Includes imported cases: Ireland: five in 1989, one in 1990, two in 1991 and 1992, one in 1994 and 1995. France: one in 1999; Portugal: one in 2000.
(4) Imported cases recorded in 1989 (Falkland Islands: one; Oman: two) and in 1993 (Canada: one).

Sources: Commission, DG SANCO.
Up to 1996 inclusive, OIE for all countries.
After 1996, system for the notification of animal diseases for the Member States, plus monthly BSE reports for the United Kingdom and Portugal, along with test reports; OIE for the other countries.

10. As at March 2001, BSE had been reported in all Member States except four — Austria, Finland, Sweden, which have been classified by the Scientific Steering Committee as countries where BSE is unlikely, but not excluded, and Greece, for which there is no geographical BSE risk assessment (see paragraph 23 and *Annex 1*).

THE COMMISSION'S BSE STRATEGY

Main elements of the Commission's BSE strategy

11. The Commission's BSE strategy comprises:

(a) research into BSE, its origins and how it is propagated, in order to identify the risks and enable appropriate risk management measures be taken;

(b) epidemio-surveillance, to identify animals that are at risk of or have BSE;

(c) standards on handling of specified risk materials, to ensure that BSE-infected animals and tissue that is more likely to carry the BSE agent stay out of the human food and animal feed chain;

(d) adequate standards to ensure that all animal waste is treated appropriately in order to minimise infectiveness;

(e) a feed ban to ensure that if there are failures in other layers, cattle are not exposed to the BSE agent through their feed;

(f) an animal identification system to ensure that the provenance of an animal and the holdings on which it has been present can be traced if BSE is diagnosed;

(g) a system to ensure the effective monitoring and enforcement of the above measures by the Member States.

12. The BSE measures implemented to date aim to eliminate possibly BSE-infected matter from entering the animal feed or the human food chain ([1]). The BSE measures taken or proposed by the Commission for implementation by the Member States are summarised at *Figure 5*. In addition to these specific BSE risk management measures, the Commission reorganised its services and took the following action:

(a) responsibility for food safety and veterinary inspection is clearly separated from the market management division of the Agriculture Directorate-General (DG AGRI), in a separate directorate with responsibility for health and consumer protection (DG SANCO);

(b) the various consultative scientific committees have been brought together under DG SANCO. A scientific steering committee (SSC) has been created to oversee matters concerning consumer health and food safety. The SSC is supported by an ad-hoc group dealing with BSE;

(c) the Commission has provided approximately 50 million euro for research into transmissible spongiform encephalopathies (TSEs). This is in addition to Member States' ongoing research projects;

(d) the Commission has proposed the creation of a European food authority ([2]), a Regulation laying down detailed rules for dealing with animal by-products not intended for human consumption and a Regulation to provide a framework for the BSE strategy measures (see paragraph18);

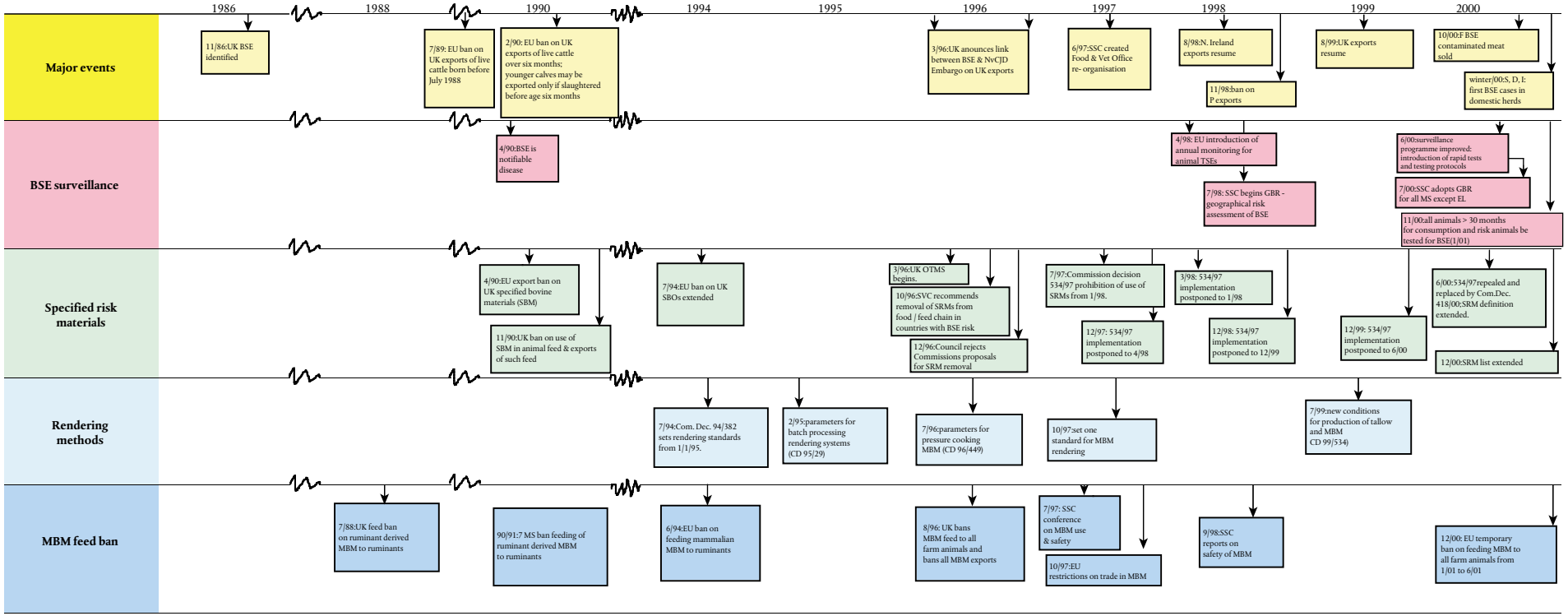
(e) the Commission has followed a policy of openness by making scientific opinions and reports, and the inspection reports of the Food and Veterinary Office (after discussion with Member States) publicly available on the Internet.

([1]) In contrast, derogations are applied for the use of bovine matter in medical/pharmaceutical products, where the industry is self regulatory, in that it has a code of good practice which recommends safe sourcing of raw materials. The nature of the end product makes it difficult to verify the raw material used, and indeed, there is no regulatory requirement to check that safe sourcing or processing has in fact been applied.

([2]) White Paper on Food Safety, COM(1999) 719 final of 12 January 2000.

Figure 5

Major events concerning BSE



Source: Court of Auditors review of BSE legislation and Commission DG SANCO documents.

13. No market measures other than those described in the Court's Special Report were introduced between 1998 and the start of the current crisis in late 2000. By mid-2000, the beef and veal market had recovered from the 1996 to 1997 BSE crisis much quicker than expected ([1]). By mid 2000 consumption was actually higher than before the crisis, prices were at their highest in five years, and there were no intervention stocks.

14. The second crisis started in autumn 2000, first of all in France, where the reported BSE incidence was increasing, due to wide-scale BSE testing (see paragraph 19). Both consumption and prices of beef fell quickly. More BSE cases were reported by the Member States as the new BSE testing programme was implemented, and consumer confidence was further eroded by the first reported cases in domestic herds in Spain, Germany and Italy. Individual Member States quickly imposed unilateral bans on imports of live cattle and bovine products from affected countries, and these were joined by non-member countries and some of the EU candidate countries. By January 2001, before the foot-and-mouth disease, beef prices had fallen by over 25 % ([2]) since October 2000.

15. In response to the crisis, the Commission proposed veterinary measures aimed at increasing public health protection, and restoring consumer confidence (testing of animals over 30 months intended for human consumption, temporary ban on the use of MBM for all farm animals). It also proposed market measures aimed at reducing the production of beef and providing support to producers. These measures envisage removing 1,3 million tonnes of beef from the market in 2001 through intervention storage and the purchase for destruction or storage schemes. The net cost of these measures to the EU budget is estimated at 2 200 million euro over the period 2001 to 2006 ([3]).

16. The Commission has calculated that it is more cost effective to destroy animals under the purchase for destruction scheme (cost to Community budget: 1 260 euro per tonne) than to put them into intervention storage (cost to Community budget 2 860 ([4]) euro per tonne). None the less, the total cost of the BSE crisis is high. Indeed, the estimated 1 748 000 animals eligible for the destruction scheme, and the animals processed for storage, have been subsidised by the EU for several years through the various beef premium schemes. The animal becomes unsaleable but the producer does not lose out on the animal concerned, as Member States' compensation is based on the market value of the animal before the crisis, and the EU contributes 70 % of this. The BSE crisis raises the question of how to reorient subsidy payments in the beef and veal sector away from production, while at the same time respecting the need to provide a reasonable standard of living to farmers.

Legislative basis for BSE measures taken by the EU to date

17. The major BSE prevention legislation had already been passed by the Commission before the start of the first BSE crisis in 1996 ([5]) (see *Figure 5*). The current BSE measures are all based on the veterinary safeguard clauses, which should normally be temporary and based on scientific criteria, and are adopted under the powers delegated to the Commission by the Council.

18. In order to provide a proper legal basis for the BSE measures, in January 1999 the Commission submitted a proposal for a Regulation on transmissible spongiform encephalopathies (TSEs) ([6]) which provides a framework for the BSE measures passed to date as well as rules for trade, secondary processed products, BSE eradication, and any other emerging TSEs. Once adopted under the co-decision procedure by the Council and Parliament, the Regulation would supersede the current measures. The main difference with current legislation is that measures would depend on the BSE status of the Member States and countries exporting to the EU (see *Annex 1*). However, adoption of Regulations by the co-decision procedure is slow owing to delays in the institutions concerned — the Regulation was signed in May 2001 ([7]), 27 months after the proposal was first made.

Epidemio-surveillance

19. Surveillance ([8]) involves identifying the incidence of BSE and animals at risk of being infected, to ensure that appropriate risk

([1]) Special Report No 19/98, paragraphs 16 to 21. Updated situation is from report 'Prospects for agricultural markets 2000 to 2007', Directorate-General for Agriculture, November 2000.

([2]) Drop in prices between week 42 (October) 2000 and week 5 (end of January) 2001: beefmeat young bulls AR3 27 %; cows DO3 28 %; heifers 16 %; steers CR3 2 %.
Source : DG AGRI working document — Market situation for bovine meat and live animals.

([3]) Estimated cost from 2001 to 2006: 3 500 million euro; estimated savings from measures to reduce beef production: 1 300 million euro; net estimated cost: 2 200 million euro.

([4]) The Commission calculation assumes that such beef in intervention will be impossible to sell in the future. This has added 800 euro to the estimated cost per tonne of intervention storage.

([5]) The major BSE prevention legislation was the 1994 ban on feeding mammalian derived MBM to ruminants and treatment of animal waste to reduce infectiveness between 1994 and 1997.

([6]) COM(98) 623 final — C4-0025/1999 — 1998/0323 (COD) (OJ C 45, 19.2.1999, p. 2).

([7]) 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, 31.5.2001, p. 1).

([8]) Passive surveillance is control of notified BSE suspects i.e. cattle that are notified because of clinical signs compatible with BSE. Active surveillance is testing of cattle that are not notified as BSE suspects but belong to risk sub-populations.

management procedures are taken. Currently, BSE can only be confirmed after the death of an animal. Until the introduction of three rapid post-mortem diagnostic tests ([1]) for animals over 30 months in 1999, BSE could only be confirmed by a relatively cumbersome laboratory analysis of the brain. According to the Commission, these rapid tests cannot identify BSE infected animals early in the incubation period nor can a negative result guarantee the absence of the BSE agent in an individual animal tested ([2]).

20. The Commission only introduced compulsory epidemiological surveillance for all animal TSEs ([3]) in 1998, based on the minimum requirements recommended by the World Organisation for Animal Health (Office International des Epizooties (OIE)). Initially, a relatively limited number of brains were required to be tested. After the rapid diagnostic tests were approved in 1999, the monitoring programmes were improved in June 2000 to extensively test at-risk animals ([4]), to establish the national reference laboratories and strengthen protocols for testing following OIE recommendations ([5]). These measures were due to be implemented in January 2001, but following the start of the crisis, the testing programme was again extended. As of January 2001, all bovines over 30 months, slaughtered for human consumption (except in Austria, Finland or Sweden and intended only for their national market), or presented for emergency slaughter must be tested. In addition, dead-on-farm bovine animals over 30 months of age must be tested at random ([6]). Between January and February 2001, over 900 000 rapid tests were carried out across the EU.

21. The number of BSE cases in the past is likely to have been under-reported, as passive surveillance ([7]) may not lead to identification and testing of suspect cases. The FVO inspections have noted weak epidemio-surveillance of BSE in all the Member States visited (see *Figure 6* and *Annex 2*), and have concluded that BSE probably existed in Member States which had yet to report any cases (Germany, Italy, Spain) ([8]), and that in other Member States, the real rate of BSE was probably higher than that being reported by the competent authorities. Before the new testing programme was introduced in January 2001, the FVO found that several Member States needed to improve their surveillance efforts (Belgium, Denmark, Germany, Greece, Spain, Ireland, Italy, Luxembourg, Netherlands, Austria) ([9]).

22. The recent increased number of BSE cases reported by Member States (see *Figure 4*) is partly due to increased and better epidemio-surveillance. The Commission considers that the recent cases reported in Germany, Spain and Italy would probably not have been detected otherwise. In addition, the Scientific Steering Committee's (SSC) geographical BSE risk assessment (GBR) ([10]) considered that more BSE cases may occur in Belgium, Denmark, France, Ireland, Luxembourg, Netherlands and Spain (see *Annex 1*).

23. The SSC started its geographical BSE risk assessment (GBR) of certain countries in 1998, with the aim that future BSE measures applied would reflect their BSE risk status ([11]). The assessment has been carried out for all Member States with the exception of Greece, ([12]) which did not provide the relevant information, and for 32 other countries (see *Annex 1*) and (see paragraph 10).

([1]) Approved rapid post-mortem diagnostic tests: Prionics, Enfer, CEA are able to prove the presence of the BSE agent close to the end of the incubation period for animals that are already clinically ill. These tests cannot identify pre-clinical cases at earlier stages of incubation. They are approved for use on animals over 30 months old, and may not be reliable for animals under that age.

([2]) *Source*: paragraph 4 of the preamble to Commission Decision 2000/764/EC of 29 November 2000 on the testing of bovine animals for the presence of bovine spongiform encephalopathy and amending Decision 98/272/EC on epidemio-surveillance for transmissible spongiform encephalopathies.

([3]) Commission Decision 98/272/EC of 23 April 1998 on epidemio-surveillance for transmissible spongiform encephalopathies and amending Decision 94/474/EC (OJ L 122, 24.4.1998, p. 59).

([4]) 'Fallen stock' dying on the farm, animals presented for emergency slaughter and those showing neurological and /or behavioural symptoms.

([5]) Commission Decision 2000/374/EC of 5 June 2000 amending Decision 98/272/EC on epidemio-surveillance for transmissible spongiform encephalopathies (OJ L 135, 8.6.2000 p. 27).

([6]) Commission Decision 2000/764/EC of 29 November 2000 on the testing of bovine animals for the presence of bovine spongiform encephalopathy and amending Decision 98/272/EC (OJ L 305, 6.12.2000, p. 35).

([7]) Passive surveillance is control of notified BSE suspects i.e. cattle that are notified because of clinical signs compatible with BSE. Active surveillance is testing of cattle that are not notified as BSE suspects but belong to risk sub-populations.

([8]) *Source*: Germany: DRAFT mission 1129/00 between 25 September 2000 and 29 September 2000; Italy: DRAFT mission 1306/00 between 11 December 2000 and 15 December 2000; Spain: DRAFT mission 1305/00 between 11 December 2000 and 15 December 2000.

([9]) *Source*: FVO document reference D33459 of 8 November 2000.

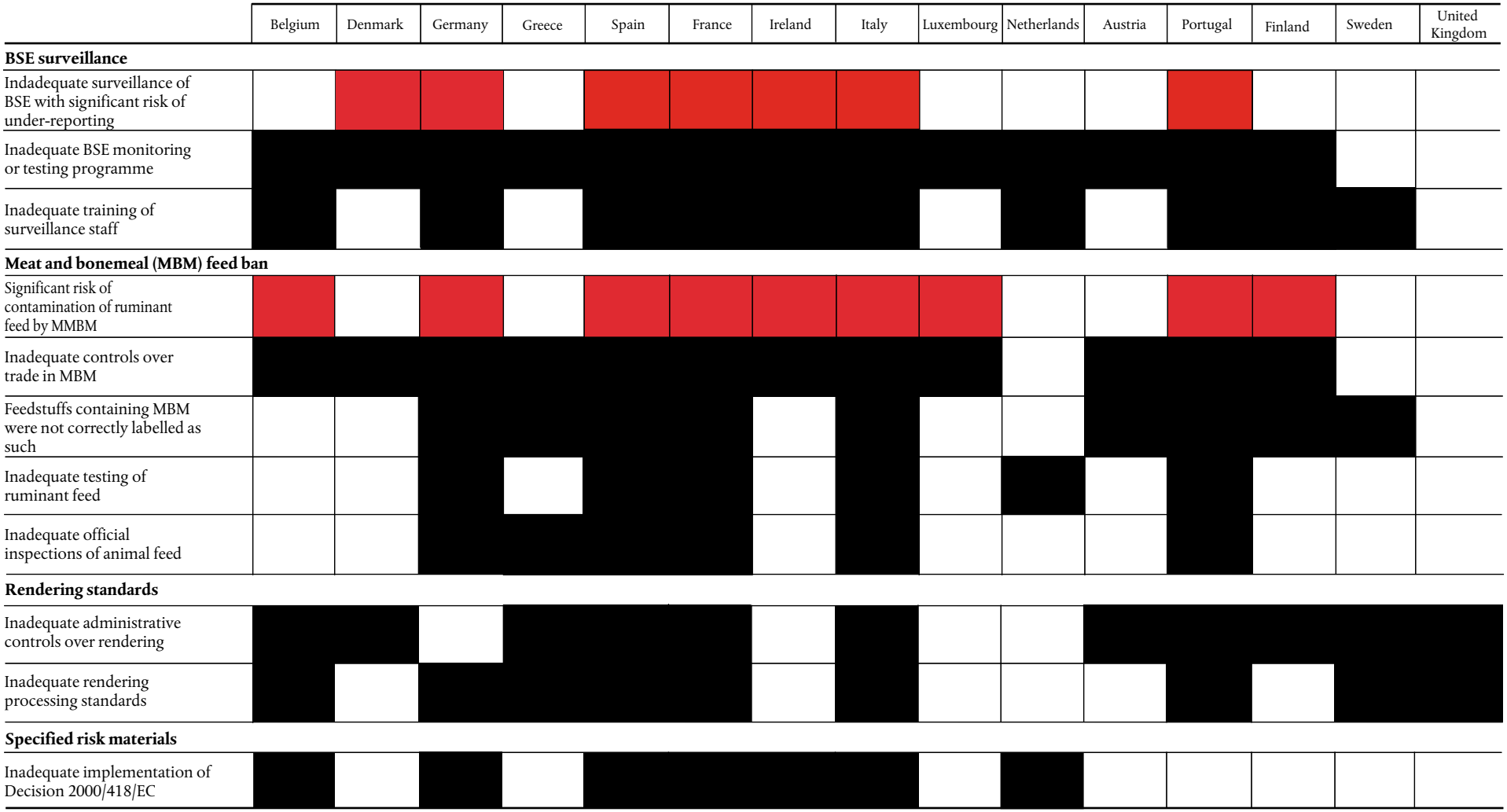
([10]) SSC's final opinion of 6 July 2000 on GBR, Annex II, Section 3, countries with current GBR level III.

([11]) To date (April 2001), the Commission has referred to the GBRs in regulating imports of SRMs from non-member countries; approving specific testing programmes for Austria, Sweden and Finland and providing for the possibility of differentiating BSE control measures by Member State in its proposal for a TSE Regulation.

([12]) The GBR has been prepared on the basis of information provided by the Member States on Commission recommendation 98/447/EC of 22 July 1998. The Greek authorities are prepared to provide this information once the Council and Parliament Regulation on TSE identification and control has been adopted.

Figure 6

Summary of main weaknesses identified by the Food and Veterinary Office (FVO) between 1998 and 2000



NB: The weaknesses in red are particularly serious, as they indicate that the incidence of BSE is higher than reported, and that cattle could have been fed with mammalian MBM.

Source: Court of Auditors review of FVO inspection reports, 1998-2000.

Specified risk materials (SRMs)

24. The SSC considered that tissues had different grades of infectiveness but that it was unwise to consider the BSE agent as present or absent in any particular tissue of an infected animal ([1]). As some tissues are more likely to harbour the infective BSE agent than others (in particular, the brain and central nervous tissue), it is important to ensure that these tissues stay out of the human food and animal feed chain, and that appropriate slaughter procedures are used to prevent the contamination of meat.

25. The Commission's proposals to remove these specified risk materials (SRMs) from the food and feed chains have taken a long time to be adopted and implemented (see *Annex 3*). Its first proposal to the Member States to introduce EU wide controls to remove certain SRM tissues was rejected by the Council in December 1996. These were proposed again to the Member States in July 1997, and in the absence of a simple majority rejecting the proposal in Council, the Commission took a decision on the removal and exclusion of SRMs from further processing ([2]). The Decision was to have been implemented in all Member States from 1 January 1998, but was postponed four times until June 2000, when it was repealed and replaced ([3]).

26. There was no common agreement on what constituted SRMs at the EU level ([4]). Acceptance of the Commission's proposals to remove SRMs took almost four years after EU-wide rules on SRMs were first proposed following the advice of the Scientific Committee.

27. The legislative procedure results in inappropriate delays where Member States do not accept the Commission's proposals, and timely action is required. The Commission cannot impose action on the Member States for issues related to human and animal health. Consideration needs to be given to whether the Commission should have specific additional emergency powers in such situations.

Rendering methods and regulation of animal feed

28. Rendering in accordance with approved standards ([5]) significantly reduces infectiveness but does not eradicate the infective BSE agent found in SRMs (see paragraph 24). Commission decisions set out the rendering methods to be used in order to reduce BSE infectiveness from infected animal waste processed into MBM for use in feed for farmed animals ([6]), and on the inspection and authorisation of rendering plants and animal feed producers. FVO inspections have identified problems in most Member States ([7]) with late transposition of the Community rules into national rules, as well as approval procedures for rendering plants and ensuring that the relevant processing standards have been applied (see *Figure 6* and *Annex 2*). Particularly in those Member States in which there was no national SRM ban ([4]), rendering is unlikely to have eliminated the BSE infective agent.

Mammalian meat and bonemeal (MBM) feed ban

29. Whilst the cause of BSE is not known for certain, consumption of infected material by ruminants is the most likely transmission method. The United Kingdom authorities have prohibited feeding ruminant-derived MBM to ruminants since 1988, and

([1]) SSC opinion on safety of SRMs, December 1997.

([2]) 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, 8.8.1997, p. 95).

([3]) Commission Decision 2000/418/EC of 29 June 2000 regulating the use of material presenting risks as regards transmissible spongiform encaphalopathies and amending Decision 94/474/EC (OJ L 158, 30.6.2000, p. 76).

([4]) According to the SSC opinion on human health exposure of 10 December 1999, Belgium, France, Ireland, Luxembourg, Netherlands, Portugal and the United Kingdom removed SRMs. Austria, Denmark, Germany, Greece, Finland and Sweden did not remove SRMs. Italy and Spain only removed SRMs from animals coming from countries with BSE.

([5]) The minimum standards for processing mammalian animal waste are: maximum particle size of 50 mm; temperature of at least 133 °C, for 20 minutes without interruption, at a pressure of at least 3 bar.

([6]) Commission Decision 94/382/EC of 27 June 1994 on the approval of alternative heat treatment systems for processing animal waste of ruminant origin with a view to the inactivation of spongiform encephalopathy agents (OJ L 172, 7.7.1994, p. 25); Commission Decision 95/29/EC of 13 February 1995 amending Decision 94/382/EC (OJ L 38, 18.2.1995, p. 17); Commission Decision 96/449/EC of 18 July 1996 (OJ L 184, 24.7.1996, p. 43); Commission Decision 97/735/EC of 21 October 1997 concerning certain protection measures with regard to trade in certain types of mammalian animal waste (OJ L 294, 28.10.1997, p. 7); Council Decision 1999/534/EC of 19 July 1999 on measures applying to the processing of certain animal waste to protect against transmissible spongiform encephalopathies and amending Commission Decision 97/735/EC (OJ L 204, 4.8.1999, p. 37).

([7]) Belgium, Denmark, Germany, Greece, Spain, France, Italy, Austria, Portugal, Finland, Sweden and the United Kingdom.

seven Member States also introduced similar feed bans soon after the United Kingdom ([1]). The EU-wide ban on feeding proteins derived from mammalian tissues to ruminants was introduced in 1994 ([2]). Given their relatively high incidence of BSE and in order to avoid cross contamination, the United Kingdom authorities banned mammalian MBM from all feed for farmed animals in 1996 ([3]), and Portugal introduced a similar ban in 1998. In the rest of the EU, mammalian MBM continued to be allowed for use in feed for other farm animals ([4]), as long as minimum processing standards were in place (see paragraph 28). The International Scientific Conference on MBM in 1997 considered whether there was a need for EU legislation to ensure that the raw materials for MBM are safely sourced, (i.e. to exclude animals dying on farm or in transit and all condemned materials from the animal feed chain, so that only material declared fit for human consumption could be used for the production of animal feed). Relevant legislation to remove animal tissues which could present a BSE risk from the food and feed chains did not enter into force until October 2000 ([5]); legislation to remove animals dying on farm or in transit and all cadavers from the animal feed chain entered into force in March 2001 ([6]).

30. The 1996 crisis in the United Kingdom showed that the inadequate implementation of the 1988 feed ban resulted in 36 000 (reported) BSE cases in animals born after the United Kingdom ban (by the time of Special Report No 19/98). All Member States having reported BSE cases except Luxembourg have now reported cases in animals born after the EU ban of 1994.

31. FVO inspections have repeatedly reported on inadequate implementation of the feed ban in all Member States (see *Figure 6* and *Annex 2*). Even in its inspections between 1998 and 2000, up to six years after the ban was first introduced the FVO found that there was a significant risk of contamination of ruminant feed by mammalian MBM in nine Member States ([7]). In addition, a certain level of contamination was tolerated by most Member States (except Denmark, Netherlands and Ireland) despite the fact that Community legislation does not allow any such tolerance ([8]). The FVO inspections in 1998 to 2000 also found weaknesses in the control of trade in MBM in most Member States (see *Figure 6*). In December 2000, due to concerns about cross contamination and following the opinion of the Scientific Steering Committee ([9]), the Council temporarily banned the use of animal proteins in feed for all farmed animals ([10]).

32. Following the United Kingdom experience, the Commission was aware of the risk of cross-contamination in feed mills, knowing that SRMs were not being systematically removed in all the Member States, that animal waste used for producing MBM was not safely sourced and that the MBM ban on ruminants only would not be foolproof. Community legislation deals with the minimum standards for feed mills. However, there is no EU obligation to impose dedicated feed mills, which would have greatly reduced risks of cross-contamination.

([1]) The United Kingdom banned ruminant derived MBM for cattle in 1988. Other Member States introduced their feed bans in: Austria (mammalian protein for ruminants in December 1990); Denmark (ruminant proteins for ruminants in June 1990); Finland (mammalian proteins for ruminants in March 1995); France (mammalian proteins for bovines in July 1990; mammalian proteins for all ruminants in December 1994 and all animal proteins except milk and fish for ruminants in July 1996); Ireland (ruminant protein for ruminants in August 1990); Netherlands (ruminant proteins for ruminants in August 1989); Sweden (ruminant MBM for ruminants in December 1990, and ruminants proteins for all animals in December 1997); Member States that had no feed ban in place until the EU-wide ban on mammalian proteins for ruminants in 1994: Belgium, Germany, Greece, Italy, Luxembourg and Spain. *Source*: DG VI mission reports in 1996.

([2]) Commission Decision 94/381/EC of 27 June 1994 on the ban on use of proteins derived from mammalian tissue for feeding ruminants, as amended, with effect from 4 July 1994 (OJ L 172, 7.7.1994, p. 23).

([3]) The United Kingdom was banned from exporting mammalian MBM produced before 1 January 1995, and was allowed to export MBM produced after that date only if the recommended processing standards had been complied with. From 1996, there was a total ban on United Kingdom exports of MBM.

([4]) France banned the feeding of all proteins of animal origin (except milk, eggs and certain other protein) to farmed animals in November 2000.

([5]) Commission Decision 2000/418/EC of 19 June 2000 regulating the use of materials presenting risk of TSEs.

([6]) Commission Decision 2001/25/EC of 27 December 2000 prohibiting the use of certain animal by-products in animal feed.

([7]) Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, Portugal (up to July 1999) and Finland.

([8]) *Source*: working document of the Commission services, April 2001, ref. SANCO/1531/2001 Rev.1 'Use of processed animal proteins in animal feed'.

([9]) SSC opinion of 27/28 November 2000 on the scientific basis for banning animal protein from the feed for all farmed animals, including pigs, poultry, fish and pet animals.

([10]) 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, temporary ban from 1 January to 30 June 2001 (OJ L 306, 7.12.2000, p. 32).

33. In addition to the failure of Member States to implement the feed ban, there is evidence from the FVO inspections that the agro-feed industry (including renderers and feed mills) did not do enough to avoid contamination of cattle feed by MBM, and that feed containing MBM was not always correctly labelled (in Germany, Greece, Spain, France, Italy, Austria, Portugal, Finland and Sweden). These failures contributed to farmers inadvertently using potentially infective feed for their cattle.

34. The temporary ban on the use of MBM for all farm animals, the purchase for destruction scheme and prohibition of the use of certain animal tissues (SRMs) will create animal waste that has to be disposed of safely and without a negative impact on the environment. Before the current feed ban ([1]), an estimated 16 million tonnes of animal waste was recycled for animal feed every year in the EU. In the short to medium term, the Commission considers the most common way of disposing of this waste will be to convert it into MBM for incineration or landfill, with unavoidable environmental consequences ([2]). However, the incineration capacity required for this is not immediately available in the EU. The cost of such disposal is estimated to be 3 000 million euro, and another 1 300 million euro will be lost in revenue (from the waste) to producers and the rendering industry ([3]).

35. The temporary ban on using MBM in feed for farmed animals, creates a need to find plant-based alternatives to processed animal protein for use in animal feed. Animal derived proteins — mostly MBM — provided only 2,4 % of the protein element in animal feed in the EU ([4]) (and if there is even minimal contamination by infected MBM, then BSE can be spread (see paragraph 6)) and can be readily substituted by forage crops, cereals, and oilseed products. The issue of whether it is appropriate to feed animals which are naturally herbivores with feed which includes animal parts has become more topical, and the Commission's recent proposals include measures to encourage more extensive farming.

Animal movement and identification

36. The transport of animals and meat products (including MBM) within and between the Member States is significant. One of the side effects, however, is that the risk of spreading BSE and other animal diseases is increased by trade. According to the SSC, 'the export of infected animals and infected feed (from the United Kingdom) provided the means for the spread of the BSE agent to other countries, where it was again recycled and propagated via the feed chain' ([5]). The 1996 BSE crisis reinforced the need for an efficient system for bovine identification and registration, and highlighted the deficiencies of the current systems for tracing cattle potentially at risk of BSE. In April 1997, the Council replaced the existing 1992 Directive on animal identification and registration with a new Council Regulation ([6]), which adapted the rules for eartagging ([7]) and herd registers, and introduced requirements for a computerised database ([8]) and animal passports. Detailed rules for inspections to verify compliance with these measures were introduced in December 1997 ([9]).

37. The total export ban of March 1996 on live animals and bovine meat or meat products from the United Kingdom was lifted gradually to allow exports of beef produced under restricted

([1]) *Source*: Commission proposal for a Regulation of the European Parliament and of the Council laying down health rules concerning animal by-products not intended for human consumption COM(2000) 574 final of 19 October 2000.

([2]) *Source:* Commission working document SEC(2001) 631 of 10 April 2001. In addition, the report of the first session of the International Scientific Conference on meat and bonemeal organised under the aegis of the Scientific Steering Committee of the EU, Brussels 1 and 2 July 1997, considered the following options for waste disposal if MBM was banned as animal feed — by application to land as fertilised, by incineration or by landfill.

([3]) *Source*: Commission note on economic impact of a total ban on animal meal (undated).

([4]) *Source*: document de travail des services de la Commission 'Offre et demande de plantes riches en proteins dans l'UE à la suite de la crise de l'ESB' SEC(2001) 431 of 16 March 2001.

([5]) Chapter 2.2 final opinion of 6 July 2000 of the Scientific Steering Committee on the geographical risk of BSE.

([6]) Council Regulation (EC) No 820/97 (OJ L 117, 7.5.1997, p. 1). This Regulation deals with the provisions directly applicable to the integrated administration and control system as well as labelling of beef and beef products.

([7]) Eartags are to be applied to each ear to identify all animals on the holding born after 1 January 1998 or intended for intra-Community trade after that date.

([8]) The computerised database should be fully operational by 31 December 1999. Once the database is operational, holdings must report to the competent authority all movements, births and deaths of animals. Council Directive 97/12/EC (OJ L 109, 25.4.1997, p. 1) concerns veterinary measures for intra-Community trade, but also specifies the requirements for the computerised database as stipulated by Council Regulation (EC) No 820/97 (OJ L 117, 7.5.1997 p. 1). Article 14 of the Directive refers to the information which should be available in the computer system: the identification code, date of birth, sex, breed or colour of coat, ID code of the mother cow (dam), the ID number of the holdings where born, ID numbers of all holdings where the animal has been kept, the dates of each change of holding, date of death or slaughter. If these requirements are respected the database could provide complete documentation on each bovine animal.

([9]) Commission Regulation (EC) No 2630/97 (OJ L 354, 30.12.1997, p. 23). The risk analysis must take into account the number of animals on the holdings; public and animal health considerations and any previous existence or outbreak of disease, the amount of bovine premium claimed/paid in comparison to previous years, other significant changes and the results of checks conducted in earlier years (e.g. the proper keeping of holding register and passports).

conditions ([1]). The ban in Northern Ireland was lifted as of 1 June 1998 and for mainland Britain from 1 August 1999. The Standing Veterinary Committee decided in March 2001 that the export ban of November 1998 on Portugal ([2]) could be lifted, but that the date would depend on a positive inspection report by the FVO.

38. The Court's Special Report No 4/2001 ([3]) on the integrated administration and control system found that although the deadline for implementation of the computerised database was 1 January 2000, eight Member States had databases which had not been approved by the Commission services as fully operational ([4]); and that there were weaknesses in the approval, monitoring, and content of bovine identification and registration databases.

39. Inspections carried out by both the FVO of DG SANCO and by the Clearance of Accounts unit of DG AGRI, consistently report delays and problems with the implementation of the animal identification and registration legislation by Member States.

Monitoring and enforcement

Food and Veterinary Office (FVO) inspections

40. Since the reorganisation of the Commission services, the working methods of the FVO have been improved, and a work flow programme has been developed. There is six–monthly and annual planning, and reports are better structured, giving clear conclusions and recommendations to the Member States and to other Commission services. Reports undergo an in-house quality control procedure and are finalised only after Member States have been consulted. A record of all findings and recommendations is maintained in a database.

41. The FVO has undergone three reorganisations and two relocations since 1997. Although staff numbers have been increased, there are not enough staff to carry out the BSE inspections. The team that deals with BSE related matters (amongst other issues) normally consists of six inspectors, and has currently been reinforced by another six inspectors. Staff turnover is high — 65 % of the FVO inspectors in January 2001 had been there for less than two years, making it difficult for the FVO to have sufficiently experienced inspection team leaders.

42. The FVO carried out 96 BSE-related inspections ([5]) between the crisis of 1996 and the end of 2000. This represents about 10 % of total FVO inspection activity, and an average of one BSE-related inspection per year to each Member State (apart from the United Kingdom, which was inspected more frequently).

Assessment of implementation of BSE strategy by Member States

43. The Commission (FVO) inspections since 1996 have reported widespread and continuing problems with the implementation of the BSE measures in all the Member States. The main problems found are referred to in paragraphs 21 to 39. See *Annex 2* for an overview of issues reported by the FVO between 1998 and 2000, and *Figure 6* for an indication of the main weaknesses identified by the FVO between 1998 and 2000. The fact that many of the problems continued to be reported in inspections from 1998 to 2000, suggests that most Member States ([6]) have not been rigorous enough in ensuring that BSE measures have been adequately implemented in their territories.

Measures available for enforcement of the EU's BSE strategy

44. Where an FVO inspection highlights problems, the Commission can undertake bilateral discussions with the Member States concerned and use single market legislation to impose trade bans to protect human or animal health. But the only concrete measure open to the Commission to enforce the application of relevant legislation (for example, the control of animal feed) is to institute infringement procedures. These procedures are slow and to date, most cases have not been taken forward to the European Court of Justice (see paragraph 46). Only in cases of perceived high risk to human or animal health are trade bans on exports used, as was the case for the United Kingdom and Portugal. There is no

([1]) The date-based export scheme allows exports of meat only from animals born after a certain date on farms that have been BSE free for eight years, prepared under certain conditions and from animals which can be traced.

([2]) The OIE considers BSE risk to be important if in a 24-month period BSE cases are reported in well over 100 per million cattle. In January 2001, incidence in Portugal was 167,9 compared to 247,5 in the United Kingdom.

([3]) Paragraph 42 of Special Report No 4/2001, on the audit of the EAGGF-Guarantee — the implementation of the integrated administration and control system (IACS) together with the Commission's replies (OJ C 214, 31.7.2001).

([4]) Animal databases that are not fully operational: Portugal, the United Kingdom excluding Northern Ireland, Italy, Greece, Ireland, France, Spain and Germany.

([5]) This figure does not include inspections relating to meat hygiene, trade or animal identification.

([6]) Particularly Belgium, Denmark, Germany, Spain, France, Ireland, Italy, Luxembourg, Portugal and Finland.

procedure for imposing financial corrections or penalties and sanctions ([1]) on veterinary expenditure or market measures because of failure to comply with veterinary legislation.

45. This can be contrasted with the DG AGRI clearance of accounts procedure, where inspection reports can be used to exclude amounts from Community funding for the market measures concerned.

46. In the period 1997 to 1999, 19 infringement procedures were opened by the Commission against 13 Member States (the exceptions were Austria and Ireland ([2]). Most of these date from the period 1997 to 1998, and relate to the implementation of the feed ban and treatment of animal waste. Of these, the only infringement taken as far as the European Court of Justice concerns the internal market: in 2000 for France's ([3]) refusal to resume beef imports from the United Kingdom. The other procedures were not pursued by the Commission either because the Member States involved undertook to improve their controls, or because the controls required by the relevant BSE legislation at the time were too general to allow Member States to be successfully prosecuted for non-compliance. The threat of carrying forward infringement action against Member States that do not comply with EU legislation has not been a sufficiently strong incentive to Member States to correctly implement the EU's BSE legislation.

CONCLUSIONS

47. The main recommendation of the Court of Auditors in its Special Report No 19/98 was that the Commission should develop an action plan to deal with the BSE crisis. This follow-up review has found that the Commission's strategy is basically sound, but that implementation by Member States is problematic, and inappropriate delays occurred in the adoption and implementation of key BSE control measures (see paragraphs 25 and 27).

48. The second BSE crisis has to be seen in the context of Member States' poor implementation of existing EU legislation (see *Figure 6*). Poor surveillance (see paragraph 21), and poor implementation of the mammalian MBM feed ban (see paragraphs 30 and 31) in most Member States (with the exception, since 1996, of the United Kingdom, and since 1999, of Portugal), and poor controls over trade in MBM and animal feed (see paragraph 31), might have contributed to preventing BSE from being eradicated, and to its spread to other Member States. The 1994 feed ban has not been effectively implemented. All Member States which have reported cases of BSE in their native herds (except Luxembourg) have had BSE cases born after the ban on feeding mammalian MBM was introduced in 1994 (see paragraph 30). FVO inspection reports between 1998 and 2000 found significant risk of contamination of ruminant feed with mammalian MBM in most Member States. The problems of safe processing, use and cross-contamination of MBM have been known since 1996, but the temporary ban on the use of processed animal proteins for all farm animals was only implemented with effect from 1 January 2001 (see paragraph 31).

49. 99 % of cases of BSE reported to date in the EU have been in the United Kingdom (see paragraph 9). However, according to FVO inspection reports, the true incidence of BSE was probably under-detected by other Member States until at least the end of 2000. Moreover, Member States which had long claimed to be free from BSE (Germany, Italy, Spain) have started reporting cases (see paragraph 21). The cost of the BSE crisis to the EU budget has been, and will continue to be high (see paragraphs 1, 4, 15 and 16).

50. Under the current legislation, the Commission, when faced with sufficient opposition from Member States is unable to impose action on Member States in matters involving human or animal health (see paragraphs 25 and 27). The institutional legislative process has also caused inappropriately long delays in the implementation of key BSE control measures, even though speedy action was required to implement measures to protect animal and human health (see paragraphs 18, 25 and 29).

51. The measures currently available to the Commission to enforce the implementation of BSE legislation by Member States are not adequate (see paragraphs 44 and 46) and have not been a sufficient incentive for Member States to correctly implement BSE measures. This is in contrast with the DG AGRI clearance of accounts procedure for market measures, whereby financial corrections in EAGGF support encourages Member States to take corrective action.

52. According to FVO inspection reports, there is evidence that the agro-feed industry was not rigorous enough in implementing the EU's BSE legislation. In particular, the FVO found that ruminant feed was contaminated with MBM, and feed containing MBM was not correctly labelled (see paragraph 33).

([1]) Except for penalties imposed for failures to implement animal identification and registration requirements under the integrated administration and control system premium schemes.

([2]) In the case of Ireland, bilateral discussions were held between DG SANCO and the authorities concerned to persuade the Member State to take corrective action. (FVO document reference D33459 of 8 November 2000).

([3]) In addition, infringement procedures were taken against Germany, but as Germany took corrective action, the case was not proceeded with.

53. The extensive intra–Community trade in bovines and MBM also contributed to the spread of BSE throughout the EU (see paragraph 36). The current crisis underlines the need to reassess bovine feeding and husbandry practices (see paragraph 35). BSE would not have been propagated if bovines had been reared extensively and fed their natural diet.

54. Consumers (and animals) were exposed to different levels of risks in the Member States, through a combination of poor implementation of BSE control measures (see *Figure 6* and *Annex 2*), and a lack (until October 2000) of an EU-wide definition of SRMs (see paragraph 25). It is paradoxical that on the one hand, the Member States, through the Council recommendations on discharge (see paragraph 3) support the need for the Commission to formulate a BSE strategy, yet have often been remiss when it comes to adoption or implementation of the strategy.

RECOMMENDATIONS

55. Consideration needs to be given:

(a) to whether the Commission should be given temporary emergency powers when Member States do not agree with proposals for legislation related to protection of animal or human health, and whether the Commission needs additional powers to reinforce infringement procedures ([1]);

(b) to the possibility of excluding funding from market measures where inspections reveal significant non-compliance with EU legislation, as non-compliance can have a considerable effect on the beef market management and lead to significant extra budget expenditure;

(c) to how, in the light of the problems for the control of BSE (and other animal diseases) caused by the significant movements of animals and MBM within the EU, animal movements could be reduced, and better information on these movements provided, when human or animal health is endangered;

(d) to how to reorient subsidy payments in the beef and veal sector away from production, while at the same time respecting the need to provide a reasonable standard of living to farmers;

(e) in the light of the continuing BSE crisis, to how to further encourage extensive and environmentally friendly farming practices and the replacement of animal based proteins with plant based alternatives for ruminants.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 13 September 2001.

For the Court of Auditors

Jan O. KARLSSON

President

([1]) The Court notes that a similar recommendation was made in the White Paper on Food Safety COM(1999) 719 final of 12 January 2000, paragraph 94.

ANNEX 1

SCIENTIFIC STEERING COMMITTEE'S OPINION ON GEOGRAPHICAL RISK OF BSE (GBR) [1]

1. The geographical BSE risk (GBR) is a qualitative indicator of the likelihood of the presence of one or more cattle being infected with BSE, pre-clinically as well as clinically, at a given point in time, in a given country.

2. The GBR is not an indicator of the risk to human health — this is dependent on the risk management measures taken to prevent BSE-infected matter ending up in the human food chain.

3. Eight factors are taken into account for the GBR, in accordance with methodology established in 1998 — structure and dynamics of the bovine population, BSE surveillance, BSE-related culling, cattle and MBM imports, feeding, MBM-bans, SRM-bans and rendering.

4. The GBR has been established for all Member States except Greece and 32 other countries since July 2000, and is currently (May 2001) on-going for another 13 countries.

GBR level	Member States [1]	Non-member countries
I — highly unlikely		Argentina, Australia, Botswana, Brazil, Chile, Costa Rica, Namibia, Nicaragua, Norway, New Zealand, Paraguay, Singapore, Swaziland, Uruguay
II — unlikely but not excluded	Austria, Finland, Sweden	Canada, Colombia, India, Kenya, Mauritius, Pakistan, Slovenia, USA
III — likely but not confirmed, or confirmed at a lower level	Belgium, Denmark, Germany [2], France, Ireland, Italy [2], Luxembourg, Netherlands, Spain [2]	Albania, Cyprus, Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, Slovak Republic, Switzerland
IV — confirmed, at a higher level	Portugal, United Kingdom	None

[1] No GBR has been produced for Greece, as the requisite information was not provided. The SSC therefore considered it prudent to assume that the geographical BSE risk in Greece was at a high level (opinion on GBR, Section 3.4 'The case for Greece').
[2] At the report date (July 2000), there were no confirmed domestic cases.

5. According to the SSC, all EU Member States are faced with a certain risk of having BSE in their national herds [2]:

(a) in seven Member States (Belgium, Denmark, France, Ireland, Luxembourg, Netherlands, and Spain) the SSC considered that 'for the time being, it cannot be excluded that (more) BSE cases may occur...';

(b) for Germany, Italy and Spain, which at the time of the opinion had no reported cases of BSE in domestic herds, the SSC GBR concluded that BSE is likely to be present in the domestic cattle population, but at levels below the limits of passive surveillance.

6. The opinion also indicated what the expected GBR trend would be in the foreseeable future [3] — it was expected to decrease in almost all the Member States if the proposed decisions for rendering (1999/534/EC for 1 July 2000) and SRM (according to 2000/418/EC, planned for 1 October 2000) were appropriately implemented. However, for four Member States (Belgium, Germany, Italy and Luxembourg), the GBR was expected to increase even with these measures in place.

[1] Final opinion of SSC on the GBR, adopted 6 July 2000.
[2] Opinion on GBR, Annex 2, Section 3 — countries with current GBR level III and Table 3.
[3] Opinion on GBR, Section 3.1 and Table 6 overview of results of GBR assessment for 23 countries.

ANNEX 2

BSE controls in the Member States — overview of issues reported by the Food and Veterinary Office, 1998 to 2000

	Surveillance	Feed ban	Specified risk materials	Rendering
Belgium ([1])	The BSE sampling programme is not correctly targeted.	Official inspections at feedmills are inadequately targeted and implemented.	No satisfactory guarantees that Decision 2000/418/EC is being implemented correctly; risk that SRM could end up in the food or the feed chain.	Insufficient level of official controls at rendering plants. Cross-contamination of sterilised MBM by non-sterilised MBM could not be excluded, at the reprocessing plant visited.
Denmark ([2])	Under-reporting of BSE suspects cannot be ruled out, as the monitoring programme is inadequate.			A rendering plant visited was not operating in accordance with the processing standards of Decision 96/449/EC.
Germany ([3])	There is a high probability that cases of BSE have gone undetected. The monitoring and testing programmes were inadequate.	The feed ban has not been applied effectively, and there was frequent cross-contamination of ruminant feed by MBM.	Based on the lack of official movement documentation for SRM materials, the overall system cannot yet be considered as reliable.	Some MBM was in fact being processed (for use as feeding stuff) to a lower standard than that specified in Decision 96/449/EC. There is no national legal requirement to process MBM according to the minimum standards set out in Commission Decision 96/449/EC and legal provisions at *Länder* level varied.
Greece ([4])	The BSE sampling programme does not comply with Commission Decision 98/272/EC in terms of sample size and category of animals to be tested.			Rendering was not carried out to the required standards.

	Surveillance	Feed ban	Specified risk materials	Rendering
Spain ([5])	The surveillance programme is not correctly targeted. It was inadequate in Castilla y León but had improved in Galicia.	Implementation of the feed ban was improved by recent national legislation.	The transposition of Commission Decision 2000/418/EC is not yet complete, lacking some aspects (production of mechanically recovered meat, the prohibition of certain slaughtering techniques, the import into the EU of certain products of animal origin). In Galicia, the lack of incinerators/ landfill sites will result in an end to the collection of SRM/fallen stock as soon as the dedicated rendering plant reaches the maximum storage capability. In Castilla y León and Galicia, implementation of the new SRM rules was not yet being adequately enforced.	Improperly processed MMBM was produced and sold, at national level, to the feed industry up until the end of 1997- spring 1998.
France ([6])	Epidemio-surveillance of BSE has been effective in France since November 2000. The number of confirmed cases increased about fivefold in the year 2000. This increase is mainly due to increased passive and active monitoring. However before 2000, it is probable that there was significant underestimation of BSE incidence in France. Instructions and training of control staff is now generally of high quality.	Before 14 November 2000 cross-contamination of ruminant feed was possible. The method now used to test for presence of MMBM in ruminant feed is of high quality, and the number of samples taken has increased considerably. Before the total feed ban came into force, the competent authority did not effectively enforce the feed ban. There was poor cooperation between the veterinary service and the State attorney. Some feed mills were not effectively avoiding cross-contamination of ruminant feed.	Provisions concerning SRM have been implemented in France since July 1996. Currently, the French provisions are stricter than those laid down in Commission Decision 2000/418/EC. Although the controls were well implemented in the plants visited, a harmonised approach on SRM handling cannot be guaranteed because harmonised instructions were not provided to the Departments, which are free to decide how to implement the necessary measures. There was some non-compliance by the abattoirs visited with the national rules.	Rendering standards were unsatisfactory until the end of 1998; e.g. inadequate controls of cross-contamination, poor records and control procedures, certain banned substances (such as sludge) were used for years in the production of feedingstuffs. Decision 96/449/EC regarding the pressurised system in renderers has been applied in France only since February 1998 (The French authorities initially refused to implement it).

	Surveillance	Feed ban	Specified risk materials	Rendering
Ireland ([7])	Epedimio-surveillance was ineffective before 2000. The number of confirmed BSE cases increased about 60 % in the year 2000 compared to the previous year. This is due to increased passive monitoring and indicates that during the past years a significant proportion of BSE-cases may have remained undetected. The number of cases detected by active monitoring remained low because targeted active surveillance only became operational at the end of 2000 and the number of samples remained relatively low. Results from the active surveillance in knackeries suggest that the number of BSE cases in fallen stock is considerably higher than the number of cases arising from suspect animals (i.e. passive monitoring). It is estimated that about 550 cases of BSE in fallen stock may have remained undetected in Ireland during the year 2000. The quality of surveillance, while improving, varies between counties. The risk of a BSE case having been buried on farm, sent to a knackery or to a lesser extent, slaughtered for human consumption, cannot be excluded. Since September 2000 when sampling of casualties commenced, the number of casualties and emergencies presented at abattoirs decreased dramatically. The minimum requirements of Commission Decision 98/272/EC were not complied with in 1999 but by 11 December 2000, the number of brains examined during 2000 was in excess (> 3-fold) of the minimum requirement.	The probability of ruminant feed being contaminated by MBM in feed-mills has been extremely low. However, similar guarantees cannot be provided for contamination outside the feed-mills, in particular amongst the approximately 2 000 home compounders. The microscopical method provides good sensitivity in detecting MBM in the samples. Targeting and coverage of the controls, in particular sampling, is less than optimal.	Although overall compliance can be considered reasonably good, audits by the competent authorities have identified deficiencies and non-compliance, particularly amongst small operators supplying domestic markets.	Two high-risk rendering plants were not working in accordance with Commission Decision 96/449/EC.

	Surveillance	Feed ban	Specified risk materials	Rendering
Italy ([8])	Commission Decision 98/272/EC has been transposed in Italian legislation and implementing measures are in place, although certain discrepancies between the Decision and the Italian measures exist. The provisions for notification of potential BSE-cases laid down in the relevant Italian legislation are potentially confusing.	Controls by the competent authorities have improved since January 2000. Sampling results indicate, at least in feedmills, a further drop in cases of contamination of feedingstuffs intended for ruminants by MMBM.	The draft control protocol of the competent authorities did not cover all the SRM chain, nor did it contain detailed provisions on how controls should be carried out. Auto-control procedures are in place, although their correct application cannot be ascertained due to a lack of staff and adequate records. The potential for SRM contamination of carcases underlines the need for clear instructions to slaughterhouse personnel and strict official control on their application. Tracing of SRM from slaughter to ultimate disposal was difficult in practice.	There were delays in inspections of rendering plants to verify compliance with Decision 96/449/EC on rendering standards. Renderers visited were not operating in accordance with the approved standards. The Italian authorities incorrectly allowed mammalian fat and bones to be processed at low pressure/temperatures. There was no guarantee that animal waste processed at low pressure/temperatures was from non-mammals. Two different authorities controlled the feed ban, but their efforts were not coordinated.
Luxembourg ([9])	The selection of subpopulations for BSE testing did not comply with Decision98/272/EC.	No special procedures to prevent cross contamination between ruminant rations and those containing MBM.	Handling of SRM was carried out in an inconsistent manner, reflecting the lack of clear national legislative requirements.	

	Surveillance	Feed ban	Specified risk materials	Rendering
Netherlands ([10])	Epidemio-surveillance of BSE is now generally satisfactory (particularly passive surveillance measures) and clear procedures for BSE suspects exist. However training and expertise of those involved in the monitoring programme is poor. The Netherlands may not have tested the minimum required number of cattle in 1999 and 2000, because a high number of brains were delivered for testing without proper data. The active surveillance programme provides for the testing of slaughtered cattle over 30 months of age. However, these cattle arrive at the slaughterhouse without documentation indicating their age. 10 to 20 % of fallen cattle are not identifiable because the ear tags are missing, which so far has led samplers not to include these animals in the monitoring programme. No procedures are in place for cases where a BSE positive bovine is found by routine testing of animals in slaughterhouses using rapid post-mortem tests.	Cross-contamination of ruminant feed by MBM occurred, particularly before 1 March 1999. The system in place since 1 March 1999 considerably reduces the risk of cross-contamination. Since then, there has been a sharp decrease in positive feed samples.	The implementation of provisions of Commission Decision 2000/418/EC concerning staining of SRM started late. No clear written procedures exist regarding record-keeping for SRM in slaughterhouses, nor for their control and reconciliation by the veterinary service. Reconciliation of the amounts of SRM collected from slaughterhouses and the amount processed in the only SRM rendering plant is not accurate.	
Austria ([11])	The national reference laboratory was not using the full range of BSE tests. Animals under 20 months are sometimes included in the monitoring programme, but are not specifically identified.	There were weaknesses in labelling and controls over trade of MBM.	Certain high risk material may have been used for the production of imported pet food.	There were problems with official controls over the renderers visited. Greaves from at least one fat melter are delivered to feedmills without being correctly processed.

	Surveillance	Feed ban	Specified risk materials	Rendering
Portugal ([12])	During the last few years, the Portuguese authorities have invested considerably in the improvement of BSE epidemio-surveillance. The main problem still existing is the control of implementation of the legislation and instructions at local level, which remains unsatisfactory (e.g. the delay in implementing the competent authority's instruction to include fallen stock in the monitoring programme). The monitoring programme is not adequately targeted in accordance with Commission Decision 98/272/EC. A general lack of management of the monitoring programme has been observed in the regions visited.	There was a risk of cross-contamination. Incompletely treated MMBM was sent for processing into feedingstuffs, but the competent authorities could not quantify the extent. Written procedures on controls against cross-contamination are not always available. The control programme to verify the presence of MMBM in ruminant rations is not risk based and the sampling is not always adequate. Frequent problems with the labelling of some feedstuffs containing MMBM where the declaration laid down in Directive 97/47/EC was absent/incorrect.	Under national legislation (NB: no EU legislation) SRMs are not used for human food, but are used for animal feed, until September 1998.	Delays in implementation of Decision 96/449/EC on processing standards. In May 1998, four of the eight plants processing MMBM had not been approved under Directive 90/667/EEC. Weak procedures at rendering plants visited to control the rendering process; weak tracing of production batches; weak controls over content of MBM produced. The competent authorities did not have complete information on the quantity of MMBM produced.
Finland ([13])	Decision 98/272/EC is generally well implemented, but the efficiency of the monitoring programme could be improved: — BSE suspects were not treated as such, but were included in the monitoring programme, — poor follow-up of documentation accompanying animals for sick or emergency slaughter, — the testing programme should be better targeted, — the documentation accompanying samples did not contain all the necessary information.	The precautionary measures taken by the feed industry to avoid cross contamination seem to be effective, however due to a lack of sampling of feed on farms, it is not clear if post-production cross-contamination may occur.		The frequency of official control visits to the rendering plant visited was not sufficient.

	Surveillance	Feed ban	Specified risk materials	Rendering
Sweden ([14])	There was scope for improvement of training.	Control over intra-Community trade in MBM needed improvement. Some pet food plants were not correctly registered under Directive 90/667/EEC. This could limit the traceability of the resulting pet food.		Rendering standards and controls were generally adequate, but there was scope for improvement. At a high-risk material renderer visited, the processing system in use until a few weeks before the mission could not allow proper checks on compliance with MBM processing standards. The information available from the new computerised system was neither satisfactory or reliable.
United Kingdom ([15])	There is high awareness and knowledge of the symptoms of BSE. Epidemio-surveillance, and monitoring of BSE is generally of high quality. However, as the incidence of BSE decreases, more active BSE monitoring will be needed. The decrease in the number of notified BSE cases follows scientific forecasts. The OTMS does not have a significant impact on the number of BSE cases reported, while the selective cull has a certain influence.	The feed ban has been enforced effectively since 1 August 1996, and all suspect test results are intensively followed up.		Weaknesses in controls over rendering plants processing both mammalian waste and poultry waste. Delays in implementation of adequate rendering standards for mixes intended for pet food.

([1]) Mission 1302/2000 from 11.12.00-15.12.00 (DRAFT), except mission 1316/98 from 16.2.98-20.2.98 (for rendering).
([2]) Mission 1321/98 between 23.2.98-26.2.98.
([3]) Mission 1307/00 from 4.12.00-8.12.00 (DRAFT) (for SRM); mission 1129/2000 from 25.9.00-29.9.00 (DRAFT) for surveillance and feed ban; mission 1481/1998 from 26.10.98-30.10.98 for rendering.
([4]) Mission 1515/1998 from 14.12.98-18.12.98.
([5]) Mission 1305/00 from 11.12.00-15.12.00 (DRAFT) except for rendering — mission 1463/1998 from 28.9.98-2.10.98).
([6]) Mission 1262/00 from 4.12.00-8.12.00. (DRAFT) Also for rendering, mission 1415/98 from 6.7.98-10.7.98, and mission 1234/99 from 19.8.99-20.8.99.
([7]) Mission 1304/00 from11.12.00-15.12.00 (DRAFT) (except for rendering — mission 1077/99 from 11.1.99-15.1.99).
([8]) Mission 1306/00 from 11.12.00-15.12.00 (DRAFT) (except for rendering — mission 1456/98 from 14.9.98-18.9.98 and mission 1024/2000 from 17.1.00-21.1.00).
([9]) Mission 1506/98 from 8.12.98-10.12.98. Mission 1303/00 from 11.12.00-15.12.00 (DRAFT). Mission 1480/98 between 27.10.98-30.10.98.
([10]) Mission 1303/00 from 11.12.00-15.12.00 (DRAFT).
([11]) Mission 1480/98 between 27.10.98-30.10.98.
([12]) Mission 1265/00 from 6.11.00-10.11.00 (DRAFT) (for surveillance) mission 1381/98 from 11.5.98-15.5.98 (for rendering and SRMs); mission 1381/98 and mission 1471/98 from 28.9.98-2.10.98 (for feed ban).
([13]) Mission 1127/00 from 8.5.00-12.5.00.
([14]) Mission 1436/98 from 24.8.98-27.8.98.
([15]) Mission 1126/00 from 20.3.00-24.3.00, and mission 1431/98 from 20.7.98-24.7.98 (for surveillance), mission 1431/98 from 20.7.98-24.7.98 (for the feed ban); mission 1502/98 from 23.11.98-27.11.98 (for rendering).

Source: Court of Auditors review of FVO inspection reports, 1998 to 2000.

ANNEX 3

DELAYS IN PASSING EU LEGISLATION ON SPECIFIED RISK MATERIALS (SRMs)

Certain bovine tissues are more likely than others to carry the infectious agent (known as specified risk materials — SRMs) and transmit BSE. By removing these from the animal feed and human food chain, it is possible to reduce the risk of transmission. The following table illustrates the main elements in the process by which an SRM ban was finally adopted in the EU.

Date	Details
21 October 1996	Scientific Veterinary Committee opinion of 21 October 1996 recommended on the basis of its risk assessment that specified risk materials (SRMs) should be removed from all human food and animal feed chains in countries where a potential risk was identified. In the case of fallen bovines, sheep and goats, SRMs should be removed so that they do not enter the food/feed chains, or the carcase be destroyed. SRMs: brain, spinal cord and eyes from cattle, sheep and goats over one year; spleen from sheep and goats over six months.
3 December 1996	Commission proposed a decision to the Standing Veterinary Committee to exclude SRMs (derived from cattle, sheep and goats) from human food and animal feed chains as of 1 April 1997 — as there was no majority in favour (only France and United Kingdom voted in favour, Ireland abstained and all other 12 Member States voted against), it was put before the Council. SRM is defined in the proposal as: head, including brain and eyes, but excluding spinal cord of cattle, sheep and goats over 12 months; spleen of sheep and goats. SRM is prohibited for human food or animal feed, as is use of vertebral column for mechanically recovered meat (MRM).
10 December 1996	Council rejected the SRM proposal.
14 May 1997	Commission announced that it would insist on the introduction of Community-wide SRM proposals (which had been rejected by the Council in December 1996).
16 July 1997	Commission re-proposed the decision to the Standing Veterinary Committee to exclude SRMs from human food and animal feed chains as of 1 October 1997 — as there was no majority in favour (eight Member States were against — B, DK, D, EL, I, A, P, FIN), it was put before the Council.
30 July 1997	Council did not give an opinion, nor reject the proposal by a simple majority. Therefore Commission adopted the SRM proposals — Commission Decision 97/534/EC of 30 July 1997 — prohibitions of use of SRMs (mainly brain, eyes, spinal cord) applicable from 1 January 1998.
9 December 1997	Scientific Steering Committee adopted an opinion on SRMs. It considered that tissues had different grades of infectiveness, and it was unwise to consider the BSE agent as present or absent in particular tissues. A true risk assessment should take into account animal age, species and geographical origin. The opinion suggested a new and enlarged list of SRMs, and proposed that these be excluded temporarily from human and animal consumption depending on the geographical source. SRMs added to list of SVC of 21 October 1996: dura mater, pituitary, skull, dorsal root ganglia, vertebral column, intestine, tonsils and lung (when animals are killed by certain slaughter techniques).

Date	Details
9 December 1997	Commission proposed to the Standing Veterinary Committee an amendment to Decision 97/534/EC on use of SRMs. There was no formal vote on the document because the Scientific Steering Committee's opinion on SRMs was published on the same date. The proposed amendment clarified the original decision, which had forbidden use of SRMs for all purposes; to introduce derogations for essential medicinal products; to require detention of suspect animals and appropriate destruction of TSE confirmed cases; clarify the declarations for import of food or feed; introduce a transition period to prohibition of use of SRMs in intermediate products and to avoid discrimination between imported and domestic products.
16 December 1997	Commission proposed to the Standing Veterinary Committee the postponement of implementation of Decision 97/534/EC on SRMs from 1 January to 1 April 1998 (77 votes in favour, 10 against). Reasons for postponement: More time was needed to consider the implications of the new SSC opinion of 9 December1997 on SRMs (see above), which recommended different lists of SRMs to be removed in different countries, and on the decision on products other than medicinal products and cosmetics; scientific advice has been requested on several aspects, including suitability of SRM lists and risks posed by tallow and tallow products; also questions of practical aspects of the Decision for foodstuffs not covered by Annex II to the Treaty.
4 March 1998	Commission proposed decision to the Standing Veterinary Committee to replace Decision 97/534/EC on use of SRMs — rejected by the majority (17 votes in favour — EL, E, S; 70 against — other Member States opposed regionalisation or the enlarged list of SRMs). Proposed (new) decision: includes enlarged list of SRMs in accordance with SSC opinion of 9 December 1997; Member States and non-member countries importing into EU can request partial or total derogation on SRM based on their geographical risk, if they submit necessary information by 30 June 1998, and the enlarged list of SRMs would apply only from 31 December 1998. No derogation should be given to countries with native BSE cases, and these should in any case apply the shorter list of SRMs until the SSC has given an opinion on their BSE status and the SRM conditions that shall apply; Member States applying a compulsory single carcase test for bovines above a certain age would be exempt from removing SRMs from the tested animal, but such a derogation would only be possible after Commission approval of the test (no such approved tests exists for the moment).; derogation applied for use of SRMs in certain medicinal, cosmetic and industrial products.
17 March 1998	Council rejects the new proposed decision on the SRMs, and invites the Commission to postpone the date of application of Decision 97/534/EC again.
27 March 1998	Commission proposed two Decisions to the Standing Veterinary Committee: 1. to replace Decision 97/534/EC on use of SRMs, with a proposal essentially the same as that proposed on 4 March 1998, except that SRMs definition now excludes vertebral column and intestines from duodenum to rectum replaced by distal ileum (small intestine). From the discussion at the SVC, it was clear that most of the SVC members would not accept this text, and no formal vote took place. 2. repeal of Decision 97/534/EC, with invitation to Member States to take appropriate steps, pending proposal for TSE control and eradication. Rejected by SVC, therefore proposal submitted to Council.

Date	Details
31 March 1998	Council rejects proposal to repeal Decision 97/534/EC on SRMs, and a Council decision postpones the implementation date of Decision 97/534/EC from 1 April 1998 to 1 January 1999. Agriculture Council also called on the Commission to submit revised SRM proposals after OIE meeting in May 1998. Commission issues statement criticising the Council's decision to postpone the implementation of the SRM legislation, and renewed its recommendation to Member States to take appropriate action.
2 December 1998	Commission proposed decision to Standing Veterinary Committee to amend Decision 97/534/EC on SRMs, for measures to be regionalised according to the BSE risk of the country of origin. Rejected by the SVC, and therefore proposed to the Council. Most Member States objected to the proposed procedure for establishing the TSE status of the countries, which would be based on the opinion of the Scientific Committee, and on the complicated controls that would result from differing SRMs according to geographical origin. (Against: B, DK, D, EL, F, IRL, I, L, P, FIN; abstention: NL, A, S, UK; no vote: E).
14 and15 December 1998	Council did not put Commission proposal for amending Decision 97/534/EC to vote. Council Decision to postpone the implementation of Decision 97/534/EC from 1 January 1999 to 31 December 1999.
17 December 1998	Decision 97/534/EC on SRMs — implementation postponed from 1 January to 31 December 1999. Decision taken by the Council without a proposal from the Commission.
8 December 1999	Commission proposed two decisions to the Standing Veterinary Committee: 1. to replace Decision 97/534/EC on use of SRMs with a proposal to modify Decision 94/474/EC regulating use of materials presenting TSE risk. The latter included a provisional risk classification of the Member States. Member states objected to the risk classification, and no formal vote took place. Most Member States preferred to defer the date of entry of Decision 97/534/EC on SRMs; 2. subsequently, the Commission proposed postponing implementation date of Decision 97/534/EC for three months from 31 December 1999 to 31 March 2000. Most Member States preferred a deferral period of six to 12 months, and the SVC rejected the Commission proposal, therefore the proposal was submitted to Council. (For: DK, E, IRL, P, S, UK; against: D, EL, F, I, L, NL, A, FIN; abstention: B).
14 December 1999	Council decision to postpone implementation of Decision 97/534/EC from 31 December 1999 to 30 June 2000 (not 31 March as proposed by the Commission).
14 April 2000	Scientific Steering Committee opinion on SRMs of small ruminants: skull (head excluding skin and tongue) and spinal cords of all small ruminants over 12 months and spleen of small ruminants of all ages pose the highest risk. Certain unprocessed meat products, such as mechanically recovered meat (MRM) derived from vertebral columns of small ruminants constitutes a significant potential risk.
7 June 2000	Commission proposed decision to the Standing Veterinary Committee, to replace Decision 97/534/EC on use of SRMs with a proposal to modify Decision 94/474/EC regulating use of materials presenting TSE risk. The proposal required all Member States to remove animal tissues which could present a BSE risk from the food and feed chains as of 1 October 2000. Annex sets out SRMs for all Member States, with an extended list for P and UK. SVC rejected the proposal, it was therefore put to the Council. (For: B, DK, F, IRL, I, L, S; against: EL, NL, A, FIN; abstention: D, E, P, UK).

Date	Details
19 June 2000	Council did not give an opinion, nor reject the proposal by a simple majority. Therefore Commission adopted the proposal — Decision 97/534/EC is repealed and replaced by Commission Decision 2000/418/EC regulating use of material presenting risk of TSEs, applicable from 30 June 2000. SRMs: skulls, including brain and eyes, tonsils, spinal cord of all cattle, sheep and goats over 12 months; ileum of bovines over 12 months; spleen of sheep and goats. In addition, in P, UK and Northern Ireland: from bovine animals over six months: entire head excluding tongue, including brains, eyes, trigeminal ganglia, tonsils, thymus, spleen, intestines from duodenum to rectum, spinal cord; from cattle over 30 months: vertebral column including dorsal root ganglia.
October to December 2000	Start of second BSE crisis.
27 December 2000	Amendment of Decision 2000/418/EC — extension of SRM to include entire intestines of all bovine animals of any age.

THE COMMISSION'S REPLIES

FOLLOW UP TO THE COURT'S SPECIAL REPORT ON BSE

1. The Commission has always accepted that combating BSE is a priority. It has made a particular effort, ever since the report of the Committee of Inquiry of the European Parliament 1997, to ensure that its measures took place within a coherent strategy framework. In particular, the Commission has carried out wide-ranging initiatives (creation of the Directorate General for Health and Consumer Protection (SANCO), publication of the White Paper on Food Safety, proposed Food Authority, etc.). These initiatives, in turn, need to be viewed in the light of the increased powers in relation to veterinary and public health measures introduced in the Treaty of Amsterdam, including the extension of co-decision to proposals in this field.

The Court's specific comments also need to be viewed in the light of the extensive Community legislative framework to combat BSE in place prior to 1 January 2001:

I. a *ban on the feeding of mammalian meat and bonemeal (MBM)* to cattle, sheep and goats, as of July 1994;

II. *higher processing standards* for the treatment of animal waste (133 degrees, 3 bars of pressure for 20 minutes), as of 1 April 1997;

III. active *surveillance* measures for the detection, control and eradication of BSE, as of 1 May 1998;

IV. the requirement *to remove specified high-risk materials (SRMs)* from cattle, sheep and goats from 1 October 2000 from the human and animal food chains.

These measures were drawn up and revised in the light of evolving scientific evidence and the evolution of the disease in the EU. Their implementation by the Member States is also closely monitored by the Food and Veterinary Office (FVO). There is general agreement that the rigorous implementation of the above measures would provide a very high level of protection against BSE. However, arising from the most recent BSE crisis, the legislative framework has been updated and reviewed. This has aimed both at addressing weaknesses identified in the implementation of measures in the Member States and at taking account of new scientific evidence. The following measures in particular have been adopted since 1 January 2001:

I. the suspension of the use of certain animal proteins, especially mammalian meat and bonemeal, in feedingstuffs for all farm animals;

II. the introduction of testing for BSE of all bovine animals intended for human consumption aged over 30 months, with derogations provided for Member States with a lower BSE risk;

III. the introduction of testing for BSE of all bovines aged over 30 months presented for emergency slaughter, or showing clinical symptoms of any disease at slaughter (the age limit was reduced to 24 months as of 1 July 2001);

IV. the enlargement of the list of SRMs to be removed and destroyed to include the entire intestine of bovines and the vertebral column;

V. a ban on the use of mechanically recovered meat from ruminant bones;

VI. a ban on certain slaughter techniques ('pithing').

VII. the extension of a range of the above measures to imports from third countries.

The above measures are kept under regular review, especially in relation to new scientific evidence. However, two major pieces of legislation, both governed by co-decision in the Council and in the European Parliament, are necessary to complete the legislative framework. First, Regulation (EC) No 999/2001 on transmissible spongiform encephalopathies (TSEs) which brings together a wide range of existing measures on surveillance, testing, risk classification of countries, specified risk materials (SRMs), etc. This Regulation entered into force on 1 July 2001 but its full impact will only be evident when decisions have been taken on the risk classification of countries. Second, the proposed regulation on animal by-products which provides a framework for the safe collection and processing of such products.

A range of initiatives has been taken to ensure that this framework is implemented in a coherent manner. BSE is now formally discussed at all meetings of the Agriculture Council when Member States are updated on developments and voice their own concerns and priorities. The European Parliament has also been kept fully informed both through regular appearances by Commissioner Byrne before the relevant committees and in the

discussions on the major legislative measures governed by co-decision. Finally, the Commission has taken the necessary measures to ensure that the process is carried out in a fully transparent manner, especially through the publication of the reports of the Food and Veterinary Office and the opinions of the Scientific Steering Committee.

2. The Court draws attention to the delay in the introduction of certain measures, notably the proposal to remove and destroy certain specified risk materials (SRMs) and the proposal to ban the feeding of certain animal proteins to farmed animals. The Commission would like to highlight the particular circumstances underlying both of these decisions.

SRMs

The Commission originally proposed a Community measure for the removal and destruction of SRMs in December 1996. However, it remained blocked for several years in the Council. This blockage existed as the repeated attempts by the Commission to secure the necessary support for a coherent measure did not secure a qualified majority in support of the proposal in the Standing Veterinary Committee and the Council subsequently rejected the proposals by a simple majority against. This situation changed in June 2000 when, finally, there was no longer a simple majority against and the Commission adopted the proposal on its own authority but without the support of the Council. It entered into force on 1 October 2000. This delay is of course deeply regrettable but reflects the reality of the (then) decision-making process in the Community.

The Court raises the question of whether the Commission should have specific additional emergency powers in such situations. This is of course a very delicate issue as Member States are reluctant to cede such powers on very sensitive issues without the safeguard of clearance through a regulatory committee. The situation will improve with the introduction of the new comitology provisions in Council Decision 1999/468/EC on implementing powers conferred on the Commission. Indeed, that Decision abrogates the possibility for the Council to reject a Commission proposal by simple majority. With this Decision, a proposal which is not in accordance with the opinion of the committee or for which no opinion is delivered by that committee, can only be rejected by a qualified majority in the Council. A number of sectoral pieces of legislation, including Regulation (EC) No 999/2001 on TSEs, also increase the powers of the Commission in relation to emergency decisions. More generally, it is an issue which needs to be looked at in the context of any further review of the relative responsibilities at Community and Member State level. In the interim, there is a heightened political awareness of the need to take no short cuts in relation to public health protection.

Meat and bonemeal (MBM)

There is full acceptance that contaminated meat and bonemeal is the major vector for the transmission of BSE. A ban on the feeding of mammalian MBM to ruminants (cattle, sheep and goats) has been in place since 1994 to address this threat. If this ban is rigorously implemented the threat is addressed, as is supported by the scientific evidence on the matter. However, it is now clear that this ban was not implemented in an entirely satisfactory manner by Member States.

The Commission took a number of measures in an effort to improve compliance, including the introduction of higher processing standards for meat and bone meal and the initiation of infringement proceedings. In addition, as doubts increased over the effectiveness of controls, as evidenced by the emergence of cases of BSE in animals born after the introduction of the ban, the Commission took stronger action. Thus, for example, the Commission requested assurances at the highest level that the existing control measures on meat and bonemeal were being rigorously implemented. When the replies to these requests were found to be unsatisfactory, the Commission proposed a total ban on the feeding of a very wide range of animal proteins to all farmed animals. In the event, the Council did not support this proposal and instead adopted a less extensive ban at the meeting of the Agriculture Council on 4 December 2000.

No national measures to ban meat and bonemeal on such an extensive scale were in place in the Member States prior to this decision. While the United Kingdom (UK) and Portugal did ban the feeding of mammalian MBM to all farm animals, this was a reflection of the high incidence of BSE in these countries. It is notable that there was no pressure for a similar or more extensive ban in any other Member State. Moreover, there was no Scientific Steering Committee opinion to suggest that a total ban was necessary. The report on the international scientific conference on MBM in 1997 called for further reflection on policy in this area rather than calling for a ban. The Commission acted on this report through increased scientific review of the issues involved, followed by the appropriate legislative action.

DISCHARGE AUTHORITY'S RECOMMENDATIONS

3. The Court's report highlights on a number of occasions that the incidence of BSE in Member States was likely to be underreported and that the 'BSE-free' status of some Member States was questionable. It is important to highlight that the Commission in its policy decisions always acted on the basis that both of these assumptions were correct. This is evidenced in the approach

towards SRMs where the Commission insisted on a harmonised EU measure requiring their removal and destruction in all Member States with BSE. In order to establish accurately the true incidence of BSE and its geographical spread, the Commission proposed strengthened surveillance measures, including the use of rapid tests. The Commission also asked the SSC for its assessment on the geographical risk of BSE and provided extensive background information in this respect. The opinions of the SSC, which the Commission fully supported, concluded that BSE was likely to exist in a number of Member States which considered themselves to be BSE-free. Unfortunately, several Member States disputed this opinion until confronted with confirmation of the presence of BSE.

The confirmation of a higher incidence of BSE when using systematic testing should not come as a surprise. In the absence of reliable rapid tests, which only became available in late 1999, it is inevitable that a certain number of BSE cases, in the late stages of clinical infectiveness, escape detection. The incidence of BSE should also be looked at in perspective. Notwithstanding the increased surveillance measures in place, including the testing of all bovines aged over 30 months, the number of cases falls dramatically short of the incidence in the UK. At the peak of the epidemic in the UK, in 1992, the annual incidence was of the order of 37 000 in a herd population of less than 11 million. This compares to the expected incidence of less than 1 000 elsewhere in the EU in 2000 in a herd population of over 70 million.

The Commission view is that the fall in consumer confidence in the course of the most recent crisis is attributable to a combination of factors but especially the discovery of BSE for the first time in a number of Member States and the higher than expected incidence in a number of others. These discoveries were contrary to public expectations in the countries concerned where consumers had been led to believe that BSE was not a national problem. Consumers reacted adversely to these discoveries. However, as evidence emerged that the necessary measures were being taken to protect against the risk of BSE, confidence gradually returned.

4. There has been a comprehensive body of legislation in place to combat BSE for several years. The scientific evidence strongly supports the view that this legislation, if rigorously implemented, is sufficient to protect against the risks of transmission of BSE. The Commission has repeatedly reminded Member States of their obligations in this respect and has given a high priority to inspections in the Member States of the implementation of control measures. These inspections have confirmed that the degree of implementation often left much to be desired. The reports of these inspections are published on the Internet and discussed with the Member States with a view to encouraging better compliance. Moreover, the Commission initiated legal infringements against most of the Member States in the period 1997 to 1999.

The lengthy delay in processing infringement proceedings has been highlighted by the Court as an obstacle to the Commission's ability to ensure better implementation. The Commission acknowledges this failing, but there are few alternatives. Member States insist on a full and lengthy process to allow their point of view to be taken fully into account in any potential legal infringements and there is also a very high burden of proof on the Commission. In addition, the resources available to the Commission for inspections are also limited, as is acknowledged by the Court. Finally, the scope for cross-compliance whereby penalties could be applied in other areas due to poor controls on veterinary measures is not evident. The Commission is actively reflecting on what more could be done to improve compliance and the Court's report is very welcome in this respect.

SCOPE OF THE FOLLOW UP REPORT

5. The reflections of the Court on reorienting subsidies and encouraging extensification constitute the major part of the decision proposed by the Commission and adopted by the Agriculture Council of 20 June 2001. The decisions taken (covering the period 2001 to 2003) include, for both premium schemes, a progressive reduction of the stocking density from 2 LU/ha to 1,8 LU/ha, for the special beef premium a substantial reduction of the national ceilings and, with regard to the suckler cow scheme, the introduction of a compulsory minimum number of heifers to be kept under this scheme and a suspension of reallocating premiums' rights from the national reserves.

CAUSES AND CONSEQUENCES OF BSE

6. The Commission considers the report in general a fair objective analysis of the BSE measures introduced and implemented since 1998. The Commission services endorse in general the report's conclusions and recommendations notably that the Commissions strategy is basically sound, but that the implementation is problematic (point 47).

THE COMMISSION'S BSE STRATEGY

14. As the Court points out correctly the knock-on effect of the BSE cases detected in several Member States resulted in a never-before-experienced drop in consumption in the Community. Numerous importing countries imposed bans on EU imports of live cattle and bovine products. The situation worsened dramatically in February 2001 as the sector was hit by foot-and-mouth disease.

The major objective of the purchase-for-destruction scheme was to contribute immediately to a restoration of the consumer's confidence in beef, by bringing into force the compulsory BSE testing on cattle slaughtered during the intermediate period before the entry into force of Decision 2000/764/EC, as well as to take pressure away, as much as possible, from the market, due to the very significant imbalance between the cattle kept on farm and the demand for meat.

The result of this policy, combined with an active purchase into intervention of beef, yielded significant positive results to such an extent that by the end of May 2001 the market loss could already be assessed as some 10 %.

16. It is true to say that the financial cost of this scheme is lower than the purchase of beef into intervention. It is however also important to underline that intervention is limited to beef originating from male animals and, therefore, for beef originating from female animals there is no optional approach possible.

The number of male and female animals that effectively entered the purchase-for-destruction scheme ending in June 2001 is 769 632 (situation as at 30 June 2001). It is worthwhile to remember that premiums aim to compensate farmers partially for price reductions decided in the context of the market support mechanisms. The criteria of the premium schemes do not contain incentives for increasing production.

In addition, the reflections of the Court on reorienting subsidies and encouraging extensification constitute the major part of the decision proposed by the Commission and adopted by the Agriculture Council of 20 June 2001. The decisions taken (covering the period 2001 to 2003) include, for both premium schemes, a progressive reduction of the stocking density from 2 LU/ha to 1,8 LU/ha, for the special beef premium a substantial reduction of the national ceilings and, with regard to the suckler cow scheme, the introduction of a compulsory minimum number of heifers to be kept under this scheme and a suspension of reallocating premiums' rights from the national reserves.

28. All EU rendering plants are now equipped to operate appropriate processing standards (133 °, 3 bars, 20 minutes).

29. The Scientific Steering Committee has not pointed at a general danger in using animal-based protein in animal feed in the context of BSE: provided certain conditions are fulfilled, the Scientific Steering Committee has not advised against using animal protein in feed for non-ruminant species. Likewise, certain animal-based proteins, such as fish meal or milk-based protein, are not considered to present a BSE risk in feed for any species, including ruminants. The current total ban on feeding animal protein to farm animals was adopted as a control measure in the absence of a test capable of differentiating between protein of different species and pending the adoption and enforcement of the draft regulation on animal by-producs. After the International Scientific Conference on MBM, the Commission decided to seek a scientific opinion on the safety of MBM. This opinion was delivered in June 1999 and re-edited in July 1999. The recommendations of that opinion have been included in the proposed regulation on animal by-products and Commission Decision 2001/25/EC.

36. It should be noted that the mentioned replacement of the existing 1992 Directive on animal identification and registration with a new Council regulation only concerns the provisions for bovine animals. Furthermore, the Commission is considering a proposal for a regulation with the aim of reinforcement of the existing provisions for identification and registration of sheep.

45. Council legislation does not allow 'cross compliance' as is the case for hormone legislation, for example.

RECOMMENDATIONS

55.

(a) The Commission considers that these proposals merit consideration (see general overview). The question of whether the Commission should have specific additional emergency powers is a very delicate issue as Member States are reluctant to cede such powers without the safeguard of clearance though a regulatory committee. The situation will improve with the introduction of implementing powers conferred on the Commission and a number of sectoral pieces of legislation also increase the powers of the Commission in relation to emergency decisions. In the interim, there is a heightened political awareness of the need to take no short cuts in relation to public health protection. The Commission is actively reflecting on what more could be done to improve compliance and the Court's report is very welcome in this respect.

(b) The link made by the Court to the possibility of withholding financial support is likely to be controversial with the Member States. Such action would only be a last resort in the context of persistent poor application of Community legislation or failure to implement scientifically justified safeguard measures as envisaged in the report.

(d) and (e) The reflections of the Court on reorienting subsidies and encouraging extensification constitute the major part of the Decision proposed by the Commission and adopted by the Agriculture Council of 20 June 2001. The decisions taken (covering the period 2001 to 2003) include, for both premium schemes, a progressive reduction of the stocking density from 2 LU/ha to 1,8 LU/ha, for the special beef premium a substantial reduction of the national ceilings and, with regard to the suckler cow scheme, the introduction of a compulsory minimum number of heifers to be kept under this scheme and a suspension of reallocating premiums' rights from the national reserves.