

STAGE (Science, Technology and Governance in Europe)

Discussion Paper 23

May 2004

The BSE crisis in Portugal or how to ‘domesticate’ European regulatory policies

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STAGE is a Thematic Network under the Fifth Framework Programme (HPSE-CT2001-50003). STAGE gratefully acknowledges the support of the European Commission

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1. Introduction*

The case of BSE in Portugal is especially relevant in developing some of the central points dealt with in the waste management case, providing additional information on the links between Parliament, Government, research, advisory and regulatory bodies and scientists and their professional associations. It is also a particularly interesting example of how European regulatory policies were "domesticated" at different moments and under two different governments, during the 1990s. Another interesting feature of the case is that it provides a quasi-textbook illustration of the contrasting ways in which scientific advice has been appropriated by legislators and political decision-makers. Both the commonalities and the differences between the two governments as far as democracy-science links, knowledge/power configurations and technologies of governance are concerned are displayed in an exemplary way in this case.

Since this is a "closed" case in relation to the central scientific controversy (at least for the time being...), we have re-analysed available materials in order to develop the main analytical points raised by the waste management case study and to explore the issues that appear to be more relevant for comparative purposes.

2. The BSE crisis in Portugal

Compared with the waste management case study, the BSE case displays in a different way the modes in which political power in Portugal deals with scientific advice in decision making processes. It is a well studied case which allows us to identify its main characteristics and the ways in which different actors were involved in the process. It is, undoubtedly, one case involved in controversy, but, in comparison with the co-incineration case, it reflects differentiated models of experts' involvement and participation.

BSE was initially identified in the UK, in 1986. This initial process of characterization led to its notification by the British Authorities in 1988 to the relevant international organization (OIE). In that same year the UK appointed a Working Party to analyse BSE (the Southwood

* This report draws heavily on the empirical work done in the context of the EU-funded BASES Project by T.S. Pereira and M.E. Gonçalves.

Working Party) which was followed by successive decisions in the UK to ban the incorporation of meat and bone meal (MBM) in ruminant feed, to destroy all animals infected or suspected of being infected with BSE and to ban the sale and use in food, for either humans or animals, of milk from animals infected or suspected of being infected with BSE.

In subsequent years the BSE crisis gained international dimensions, with the spread of the disease beyond the UK borders and with decisions to embargo related imports from the UK. At the same time, signals were developing on the possible inter-species transmission of the disease.

In 1996, the British Minister of Health announced that there was a strong suspicion of a relationship between BSE and a new variant of the Creutzfeld-Jacob Disease (nvCJD), which generated specific actions across the world, and particularly at the European level.

In Portugal, BSE became a public issue in 1993. Before that date, the Portuguese authorities tried to keep the available data confidential. Key moments of that period are identified in table 1:

Table 1. BSE in Portugal: from the Eighties to 1993

<p>Between 1981 and 1989 – Portugal imported ca. 12,000 animals from the UK (the eradication of these animals was decided only in 1996)</p> <p>April 1990 – The import of bovines born before the prohibition of meat and bone meal in the United Kingdom or of descendants of infected animals, and specific derived materials was prohibited</p> <p>May 1990 – BSE was classified as a disease of obligatory notification</p> <p>June 1990 – The first identification of an animal suspected of being infected with BSE, which was kept confidential</p> <p>August 1991 – The compulsory notification of BSE to EC</p> <p>Between 1990 and 1993 – The National Laboratory for Veterinary Research (Laboratório Nacional de Investigação Veterinária – LNIV) examined four animals suspected of BSE – this diagnosis was kept confidential</p>

Although the number of cases identified in Portugal was low until 1996, the country was ranked fourth in terms of the number of diagnosed cases (ca. 60 cases) (Almeida and Graça, 2000).

Three crucial moments in the development of the BSE crisis in Portugal, which were accompanied by peaks of public controversy, can be identified:

- In 1993, the existence or non-existence of BSE cases in Portugal was debated for the first time. Following political arguments, extensive media coverage was a key feature of this period;
- In 1996, as a consequence of the generalization of the controversy across the EU, the Portuguese government admitted the existence of human health risks and that the problem could not be ignored.
- In 1998, as a result of a third parliamentary hearing in view of a European embargo to Portuguese cattle and beef exports, the need for an institutional reform of the control of the health and safety of the animal and human food chain was stressed.

In each of these periods, parliamentary hearings¹ were carried out. As we shall see, the differences between the successive periods of the BSE crisis in Portugal are related to the nature and results of the three parliamentary hearings.

2.1. The debate over the existence or non-existence of BSE in Portugal (1993)

In 1993, when a public debate on the existence of BSE in Portugal started, the Social Democratic Party (PSD), a liberal party, had been in power since 1985. This whole period coincided with the entry into the European Union, which brought together new rules and legislation but also significant investment support through the Structural Funds. In 1987 PSD had achieved an absolute majority for the first time under the post-1974 parliamentary democracy, without the need to resort to any coalition. This was renewed in the 1991 elections, but was to be later lost in the 1995 elections, when the Socialist Party (PS) won, just short of absolute majority.

In 1993, it became public, through political debate, that the National Laboratory of Veterinary Research, the reference laboratory for animal diseases, had detected the existence of cases of

¹ The Portuguese Parliament does not have a technical or scientific office as part of its structure. There are, however, several Parliamentary Commissions that operate as specialized structures. These Commissions are composed of members of parliament and are in charge of the preparation of plenary discussions. In addition they may organize hearings with members of parliament, citizens, experts or stakeholders. The Parliamentary hearings on the BSE issue were organized and held by the Parliamentary Commission on Agriculture and Fisheries. During this process the Parliamentary Commission had its name changed to the Commission for Agriculture, Rural Development and Food.

BSE in Portugal, the diagnoses of which had been kept secret since 1990. This initial political controversy generated large media coverage.

Table 2. The emergence of BSE as a public problem in Portugal

May/June 1993 – Parliamentary hearings on existence or non-existence of BSE in Portugal

July 1994 – Four cases of animals diagnosed with BSE

July 1994 – Prohibition of the incorporation of meat and bone meal in animal feedstuff

1994 – Creation of the ‘Grupo de Acompanhamento da BSE’ (Follow-up Group on BSE)

As a result, the need for a clarification on the existing evidence and information, and eventual determination of responsibilities and possible risks for animal health led the government to request an urgent parliamentary hearing, with the participation of experts.² The hearings were held between the 27th of May and the 2nd of June, “with experts and scientists, for the purpose of finding out whether Bovine Spongiform Encephalopathy, commonly known as mad cow disease, exists in Portugal”.³ Such mandate conditioned the hearings to a discussion between scientists on methods of diagnosis of the disease. The experts were chosen by the different parliamentary groups and by the Animal Health Authority (Director-Geral de Pecuária). A total of sixteen people were heard, all of whom were veterinarians; fourteen were veterinary researchers from LNIV and the Veterinary Medical School. Such participation clearly framed the discussion as an animal health issue, and in this context, discussions specifically regarding the transmissibility or not of BSE to humans were considered beyond the scope of the Hearings.

Two researchers from the National Laboratory for Veterinary Research (LNIV) presented the results of tests they had used to detect the existence of BSE in Portuguese cattle. This was based on the histopathological method, for which they had received specific training at the Central Veterinary Laboratory, in the UK, possibly the institution with most knowledge of the disease at that time. They argued that all the norms issued by the Ministry of Agriculture were

² The mandate for the hearings was focused on animal health. Even if there was no evidence, at the time, of possible risks for human health, the details of the mandate were later used to consider that possible implications for human health were out of the mandate, therefore avoiding their discussion and defining the BSE controversy as a purely animal health issue. This was a clear example of *boundary setting*.

³ Parliamentary hearings, 1993.

taken into account during these procedures, but that the results had been deliberately kept secret by the authorities, following evidence presented.

However, other researchers, with academic credentials but no specific experiential knowledge of the disease, claimed that complementary tests would be necessary to confirm the diagnosis, leading to intense debates that often extended beyond scientific knowledge into academic credibility. A further point of debate during the hearings was related to the origin of the cattle examined. These had been imported from the UK, which led some to conclude that the disease did not exist in the country, as it had not been found in autochthonous animals. The conclusions made clear a strong suspicion of the existence of BSE in Portugal, but denied that it had been confirmed by scientific means.

This episode led to an intense controversy between those who claimed that the data available were insufficient as evidence of the existence of BSE in Portugal and those who claimed that the method that had been used was appropriate and, thus, the existence of BSE in Portugal had been proved. The final report on the parliamentary hearings declared the non-existence of the BSE in Portugal and the absence of hazards to human health” (Gonçalves, 1996), along with the statement of the need to carry out complementary tests in order to conclude on the (non)existence of BSE.⁴

The Minister of Agriculture, in turn, stated:

“(...) mad cow disease does not exist in Portugal because no scientist has proved its existence (...). If the disease existed, I’m sure that the rules of ethics and deontology would have kept the scientists from hiding that reality”.⁵

The evolution of this debate coincided with the degradation of the institutional status of the LNIV (Gonçalves, 1996 and 2000). In fact, the LNIV was defined in 1985 as the reference laboratory for livestock diseases in Portugal⁶. After the parliamentary debate on BSE and ensuing controversy, the LNIV was integrated into the new Institute for the Protection of Food Production (Instituto de Protecção da Produção Agro-Alimentar – IPPAA), created to replace the Animal Health Authority, and was renamed National Laboratory of Veterinary (dropping the reference to ‘research’) (*Idem*).

⁴ Parliamentary hearings, 1993. The structure of Parliamentary hearings committees, in Portugal, reflects the political distribution in Parliament, traditionally with greater representation from the political party(ies) supporting the government. As a consequence, it is not uncommon that the results of the hearings support the government role in the issues under discussion.

⁵ “Ministro da Agricultura só confia nos cientistas” [Ministry of Agriculture only trusts scientists], *Público*, 21/05/1993.

⁶ Council’s Directive from 20 December 1985.

With the focus of the hearings on the controversy surrounding the diagnosis, the implications of existing scientific knowledge about the disease for specific policies to limit its eventual spreading, either within cattle or to humans, were not pursued (Pereira, 2000a). Nevertheless, and even though the Parliamentary hearings had reached the conclusion that BSE did not exist in Portugal, the opposition parties fiercely discussed the role of government during the whole process. Socialist members of parliament called for the resignation of the Minister of Agriculture. They argued that the EU rulings had been ignored and that the Minister had violated basic rules of democracy throughout the process. They argued as well that government had tried to impose censorship on science:

“It’s a shame! It’s a shame for a democratic state and for the rule of law how the Minister of Agriculture has behaved (...) because he has concealed the truth, he has violated all the ethical, political and moral norms that define the workings of a democracy and of the rule of law (...). He imposed censorship on science and on truth and did not comply with the norms he was supposed to follow on the obligatory declaration of the disease.”⁷

However, the conclusions favourable to the government⁸ led to the disappearance of the controversy from the media. Only when a first autochthonous animal was found with BSE, in 1994, was the existence of BSE officially notified to international authorities, but no major public controversy followed.

2.2. The generalization of the controversy (1996)

In March 1996, new evidence on the relationship between BSE and a new variant of Creutzfeld-Jacob Disease was brought to public attention and forced the government of the UK, where the risk was particularly acute due to the high incidence of BSE in the country, to recognize that there could indeed be a threat to human health.

Table 3. The second round of controversy over BSE in Portugal

<p>April 1996 – New parliamentary hearings</p> <p>April 1996 – Creation of the ‘Comissão de Estudo e Acompanhamento das EEs (CEAEE) (Commission for Study and Follow-up of Spongiform Encephalopathies)</p>

⁷ Parliamentary debate 3 June 1993.

⁸ It should be noted that the structure of the Parliamentary Committees running the hearings reflect Parties’ representations in the Parliament. In this way, the majority party, in government, also had a majority representation in this Committee. In fact, the conclusions of the hearings were approved with votes against from the whole opposition.

July 1996 – Use of meat and bone meal is prohibited in all animal feeding

December 1996 – Imports of meat and bone meal from United Kingdom are banned, as well as several products of bovine origin

February 1997 – Prohibition of including products derived from bovines in the human food chain, but not in the animal food chain (against the recommendations of CEAAEE)

July 1997 – EC sues Portugal for lack of cooperation with the EC and violation of its rulings

October 1997 – All members of CEAAEE resign

Immediately after the British declaration, the Ministry of Agriculture followed other countries in embargoing all imports of cattle, fresh meat or bovine-derived products for human consumption from the United Kingdom. By this time, a new government, from the Socialist Party (PS), was in power, and, eventually, it might have wanted to take a strong position on the subject.

In reaction to this news, a new parliamentary hearing was held in Portugal, following unanimous approval of a proposal from the Communist Party, in the opposition. Once again several experts were called to testify, but this time invitations went beyond the strict animal breeding sector, including as well administrative authorities, representatives of the producers and trade associations, and representatives of a consumer association. Contrary to the 1993 hearings, which had restricted the discussions to the existence or non-existence of BSE in Portugal, the new hearing was devoted to the evaluation of the social and economic impacts of BSE risks to human health (Gonçalves, 2001). At this time, the hearings did not result from specific national dynamics, but rather from the European and international debates initiated by the declaration of the British Government. As such, the existence of the risk had already been widely accepted internationally and could no longer be ignored in Portugal. These developments lead Maria Eduarda Gonçalves (2000, 2001) to characterize this period as the “Europeanization of the BSE controversy”:

“(…) contrary to what had happened in 1993, this time they [the Portuguese authorities] could not ignore the existence of a risk from mad cow disease since it was broadly recognized in Europe” (2000: 433).

In fact, during this period there was a “generalized public scare” concerning the possible consequences of mad cow disease to human health (Jasanoff, 1997).

It is noteworthy that by then the Ministry of Health could no longer ignore or be ignored in the BSE case, since the risks to human health had been finally acknowledged in Portugal.

As such, the scope of the Parliamentary hearings was broader than in 1993. The following were among the aims of the debate:

- To evaluate the scope of the BSE problem in Portugal;
- To estimate the potential consequences of mad cow disease to public health;
- To get information about the action taken or planned in this field (Gonçalves, 2000).

With the results of the scientific debate being widely acknowledged, the 1996 hearings focused on the extent of the risks to human health and their association with eating habits, as well as on institutional measures regarding the surveillance and control of the disease.

While producers showed strong concern with the sudden drop in the levels of consumption, a consumer association, which was called as a witness in this hearings, assumed a more radical position regarding the certainty of transmissibility to humans, but distinguished levels of risk for different subproducts.

With the crisis having been dealt with until then by the Ministry of Agriculture, the concern with avoiding panic among consumers was, however, clear, and in the aftermath of the British declaration the Minister made a public appearance eating a typical Portuguese dish, with bovine brains, precisely the highest risk subproduct, which had been part of a wider ban in the human food supply early on in the UK. One of the conclusions of the 1996 hearings was a recommendation to the Attorney General to evaluate the behaviour of the Minister of Agriculture and the Chief Veterinary Officer in the 1993 crisis. The conclusion, presented later that year, indicated that the conduct of the Public Administration from 1990 to 1993 should be interpreted as part of a «strategy of reservation and caution», to avoid reactions of panic among the population⁹.

By the end of the hearings there were no doubts about the existence of risks and uncertainties related to BSE and its consequences.

2.3. The 1998 turning point

By 1998, the European Commission had become an active participant in the process of confining and controlling the spread of BSE in Portugal, with successive inspection missions

⁹ Procuradoria-Geral da República [Attorney General], Information nr. 56/96, L° H-9, Subject: Encefalopatia Espongiforme Bovina (BSE), 25/09/96.

to Portugal leading to strong recommendations from the Commission services for action by the Portuguese government. Eventually, this peaked in the enforcement of an embargo on Portuguese exports of cattle, beef and derived products, in November 1998, which was later extended.

Table 4. The new stage of the BSE crisis

<p>February 1998 – Official establishment of CEAAE and nomination of new members</p> <p>April-October 1998 – Recommendations of CEAAE suggest the ban on meat and bone meal in the animal food chain</p> <p>May 1998 – First animal with BSE born after the ban on meat and bone meal</p> <p>May 1998 – Mission of the EC Veterinary Inspection</p> <p>September 1998 – Second (emergency) mission of the EC</p> <p>October 1998 – Parliamentary hearings</p> <p>November 1998 – Creation of a Working Group at the Ministry of Agriculture</p> <p>November 1998 – EC declares provisional embargo on animals, meat and derived products from Portugal, which was later extended</p> <p>December 1998 – Prohibition of the use of meat and bone meal in all feedstuff for livestock</p>
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In an attempt to control the spread of the disease and the measures put in place by the different countries the European Commission had Veterinary Missions visit Portugal several times during the period after the 1996 announcement.

The reports from the EC Veterinary Missions to Portugal, which were made public, were often severe in the assessing the situation in the country and the role of the government in implementing effective controls to the spread of the disease. Issues such as the incorporation of European decisions on industrial processes for the rendering of meat, other industrial practices, frequency of inspections, breadth of the measures implemented, effectiveness of the control of the implementation of recent legislation, as well as the level of response to the proposals of expert committees were discussed and often criticised in these reports. The appearance, in May 1998, of the first case of a Portuguese cow born after the MBM ban (BAB) to ruminants, created further concerns that the measure taken in 1994 had not been completely effective in its implementation (Pereira, 2000b). The lack of action from the

national authorities on recommendations from previous EC missions, as well as from the nationally established expert committees, were also identified and strongly criticised, leading to the conclusion that the BSE agent was still being recycled.

Such reports displayed an international lack of credibility at the measures imposed, which had, however, not been closely followed by the public in Portugal. In fact, when the expert commission on the follow-up of TSEs was officially set-up in February 1998, one of its first decisions was to establish periodical informal meetings with the press, as well as other modes of diffusion of information to the public, in view of the lack of public information on the work of the former expert commission.¹⁰

These developments contributed to the implementation by Spain, in October 1998, of an unilateral embargo on Portuguese cattle and beef products. This also hinted at the possibility of a European embargo which eventually came into force, on a temporary basis, in November of the same year. As a consequence, the Communist Party called for another set of hearings on BSE (the third) to be convened by the Parliamentary Commission. These were held between 7 and 16 October 1998.

The participation from a wide set of actors, as in the 1996 hearings, made clear a lack of coherence in the national strategy towards BSE. It made clear as well the strongly reactive (and often delayed), rather than proactive, response of national authorities to the international developments, as well as the lack of follow-up to the national expert committee's analysis of the situation and ensuing recommendations. As the Parliamentary hearings concluded, most of the recommendations produced by different bodies regarding the BSE situation in Portugal were not implemented by government.¹¹ Furthermore, those that were implemented often lacked appropriate controls to ensure its effectiveness, as time came to show.

Stronger legislation which had been recommended earlier on was only approved after (or as a result of) the enforcement of the European embargo. The lack of effectiveness of the controls in the implementation of some measures was recognised by the government during these hearings. Indeed, one of the important contributions of the expert committee was the identification of the different industrial and agricultural practices in Portugal which required specific legislation. The traditional difficulty to implement certain measures, due to more

¹⁰ Cf. CEAAEE, 'Plano de Actividades' [Activities Plan], 1998.

¹¹ Conclusions from the Parliamentary Hearings on October, 1998.

informal practices, was one such case. However, the authorities delayed the implementation of some recommendations which eventually were put in place.

These developments also made clear that the change in government had not led to a different stance on the use of expert advice, or the role of consumer protection in relation to agricultural policy. The socialist government then in power, which had previously voiced strong criticisms of the role of the previous government regarding the disclosure of the disease, was systematically avoiding strong legislation and the communication of risks to the public in favour of piecemeal action and the neglect of possible risk factors. The events of March 1996 brought to the forefront the human health implications of BSE, which was reflected in the broadening of the debate, and the participation of the Ministry of Health. Nevertheless, the analysis of subsequent events shows that the animal health and the human health approach were not strongly linked, and that the Ministry of Agriculture remained reluctant to introduce new measures without very strong signals, or before it was too late, as some would argue.

The importance of the European context also becomes particularly clear. Not only did the recommendations from the EC missions and the European embargo have an impact at the national level, but on several occasions the policy-makers were to make direct comparisons between national measures and European developments, both to highlight the former or to justify that certain measures did not seem appropriate. The European embargo required a radical change, as it had a strong impact on the media and the public, making it a turning point. Legislation which had been in preparation for a long time was quickly approved and more effective controls were implemented.

Nevertheless, the Parliamentary Commission considered that the Spanish and European decisions were unfair towards Portuguese producers, and that statistical and scientific data still suggested that the consumption of national beef, namely that from animals fed on natural pasture and with assured quality control, presented no threat for public health (Pereira, 2000a).

Although these can be considered the main periods of the BSE saga in Portugal, it did not end here. Occasional news regarding this controversy have continued to arise in the main newspapers. Among the main issues of concern have been the treatment of waste products, mainly derived from the transformation of banned subproducts or residues, and their final

destination; the effectiveness (or lack of it) of the implementation of the human epidemiosurveillance network on CJD; or the implementation of the new Agency for Food Quality and Safety (which will be further discussed below), which was partly an outcome of the BSE scare.

It is relevant, nonetheless, to note that the three main periods identified here, as well as by Gonçalves (2000), have been marked by the holding of Parliamentary hearings. This raises two central questions: why have Parliamentary hearings been necessary at each of the three periods identified? And how did each of the Parliamentary hearings influence the subsequent period? Although the aim of this report is not to extensively discuss these questions, their formulation cannot go unnoticed in relation to the dominant mode of governance in the BSE case in Portugal. In this case, it is not only clear that decision-making has been reactive, and at times secretive, but also that the normal mechanisms of governance were not sufficient to stabilise the controversy or articulate the position of different actors, leading to ad-hoc initiatives (the hearings). These, although appearing as culminating events, have a greater palliative effect rather than acting as triggers of change in the mechanisms of governance.

The BSE crisis opened up a new debate on the redefinition of the evaluation and management system concerning food safety issues. The failure of the previous models led to the creation of the Food Quality and Safety Agency (Agência para a Qualidade e Segurança Alimentar). Despite the promises of this new model, the results were far from successful. The model chosen for the Food Quality and Safety Agency corresponded to the concentration of a variety of roles in the same institution. Besides the fact that this meant a broad change in the system, a significant need for financial and human resources and the emptying out of other existing services, which eventually contributed to the barriers to its implementation, the model does not seem to be able to keep separate quite distinct functions and becomes too dependent on the fluctuations of the political climate. Even if the distinction between risk assessment and risk management may be difficult to define, the addition of an inspection role, with necessarily stronger links to producers than to consumers, does not contribute to ensuring the independent role of the agency.

3. Expertise and public participation

The case of BSE gives us important entry points to the way Portuguese authorities deal with scientific advice, displaying as well features of the debate on academic hierarchies and disputes between academics and government research staff. This case also displays some of the consequences of the low level of institutionalisation of scientific advice in Portuguese society.

Besides, since the beginning of the process, public authorities tried to keep BSE away from public debate. As a result, only in a second phase of the process these other actors enter the stake. Among these, we can identify producers and their representatives and the Portuguese consumer association (DECO). As for the broader public, besides the drop in public consumption of bovine products (an instance of “voting through consumers choice”), there was no widespread debate on BSE problem.

3.1. The institutionalisation of expertise

In Portugal as in other European countries (Barbier et al., 2002), the BSE case has been largely shaped by the allocation of competences in the area of animal food quality, and by related framings of the issue as an animal or public health problem. This has been particularly clear in the Portuguese case. Before the British government publicly declared the strong possibility of a link between the animal and the human form of the disease, not only was BSE framed simply as an animal health issue, but no questions were asked regarding possible human risks thereof.

But even during this initial period, pre-1996, the definition of the relevant expertise followed discretionary decisions. When researchers from the National Veterinary Research Laboratory, the reference laboratory for animal health, identified the emergence of a new disease in cattle in Portugal, knowledge of which was necessarily limited, decision-makers not only neglected the conclusions but imposed secrecy on them, at the same time as they questioned the technical expertise of their staff holding appropriate credentials for that effect.

In so doing, as later became evident during the Parliamentary hearings, decision-makers resorted to academic hierarchies and disputes between academics and government research staff, neglecting specific expertise on the questions under discussion. In establishing such

priorities, the experiential knowledge of veterinarians in the field, who were placed at the bottom of the pecking order thus established, was neglected as well, as were the experiences of other actors.

Until the 1996 scare, BSE was fully dealt with within the Ministry of Agriculture. In 1994, a Group for the Follow-Up of BSE was created, within the Ministry. Its decisions, however, according to the conclusions of the 1996 Parliamentary Hearings, contained nothing substantially different from the approach taken since 1990.¹²

With the 1996 announcement, the need was recognised to create a working group to analyse the BSE case from a public health perspective, in collaboration with the Ministry of Health. A Scientific and Technical Group on Creutzfeldt-Jakob Disease, including doctors and veterinarians, was appointed in April, now under the Directorate-General of Health, to study the epidemiology and diagnosis of CJD and to follow scientific knowledge on the issue.¹³ Nevertheless, as noted during the 1996 Parliamentary Hearings, the solution did not follow the path towards the creation of an independent commission, as in the UK, but amounted to establishing an internal committee.¹⁴

This expert committee did not, however, become fully institutionalised, neither in its form nor in its impact in the policy-making. Changes in the title, composition or functioning over the committee became recurrent features of its existence. According to one of the Commission's members, in only a few cases did the experts' advice influence the regulatory measures taken by government. The lack of interaction with the government was already visible early on (Pereira, 2000b).

The members of the then called Commission for the Study and Follow-Up of Spongiform Encephalopathies (CEAEE) collectively resigned in October 1997, to pressure the Health Minister to restructure its composition and functioning, as earlier suggestions had not lead to any changes.¹⁵ Since the start of its activity in April 1996, the Commission had not yet been officially nominated. The former coordinator considered that the large number of committee members (over 15) made meetings difficult to manage, and that it would be desirable for the CEAEE to include experts in other fields. Only in February 1998, through a joint Decision by

¹² Conclusions from Parliamentary hearings, 1996.

¹³ Ministry of Health, Press release, 10/04/1996

¹⁴ Parliamentary hearings, 1996.

¹⁵ *Diário de Notícias*, 11/11/1997.

the Ministry of Agriculture, the Ministry of Health, and the Ministry of Science and Technology, was the CEAAE officially institutionalised, for a two-year term.¹⁶

Recognising that the public impact of the work of the TSEs Commission was not significant, the CEAAE programmed periodical informal meetings with the press, as well as the production of information materials to be developed during the first year after formalisation.

Anticipating what became a central issue identified by the EC Inspection Missions, the CEAAE showed concern with problems related to enforcement, namely those dealing with the treatment of risk material, and not just with an evaluation of the scientific evidence relative to the TSEs, proposing site visits. In this way it was underlining the fact that the BSE issue could not be dealt only through scientific evidence, but that it had to take into account as well the local context and agricultural practices. This view was not shared by public administration, which favoured intervention based on legislation rather than on enforcement, and on internationally available scientific evidence rather than on local practices. In any case, the government showed no effort to develop local scientific capabilities on the matter, by refusing to fund a research proposal gathering the main Portuguese researchers on the topic, dealing both with animal health and public health.

The marginalisation of the CEAAE eventually led to the setting up of a new Working Group to follow the application of the emerging measures to combat BSE, in response to the EU embargo to Portuguese beef. The Working Group was expected to provide technical advice to the new Minister, and included as members the Veterinary Director-General, the director of LNIV, the chairman of the Association of Veterinarian Doctors, and a Union representative, and representatives from producer and consumer associations.¹⁷ Other committees existed during this period, namely an Inter-Ministerial Working Group, with members from the Ministries of Health, Environment and Agriculture, but they had little impact on the policy-making process.

In the conclusions of the 1998 parliamentary hearings, it was stressed that the government had acted irresponsibly for at least two and a half years by not having followed the recommendations produced by the Parliament, working groups and commissions following BSE, or by the services of the Ministry.

¹⁶ Despacho Conjunto nº 267/98, 17.02.1998.

¹⁷ Diário de Notícias, 12.11.1998.

3.2. Government policy and the protection of producers

As noted above, the dynamics of the BSE case may have been significantly shaped by the three parliamentary hearings. These have also made clear the involvement of different actors in these debates and in governance.

The events during these periods showed that the government structures, namely within the Ministry of Agriculture, were particularly sensitive to the concerns of economic agents, and tended to neglect possible risks for the consumers. As mentioned above, this was clear from the whole initial framing of the issue, which neglected possible consequences for human health, until risks were recognised internationally.

In the first phase, pre-1996, the issue was thus fully dealt with within the services of the Ministry of Agriculture, through an animal health perspective. Furthermore, there was a specific concern with avoiding any “public alarm”, which led to secrecy. Although the information was concealed from the consumers, there was no influence of industrial associations in this strategy. In the 1993 hearings, a veterinarian representing an Association of Cattle Producers gave evidence (but no representative of the consumers...). He argued that the clarification of the situation, required that the public be informed– “if there is, it has to be assumed that there is”¹⁸ – in order not to threaten consumption and to foster trust in the diagnostics of the veterinary laboratory.

Although the strategy was to keep information away from the public, the media had a particularly relevant and active role during the 1993 Parliamentary hearings. In fact, the hearings followed from news coverage of declarations by a Portuguese MP who took the lead in challenging the Minister of Agriculture, and who denounced that the existence of cases of BSE in Portugal was being covered up by the administration. However, once the parliamentary majority closed the political controversy, and BSE was declared ‘non-existent’ by the conclusions of the hearings, the BSE case (temporarily) ceased to attract media attention.

In the 1996 Parliamentary hearings the situation changed, as public health became the central concern. Representatives of several trade associations (meat sellers, cattle producers, agricultural confederations and compound feed producers) were called to witness. Showing a

¹⁸ Parliamentary hearings, 1996, p. 11.

strong concern with the sudden drop in public consumption of bovine products, which had fallen between 50 and 83%¹⁹, according to several surveys, they generally looked at the possibility of transmission of BSE to humans as remote, since there was no proof available of that possibility. Emphasis was put, instead, on the differentiation of the meat products, considering that while beef (muscle) could be eaten certain other products should not. The association of the disease with milk was avoided as well. The Trade Associations also made several criticisms or recommendations regarding the implementation of measures and sanitary controls.

In this context, the government did not attempt to clarify the issue and the possible risks. In a widely publicised, and discussed, case in April 1996, just shortly after the UK announcement, the Minister of Agriculture, on a visit to Luxembourg, decided to eat a typical Portuguese dish of bovine brains at a restaurant owned by Portuguese migrants. This initiative, widely diffused through the media and strongly criticised, showed the central concern of the government on the impacts on consumer habits and, therefore, on the economic performance of producers, and thus the sending of the wrong signals to the public.

The Minister was questioned about such action in the Parliamentary hearings later that month, being reminded that brain, together with other subproducts, was considered a high risk material, which according to scientists, and as a safety precaution, should not be eaten. Although he agreed on endorsing that recommendation, he stated that he only ate brain because there was no risk at that specific place.²⁰ The message on possible risks was thus blurred, to say the least, as it denied the identification of bovine brain as, in general, a high risk material.

After the 1996 announcement, the government acted swiftly, and distributed a note to the press stating that beef, milk and milk products could be consumed without any restrictions, advising, for the time being, that the consumption of brain and intestines should be avoided. The Government stated as well that, on matters of safety, it would follow the international

¹⁹ A survey of Portuguese consumers was conducted in April/May 1996 and in January 1997 (Almeida and Graça, 1996). This survey was held during the second period of crisis, when the contradictory positions on the issue emerged. The results of the first part of the survey showed that 51% of Portuguese consumers had changed their eating habits. Of those, 67% had totally or partially reduced their consumption of beef. In January 1997, however, only one half of the interviewees stuck to those reductions. The main reasons they gave for that were: the prevalence of hazards (60%), and doubts about the information given by the authorities. The other half – who had resumed earlier eating habits – argued that the danger had been eliminated (72%).

²⁰ Parliamentary hearings, 1996.

community. But, as the previous case exemplified and as it became clear of other measures, while the new government was trying to show his capacity of rapid response, the implementation of its policy followed previous practices, with serious delays and lack of clarity in the strategy followed and the messages sent to the public (Pereira, 2000a).

Another significant example of the gap between discourses and implementation related to the ban on the use of specified bovine offals (SBO) in human food. As recommended by the expert committee, when it was legislated, in January 1997, by the Ministry of Health, the draft legislation also included a ban on the use of those products in animal feed, which was later to be removed by the Ministry of Agriculture. The change to the project-law went against the opinions of the BSE Inter-Ministerial Working Group, even if it was consistent with the Portuguese position within the EU. Although it was not possible to find out precise statements, during the 1998 Parliamentary hearings, on what led to the removal of the ban on animal feed, it appeared that the estimated costs of the proposed ban and the need for five sanitary inspectors to guarantee the effectiveness of the law were behind the initiative of the Ministry of Agriculture, once again demonstrating the predominance of business concerns behind the Ministry's decisions.

Only after news on the possibility of an embargo on Portugal reached public opinion in September 1998, and in particular after the decision of the Spanish government to ban imports of Portuguese bovine products, did the government passed legislation to ban SBO from animal feed and to extend the existing ban on the use of MBM in animal feed to all animal species.

The Association for the Defense of Consumers (DECO), which had not been actively involved in the 1993 events, became more active only in 1996. DECO was also invited to contribute to the Parliamentary hearings and took a forceful position, declaring that "it is more than proved that BSE is transmissible not only between species but also to humans",²¹ thus offering a catastrophic outlook on the potential diffusion of the disease. The assertion by DECO of the existence of transmissibility was considered by the MPs to be significantly different from other declarations presented during the hearings, which emphasised uncertainty in scientific knowledge, and may have lessened the strength of their overall contribution. DECO's representatives showed some disagreement among themselves during the hearings regarding the consumption of beef, but noted differences in risk in relation to the different

²¹ Parliamentary hearings, 1996, p. 100.

cattle sub-products. They also drew attention to the importance of a well-functioning veterinary inspection system, and to the different risks of contamination throughout the food chain. DECO's declarations criticised government action for being dependent on economic interests and for not providing adequate information to the public, thus blocking public awareness of the risk.

4. Discussion

We have identified three main periods of the BSE crisis in Portugal. All these periods provide interesting information on how the links between Parliament, government, research, advisory and regulatory bodies and scientists were established during the crisis 'scenario'.

In 1993, Portuguese political authorities tried to enhance their credibility by attacking the credibility of experts. In 1996, the situation had moved towards the inevitable public acceptance of the risk associated with BSE, after an earlier recognition of the accuracy of the previous diagnosis made by veterinarians. As a result, veterinarians made public the arguments on the need for the authorities to be accountable for their earlier claims of the non-existence of risks to human health.

During a first phase the controversy was characterized by the lack of public debate, the lack of relevance of scientific advice, the lack of transparency and the lack of information on the developments of the BSE issue. A second phase witnessed the opening of public debate and the visibility of contradictory positions on the issues. This opening was clearly a consequence of what was happening throughout Europe.

The third phase was characterized by the dominance of the role EU within the process of confining and controlling the BSE in Portugal. At a later stage, the debate on the redefinition of the evaluation and management of food safety issues, revealed during the process of creating the Food Quality and Safety Agency, emerged as central.

Drawing on Hagendijk and Kallerud's (2003) typology, we can identify discretionary governance as a central feature during the whole process. In 1993, this role was played by the Parliamentary commission, acting as an agent of discretionary governance, endorsed by the government. In 1996, by the time of the second parliamentary hearings, the parliamentary commission introduced a deliberative dimension into the controversy. The lack of articulation

between the second parliamentary commission and the decision-making process, however, allowed the latter to pursue its discretionary path. By the third period, discretionary action ‘performed’ by the European Commission was paramount. The developments, mainly in the first two periods of the process, show the importance of the mode of discretionary governance in Portuguese context, which persists beyond changes in government.

During this process, it became clear that the decision-making process was based on a reactive approach. Besides, the regular mechanisms of governance were not sufficient to stabilise the controversy or articulate the positions of the different actors, which led to holding parliamentary hearings as ad-hoc procedures. Actors outside the policy-making (and political) institutions were not particularly active (or reactive) either. They did not contribute to opening up the debate beyond parliamentary hearings, thus reinforcing the central role of discretionary governance. The latter was put into question, in fact, by external events, namely EU policies.

Within this process we can find other types of governance, to be sure, even if with lower visibility. For instance, consumers exercised their choices, reducing beef consumption. Even taking into account the limits of this behaviour – only for a brief period of time, only with short-term impacts – we can identify here some features of market governance.

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