REPORT

on alleged contraventions or maladministration in the implementation of Community law in relation to BSE

Part A:

III. Minority Opinions

Temporary committee of inquiry into BSE

Rapporteur: Mr Manuel Medina Ortega
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REPORT OF THE COMMITTEE OF INQUIRY INTO BSE

Minority view of Christine Barthet-Mayer

Introductory remark: Christine Barthet-Mayer believes that the Commission’s previous handling of the BSE crisis should be assessed in the light of the considerations set out below.

No objections need be raised to the main body of the report, that is to say the findings of the committee of inquiry, especially as regards the responsibility of the Council and above all the United Kingdom, the recommendations for the future, and the call for Parliament scrupulously to perform its supervisory role in relation to the Commission and, on that basis, subject the Commission’s future handling of the BSE crisis to particular scrutiny.

In view of the confusion surrounding the final votes on Mr Medina Ortega’s report in the committee of inquiry, Christine Barthet-Mayer wishes to express her minority opinion regarding point I.5, paragraph 3, ‘Political responsibility of the Commission’.

As the report of the committee of inquiry has clearly established, the action taken by the Commission between 1989 and 1997 with a view to protecting human and animal health and monitoring the measures concerned constitutes grave negligence or indeed a violation of the Treaty on European Union.

The fact that the Commission exercises power jointly with the Member States and the Council should not be considered a mitigating circumstance, since the Commission’s responsibility, from the institutional point of view, is indivisible by virtue of the fundamental principle of institutional continuity. (Moreover, even though the blame to be apportioned to the ‘old’ and the ‘present’ Commission might become a subject of debate, the report demonstrates that both the United Kingdom’s failure to carry out checks between 1990 and 1994 and the lifting of the embargo on gelatine in 1996 are such as to involve the responsibility of the Commission).

Consequently, given the serious negligence of which the Commission has been guilty, its failure to act, and its inept handling of the crisis, Parliament has to call the Commission to account.

Parliament may thus do so by tabling a motion of censure on the Commission in accordance with Article 144 of the EC Treaty.
Minority opinion
tabled by José HAPPART
in connection with the work of the
European Parliament's Committee of Inquiry

I. Regarding the errors made by the United Kingdom

A. The emergence and spread of BSE

The first case of BSE was confirmed in the United Kingdom in November 1986. In 1987, the United States food authorities banned meat imports. Although the UK ordered the slaughter of sick cattle, the measures taken were too late. To date, there have been 170,000 cases in British herds. In 1988, following an epidemiological study of BSE, the first warnings about the risks of transmission from one species to another established a link between the disease and meat-and-bone meal. The UK banned the use of meat-and-bone meal in ruminant feed in Britain, but exports of meat-and-bone meal continued to be permitted. On 20 March 1996 the British Secretary of State for Health reported a study which established the possibility of a link between BSE and a new form of Creuzfeldt-Jakobs Disease, which affects young people.

B. What mistakes enabled the disease to spread exponentially?

The main responsibility for the crisis lies with the British Government:

1. for having processed cattle carcasses cheaply for use in meat-and-bone meal for cattle;
2. for having allowed economic interests to take priority over the requirements of health and the interests of consumers;
3. for having concealed some available information in order to limit perceptions of the seriousness of the risks;
4. for having brought pressure to bear on the Commission, the Standing Veterinary Committee and the Scientific Veterinary Committee to induce them to espouse its views.

This unacceptable behaviour sprang from serious decisions such as:

(a) the inadequate checks on the method of processing animal carcasses;
(b) non-compliance with the bans on meat-and-bone meal as ruminant feed and, in fact, increased exports of such meal in 1989 and 1990;
(c) the way in which the British Government placed its own representatives on the Standing and Scientific Veterinary Committees;
(d) the refusal of the British Secretary of State for Agriculture to appear personally before the Committee of Inquiry.

II. Regarding errors made by the European institutions

A. The seriousness of the mismanagement which occurred

The Commission, too, committed serious errors. It must learn the lessons from its virtual lack of interest in BSE. The feeble response that it demonstrated when faced with the seriousness of the facts, the lack of horizontal internal contacts, and the compartmentalization of teams within its...
administration, resulting from the failure to take the problem seriously, led to unacceptable mismanagement. The Council and the Commission did not display the openness that the European Parliament’s Committee of Inquiry was entitled to expect. The institutional agreement envisaged frank and fruitful cooperation in the search for the truth. Despite that, we found:

- public health concerns were insufficiently taken into account by comparison with the economic imperatives of the single market;
- an inability to ensure that the general Community interest took priority over specific national interests;
- poor articulation between the so-called political decisions and the so-called scientific opinions, connected with the inability to collate epidemiological information; a lack of information about meat-and-bone meal exports and the implementation of Community veterinary checks;
- lack of transparency within the Standing and Scientific Veterinary Committees;
- we deplore the Council’s and Commission’s blatant lack of cooperation with the European Parliament’s Temporary Committee of Inquiry; most information and ‘revealing’ documents reached us by means of leaks or from information provided by journalists via the media.

B. The transmission of BSE by means of meat-and-bone meal, meat and bones

Meat-and-bone meal was produced in the UK using hexane processing and heat treatment at 130°C. In 1980, in circumstances and for reasons which remain obscure, the British authorities gave the go-ahead for heat treatment at only 80-90°C. In 1990, the European Community introduced the first directive regulating the production of meat-and-bone meal. It was already too late. The directive, which came two years after the ban on feeding meat-and-bone meal to ruminants in the UK, was accompanied by questionable derogations. It was Mr Riedinger who challenged the Scientific Veterinary Committee and led the Commission, in 1990, to lay down methods for sterilizing meat-and-bone meal which were wholly inadequate. Other experts involved who gave evidence admitted that they were subjected to massive British pressure. A German professor condemned the derogations which were permitted, in full knowledge of the risks being run, because in order to eliminate infective agents, strict compliance with the rules is essential. Instead of this, the European rules appear to have set up a lax approach for the benefit of the producers.

C. The decisions which were to lead to the lifting of the embargo on British gelatin on 11 June 1996

The lifting of the embargo, which was decided on 27 March 1996, was based on a study carried out by the Inveresk Institute, in Scotland, at the request of gelatin producers. The UK adopted a policy of systematic obstruction. The decisions resulted in the embargo on British gelatin being lifted on 11 June 1996. Did the European gelatin producers not knowingly conceal from the EU Scientific Veterinary Committee information about the safety of their production processes? The incident is a serious one, pointing to deliberate intent to conceal information by using a policy of obstruction, as is evidenced by the existence of records which were not submitted to the European Parliament’s Committee of Inquiry.
D. European consumer protection measures

The BSE crisis led to public health being forgotten as an element of European integration. Despite the deaths involved, the Agriculture Commissioners showed a wholly inadequate level of concern. Concerned, above all, to protect the interests of the market, they minimized the public-health consequences. The British Government deliberately underestimated the disease and its repercussions, because it was protecting the interests of the market and was driven by commercial and falsely national motives.

III. Regarding the analysis of the agricultural crisis

From the economic and social point of view, both upstream and downstream agricultural businesses are facing enormous problems and currently view the future with deep anxiety. First of all, the crisis has led to major human tragedies, such as farmers’ suicides. Despite the bankruptcy of their tools of trade, despite the significant drop in the value of their farm capital, which is still tied to stock-rearing, despite the collapse in meat consumption, and despite the fall in producer prices, there is no sign of a genuine will to support the sector.

In conclusion

The dreadful consequences of BSE call for reparations for its victims. The human tragedy of the victims and their families requires us to bring matters to light in the search for truth and for the culprits. Through its work, the Committee of Inquiry must play its part vis-à-vis the public by means of practical results. It must restore compensation measures in response to the mistakes made and the repeated instances of negligence. As an instigator of the European Parliament's Committee of Inquiry, I wish to table a motion of censure on the Commission pursuant to Article 144 of the Treaty. Given the seriousness of the negligence concerned, the European Parliament's Committee of Inquiry must call for the Commission's resignation, as a means of properly fulfilling its responsibilities and accepting the consequences of this crisis. This is a constructive sanction which seeks to find solutions together and not simply to bring about cosmetic changes within the Commission. The priorities which provide the reasons for this censure must result in:

- compensation for the human victims and those who have suffered economically;
- a policy of transparency and independent checks;
- a clearer legal basis;
- improved internal organization within the Commission;
- financial resources for research.
MINORITY VIEW
PHILIPPE MARTIN

To give more useful effect to the principle of consumer protection and provide the efficient machinery required for independent decision-making, Philippe Martin would have preferred points II.2.2a, 3.2., and II.3.3 to read as follows:

2.2a. (new) Bringing together health controls as part of a single structure consisting of missions from the current veterinary and phytosanitary inspection office together with those set up by Directive 93/99 would improve the effectiveness of the Community’s public health control system, provided that its impartiality is guaranteed by compliance with international standards for inspection services (EN 45 000). In order to make the overall control procedure consistent, the Member States should ensure that their national control authorities comply with standard EN 45 000.

3.2. Article 43 is the appropriate legal basis for regulating conditions for the production, processing and distribution of foodstuffs throughout the chain, including animal foodstuffs or pesticides, since this is vital in order to control food risks.

Unlike Article 100a, it also makes it possible specifically to regulate imports (third countries section). Given that health policy vis-à-vis third countries, such as fixing and controlling the conditions that must be met by third country establishments, requesting lists of establishments which meet Community requirements, visits by European Union inspectors to third countries to protect European consumers, is an extremely important element of public and animal health protection.

3.3. At present, at EU level the Community’s public health powers are dispersed at the Commission between DG III (Industry), DG VI (Agriculture and Animal Health), DG V (Health and Safety), DG XI (Environment and Nuclear Safety) and DG XXIV (Consumer Protection).

The Union must improve its ability to protect human and animal health, both in the face of the risks stemming from trade with third countries and with regard to the conditions under which agricultural products are produced, processed, transported, and distributed on the internal market.

The capacity to evaluate and manage all the above risks implies that a whole range of technical expertise, currently spread across several Directorates-General (and involving specialists such as veterinary surgeons, agronomists, logistics experts, administrators, lawyers, doctors, nutritionists, and agri-foodstuffs engineers), has to be brought into play. To make for consistency in the actions of each Directorate-General involved, clarification and a clear-cut system of organization are required as a matter of urgency, especially where regulatory measures are concerned.

An ad hoc coordinating committee, chaired and run by the Commission Presidency and formed by the four appropriate Members of the Commission, should be set up as soon as possible.

Management of the scientific committees which deliver opinions for risk assessment purposes should be the responsibility of a Directorate-General having no connection with farming or agro-industrial activities - DG XXIV for example. The same applies to supervision of the Union’s watchdog bodies, whether investigations are carried out in third countries or within the internal market.
MINORITY OPINION OF JEAN-CLAUDE MARTINEZ
Non-attached Member of the European Parliament

More than 167 000 cattle have already died in Europe from bovine spongiform encephalopathy. Thousands of farmers have been plunged into a major economic and human crisis. A whole agri-food sector has been discredited. Export markets have been lost. Scientists are helpless. The general public are questioning and alarmed, and increasingly so because already some 20 people in Europe have died from atypical Creutzfeldt-Jacob Disease, raising fears of the transmission of BSE to humans. These were the factors motivating the establishment of a parliamentary committee of inquiry.

In the face of this major scientific, economic and health upheaval the European Parliament had finally to resolve to set up and convene this committee in September 1996, i.e. more than five months after the crisis broke.

The peoples of the European Union expected that this committee would produce a report in keeping with the facts which had led to its establishment. Today, now that it has been drawn up, amended and adopted this report of the inquiry can be summed up entirely in its opening words: 'Evidence of negligence ...', which makes it quite clear that the report of the committee of inquiry is simply a notarial statement.

The firm tone in which the 18 areas of negligence imputable to the Commission are listed could give the impression of boldness. However, in reality this firmness comes to nothing when the list ends with the refusal to apply penalties in respect of the responsibilities listed. In effect what we have here is a smoke-screen report, which uses a detailed analysis of technical mismanagement, which is of secondary importance, to mask three major truths:

1. firstly, the series of bad policy choices which explain the 'how' of BSE (I);
2. secondly, the sum of responsibilities for BSE which explains whose fault it was that BSE occurred (II);
3. lastly, and above all, the explanation of a general institutionalized complicity leading to the question - why were there so many years of silence before BSE? (III)

I - THE INEXORABLE CHAIN OF EVENTS WHICH LED TO BSE: HOW DID IT HAPPEN?

BSE is not a fatal coincidence. It is the result of the following policy choices:

1. In order to increase the dairy reference quantity in 1984, the date when milk quotas entered into force, the British authorities pressed for an increase in milk yields from their dairy herds.

2. To achieve this goal they increased protein feeds, seeking, in the ultra-liberal climate which characterized the Commission, to find meat-and-bone meal products at the lowest possible cost. Hence the reduction in cooking temperatures for these meals to save energy.

3. However this meal increasingly included sheep carcases, which had become much more numerous since the European premiums system favoured the British sheep flock.

4. Since scrapie was endemic in the British flock the larger that flock became the greater the proportion of sheep dying of scrapie. Furthermore, at the same time a growing number of scrapie pathogens were to be found in the meals thus processed from contaminated sheep.
5. As British cattle ate increasing amounts of ever more contaminated meal the species barrier collapsed in the face of the concentrations of the pathogenic agent absorbed on this industrial scale. This explains how and why British cattle developed BSE.

6. Furthermore, as the European Union allows the free movement of products, including meals, the contamination spread into the west of France in particular. This explains how BSE spread geographically. In each case a policy choice on the part of the European Commission was is responsible for the damage caused.

II - THE SUM OF RESPONSIBILITIES FOR BSE - WHO IS AT FAULT?

Whilst the report of the Committee of Inquiry deals with the responsibility of the British Government and the Commission it remains silent on the civil liability of the meat-and-bone meal importers and manufacturers (A), the political responsibility of three institutions of the Community (B) and the moral responsibility (C) of all the bodies, including the media.

A - Civil liability of the meat-and-bone meal importers and manufacturers

Without referring to any criminal liability, the British manufacturers of meat-and-bone meals (1) and the European importers of contaminated meal (2) have incurred civil liability.

1. Responsibility of the meat-and-bone meal manufacturers

Virtually all the scientists heard by the committee of inquiry took the view that the meal fed to British herds was the vector for transmission of the BSE pathogen; on the other hand, it emerges that the lowering of the cooking temperatures below 130° for the manufacture of meat-based meal did not result in the destruction of the pathogen. Accordingly, by changing their manufacturing processes in this way, the British meal manufacturers caused a major threat to health, initially that of the herds fed with their products and, subsequently, that of the consumers of cattle fed this way. Now that the threat has become reality, the civil liability of the meal manufacturers accused, not to mention criminal liability, is therefore proven committed on a clear legal basis with the existence of damage, the perpetrator and the causal connection. This is especially true with regard to the major manufacturer of British meal, the De Mjlders plant at Doncaster, Yorkshire referred to during the hearing of Mr Peschenard and in the report of the Committee of Inquiry itself.

2. Responsibility of meal importers

It emerges from the hearings that, despite the ban on meat-based meal in Britain imposed in 1988, it continued to be imported into other countries of the European Union, especially France. In this last case, the geographical localization of cases of BSE is very clearly in the west of the country, more specifically in Brittany. However, since the herds in Brittany are largely fed on the products of two commercial companies, it would be logical to assume that those two companies were the importers of British meat-based meal banned in the country of origin. That conclusion could have been supported by import documents held by in the possession of the French Customs Service. During his hearing by the committee of inquiry, the Director-General of the French Customs Service, Mr Duhamel, confirmed that his administration had kept those import documents, although they dated back to the 1980s. When asked to make those documents available, Mr Duhamel felt that he could not do so.
It is highly probable that two French companies which imported prohibited British meat-based meal were responsible.

B - The political responsibilities of three institutions of the Community

The responsibility of the Council of Ministers was correctly presented in the report. In particular as the rapporteur thereby found the means initially to diminish the political responsibility of the Commission (1) by dividing it and then disregarding the political responsibility of the Parliament (2).

1. The political responsibility of the Commission

The rapporteur lists 18 cases of responsibility which would justify a motion of censure (a), whilst, strangely, finally refusing to carry out this censure (b).

a. Analysis of the case for initiating the motion of censure

Between pages 11 and 21 (French version) of the report the reasons for imputing responsibility to the Commission are listed in the strongest terms and summed up on p.21: 'there must be considered to have been political responsibility on the part of the highest authorities over the terms of office concerned'.

b. Refusal of the committee of inquiry to initiate a motion of censure

The report of the committee of inquiry, like its debates, tried to avoid censure and to soften it.

1. Two manoeuvres were attempted to avoid censuring the European Commission as provided for in Article 144 of the Treaty. On the one hand the Committee of Inquiry tried instead of censure to substitute an action for failure to act under Article 175 of the Treaty. On the other hand the rapporteur wished it to be thought that it was legally impossible to bring a motion of censure, in particular because only two commissioners were responsible and that they were no longer in office.

As regards the individual responsibility of the Commissioners Mr MacSharry and Mr Steicher, this distinction is based on confusion between civil and criminal liability, which can clearly only be individual, and the political responsibility of a collective body, which, equally clearly, can only be collective.

Moreover, this is true to such an extent that, by analogy, the investiture of the Commission before our Parliament is carried out collectively, and not as a series of individual investitures, on the basis of the respective merits of the Commissioners.

Any other course of action would destroy the principle underlying collective bodies, i.e. solidarity.

As regards the obstacle based on the fact that the two Commissioners for agriculture whose actions have been called into question are no longer members of the Commission, this runs counter to the basic principle of the continuity of institutions. In legal terms, the Santer Commission is not an institutionally different 'species' from the Delors Commission, it is the continuity of a single institutional 'species': the Brussels Commission as referred to in the Treaty of Rome and Maastricht Treaty.
The political responsibility of an institution cannot be attributed 'intuitue personae' to its component members, but instead the institution which they serve.

Even if it were otherwise, the Santer Commission itself has made itself responsible through its repeated acts of negligence, omission and dissimulation in the management of the gelatin issue.

2. To soften the censure the Committee of Inquiry attempted, although unsuccessfully, to delay it by setting conditions. The Commission in Brussels would be censured only in December 1997, i.e. a year would be gained so that public opinion would be calmer and there would no longer be any political and electoral reasons for the Commission to be censured.

2. The political responsibility of the Parliament

Historically responsible for monitoring the executive arm, a Parliament falls into disrepute when it is aware of the turpitude of this executive arm and turns a blind eye to it... The European Parliament could not fail to know what was happening (a). This is the root of its crime of failure to assist millions of consumers at risk (b).

a. The European Parliament could not fail to know what was happening

Between 1990 and 1994 the European Assembly was made aware of the situation:
1. by Jean-Claude Martinez in various interventions including on 11 September 1990 when he said that there was a risk of zoonosis because of BSE. The disease could jump from cattle to humans. The preventive measures had to be taken to avoid the expansion of the source of infection from Great Britain to the whole of Europe without frontiers.
2. by José Happart through various oral questions to the Commission.
3. by Vasco Garcia in a report adopted on 22 January 1993 dealing specifically with BSE.

b. The European Parliament did nothing

The report of the Committee of Inquiry notes correctly that from June 1990 to May 1994 the European Commission carried out no veterinary inspections relating to BSE in the United Kingdom. But the same report also fails to ask why in view of this failure to act the European Parliament did nothing. For example, the political responsibility of a culpably passive Commission could have been raised. This has now happened, but three years later ...

C. The moral responsibility of the media

There has been the same silence, both curious and culpable, in the major European media sectors. The note from the official, Mr Castille, the publication of which in the press in June 1996 was the trigger for the setting up of the committee of inquiry to appease public indignation, revealing the deliberate and organized disinformation campaign by the Commission in Brussels, had been known since 1991 following a piece published in the consumer review 'Que choisir'. The newspaper Libération published this note for general consumption only in 1996. Why was there silence for five years? Who was being protected? What was being protected? Why was there this 'conspiracy of silence'?
III. EXPLANATION OF THE GENERAL COMPLICITY IN THE FACE OF BSE: WHY SO MANY YEARS OF PASSIVITY?

The European Commission, the Council of Ministers, the European Parliament and the major European media were all involved. They kept quiet while one of the most terrifying epizootics or perhaps even zoonoses was being incubated in order to allow the incubation of another 'prion', an ideological one - the federal European Union of the single market and the Maastricht Treaty (A). The same causes produce the same effects, the Committee of Inquiry kept the same silence to protect the same ideological prion. In this case that of the single currency (B).

A.- The culpable silence of the institutional trialogue to protect the single market and the Maastricht Treaty

If from 1990 to 1994 nothing effective was achieved either by the European Commission, or the Council of Ministers or the European Parliament it was because, by chance, preparations were underway for the opening up of the single market on 1 January 1993 and the ratification of the Maastricht Treaty during 1992.

Indeed, if on 20 September 1992 the French electorate had known the truth about BSE who can really believe that the few thousand votes which brought about the Yes victory would have been forthcoming?

And if the Committee of Inquiry, strangely, refused to hear President Jacques Delors, it was undoubtedly because he was the symbol of the federal idea which it wanted to protect.

B. Culpable inaction in order to protect the single currency

The report of the Committee of Inquiry is full of stylistic caution, in order to conceal its political complicity.

The Committee of Inquiry has sought to find ways out in order to avoid the European Commission being censured, which would risk delaying the movement towards the single currency.

The ideological ends of the federal structure have justified political passivity, even if there is a health and economic disaster and even at the cost of the loss of credibility of the European Parliament with regard to the general public.

Better that humans should perish than that an ideological principle should be harmed: the single world-euro market! For the European Commission, the Council of Ministers and the European Parliament and in its turn for the Committee of Inquiry this was the incorrect line of conduct which was pursued.
MINORITY OPINION OF Mr ÉDOUARD DES PLACES

Mr Édouard des Places has expressed an opinion which differs from the positions of the majority report of the Committee of Inquiry and emphasises three particular aspects:

- the EU has given excessive priority to questions of free movement over and above public health;
- food safety is still not guaranteed as things stand;
- means must be found at institutional level of laying greater stress on Articles 36 and 100a of the Treaty.

1) Public health

The objective of Amendment 202 was to consider the possibility of introducing prohibitions or restrictions as provided for under Article 36 of the Treaty, where they are 'justified on grounds of...the protection of health and life of humans [or] animals', in the context of compatibility with the single market. The amendment was rejected by a large majority. The same errors were committed both in 1990 and in 1996.

a) The dysfunctions of 1990

Following the publication of a number of articles pointing to the possibility of vertical and horizontal transmission of BSE between animals, embargos were instituted by France, Germany and Italy.

30 May 1990: France instituted a temporary ban on imports of live animals and agricultural products of bovine origin from the UK.

Mr Nallet, the French Minister of Agriculture at the time, stated, in his hearing before the Committee of Inquiry into BSE of the French National Assembly: 'I informed the Commission, in accordance with the rules, and attended the extraordinary Agriculture Council called by Mr MacSharry, the then Commissioner for Agriculture, which took place on 6 and 7 June 1990 and which I remember very well as being somewhat heated. Our decisions were, I have to say, very badly received, first because they were unilateral and second because they appeared exaggerated.' He went on to say: 'During that Council meeting, the Scientific Veterinary Committee, which had been called on the request of France, said that it had no intention of giving a detailed opinion, as it still believed - despite the reports of sick cats - that the probability of transmission to humans was extremely remote.'
8 June 1990: Mr Delors stated: 'What is involved here is, in a sense, the credibility of the European project. If each Member State took whatever measures it liked on the basis of differing scientific opinions against a backdrop of national and trade interests, the result would be chaos. For us to preach the need for greater European integration while giving an image of disorder and mutual rivalry would be unthinkable. I am delighted with this agreement, and with the fact that a consensus has been achieved on the scientific diagnosis, for if every expert were to defend his interests or his own way of seeing, nothing would ever be done.'

14 June 1990: Mr MacSharry said in Strasbourg: '... if it [the embargo] happens, in circumstances such as these without full consultation and without the slightest warning, it will give rise to serious doubts as to the commitment of certain Member States to the fundamental provisions of Community law.'

These three statements are clear evidence of the priority given to the internal market to the detriment of public health. Political pressure was exerted to preserve an ill-thought-out notion of European integration.

b) Similar dysfunctions in 1996

At her hearing before the Committee of Inquiry, Mrs Cresson, currently a member of the Commission, said: 'Competition is often perceived as an end in itself. When the embargo on British products was decided, I heard the Commissioner for competition declare that this was the end of the single market. ... Then there is the committee of veterinary experts, who represent the interests of the Member States. I would like to say that some degree of scientific independence prevails, but I have my doubts. ... I have had to insist with the Commissioner for Agriculture, who had seized the dossier, on my own participation in the discussions.'

According to Mrs Cresson, the committee of veterinary experts did not always take its decisions on an independent basis, and the principle of the single market was always given priority.

10 June 1996 saw the Commission's decision to authorize any British undertaking fulfilling the manufacturing criteria to export gelatin from the UK.

At his hearing of 15 January 1997, the President of the Commission, Mr Santer, stated: 'The decision of 10 June to lift the embargo on gelatin was taken subject to certain conditions. This is the first time, as far as food safety is concerned, that a decision of principle has been taken subject to a number of extremely stringent conditions: the result is that, to date, not a single ounce of gelatin has been exported from the UK. This shows that we have exercised all prudence in the matter.' It should be noted that, while the lifting of the embargo on gelatin has not led to the export of gelatin as such, it has permitted authorization of exports of food, pharmaceutical and cosmetic products containing British gelatin.
2) Food safety

a) A total ban on the use of animal meal

In the interests of food safety, there must be a total ban on the use of animal meal in feedingstuffs. At present five main sub-acute transmissible spongiform animal encephalopathies have been identified: scrapie; transmissible encephalopathy in sheep; chronic deterioration syndrome in wild ruminants (elk, fallow deer, red deer, roe deer, etc); BSE; and feline spongiform encephalopathy in cats. The illness has, then, been transmitted to carnivores via beef or sheepmeat present in their diet. The Committee of Inquiry at first voted by a large majority in favour of a total ban on administering animal meal, but later watered down its position to restrict such a ban to ruminants. The risk of transmission remains for carnivores and omnivores, and, therefore, for humans.

b) Free movement of potentially contaminated animal meal

In July 1988 the UK decided to outlaw the use of animal meal to feed ruminants. It is difficult to understand why Britain did not also ban exports, or why it took the Commission five years before it finally (in Decision 94/381 of 27 June 1994) outlawed exports of British animal meal.


The Mattei report states: 'In two notes, dated, respectively, 13 February and 13 March 1990, to the then Agriculture Commissioner, Mr MacSharry, Mr Legras, Director-General for Agriculture, expressed his support for an embargo on British animal meal, invoking the Council Directive of 11 November 1989 on veterinary controls in the context of intra-Community trade, whose incorporation deadline was 31 December 1991. The Commission's legal service indignantly opposed any such move, taking the view, in a note of 20 February 1990 signed by J.-L. Iglesias, that "a provision of directive whose deadline for incorporation is still in the future does not amount to a valid legal basis for a Commission decision laying immediate obligations on the Member States."'

3) Improvement of the Commission’s internal procedures

The Mattei report of 15 January 1997 to the French National Assembly states (p. 101): ‘Light may be shed on the low priority attached to public health by the European institutions simply by reading the Commission's establishment plan. One will search in vain for the name of a Commissioner, or even a Directorate-General, responsible for public health. There is only a Director for "public health and workplace safety" attached to the Director-General for Employment and Industrial Relations (DG V), who himself depends on the Commissioner for Employment, Social Affairs and Relations with the Economic and Social Committee.’

The same report goes on to say (p. 103): ‘It is particularly indicative that throughout the "mad cow" crisis the Health Ministers have met only once, at an extraordinary Council called at the request of Germany to examine the situation with regard to Creutzfeldt-Jakob disease and the possible link with BSE.’
At his hearing before the French National Assembly, the former French Minister of Agriculture, Mr Nallet, declared: 'As far as the main principles of operation of the Community are concerned, it is clear that public health is not one of its major objectives. In June 1990, I heard far more about the rules of competition than the rules of public health.'

One must bear in mind the two most recent watershed dates for the Union, namely the signing of the Treaty of Maastricht in February 1992 and the establishment of the single market in January 1993.

The procedure employed for the lifting of the embargo on gelatin, tallow and semen enabled political responsibility to be shifted from the Council to the Commission. In the context of the IGC, it is therefore vital to lay greater emphasis on Articles 36 and 100a of the Treaty, and also to oblige the Council to assume its political responsibilities.

4) Remarks on the conclusions of the Committee of Inquiry

In its conclusions, the Committee of Inquiry has chosen to place the main emphasis on the codecision principle for its decisions relating to Article 43, the aim being for Parliament to obtain more powers so as to have the legal means enabling it to restructure Community expenditure.

The protection of the health of the people of Europe is a far more important and practical matter than the modification of the legal basis of the common agricultural policy, whose unstated objective is to transfer budget funding from agriculture to other policies.

In view of the conclusions of the report of the Committee of Inquiry, as well as the complementary material reproduced above, Mr Édouard des Places will act immediately to table a motion of censure against the Commission, on the basis that the dysfunctions referred to cover the period from 1988 to 1997 inclusive, if one adds to them the Commission's decision of 18 December 1996 authorizing the marketing of genetically modified organisms, which utilized the same legal bases and administrative procedures as the lifting of the gelatin embargo.
A Minority Opinion to the Medina Ortega Report on BSE by Lord Plumb

Introduction and History

The whole crisis surrounding BSE is one of the strangest that I have experienced in over 50 years of involvement with British and European agriculture. It has been typified by strong public opinion which has varied from country to country in the EU, and which has been led by often unfounded speculation devoid of all scientific fact or opinion. Many political decisions have been made, in complete ignorance of the science behind this disease.

We have heard differing scientific evidence on BSE with as many different interpretations of what we are told is fact. At times it has seemed that for each opinion on how and why, there are at least a dozen more conflicting theories. In some cases the ‘scientific opinion’ which has been reported in the media has remained unproven and speculative. Much is still unknown about the many elusive elements of this disease. We still do not conclusively know how the original Scrapie agent became contagious to bovine animals, nor have scientists yet been able to establish a conclusive link between BSE and new variant CJD.

It must be recognised that to date there have been as few as 15 cases of the new variant of CJD, and scientists are at a loss to say how many more we might expect. There is no live test for BSE in animals, or for the original or new variant CJD in people. Over the history of BSE there have been few scientific certainties with even fewer convincing solutions. Governments and Commission officials have been faced with having to act upon the scientific opinion of the day, and whilst recognising the overriding importance of public health, it must be stressed that until early 1996, the vast majority of this scientific opinion was that BSE remained a veterinary problem.

BSE is a serious problem, and one which has always been taken extremely seriously in Britain. The UK has spent more than £60 million on BSE related research since 1986. In 1996 it allocated a further £40 million for use by the Meat Hygiene Service for additional BSE related controls. The British Government has committed more funding in 1996 to research, and the European Commission has also allocated additional resources to increase the knowledge on BSE. Perhaps more is needed at Community level, and in all Member States. There is still much unknown about BSE.

Work of the Temporary Committee of Inquiry

This committee was established at a time when across Europe, consumers were worried by the many scare stories about eating beef. Farmers were not able to sell their cattle at market; transporters, abattoirs, and butchers were laying off workers, and all involved with the meat industry were facing an uncertain and worrying future.

What the public was, and is, entitled to expect, above all, from the work of the Committee is the establishment of the facts about the cause of the disease and the efficacy of the measures taken to eliminate it. In this the Committee has failed. The report concentrates excessively on criticisms of past mistakes - which undoubtedly were made - rather than on an evaluation of the current risks to health, an assessment of action to date, and perspectives for the future for both consumer and farmer.
Beginning with the well-being of the consumer, the single most important question which has not yet been asked is ‘Is British beef safe to eat?’. In answering this question we must assess whether the current measures being undertaken in the United Kingdom are adequate; whether they are being properly enforced; and when this disease will disappear. Once we have answered these questions we must then consider when the beef ban should be lifted.

The question of effective safeguards in other Member States must also be raised, as well as a total offal ban throughout the European Union, as the Committee heard evidence that due to feed and live animal exports, statistically we could expect as many as 1600 cases of BSE in other EU Countries.

UK Visit

From the outset of the Committee I was in favour of sending a team to take evidence in the UK and to look closely at how the problem of BSE was being dealt with there. On 4 December, a Delegation of six members undertook such a visit. It was disappointing that more members of the committee could not take part in this visit, and that the Chairman of the Committee was not able to attend, for he would have seen the effectiveness of the current measures and the willingness of farmers and officials to work together to rid the UK cattle herd of BSE. He would have had an opportunity to meet with a Government Minister to discuss BSE, and with the House of Commons’ Agricultural Select Committee. The Committee would have witnessed the high level of progress and achievement of the last 10 months, and the high standards that exist in our meat industry from farm to auction, right through to the market place. They could have experienced the overriding importance that UK officials place on consumer safety and food hygiene.

I believe it was extremely telling that a member of the Delegation publicly stated during the visit that Europe might not have had the problem of BSE had there always been the high standards which exist in the UK beef industry today, and that these high standards are possibly better than in most other EU countries. This comment, based on an on-the-spot direct experience, revealed a renewed confidence in British Agriculture and British beef. This is a confidence shared by the British consumer, as evidenced by the recovery in beef sales.

The UK and the Facts

The Last 10 Months

Much has been achieved in the UK over the last 10 months and this in itself is a tribute to the determination of farmers and farming organisations, the Ministry of Agriculture, Fisheries and Food and the British Government, in co-operation with our very fine veterinary service.

On 25 June 1996, the European Summit in Florence reached agreement on the measures necessary to allow for a gradual lifting of the beef export ban in the United Kingdom. The so called ‘Florence Agreement’ called on the United Kingdom to identify all bovine animals most at risk from BSE and to implement a selective slaughter policy; to establish an effective animal identification and movement recording system; to legislate for the removal of all meat and bone meal from feed mills and farms; to implement effectively the Over Thirty Month Scheme, including the destruction of animals; and to introduce additional improved methods for the removal of Specified Bovine Materials from the carcasses. All of these measures have been implemented.
Effective Implementation of the Over Thirty Month Scheme

On 29 April 1996 the UK government agreed a scheme to exclude from the human and animal food chains all animals older than 30 months of age, with their carcasses being disposed of by incineration. In July 1988 a ban on feeding meat and bone meal to all ruminants was put in place in the UK. Therefore, it was estimated that the risk of bovine animals having consumed contaminated feed after 1994, i.e. animals under 30 months of age, was extremely low. Although it has been shown that the muscle (quality steak and mince meat) from beef cattle is entirely free from infection, and that the effectiveness of the Specified Bovine Offal Ban of November 1989 whereby high risk materials were unconditionally excluded from human consumption was not in question, the Over Thirty Month Scheme was seen as being essential in restoring public confidence in beef, both of British and Continental origin. It is interesting to note that to date, the percentage of cases of BSE which have arisen in animals aged under thirty months is less than 0.05%.

The first animal culled under this scheme was slaughtered on 3 May 1996, and as at 3 February 1997, 1,245,676 bovine animals over thirty months of age have been culled. Never in the history of agriculture have so many healthy animals been destroyed and disposed of in such a short period of time. (In 1995 there were 14,298 confirmed cases of BSE in the UK; in 1996 there were 7,691 in a total herd population of more than 10 million animals.)

The number of animals over thirty months of age sent from farms exceeded all expectations and a serious backlog of animals waiting to be culled was created due to limitations in rendering capacity. The Government made a decision to allow frozen storage of carcasses before rendering, which allowed for the backlog to be greatly reduced. This in turn made the implementation of a selective cull, called for in Florence, physically possible. At its peak, 58,433 animals per week were being slaughtered under the Over Thirty Month Scheme.

Identification of Bovine Animals Most at Risk from BSE and Implementation Of a Selective Cull

The United Kingdom is now proceeding with a selective cull which is aimed at identifying animals most likely to have been exposed to the risk of infection from contaminated feed and at slaughtering them and destroying their carcasses by incineration. A thorough record of the movements of all bovine animals which have suffered from BSE has been carefully kept by the Ministry of Agriculture since 1987, and the Selective Cull Scheme will consider offspring born to confirmed BSE cases, and to ‘Cohorts’, (those animals from the same herds which could also have been exposed to contaminated feed). In effect, the Selective Cull makes provision for all high risk animals born between October 1990 and July 1993 to be compulsorily culled.

Early estimates suggest that as many as 100,000 animals may need to be slaughtered; however, it is also believed that, to some degree, a large number of animals will have already been destroyed under the Over Thirty Month Scheme. Farm visits commenced in Scotland during the week beginning 20 January 1997, and it is expected that the Selective Cull will be completed within 6 months. This cull represents less than 1 in 20 of the national dairy herds, and only approximately 1% of the total UK cattle population including calves.
Effective Animal Identification and Movement Recording System

Cattle Passports

In July of 1996, the Cattle Passport Order 1996 came into force. This order requires all cattle to be issued with a cattle passport, and stipulates that no animal can be moved from farms, sold or purchased, unless their identity can first be proven by a passport. Cattle holders are required to apply to the Ministry of Agriculture, Fisheries and Food for a cattle passport within 28 days of an animal having been marked with an ear-tag, and in the case of imported animals within 14 days of arrival. The application must include information on the ear tag number, breed and sex of the animal, the official county, parish, holding and herd number of the herd of birth, as well as the date of birth of the animal, the ear tag number of the dam, and the address of the owner. To date, in England and Wales, 879,400 cattle passports have been issued, with a further 157,185 in Scotland, bringing the total to 1,036,585.

Computerised Database

The Ministry of Agriculture, Fisheries and Food is currently creating a comprehensive computer database recording all cattle born or imported into Great Britain. Information stored will include records of each animal’s movements from birth or import, to death. This system is to be similar to that which is already in use in Northern Ireland.

This Database could be one of the most comprehensive in use throughout Europe today, as estimates show that there may be as many as 38-40 million cattle movements per year in the UK, considerably more than in any other Member State.

Ear-Tagging

The United Kingdom is establishing a system of double ear-tagging for all bovine animals. It is intended that it will be a legal requirement for all animals to have two officially authorised tags, which must include herd information. One of the tags will need to be distance readable, the other tamperproof in nature.

Legislation for the Removal of all Meat and Bone Meal (MBM) from Feed Mills and Farms

On 10 June 1996, the UK government announced a scheme to recall all mammalian meat and bone meal from farms and feed mills. Under this scheme, which was completed by mid-July 1996, almost 11,000 tonnes of MBM was collected from predominantly pig and poultry farms.

On 1 August 1996, it was made a criminal offence for mammalian MBM or material containing mammalian MBM to be present on farms or in feed mills.
Conclusions

When the first indications of a possible link between BSE and CJD were observed, as announced by the British Secretary of State for Health on the 20th March 1996, prompt additional action was taken in the United Kingdom. This action ranged from the removal from herds of known reactors, to a massive slaughter of all cattle over the age of 30 months, eliminating more than 1.2 million animals from the food chain in less than 9 months, together with the slaughter and disposal of approximately 500,000 additional calves.

It is my firm conviction that many of these wide-ranging measures were not necessary to promote the elimination of the disease. BSE has steadily been on the decline since its peak in 1992, and was showing every sign of falling to negligible levels over the next few years without the intervention of additional slaughter measures. It is my belief that these measures were taken purely for reasons of consumer confidence and, bearing in mind the thorough controls on the exclusion of all Specified Bovine Materials from human consumption, I do not believe they were necessary from the point of view of public health.

Professor Roy Anderson, Professor of Zoology at Merton College, Oxford University, stated whilst giving evidence to the Committee of Inquiry on 19 November 1996: “Looking at the future of the Epidemic, it is in our view (Oxford Study Group of Experts) in a phase of decline, and indeed, in the absence of any cull, one would predict that it (BSE) would be at low levels by 2001”. He concluded by saying: “All of these analyses point to the epidemic being in a very rapid decline”.

Taking account of the further selective cull which was put in place in January, and following the positive action of the past year’s eradication programmes in the UK, a selective lifting of the export ban on British beef exports can now be justified.

It is my hope that we can all get back to a normal free trade in beef, which should be recognised for what it is - that is to say safe - throughout the EU in the very near future.

End.
**Annex 1.**

**Chronology Of United Kingdom Action On BSE**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tr>
<td>November 1986</td>
<td>BSE identified as a new cattle disease. Experiments begun to identify methods of transmission to other animals thought to be suffering from the same condition.</td>
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<td>1987</td>
<td>The creation of a UK BSE computer database system to keep track of all confirmed BSE cases.</td>
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<tr>
<td>April 1988</td>
<td>UK Government sets up Southwood Working Party.</td>
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<tr>
<td>18 July 1988</td>
<td>Use of ruminant derived protein in feedstuffs for ruminant animals banned in England, Scotland and Wales. *</td>
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<td>8 August 1988</td>
<td>Compulsory slaughter with compensation (50%) for BSE suspects introduced in England, Scotland and Wales.</td>
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<td>13 November 1989</td>
<td>UK ban on use in human food of specified bovine offal (brain, spinal, cord spleen, thymus, tonsils and intestines from all cattle over 6 months of age) introduced in England and Wales. (30 January 1990 in Scotland). *</td>
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<tr>
<td>14 February 1990</td>
<td>Full compensation introduced for slaughter of BSE suspects. Jump in cases reported which might have indicated possible underreporting is not experienced.</td>
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<tr>
<td>25 September 1990</td>
<td>The ban on the use of specified bovine offal or protein derived from them extended to include all animal and bird feed. *</td>
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<tr>
<td>15 October 1990</td>
<td>UK Government introduces new measures to improve record keeping in cattle herds.</td>
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<tr>
<td>November 1991</td>
<td>Ban on the use of SBO in fertilisers. *</td>
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<tr>
<td>June 1994</td>
<td>Ban on the use of SBO extended to cover intestines and thymus of calves under 6 months of age. *</td>
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<tr>
<td>August 1995</td>
<td>Ban on the removal of brains and eyes from the skulls of bovines over 6 months old. Removal of spinal cord from the vertebral column permitted only in slaughterhouses. *</td>
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20 March 1996  The Secretary of State for Health announces the identification of a new strain of CJD in 10 people under 42 years.

28 March 1996  With immediate effect the ban on the manufacture and use of mammalian meat and bone meal in feed for all farm animals. *

22 April 1996  The Calf Processing scheme starts.
Up to 23 January 1997 some 483,865 calves have been processed in Great Britain. 25,904 in Northern Ireland.

29 April 1996  The Over Thirty Months scheme starts in the UK.
Up to 23 January 1997 over 1.2 million cattle have been processed under this scheme, with a peak of 56,000 per week.

10 June 1996  UK Government launches Mammalian Meat and Bone Meal Feed Recall scheme.

21 June 1996  At the Florence Summit agreement is reached for the possible lifting of the Beef Export Ban.

1 July 1996  UK introduces effective animal identification and movement recording system with official registration. (Cattle Passports)

1 August 1996  It is made an offence in the UK for mammalian MBM or material containing mammalian MBM to be present on farms or feed mills.

19 August 1996  The UK’s Beef Assurance scheme is launched.
This scheme is exclusively for specialist beef herds which have not been affected by BSE or come into contact with meat and bone meal.

24 January 1997  Legislation to implement the selective cull, announced on 16 December 1996 came into force.

* These measures were taken on the advice received from scientists, each of which was supported by a growing body of research evidence.
MINORITY OPINION ON THE REPORT OF THE TEMPORARY COMMITTEE OF INQUIRY INTO BSE
PURSUANT TO RULE 136(10) OF THE PARLIAMENT’S RULES OF PROCEDURE SUBMITTED BY P. WHITEHEAD MEP

The Temporary Committee of Inquiry has correctly analysed the development of the BSE catastrophe in the UK. It has also pointed out the errors and omissions in dealing with it by the British Government, the Council and the Commission. Nevertheless its recommendations must look to the future and learn the lessons of the past. That is a future in which the phenomenon of BSE will be better understood, and the disease itself more swiftly identified, not just in Britain but in the other Member States as well.

The centre of the epidemic remains in the UK although the number of cases involved has fallen rapidly with the measures recently put into effect. The UK has now adopted the measures agreed at the Florence summit and is belatedly carrying out the required selective cull. In this regard, the statement in the Committee’s report (1.3.8) casting doubt as to the efficiency of the cull adopted in the UK is to be regretted. Subject to the resolution of present public health concerns and the fulfilment of the undertakings made by the UK at the Florence summit, the ban on the export of beef from the UK should be lifted.

There is enough evidence of cases appearing in other Member States to justify the adoption of equivalent safety measures throughout the European Union. The Commission, since March 1996, because of resistance from certain Member States in the Standing Veterinary Committee has so far been unable to bring BSE control measures in the rest of the EU up to the high standard eventually adopted in the UK, which has banned the use of meat-and-bone meal for the feeding of any animals intended for slaughter. The impression is given that the resistance to the adoption of such measures throughout the EU is due to financial considerations. The Council has shown itself reluctant to swiftly adopt proposals that would bring the identification and control of BSE and the destruction of sources of infectivity up to the same level now properly required of the UK. In this regard, there must be concern that both the Standing Veterinary Committee and then the Council have failed to adopt the Commission’s proposal on the removal of specified risk material which the Commission drafted in response to recommendations in the Scientific Veterinary Committee.

Only with such a course of action will the citizens of the European Union be reassured that their Governments are committed to all necessary precautions for the inspection and processing of animal carcasses and all forms of meat and bone meal. Such action would also show an even handed European approach to the crisis and would further commend the comprehensive proposals of the Temporary Committee of Inquiry to the people of the UK as the Member State principally the subject of this report. BSE has become a European and not just a British problem which requires European solutions which are supportive and not recriminatory.