

# **The Impact of Europe on Spanish Food Safety Policy**

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## **CONTENTS**

<b>GLOSSARY</b>	82
<b>INTRODUCTION</b>	83
<b>1. THEORETICAL FRAME OF REFERENCE</b>	
<b>Conceptualizing Europeanization and analytical approach</b>	83
<b>Methodology and case selection</b>	87
<b>2. EUROPEANIZATION OF FOOD SAFETY</b>	
<b>Policy Development</b>	87
<b>The BSE crisis: specific risk materials regulation</b>	88
<b>Community responses to the BSE crisis</b>	89
<b>3. EUROPEANIZATION AND DOMESTIC CHANGE</b>	
<b>Adaptational pressure and goodness of fit</b>	91
<b>Domestic constraints and veto points</b>	93
<b>Changes in the problem solving approach and policy instruments</b>	97
<b>Europeanization of domestic structures</b>	99
<b>4. CONCLUSION</b>	100
<b>REFERENCES</b>	101

## **GLOSSARY**

AESA	Agencia Española de Seguridad Alimentaria
ANGED	Asociación Nacional de Grandes Empresas de Distribución
ASAJA	Asociación Agraria de Jóvenes Agricultores
ASEDAS	Asociación Española de Distribuidores, Autoservicios y Supermercados

BSE	Bovine spongiform encephalopathy
CAGyP	Comisión de Agricultura, Ganadería y Pesca
CAP	Common Agricultural Policy
CARCE	Conferencia de Asuntos relativos a las Comunidades Europeas
CCAA	Comunidades Autónomas
CCU	Consejo de Consumidores y Usuarios
CIOA	Comisión Interministerial de Seguridad Alimentaria
COAG	Coordinadora de Asociaciones de Agricultores y Ganaderos
COCOCSA	Comisión de Coordinación y Cooperation de Salud Alimentaria
CONFECARNE	Confederación de Organizaciones Empresariales del Sector Cárnico
CSyC	Comisión de Sanidad y Consumo
EC	European Community
ECJ	European Court of Justice
EFSA	European Food Safety Authority
EP	European Parliament
EU	European Union
FEGA	Fondo Español de Garantía Agraria
FIAB	Federación de Industrias de Alimentación y Bebidas
MAPA	Ministerio de Agricultura, Pesca y Alimentación
MI	Ministerio del Interior
MISACO	Ministerio de Sanidad y Consumo
MMA	Ministerio de Medio Ambiente
PCD	Pleno del Congreso de los Diputados
QMV	Qualified majority voting
SEA	Single European Act
SEPRONA	Servicio de Protección a la Naturaleza
SRM	Specific risk materials
TSE	Transmissible spongiform encephalopathy
UK	United Kingdom
UPA	Unión de Pequeños Agricultores
WHO	World Health Organization

## INTRODUCTION

The central focus of this analysis is the impact of European policy-making on Spanish food safety policy. Using a theoretical approach based on Europeanization literature we analyse the relationship between European integration and domestic change in a context of multi-level governance. We focus on two dimensions of change: policy change (problem solving approach and policy instruments) and change in structures (institutional reforms and changes in state-society relations). Since we are unable to consider all food safety regulation, we place two elements at the centre of our analysis: the regulation of specific risk materials (SRM) in the context of the “mad cow” disease and the food safety reforms that followed this food scandal. We argue that in both cases, regulatory reforms took place in Spain because of a combination of national and supranational reform pressures. We confirm the importance of European influences, but underlying the weight of domestic mediating variables. The analysis proceeds in four chapters. The first chapter introduces the theoretical frame of reference and analytical approach. The second describes the Europeanization of food safety. The third analyses the impacts of European developments at a domestic level. The final chapter summarizes the main argument and findings.

## 1. THEORETICAL FRAME OF REFERENCE

### Conceptualizing Europeanization and analytical approach

The term Europeanization has been used in a wide variety of ways across a range of disciplinary contexts (see Olsen, 2001 for an overview). However, as Harmsen (2000:51) points out, “within political science literature usages of the word cluster around two principal definitions. On the one hand, Europeanization is used to refer to the construction of a European polity and the emergence of European-level political processes. On the other hand, Europeanization is concerned with patterns of national adaptation to European integration”.

Our analysis describes as a preliminary step, how food safety policy develops at European level in line with the first definition. It is a necessary starting point to understand how policy choices are made at supranational level for the analysis of its domestic impact (Risse et al., 2001:6). In the study of European policy-making it is necessary to move from traditional research in European integration (intergovernmentalism and neofunctionalism) toward approaches developed under the “governance turn” (Jordan, 2001:194; Rosamond, 2000:106). Among these approaches, the regulatory state (Majone, 1996a); the network perspective (Peterson, 1995, 2003; Eising and Kohler-Koch, 1999) and the multi-level governance approach (Marks et al., 1996; Marks, 1997; Hooghe and Marks, 2001) are relevant for our analysis.

Food safety is a characteristic policy of the regulatory state. According to Majone (1996a:276), a regulatory state specializes in the control and management of international externalities and market failures, and it has an essential element: the establishment of regulatory networks, namely “a web of networks of national and supranational regulatory institutions held together by shared values and objectives and by common style of policy-making”<sup>110</sup>. Peterson (1995) recommends the use of the policy networks analysis for the study of the European Union (EU) systemic level of analysis. European policy-making involves informal contacts and networks of public and private actors, sharing information and resources in the design of policies. Food safety is a policy area where networks are likely to develop. There are a number of actors interested in influence regulation, from farmers to consumers. It is a complex and highly technical policy, where European groups provide information and expertise to legislators and shape policy decisions. European policy-making takes place in a context of multi-level governance, namely a “system of continuous negotiation among nested governments at several territorial tiers” (Hooghe and Marks, 2001:3). Unlike more state-centric accounts (e.g. liberal intergovernmentalism)<sup>111</sup>, while recognising the importance of the state, multi-level governance states that European integration challenges its autonomy and authority. As Hooghe and Marks (2001:4-11) underline, even if nation states want to maintain national sovereignty, they are unable to do so because most decisions in the Council are now taken by qualified majority voting (QMV) and because the EU institutions (the Commission, EP or ECJ) leave their own input in policy decisions. National governments no longer monopolize European policy-making neither the aggregation of domestic interests. Mobilization takes place directly at the European arena, where Euro-groups and offices representing subnational authorities exist.

While taking into account how food safety policy develops at European level in a context of multi-level governance, our research focuses in the study of its domestic impact. Is Europeanization a decisive factor in explaining national developments? What are the mechanisms that make European policy-making important for domestic change? Our dependent variable includes two dimensions of change: policy change (problem solving approach and instruments) and change in structures (institutional reforms and changes in state-society relations) caused by EU policy-making. According to Héritier (2001:15) the problem solving approach is a “relatively consistent system of ideas supported by scientific knowledge, as to how a problem should be solved, and comprising a set of value priorities and causal assumptions for the realization of the solution”. Policy instruments, in contrast “give a more precise definition of how to realize specific policy goals by specific actions” (ibid.:15). By institutional reforms we refer to changes in the formal institutions responsible for food safety. Special attention is paid on the emergence of independent regulatory agencies. By changes in state-society relations we refer to changes in public-private negotiations in the design, formulation and implementation of policies.

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<sup>110</sup> According to Majone (1996a:261) regulation is one of the main functions undertaken by states and the most important at the EU level for the following reasons: 1) the small budget of the EU: redistributive policies are by definition costly; 2) the political goal of creating an European market requires a substantial degree of regulatory activity; 3) the type of policy required in the European market is characterized by a high degree of specialized technical knowledge.

<sup>111</sup> The core ideas of state-centric approaches such as liberal intergovernmentalism (Moravcsik, 1998) are that European integration does not challenge the autonomy of nation states; it is a process driven by bargains among member states reflecting the lowest common denominator among state positions; the EU institutions exist to aid member states to facilitate agreements; and state leaders monopolize the interface between the neatly separated arenas of European and domestic politics.

The establishment of the independent variables is far more complex. In the study of domestic impact of the EU policies we are confronted with a variety of approaches. As Knill (2001:10) points out, on the one hand classic integration theories and approaches developed under the “governance turn” in EU studies “provide only limited insight when it comes to the impact of European integration at the domestic level”. On the other hand, within the Europeanization literature, there is a “strong disagreement as to whether either institution-based or actor-based perspectives constitute the most fruitful approach to account for the domestic impact of EU policies” (ibid.:14). Knill and Lehmkuhl (1999:2) distinguish three types of European policy-making, namely positive, negative and framing integration, which require distinctive approaches in order to explain their domestic impact<sup>112</sup>. However, this typology constitutes an ideal model and the reality of many policies, like the food safety policy, shows that they usually present characteristics from the three policy types.

Different authors (e.g. Cowles et al., 2001; Héritier et al., 2001; Knill, 2001; Radaelli, 2003; Risse et al., 2001) combine institution and actor-based perspectives, providing a more integrated explanation. We analyse the impact of Europe on Spanish food safety policy and structures using the variables developed by these theoretical approaches. We start with the concept of adaptational pressure and goodness of fit between European and national arrangements. Next, we analyse mediating factors facilitating or prohibiting a flexible response to adaptational pressures. Domestic variables mediate the impact of European developments and determine adjustment to Europeanization pressures.

#### *Adaptational pressure and goodness of fit*

A misfit between European demands and national policies generates a pressure to adjust on the part of member states (Héritier, 2001:4). The goodness of fit between domestic and European arrangements constitutes adaptational pressures determining “the extent to which domestic institutions would have to change in order to comply with European rules and policies” (Risse et al., 2001:7). If misfit is low, not much domestic adaptation is required and actors can easily incorporate EU requirements. In contrast, if misfit is high, resistances to change are likely.

The fit-misfit perspective is a preliminary step, but not a sufficient condition to explain the impact of European policy-making on domestic policies and structures. Héritier (2001:9) argues that, even when there is a low misfit it is necessary to go beyond a rough assessment of the similarities between European and domestic arrangements, and include the domestic process in order to assess “whether and how Europe matters”. According to Risse et al. (2001:9) “in cases of high adaptational pressure, the presence or absence of mediating factors is crucial for the degree to which domestic change adjusting to Europeanization should be expected”. We distinguish among those mediating variables that facilitate or difficult adaptation, the following explanatory elements: institutional factors, beliefs and learning and domestic actors’ preferences.

#### *Institutional factors*

Actor-based institutionalist approaches argue that Europeanization generates different national responses depending on the “reform capacity” of the system, defined in terms of formal and factual veto points (Héritier and Knill, 2001:258). Formal veto points exist in federalist or decentralized political systems or when there are multiple-party coalition governments. Factual veto positions turn up when there is participation of associations and interest groups in decision-making, such as in corporatist systems. As Risse et al. (2001:9) point out, “the more power is dispersed across the political system and the more actors have a say in political decision-making, the more difficult it is to foster the domestic consensus of “winning coalition” necessary to introduce institutional changes in response to Europeanization pressure”. From this perspective, institutions affect the capacity of utility-maximizing actors to induce policy and structural reforms.

From an institution-based perspective and following the propositions of historical institutionalism, a number of studies (e.g. Risse et al., 2001 or Knill, 2001) complement actor-based approaches including institutions as independent explanatory variables. From this perspective, actors are not utility-maximizing actors with fixed interests and preferences. Although self-interest undoubtedly permeates politics, behaviour is not driven by rational calculation but by the “logic of appropriateness” (March and Olsen, 1984:744).

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<sup>112</sup> The domestic impact of policies of positive integration can be explained on the basis of the institutional compatibility of European and domestic arrangements. The impact of negative integration policies is confined to the change of domestic opportunity structure, and can be explained from an actor-based perspective taking the strategic interaction among domestic actors into account. Finally, framing integration policies based on a cognitive logic can be explained by analysing the extent to which EU legislation has helped alter expectations and beliefs.

Individuals “satisfy” more than maximize and behave in a routine manner following “standard operating procedures” (Simon, 1985:302). These approaches are based on a broad concept of institution, including formal institutions but also “rules, compliances procedures, and standard operating practices that structure the relationship between individuals” (Hall, 1986:19).

An informal institutional mechanism to overcome veto points prohibiting adaptation to EU requirements is the existence of a “consensus-oriented or cooperative decision-making culture” (Risse et al., 2001:10). According to Knill (2001:21-23) domestic adjustment follows “logic of appropriateness” and is “path dependence”. Existing institutional structures and practices determine the extent to which European demands are accommodated. EU requirements are not easily accommodated if they challenge core policy styles or embedded institutional frameworks (ibid.:47). A policy style defines the “standard operating procedure” for the formulation and implementation of policies (Richardson, 1982). Institutional embeddedness increases with the number of (inter-) institutional linkages and the tightness of these linkages, i.e. with the number of changes that have to be made if the institutions under observation have to be changed (Knill, 2001:43). “Path dependence” means that history matters: “we cannot understand today’s choices without tracing the incremental evolution of institutions” (North, 1990:100). Well established institutions and traditions will not easily adapt to exogenous pressures: “except when there are external shocks or fundamental performance crisis, institutions remain stable even in a changing environment” (Knill, 2001:47).

#### *Actors*

As Héritier (2001:13) points out, both public and private actors seek to influence policies “according to their goals within the limits imposed by institutional prescriptions”. Within institutional constraints, domestic actors might exploit European policies in order to achieve their objectives, facilitating domestic adjustment. In contrast, if European developments are not in line with actor’s interests, they might constitute factual veto points for introducing policy and structural reforms. To influence policies actors constitute in policy networks. Within the network, the distribution and type of resources explain the relative power of actors (Rhodes, 1997:11). There are different typologies of networks (see Wilks and Wright, 1987 or Rhodes and Marsh, 1992) but one of the most employed ones is the elaborated by Rhodes (1981) distinguishing between policy communities and issue networks<sup>113</sup>. According to Falkner (2001:99), changes in European level policy networks (e.g. movement from a policy community toward an issue network) may have “feed-back effects” in the national environment empowering domestic actors. European policies may alter domestic opportunity structures and the distribution of power and resources within the network, changes implying in turn a challenge for existing institutional equilibrium (Knill, 2001:215).

#### *Beliefs and learning*

By emphasizing the role of ideas and policy learning we are introducing elements of sociological institutionalism and constructivist approaches. The cognitive dimension has to be included in the analysis since not only can Europe affect formal political structures and domestic opportunity structures, “it can also influence the values, norms and discourse prevalent in member states” (Radaelli, 2003:36). From this perspective, Europeanization is understood as the emergence of “new rules, norms, practices, and structures of meaning to which member states are exposed and which they have to incorporate into their domestic practices and structures” (Börzel and Risse, 2003:66). Both European and national actors work within institutional prescriptions but also within problem solving approaches or policy paradigms, namely “framework of ideas and standards that specifies not only the goals of policy and the kind of instruments that can be used to attain them, but also the very nature of the problems they are meant to be addressing” (Hall, 1993:290). The degree to which European developments challenge domestic rooted policy paradigms determines the extent to which national adaptation is expected. A third order change involving a radical change in the goals that guide policy (a paradigm change) is likely to involve the accumulation of anomalies

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<sup>113</sup> A policy community has few but a stable numbers of members that heavily depend on each other for valued resources such as money, expertise, and legitimacy. The same actors tend to dominate decision-making over time and they monopolise the representation of interests. Interests are aggregated around a single and professionalized organization that has stable relations with the government. In contrast, an issue network has a fluid membership depending on the specific policy issue under discussion. It is highly permeable by a variety of actors with different objectives, its members are relatively independent from one another and its level of mobilizations is weak which limits their ability and legitimacy to defend their interests and to establish stable relations with the government.

and policy failures that discredit the prevailing paradigm, precipitates a shift in the locus of authority over policy and initiates a contest among competing paradigms (ibid.:291)<sup>114</sup>.

An approach based on policy learning has been used to explain the convergence of national policies and institutional isomorphism. Thatcher (2001) for example uses policy learning as explanatory variable to account for the spread of independent regulatory agencies across Europe. While structural isomorphism has been traditionally explained in terms of negative integration and reasons of efficiency, “coercive, mimetic, and normative processes” explain institutional isomorphism to reduce uncertainty and complexity (DiMaggio and Powell, 1991:74). Mimetic learning operates when means-end relationships are unclear and institutions imitate successful examples.

### **Methodology and case selection**

As research method, studies on Europeanization include both, data obtained from exploratory interviews and document analysis. The extent of the research forces us to focus on the second leaving for the future having interviews. This analysis is only a preliminary step and its conclusions will need to be confirmed by further research. Using document analysis, the data is collected through the review of the existing literature on the topic under study; the analysis of the EU and the national regulation (Regulations, Decisions and Directives at European level and Laws, Regulations, Royal Decrees, Resolutions and Ministerial Orders at national level); European inspection missions carried out in Spain to control the application of EU law; European Commission documents; European Parliament reports and national parliamentary documentation (Congress parliamentary reports). Our case selection allows us to introduce a comparative element in the analysis. Analysing SRM regulation and the food safety reforms that followed the BSE (bovine spongiform encephalopathy) scandal, we compare within the same policy area and institutional framework, the impact of dissimilar European measures with different scope and very different implications and adjustment requirements at a domestic level.

## **2. EUROPEANIZATION OF FOOD SAFETY**

This chapter describes the Europeanization of food safety policy in a context of multi-level governance. We start with a brief introduction to its development. Next we focus on SRM regulation in the context of the “mad cow” disease and the Community responses to this food scandal.

### **Policy Development**

Food Safety, as a public good, has an essential role in any society. Everybody has the right to get access to healthy, safe and nutritive food to satisfy their food needs. In advanced societies, food safety is not only the responsibility of private agents but also a public competence. It is a characteristic policy of the regulatory state which takes place to correct market failures, particularly negative externalities and information failures, and to increase the efficiency of the allocation of goods (Krapohl, 2004:521). As Majone (2001:281) points out, the food sector is an area where European Community (EC) regulation “dates back to the earliest days of the Community”. The goal established in the Treaty of Rome to create a single market requires the harmonisation of national laws, including laws for the regulation of foodstuffs<sup>115</sup>. The EC has regulated food

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<sup>114</sup> Hall (1993) identifies three types of policy change according to their magnitude. A first order change involves a change in the characteristics or technical aspects of the instruments used to attain the goals that guide a policy in a particular field. A second order change implies the development of new policy instruments to attain policy goals. A third order change means a radical change in the goals that guide policy. The advocacy coalition framework developed by Sabatier (1988) has similarities with Hall’s model. Sabatier argues that the “deep core” belief system can be only changed through some shock originated outside the political subsystem.

<sup>115</sup> As Lister (1992:16-33) points out, prior to 1985, the Community undertook the harmonisation of food regulatory policies using a retail approach. Under the retail approach “the Community prepares detailed compositional standards for individual foods or products categories, in which the most specific requirements are included”. The difficulties to reconcile national rules and the existence of a variety of administrative traditions were an obstacle for the harmonisation and the retail approach proved thoroughly unsuccessful. ECJ decisions, particularly the introduction of the principle of mutual recognition (case 120/78 *Cassis de Dijon*) modified the harmonisation goal. With the 1985 White Paper completing the internal market the Commission developed a new regulatory approach to harmonisation looking for more

safety issues during decades, but avoiding distortions to the free circulation of products and not ensuring quality and safety is initially the main Community goal (Lister, 1992:24). Only after the BSE scare in 1996, legislative measures are generated exclusively inspired on the protection of consumer's health and Treaty reforms are introduced to have the competence to act on the area.

Before the BSE crisis, the European problem solving approach to food safety presented a number of shortcomings (see Lister, 1992:285 or Millstone E. and van Zwanenberg P., 2002: 594). First, failure to identify values, goals or principles guiding policy-making: there was not a coherent food law and the regulation was adopted on an "ad hoc" basis. Second, tendency toward rigidity and ambiguity: regulation resulted in regulatory delay, impediments to innovation and significant trade barriers. Third, tendency toward uncoordinated policy-making: lack of coordination within the Commission directorates general (DG) responsible for food safety (DGIII; IV and XXIV) and with the Community's policies concerning other issues (e.g. agricultural, competition or environmental policy). Four, tendency toward non-public rulemaking and lack of transparency: the policy was formulated under conditions which largely excluded the open discussion, public debate and scrutiny. Finally, there were significant enforcement problems and scientific advice procedures worked deficiently. Decisions were taken "to advance commercial and political ends as distinct from the ostensible policy goal, namely protection of consumers and public health" (Millstone and van Zwanenberg, 2002:594). Because of its shortcomings, the reform of the European food safety policy and the establishment of a food agency were unavoidable. As Chambers (1999:98) states, "there was a disaster waiting to happen in the field of food and had it not been BSE, it might well have been something else".

### **The BSE crisis: specific risk materials regulation**

The BSE or "mad cow" disease was discovered in 1985 in the United Kingdom (UK). The first Community measures were passed in 1989 when "mad cows" started to appear in other European countries<sup>116</sup>. Since we are unable to consider all the BSE regulation, we focus on the regulation of SRM, one of the most controversial aspects of EU regulation, from 1990 to 2001. The goal of SRM regulation is that those materials with a high probability of containing the BSE causing agent do not enter the food chain. It started in 1990, when the EC established restrictions on the dispatch of certain bovine tissues and organs from the UK (Decision 90/200/EC). In 1996, after the British government announced the existence of a link between the BSE and the Creutzfeldt-Jacob human disease, the World Health Organization (WHO, 1996) recommended countries not to permit any part or product of any animal which had shown signs of a transmissible spongiform encephalopathy (TSE) to enter the food chain. The EU put the WHO recommendation into effect by means of Decision 97/534/EC. The original date for its implementation is 1<sup>st</sup> January of 1998 but its coming into force was delayed in four occasions<sup>117</sup>. It did not take place until the second BSE crisis in 2000 when there was a substantial increase of the number of "mad cows" in member states and the Community started a new wave of legislation.

The implementation of SRM regulation had serious economic costs and member states without "mad cows" in their territory were not happy to implement it. Member states called for the application of the regionalization criteria (according to the BSE risk in each country) so that each country could ask for the total or partial exemption of its application according to its epidemiological situation. SRM regulation in general was insufficient because member states had a stable majority to prevent its application (Krapohl, 2003:198). The situation did not change until 2000 when the disease became an EU-wide problem. Only then, the preference constellation of the member states changed so that a majority preferred the introduction of the

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flexible methods than total harmonisation and yet more uniform than mutual recognition. After the SEA the EC sought to recognise the Community's regulation of food products on a wholesale basis introducing more flexibility and realistic appreciation of the complexities of food regulation. Wholesale directives address regulatory issues horizontally rather than vertically and establish requirements applicable to broad range of dissimilar products. The SEA offered two important new opportunities for foodstuff regulation. First it eliminates the need to seek unanimity among the member states for the approval of most internal market legislation. Second, it provides a more secure basis for the delegation by the Council of subsidiary and technical matters to the Commission.

<sup>116</sup> Community regulation focused on six main areas: 1) controls on British exports; 2) SRM regulation; 3) ban on the use of proteins derived from mammalian tissues for feeding ruminants; 4) animal sacrifice and guarantees on their identification and register (eradication programmes and epidemiologic-surveillance); 5) research programmes; and 6) market support measures.

<sup>117</sup> Decision 97/8666/EC delayed its application until 1<sup>st</sup> April 1998; Decision 98/248/EC until 1<sup>st</sup> January 1999; Decision 98/745/EC until 31<sup>st</sup> December 1999 and Decision 1999/881/EC until 30<sup>th</sup> June 2000.

regulation (Pozo, 2000:19). The way SRM regulation was passed shows the power of member states to control EC regulation according to their national preferences, in line with the picture described by liberal intergovernmentalism. However, the pass of legislation by QMV reinforced the impact of multi-level governance for those states opposing EU regulation. Member states' obligations derived from SRM regulation are summarized in Table 2.

**Table 2**  
**SRM obligations for member states derived from EU regulation**

<i>SRM Definition:</i>	Decision 00/418/EC provides for the removal and destruction of SRM from 1 October 2000: the skull including the brains and eyes, the tonsils, the spinal cord and the ileum of bovine animals aged over 12 months; the skull including the brains and eyes, the tonsils and the spinal cord of ovine and caprine animals aged over 12 months or that have a permanent incisor erupted through the gum, and the spleen of ovine and caprine animals of all ages. Further amendments of Decision 00/418/EC extend the list of SRM to bovine intestines (Decision 2001/2/EC) and vertebral column (Decision 2001/233/EC). Regulation 999/2001/EC establishes that SRM must be removed and destroyed according to the epidemiological status of a member state. It includes criteria as to classify the BSE status of member states and third countries into one of five classification categories.
<i>Removal and destruction:</i>	Member states must ensure that SRM are removed at slaughterhouses, cutting plants or high risk processing plants under the supervision of a designated agent appointed by the competent authority. The vertebral column may be removed at the point of sale. SRM must be stained with a dye and marked with a marker immediately on removal and completely destroyed by incineration without pre-processing or provided that the dye or marker remains detectable after pre-processing by incineration, co-incineration or by burial in an approved landfill site.
<i>Control procedures:</i>	Member states must carry out frequently official controls to verify the correct application of EU law. There are imposes restrictions on imports of SRM and on certain products of animal origin containing or derived from these materials.

### Community responses to the BSE crisis

After the BSE crisis the EU undertook an in-depth reform of the European food safety policy. Its development took place in a context of multilevel governance with supranational institutions, particularly the EP and the Commission, playing a key role for its development. After the "mad cow" scandal in 1996, the EP exercised its right to set up an Inquiry Committee and started an investigation of the policies adopted by the British government and the EU. The Temporary Committee of Inquiry into BSE (EP, 1997) revealed the Commission mismanagement of the crisis and shed light on the shortcomings of the European policy and regulation<sup>118</sup>. The EP report involved a first step toward a new governance regime in food safety including a new problem solving approach and instruments but also to important structural reforms.

#### *Problem solving approach and instruments*

After the BSE scandal a new policy paradigm emerged in food safety. Greater emphasis was placed upon the preventive character of the policy and the protection of consumer's health through a more integrated and

<sup>118</sup> According to the final report (EP, 1997: 16-29), the Commission gave priority to the management of the market as opposed to the possible human health risks existing in the light of scientific uncertainties. It followed a policy of downplaying the problem to avoid disrupting the beef market. Under pressures from the UK government, the Commission did not carry out inspections between June 90 and May 94, it did not carry out large scale research programmes and it did not take into account the Parliament's expression of concern. The Scientific Veterinary Committee was chaired by UK national and included a substantial number of British scientists which made the Committee to take decisions according to the interests of the British Ministry of Agriculture. Moreover, it did not encourage scientists to express their opinions diverging from the views held by the majority of its members.



coordinated approach. In terms of Hall (1993) typology, we can say that after the accumulation of policy failures a third order change took place, involving the definition of new policy goals and instruments.

Following the EP report, the entrepreneur role of the Commission played an important role for the emergence of the new paradigm. After the BSE scandal, the Commission's President announced the development of a new approach to food safety moving away from an approach emphasizing food security, i.e. the provision of food in the context of agricultural policy, towards an approach emphasizing food safety linked to the protection of consumers (Vos, 2000:233 citing Valverde, Piqueras García and Cabezas López, 1997). The new approach was initially established by the Commission in the Communication on Consumer Health and Food Safety (CEC, 1997a). Its main goals were the "reinforcement of the protection of consumer health" and "to protect animal and plant health and respect animal welfare" (ibid.: 6-9). To achieve this objective the Commission proclaimed three main instruments. First, scientific advice based on the principles of excellence, independence, and transparency<sup>119</sup>. Second, risk analysis comprising risk assessment, risk management and risk communication<sup>120</sup>. Third, control systems by reinforcing the implementation of EU legislation by member states. The Commission established that the precautionary principle, a feature at that moment of EU action in environmental policy, would guide risk analysis "in cases where the scientific basis is insufficient or some uncertainty exists" (ibid.:20).

As Chalmers (2003:534) states, the Europeanization of food safety policy "reaches its climax" with the publication of the Green Paper on the General Principles of Food Law (CEC, 1997b). In the Green Paper, the Commission identified the basic goals of community food law introducing more substantive reforms in relation to food safety, emphasizing the protection of consumer's health (Vincent, 2004:512)<sup>121</sup>. The BSE crisis influenced also the 1996/7 intergovernmental conference agenda and the reforms concerning health and safety protection introduced by the Treaty of Amsterdam (articles 95, 152 and 153)<sup>122</sup>. Subsequent food safety scares, like the Belgian dioxin contamination, further undermined consumer's confidence in the capacity of food industry and public authorities to ensure food safety. Following the debate raised by the 1997 Green Paper, in 2000 the Commission published the White Paper on Food Safety (CEC, 2000a). The White Paper formalises the linkage between the institutional reform and the broader objectives reform of EC food policy (Chalmers, 2003:536). It seeks to develop and reform the system of governance, not only in the area delineated by the Green Paper "but also in reaction to the experience gained through the implementation of the system created in the wake of the Communication on Consumer Health and Food Safety" (Vincent, 2004:513). The White Paper main priority is achieving the highest possible level of health protection in a more coordinated and integrated manner (CEC, 2000a: 6). In order to achieve this goal new instruments are proposed, such as the establishment of the European Food Safety Authority (EFSA) as the scientific point of reference for the whole Union; the review of the legislation to make it more coherent, comprehensive and up-to-date, and greater transparency improving the dissemination of food safety information to consumers (ibid.:3-4). The principles guiding the Commission proposal implementation include a comprehensive and integrated approach, covering the whole food chain and all food sectors and delineating responsibility through "a farm to table" policy, ensuring the traceability of products (ibid.:8). The Commission White Paper was the

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<sup>119</sup> According to Commission (CEC, 1997a:9), the principle of excellence involves that risk evaluation is undertaken by eminent scientists; the principle of independence wants to ensure that scientists are free from conflicting interests; and the principle of transparency guarantees an easy access to information on the committees activities and on their advice.

<sup>120</sup> Risk analysis is a systematic procedure comprising: the scientific evaluation of hazards and the probability of their emergence in a given context (risk assessment), the assessment of all measures making it possible to achieve and appropriate level of protection (risk management) and the exchange of information with all the parties concerned to explain the reasons and to justify the management measures proposed (risk communication) (CEC, 1997a: 19).

<sup>121</sup> The main goals of Community food law established by the Green Paper were: 1) ensuring a high level of protection of public health, safety and the consumer; 2) ensuring the free movement of goods within the internal market; 3) ensuring that legislation is based on scientific evidence and risk assessment; 4) ensuring the competitiveness of European industry and enhance its export prospects; 5) placing the primary responsibility for safe food with industry, producers and suppliers, through self-checking provisions (HACCP system) backed up by effective official control and enforcement; 6) ensuring that legislation is coherent, rational and user friendly.

<sup>122</sup> As Vos (2000:235) states, Article 95 established the Commission obligation to take particular account of "any new development based on scientific facts" in addition to the already existing obligation to start from a high level of health and safety protection when proposing harmonization measures. It allowed member states to introduce new national measures only when a problem is specific to that member state and has risen after the adoption of a harmonization measure. Article 152 required all Community policies to "ensure (and no longer "contribute to") a high level of human health protection in general. Article 153 established that the Community must contribute to protect the health and safety and the economic interests of consumers.

basis of Regulation 178/2002/EC laying down the general principles and requirements of food law, establishing the EFSA and laying down procedures in matters of food safety<sup>123</sup>.

#### *Structural reforms*

On the institutional side, the main institutional reform involved the establishment of the EFSA. Although the Commission had already considered the creation of a European food agency in the past, it was only established after the BSE scandal by means of Regulation 178/2002/EC<sup>124</sup>. The main task of the EFSA is to “provide scientific advice and scientific and technical support for the Community’s legislation and policies” and “to contribute to a high level of protection of human life and health” (art. 22). In line with the characteristics of the regulatory state (Majone, 1996a) the EFSA is the most authoritative body of a web of networks of national and supranational regulatory agencies. The White Paper explicitly established that the EFSA had to find analogous bodies in member states, working in cooperation with the European agency. The EFSA is a “transnational governance regime which cuts across national-supranational and public-private distinctions, and which both guides and is accountable to scientific communities, national food authorities and civic society” (Chalmers, 2003:538).

Structural reforms included also changes in EU relations with European interest groups. The EU food safety network includes a number of European groups representing farmers, food industry, distributors and consumers interests. One important source of pressure in food safety issues is the Common Agricultural Policy (CAP) and the powerful agricultural lobbies (Lister, 1992:18). The power of agricultural groups over industry and consumers is shown by Directive 85/374/CE establishing that agricultural producers are not liable for defective products. After the BSE crisis, Directive 85/374/CE was modified by Directive 1999/34/EC, finishing with the privilege enjoyed by agricultural groups. This reflects the new integrated approach “from farm to table” and represents the loss of farmers’ power in front of industrial interests, giving response to an old demand of consumer’s organizations (Romero, 1999: 81). The White Paper on food safety (action 81) provided for the establishment of an Advisory Group on food safety, and Regulation 178/2002/EC provided for open and transparent public consultation, directly or through representative bodies, during preparation, evaluation and revision of food law (article 9)<sup>125</sup>. The establishment of an Advisory Group took place by means of Decision 2004/613/EC inviting European level association to participate in policy-making. It may represent a step further towards the evolution of the EC policy network from a closed policy community dominated by agricultural producers, towards a more open issue network including representatives from the whole food chain. However, the Advisory Group basically has a consultative function, which means that associations’ interests are not needed to be taken into account in policy formulation.

### **3. EUROPEANIZATION AND DOMESTIC CHANGE**

This chapter analyses the impact of European developments in Spain, in relation to SRM regulation and food safety reforms. First, we focus on adaptational pressures by analysing the goodness of fit between European requirements and national arrangements. Second, we study domestic constraints and veto points as mediating factors prohibiting a flexible response to adaptational pressures. Finally, we analyse how regulatory reforms, both policy and structural reforms, took place at a domestic level. We determine the extent to which they were influenced by European developments, and what helped to overcome domestic constraints and veto points.

#### **Adaptational pressure and goodness of fit**

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<sup>123</sup> The Commission in order to settle and develop Regulation 178/2002/EC principles passed a set of rules (hygienic pack) which will entry into force in 2006.

<sup>124</sup> As Majone (2000:282) and Lister (1992:14) point out, the establishment of a European food agency was considered in the past but in 1990 a political decision was taken that the agency model was not appropriate for the sector. An alternative approach based on improved scientific co-operation and greater collaboration among international and national agencies was decided. According to Chambers (1999:98), the quest for subsidiarity fuelled by a public perception that the Commission was too big and too powerful, made any attempt to obtain additional resources and staff in the food safety area difficult in the past.

<sup>125</sup> Arguments to increase consultation with the public in general were previously set out in the intellectual forefather to the EFSA, the White Paper on Governance (CEC, 2001a).

There are different ways by which Europeanization exerts adaptational pressure. As Risse et al. (2001:7) point out, European policies might lead to policy misfit between EU rules and regulations and domestic policies, but they can also challenge ingrained national policy styles, institutional structures or deeply rooted collective understandings or policy paradigms. Europeanization may also challenge patterns of state-society relations.

In the case of SRM, we observe high adaptational pressure taking the form of misfit between European regulation (Decision 00/418/EC and Regulation 999/2001/EC) and domestic policy. EU law could not be easily incorporated and implemented in Spain since important domestic reforms were necessary to accomplish EU requirements. SRM regulation was a completely new regulation giving answer to an unexpected food safety crisis. As a result, domestic procedures could hardly fit European requirements in advance. Taking into account the obligations derived from SRM regulation (Table 2) we use SRM definition, their removal and destruction conditions (number of incineration plants and their incineration capacity) and control procedures, as goodness of fit indicators. Spain introduced domestic measures related to SRM regulation before the pass of EU regulation. A SRM-ban for cattle, sheep and goats imported from BSE-affected countries, was introduced in 1996 following the recommendation of the WHO<sup>126</sup>. However, although authorities argue that these measures were implemented, the Report on the Assessment of the Geographical BSE-risk in Spain (SSC, 2000:45) determined that “no compliance data are available”. Moreover, the Spanish regulation did not establish a ban for domestic cattle as Decision 00/418/EC demanded and SRM definition was not in line with EU regulation.

The Spanish government recognised that the existing national industrial infrastructures (5 authorized incinerator industries) were insufficient to go through with the removal and destruction of SRM under EU requirements (El País, 2000a:35). The existing industries could only treat between 40% and 60% of the total SRM volume. An additional problem was the irregular geographical distribution of these plants, which significantly increased SRM transport costs (Kubusch, 2000:32). The high predicted implementation costs of EU regulation reflect the policy misfit between domestic and European arrangements. The *Ministerio de Agricultura, Pesca y Alimentación* (MAPA) estimated the total costs of implementing SRM measures between 4000 and 6000 million pesetas (Eurocarne, 2000:119). Additional costs for transportation to the incineration plants were estimated between 400 and 500 million (Pozo, 2000:22). The removal of SRM under EU law involved changes in the infrastructure, logistics and working procedures in slaughterhouses. Moreover, it was necessary to increase the activity of the official veterinary services, which controls were much less frequent than the EU regulation demanded.

If we focus on the food safety reforms that followed the BSE crisis in Europe, adaptational pressure was also significant in Spain. Adaptational pressure did not take the form of misfit between EU law and national policy, but the new European paradigm and structural reforms in food safety challenged the existing problem solving approach, institutional design and state-society relations in the area in Spain. We use the requirements of the Commission Communication on Consumer Health and Food Safety, the Green Paper and the White Paper on Food Safety which formed the basis for Regulation 178/2002/EC as policy misfit indicators.

Policy misfit was high since Spanish policy deficiencies resembled the European ones before the BSE scandal. The shortcomings of the Spanish food safety policy have been highlighted by different authors (Barros, 1983a:66; 1983b:20; 1990:2; Losada, 2001:187; Lumia, 1983: 92 or Muñoz, 2002:64) but taking European reforms into account, we can summarize the most important ones as following. First, there were no values and goals guiding policy-making: there was not a coherent food law laying down general principles and procedures in food safety, in spite of the existence of an Alimentary Code<sup>127</sup>. Second, there was no single body or food agency responsible for food issues and scientific advice. There were important coordination and cooperation problems among the competent authorities, both among government levels and among ministerial departments. In scientific advice, we can also talk about a situation of multicompetences and a lack of coordination. Third, there was a lack of transparency, and state-society relations did not include appropriate consultation methods neither with consumers nor with representatives of all the food chain. Fourth, there were important implementation gaps and failures in the inspection and control systems. Fifth, there was no application of the precautionary principle and risk analysis. Decisions and rules were passed “following

<sup>126</sup> Regulation introduced by means of MISACO (*Ministerio de Sanidad y Consumo*) Resolution, 9<sup>th</sup> October 1996.

<sup>127</sup> The Code, in force since 1974, represented the first attempt to unify and rationalize food law but it has neither legal force nor sanctioning power. It was initially passed in 1967 but it did not enter into force until 1974 (Royal Decree 2519/1974, 9 August). According to a civil servant, because its application would cause at that moment the closing of the 80% Spanish food industries (Díaz, 1975:19).

different procedures, more or less diffused and frequently inspired in situations relating to the present moment” (Polledo, 2002:20). They were ex post facto remedial rather than preventive measures. Most food safety regulatory reforms were passed as “ad hoc” responses to food safety crisis<sup>128</sup>. There were no clear governmental goals in food safety and it had never been a policy priority, with the exception of crisis situations. The machinery of Spanish policy was ill-designed to cope with the complexities of modern food problems and the new European approach to food safety. Food safety regime was basically deregulatory and the existing regulation, problem solving approach and institutional design needed to be overhauled and improved.

From what we have already exposed, we can say that in both cases, SRM regulation and food safety reforms, there was a high policy misfit between European and domestic arrangements, so the need for policy adjustment was also high. The Spanish implementation record of the regulation and measures under study shows that in the case of SRM, implementation of the EU law was hard to achieve, including delayed adaptation and implementation gaps. In contrast, many food safety reforms, in line with the new European paradigm on food safety, had already been introduced in Spain before compulsory EU law existed. Then the question is: what can explain the patterns of domestic adjustment to adaptational pressure?

### Domestic constraints and veto points

This chapter analyses domestic constraints and veto points as mediating factors prohibiting domestic adjustment to European demands. Spain has a decentralized political system where according to Héritier and Knill (2001:258), “numerous institutional veto points that significantly reduce the potential for enacting far-reaching reforms” exist. On a vertical basis, competences on food safety are shared among the central government, the *Comunidades Autónomas* (CCAA) and the municipalities. The central government is responsible for the transposition of community legislation, international relations and agreements, preparation of the basic national legislation and the coordination of CCAA. The CCAA have executive and control competences, and they are responsible for regional legislation and its implementation. In municipalities over 50000 inhabitants, the local administration has the possibility to assume competences in the retail sector inspection.

The Spanish territorial structure is highly asymmetrical, since there are 17 CCAA with different degrees of political competency and powers. The relationship between the central government and the CCAA has always been characterized by “competition, conflict and imposition rather than cooperation and mutual understanding” (Börzel, 2001:151). Moreover, the existing mechanisms of national policy coordination have a number of shortcomings. In food safety, the designed body to facilitate cooperation, the *Comisión de Coordinación y Cooperación de Salud Alimentaria* (COCOCOSA) has always worked deficiently (Hinojosa, 2001:10). The CCAA heterogeneity; the competitive culture and coordination problems militated against consensus building and complicated policy implementation. However, the influence of the decentralized political system as veto point to introduce EU reforms was attenuated, since the CCAA have limited capabilities to participate in policy formulation, both at a national and European level. At a national level, the CCAA influence is limited, yet the Senate is not designed as a chamber for the representation of regions, and the central government position is stronger than in federal systems. The CCAA generally have no veto power in the policy formulation stage. At the European level, during the so-called “upstream stage” (when the national position is elaborated and the EU legislation is drafted) the central government is in sole control, even in those areas that affect the powers of the CCAA, reducing their role to the “downstream stage” (when EU measures have to be implemented) (Closa and Heywood, 2004:83). Although joint decision-making procedures between central authority and the CCAA have been established, the CCAA keep on not having influence at the policy formulation stage<sup>129</sup>. The influence of the CCAA was also attenuated because by the

<sup>128</sup> The most important policy and institutional reform in food safety, during the democratic period and before the BSE, took place after the rapeseed oil scandal in 1981. This is so far the most important food safety crisis in the Spanish history causing 1200 deaths and 25000 affected people (El País, 1995:67). After that food outbreak, food safety became a salient public and political issue, and important reforms like the unification of the *Registro General Sanitario de Alimentos*<sup>128</sup> or the approval of the General Health Law took place. However, many of the reforms introduced after 1981 were the result of improvised measures by the government under social and political pressures (Barros, 1990:1, 2).

<sup>129</sup> The coordination between central and regional governments on European affairs have gone through various phases, and the early strategy of confronting and circumventing the state has given way to a more collaborative relationship (Closa and Heywood, 2004:93). To compensate for the centralizing effects of Europeanization, instead of pushing for intrastate participation in European policy-making as German Länder did, Spanish competitive regionalism initially

time that SRM regulation was implemented and food safety reforms took place, the Partido Popular Administration, with absolute majority in the Parliament, was strongly resistant to the CCAA demands (ibid.:93).

Factual veto positions have to be taken into account when there is participation of associations in decision-making (Héritier and Knill, 2001:258). To analyse state-society relations we focus on the relative strength and organizational capacity of interest groups, their access to the political system and the autonomy between state and interest groups. The policy network includes a wide and complex range of actors with very different organizational resources. With respect to agrarian organizations, according to Moyano (1984) they have problems of collective action because of the heterogeneity of the agrarian social structure, and because of the weakness of their organizational resources. The main agrarian organizations (ASAJA, COAG, and UPA), are weak actors, not only for a low implantation and a small number of members and representation, but also for the low level of institutionalized relationships they have with government.

Consumers' organizations are also weak actors. They are characterized by a high degree of atomisation, with eleven recognised organizations taking part in the *Consejo de Consumidores y Usuarios* (CCU)<sup>130</sup>. Atomisation has been stimulated by public authorities, mainly because of the autonomic structure of the state and the financing policies used to promote its development (Sánchez, 2001:43). They are organizations characterized by a low level of professionalization and very general action programmes because of the complexity of consumers' problems (Soria, 2001: 230). All these characteristics reduce their legitimacy as consumers' representatives, their influence power, limit the hegemony of a single organization and make their relationship with public authorities difficult.

In contrast, the food industry and the distribution have an advantaged position compared to agrarian and consumer organizations. First, they have a more organized collective action. The food industry has managed to organize around a single and unified organization (FIAB) and the distribution sector is organized around two big organizations (ANGED for big distribution chains and ASEDAS for medium and small size). Second, they hold the economic leadership within the food chain after the consolidation of the agro-food system following the industrialization process (Moyano, 1984). The accumulation of power in the last stages of the food chain involves that economic interests have an advantaged position since the state may try to reproduce the prevailing structure of power in the market (ibid.:86-87). The mobilization of industrial interests is reinforced because the industrialization process and the increasing number of transformed food products in the market, contribute to consolidate an approach to food safety according to which it is solely an industrial responsibility (Hinojosa, 2002:5).

The role of interest groups as veto points, has to be analysed taking into account existing practices and tradition of interest intermediation. In Spain, corporatist practices where factual veto positions are more likely to develop, have not been as institutionalized as they have in other countries (see Pérez and Giner, 1988). Subirats (1992:125) following Richardson's (1982) classification argues that Spain has a consensual policy style in state-society relations<sup>131</sup>. However, the search of consensus is characterized by the establishment of informal more than formal relationships (Molins, 1995:8) the maintenance of traditional barriers of access for interest groups in their relations with public authorities (ibid.:15) and the participation of a few number of actors which, because of tradition or position, or because their participation is important for the legitimization of policies, have a privileged relationships with the government (Subirats, 1992:129).

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favoured a strategy of the CCAA to confront and circumvent the state (Börzel, 2001:144). The CCAA established direct contacts with EU institutions and participated in interregional associations. However, the subnational dimension of multi-level governance hardly emerged beyond specific regional policy arrangements (see Closa and Heywood, 2004:91). The CCAA realized that a confrontational strategy with central state was ineffective and failed in readdressing the balance of power and changed toward a more cooperative approach (Börzel, 2001:138). Joint decision-making procedures were established through the *Conferencia de Asuntos relativos a las Comunidades Europeas* (CARCE) formally institutionalized in 1994. However, the CCAA keep on not having influence at the formulation stage. As the Catalan *Patronat Català ProEuropa* (2000) report points out, many conferences are held when the corresponding sectorial Councils are concluded, only informing about the agreements, or just before its celebration when there is no time enough to convent a common position. In addition to the CARCE, there are sectorial conferences on key policy areas but they have no binding force and they have not been effective (Closa and Heywood, 2004:95).

<sup>130</sup> The CCU was established in 1990 (Royal Decree 825/1990) and its main function is materializing the audience right established in the 1978 Constitution.

<sup>131</sup> The analysis of the Spanish policy style is arduous since there are few studies in Spain from a politological perspective, and the most important studies carried out on a comparative basis (e.g. Richardson, 1982 or Schmidt, 1999) exclude the Spanish case.

Generally, in Spain there is no tradition of consensual politics with agrarian organizations (Moyano, 1988:213). The negotiation of food policy then was not characterized, as in Europe before the BSE or in other countries (see Smith, 1991 for the British case) by closed policy communities with agrarian organizations enjoying a privileged position. In Spain, the government has had traditionally privileged relationships with business interest, through closed policy communities in different policy sectors (Subirats, 1992:58, 68). In the food safety area however, the existing literature indicates that although the FIAB collaborates with the administration through “ad hoc” negotiations on specific food safety issues, there is not in Spain a structured and permanent intermediation between food industry and public authorities (Hinojosa, 2002:11). Public authorities have not developed any intermediation strategy with food industry organizations, which has given rise to an “erratic situation” (Langreo, 2003:25). Consumers’ organizations have been traditionally excluded from policy-making. There is a pronounced sectorial approach to state-society relations in food safety, not only because negotiations take place only with industrial affected sectors for the regulation of specific issues, but also because there is not a permanent and structured body for interest intermediation. The lack of an integral approach and the weakness of state-society relations are reinforced by the weakness of interprofessional organizations in Spain, and because organizations have only recently introduced food safety issues in their discourse<sup>132</sup>. Discourse on food safety is an emergent phenomenon and has not yet generated differencing elements among organizations (Moyano, 2002: 14).

To sum up, the characteristics of interest intermediation seem to indicate that public authorities had initially a significant level of autonomy in deciding policy reforms, and interest groups had a small role as actors facilitating or prohibiting adjustment to EU reforms. In the case of SRM, both public and private actor’s interests were not in line with the EU regulation and they played an important role when deciding Spanish position in Council negotiations. Even when a majority of countries called for the application of SRM regulation, Spain voted against the approval of Decision 00/418/EC since the European regulation conflicted with national interests. Domestic implementation costs were important for both public authorities and interest groups. The “mad cow” scandal coincided with the European convergence process, which involved an important economic and budgetary effort for Spain. Among government’s priorities, there was not to face the high costs of eradicating a livestock disease, considered not to be a national problem at that moment since there were not “mad cows” in Spain. In line with the government interests, industrial and agrarian groups opposed the removal of SRM because, their withdrawal from the market and the ban in their use as animal meal, involved important costs, among them the lost of their economic value; the replacement of animal meal for another (more expensive) animal food, and a benefit reduction in 90 Spanish firms working in the animal meal production and generating 400.000 tons of meals a year (El País, 2000b: 37; 2001: 22).

Although interest groups opposed SRM regulation, they only had access to the political system to negotiate implementation conditions, once the introduction of SRM regulation was decided. The end of public subsidies to SRM removal<sup>133</sup> gave rise to a conflict of interests, and the government started a formal negotiation with the affected sectors for the first time (with UPA and COAG representing farmers; CONFECARNE -a FIAB organization- representing meat industry; and ANGED and ASEDAS representing distribution). There was no consumer organization in the negotiation board. After more than 50 meetings, there was no agreement and the central government decided, though the opposition of all the organizations, that SRM destruction costs would be taken to consumers through the food chain (Ministerial Order APA/67/2002)<sup>134</sup>. Negotiations on SRM illustrate the central government autonomy; the “ad hoc” character of

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<sup>132</sup> Interprofessional organizations are vertical organizations including representatives of all the food chain. These organizations were not regulated in Spain until 1994. They are weak actors because of the lack of financing, and the problems with the organization of interests at a sectorial level, mainly the agrarian and the consumer sectors (Langreo, 2002:33).

<sup>133</sup> The MAPA and the *Fondo Español de Garantía Agraria* (FEGA) provided for a public subsidy system to assist the SRM removal, but the government announced that those subsidies would not hold beyond January 2002. The main reasons were the entry into force of a new autonomic financing system which involved a loss of the 30% of its economic resources for the central government, and the EC recommendations establishing that they introduced competition distortions (Cruz, 2002:45)

<sup>134</sup> The negotiation characteristics were explained by the Agriculture Subsecretary, Mr. Lamela (Lamela, 2000:52). The Ministerial Order APA/67/2002 was contested by CONFECARNE arguing that the Order did not establish appropriate mechanisms to guarantee that costs were translated to consumers, because the distribution sector was unwilling to assume the costs. As a result the government passed a new Ministerial Order (APA/1556/2002) clarifying some points and establishing new conditions accepted by both distribution and food industry.

state-society relations; the lack of a consensual culture to agree policy solutions among all food chain actors, and the marginal role of consumers' interests.

In contrast to SRM regulation, a food safety policy reform, including the establishment of a Spanish food agency, was defended by interest groups. Their preferences were in line with European developments. The globalization process and the application of new technological processes to food increased food safety threats which sometimes, like in the BSE scandal, materialized in scandals with important economic costs. As a result, economic interests called for the end of the traditional government's "laissez-faire" approach to food safety (Smith, 1991:245). In Spain, and because of the chaotic character of the food safety policy and the coordination problems among public authorities, economic interests claimed for a more rationalized intervention in the area (Barros, 1990:3). Food safety was a focus of confusion for food industry and farmers, and the lack of cooperation among administrations threatened with the establishment of different food safety requirements among CCAA, leading to disloyal competition among firms (Hinojosa, 2002: 9). The food industry took particularly an active role calling for the establishment of a food agency in Spain (Polledo, 2002:10). However, although industrial interests pushed for a policy change for years, no concrete political decision was taken. The characteristics of interest intermediation gave public authorities a high level of autonomy in introducing changes in the broad goals and orientation of the policy. The government preferences did not facilitate adjustment to European requirements and policy change. A food safety policy reform had never been a priority within public agenda and the institutional framework inhibited to introduce structural reforms in the area.

Food safety policy involves an entangled institutional design, and it offers a substantial challenge to the government, since competences are not only shared on a vertical dimension but also on a horizontal basis, involving different departments<sup>135</sup>. The horizontal distribution of competences complicated policy-making and prohibited to build the necessary consensus in order to introduce policy reforms. It involved that in no Ministry food safety was a priority and it promoted permanent interferences and competences conflicts. Conflict has been traditionally tried to be solved using inter-ministerial commissions, but as Nieto (1984:65) points out, the consequences of establishing those mechanisms are disastrous. The *Comisión Interministerial de Ordenación Alimentaria* (CIOA) has serious procedure and operation deficiencies, mainly because of administrations' organizational problems, the ministerial departments "disproportionate jealousy" of their competences, and the lack of governmental criterion on food planning (Barros, 1990:2). There are no effective coordinating mechanisms facilitating joined-up decisions on food safety issues, beyond the establishment of "ad hoc" Committees after food safety emergencies. The horizontal distribution of competences prohibited a flexible response to adaptational pressures since an important number of reforms were necessary to change the existing institutional design. No Ministerial department called for a policy change since the introduction of reforms, particularly the establishment of a food agency, involved the reorganization of competencies and the redistribution of power among a number of Ministries. A high institutional embeddedness with a number of tight institutional linkages reinforced the logic of "path dependence" and it promoted institutional stability over time.

Finally, the traditional reactive and "ad hoc" character of the food safety policy fits with the broader Spanish policy style in the formulation and implementation of policies. Subirats (1992:111) following Richardson's (1982) classification, argues that within the "problem solving" axis, the Spanish policy style fits within the "reactive" category. There are only exceptional circumstances or few cases, in which public authorities anticipate problems or prevent future complications (Subirats, 1992:31). The "standard operating procedure" is defined by a "reactive style" leading to incrementalism, without efforts to rationalize,

<sup>135</sup> Before establishing that, AESA competences were shared among different Ministries (*Ministerio de Medio Ambiente; Ministerio de Industria; Ministerio de Ciencia y Tecnología; Ministerio de Sanidad y Consumo* and *Ministerio de Agricultura, Pesca y Alimentación*). The last two hold the most part of competences. The *Ministerio de Sanidad y Consumo* (MISACO) is responsible through the *Dirección General de Salud Pública* for epidemiological information, health promotion, exterior health, hygienic-sanitary requirements of consumer products, the coordination of the Alert System and the management of the *Registro General Sanitario de Alimentos*. The MISACO also administers the work of bodies to promote co-ordination on food issues: the COCOCOSA (coordinating committee with representatives from the CCAA); the *Comisión Interministerial de Seguridad Alimentaria* (CIOA) (inter-ministerial body that coordinates food legislation and communicates with international bodies); *Instituto de Salud Carlos III* (training of food inspectors and operation of the *Laboratorio Nacional de Referencia*) and the *Instituto Nacional de Consumo* (it supports consumer organisations). The *Ministerio de Agricultura, Pesca y Alimentación* (MAPA) is responsible through the *Dirección General de Alimentación* for food quality control and the coordination of food industry, market related activities and food policy. The *Secretaría General de Agricultura* is responsible for vegetal and animal health; animal feed and nutrition.

coordinate or programme policy responses (ibid.:130). The reactive and incremental character of policy formulation and implementation inhibited the introduction of European developments involving radical reforms and preventive measures (e.g. the precautionary principle application).

### Changes in the problem solving approach and policy instruments

We focus now on the analysis of policy change as defined by reforms in the problem solving approach and policy instruments, determining how long they were influenced by European developments. What determined the overcoming of domestic constraints and veto points? In both cases, the implementation of SRM regulation and food safety reforms, Europeanization was a decisive factor. However, a shock originated outside the political system -the crisis caused by the arrival of “mad cows” in Spain- and the accumulation of policy failures, reinforced the impact of multi-level governance and facilitated adjustment to EU requirements.

According to Radaelli (1997:555) “the Europeanization of public policy manifests itself directly, for example through the implementation of EU law that reduces the degrees of freedom of national policy, or indirectly, when national policy makers conceive of a domestic issue within a European frame of reference and decide to change their domestic policy to bring it into line with a particular European paradigm even though no specific compulsion (e.g. form a directive) exists”. In SRM regulation, Europeanization manifested itself directly through the implementation of the EU regulation, reducing state autonomy to control national policy. Even if opposing SRM regulation, Spain passed new legislation as an instrument to be adjusted to European demands on SRM definition, removal and destruction conditions and control procedures. The entry into force of Decision 00/418/EC demonstrated the impact of multi-level governance on the state autonomy and authority. The pass of legislation by QMV in the Council showed, as multi-level governance describes, evidence of a “limited state executive rationality and consequences that are beyond state control” (Bache and Flinders, 2004:202). Although Spain was forced to implement EU regulation, Spanish opposition resulted in implementation delay. Although Decision 00/418/EC entered into force in October 2000 and it was directly applicable, the Spanish government did not go through with legislative measures for its effective implementation until November 2000, when the first “mad cow” case appeared in Spain<sup>136</sup>. An external shock to the political system led to a change in government preferences and turned the question a policy priority. Since policy misfit between European and national provisions on SRM was significant, implementation resulted in important implementation deficits and gaps<sup>137</sup>. The Spanish government passed regulation without having the necessary physical and economic means to implement it. As a result, it was necessary to modify the rules approved in a number of times and to incrementally introduce policy reforms. The lack of coordination among Ministries and government levels did not contribute either to domestic implementation<sup>138</sup>. The domestic institutional framework determined the way EU law was implemented imposing incremental and not radical policy reforms.

There was in Spain, the same as in Europe, an important food safety policy reform after the BSE scandal. In contrast to SRM regulation, Europeanization did not manifest directly through EU law implementation. Spain introduced substantial policy reforms to bring its food safety policy into line with the new European paradigm and structural reforms when no compulsory EU law existed. As it occurred in Europe, after the accumulation of policy failures there was a third-order change (Hall, 1993) involving definition of a new problem solving approach and policy instruments. Domestic reforms were carried out in line with European developments in food safety.

In 1997 the Spanish President, Mr. Aznar, informed in the *Pleno del Congreso de los Diputados* (PCD) about the food safety policy reforms that were taking place in Europe after the BSE scandal. He stated that those reforms had to find an appropriate response at a national level (PCD, 1997:4763). Successive food scare in Europe, like the 1999 Belgian dioxin contamination, contributed to increase public concern on food safety issues. This new food outbreak fuelled the debate around food safety issues initiated in the Spanish Parliament

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<sup>136</sup>SRM regulation in Spain was regulated by the Royal Decree 1911/2000 which implemented Commission Decision 2000/418/EC; the Royal Decree 3454/2000 which implemented Decision 20001/2/EC; and the Royal Decree 221/2001 which implemented Decision 2001/233/EC. The Order of 30<sup>th</sup> March 2001 gave additional instructions for the control of the vertebral column removal.

<sup>137</sup>Implementation deficits were noted by different inspection missions carried out by the European Commission (CEC, 2000b; CEC, 2001b; and CEC, 2002) and Spanish authorities (MI, 2001).

<sup>138</sup> As an example of the lack of coordination, the *Ministerio de Medio Ambiente (MMA)*, in spite of the important environmental consequences of SRM destruction, did not participate in the *Comisión Nacional del Programa Integral Coordinado de Vigilancia y Control de las EET*, until December 2000.



at early 1999, regarding the commercialization of genetically modified food (*Comisión de Sanidad y Consumo* (CSyC), 1999:18568-18573 and PCD, 1999a:11685-11694). As a result of that debate, there was a proposal in June 1999, to establish a Spanish food agency (PCD, 1999b:13270-13299). The government started an additional commitment to food safety issues trying to avoid that "food scares similar to those suffered by other European countries, could affect the Spanish food chain" (PCD, 1999c: 14591). From food safety outbreaks in third countries and European developments, the Spanish government seemed to adjust its policy through a process of learning, by which it realized the new threats emerging from consumption and became aware that domestic reforms were necessary in food safety.

After 2000 general elections, the re-elected popular administration compromised itself through its electoral programme and before the arrival of "mad cows", to set up a food agency "working in coordination with the European food agency within the framework of the new European food safety model" (*Comisión de Agricultura, Ganadería y Pesca* (CAGyP), 2000a:2003). There was a general commitment to advance in the managements of food safety issues "in line with the White Paper" (CSyC, 2000b: 1909). However, beyond policy discourse no effective action took place. The government justified delay in the food agency establishment arguing that it was necessary to wait until the European Agency came into operation. The Agriculture Subsecretary said that "reasons of prudence recommend, first, to see how the European Agency is established and then establish our own agency, mainly to avoid doing something incoherent or contradictory with what Europe says" (CAGyP, 2000b:1841). But paradoxically, law 11/2001 establishing the *Agencia Española de Seguridad Alimentaria* (AESa) was passed in July 2001, 6 months before the approval of Regulation 178/2002/EC establishing the EFSA. The arrival of "mad cows" in Spain in November 2000 explains the change in government's priorities. The Spanish government committed to the introduction of policy reforms in line with EU developments before the BSE scandal, but this food outbreak reinforced the impact of multi-level governance. It opened a "policy window" (Kingdon, 1984) which contributed to adjust domestic policy in line with European developments by bringing the shortcomings of the Spanish food safety policy to light.

In the BSE scandal, the coordination problems among Ministries were shown to public opinion eyes, which in spite of coordination saw occultation and half-truths from public authorities (Oñorbe de Torre, 2001:10). The MISACO and the MAPA had important differences since the start of the crisis and while the Agriculture Minister said that there was no risk for consumer's health, the Health Minister said in the media that there were clandestine slaughterhouses in Spain and recommended not to use beef bones for soup and not to buy bargain beef (El País, 2000c:39). There were also coordination problems among levels of government. At the beginning of the crisis the central government missed out its responsibilities on food safety arguing that many food safety competences had been transferred to the CCAA and that food meals were imported during the Socialist period (CAGyP, 2000c: 3316). The CCAA demanded the government to exercise its competences and to elaborate a coordinated plan to face the situation and avoid the establishment of different food safety levels among the CCAA (Oñorbe de Torre, 2001:12). Trying to solve coordination problems, the *Comisión Interministerial de Seguridad Alimentaria* was established, but it did not manage to solve the situation (Hinojosa, 2002:11). The BSE scandal showed also the reactive character of the Spanish food safety policy. Public authorities did not apply the precautionary principle although European reports warned them since the beginning of 2000, when they said that Spain was a country where domestic cattle "are likely to be infected with the BSE-agent although it has not been yet confirmed" (SSC, 2001:45).

The accumulation of policy failures, and the need for the government to recover its policy credibility after years arguing that the BSE was not a Spanish problem, accelerated the development of a new problem solving approach and policy instruments. Failures associated with the existing regulatory approach increased pressures for domestic reforms, which were carried out according to the new European paradigm in food safety. Law 11/2001 established the AESa as the scientific point of reference of a new food safety problem solving approach whose main goal is the protection of public health and consumers' interests. To achieve this objective different instruments were introduced in line with the Commission White Paper: scientific advice based on the principles of excellence, independence and transparency; risk analysis; the precautionary principle<sup>139</sup>; an integral approach to food safety "from farm to table"; food traceability; the reinforcement of the monitoring and surveillance systems (new Alert System); the increase in transparency by making the

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<sup>139</sup> The application of the precautionary principle was invoked by the Supreme Court by means of the Sentence 18/2001, 29 January.

AESA documents accessible to citizens and improving consultation with interest associations; and the review of the legislation to make it more coherent and comprehensive<sup>140</sup>.

Traditionally the Spanish food safety policy has been characterized by a reactive style, the improvised approval of legislation and important implementation deficits. Policy changes indicate that reforms undertaken under the EU food safety model may have had an impact on the Spanish style by becoming more preventive, integrated and coherent. Policy responses to new food scares and policy practice will show if policy reforms can overcome “path dependency” and consolidate the new approach. As Barling et al. (2002:561) point out, “an exogenous shock to the policy system, such as food safety crises, may bring about some policy change, but such policy change is likely to be incremental”.

### Europeanization of domestic structures

Food safety reforms included not only policy change but also structural reforms. On the institutional side, the most important reform was the establishment of the AESA. The main goal of the agency, according to law’s motives exposition, is the protection of public health and consumer interests, fostering cooperation and collaboration among administrations and providing scientific advice. The EFSA exercised a big influence on the Spanish agency design. Law 11/2001 explicitly established that the AESA responds to the White Paper requirement that the EFSA had to find correspondence in the establishment of analogous bodies in member states. The AESA goals, organizational form and working procedures are similar and compatible with those established for the EFSA<sup>141</sup>.

In principal-agent terms (Majone, 1996b:4) the need for expertise to deal with complex food safety issues and the need to recover policy credibility after food outbreaks justify delegation powers to independent agencies. However, as Thatcher (2001:136) states, not only policy credibility but also policy learning and institutional mimetism are important to understand the spread of independent regulatory agencies<sup>142</sup>. Through a process of policy learning states imitate successful examples to reduce uncertainty and complexity (DiMaggio and Powell, 1991:74-77). “Snowball” effects mean that once an apparently successful model of an agency exist it is copied in other domain and countries (Thatcher, 2001:136). In this sense, the successful American Food and Drug Administration works as model for the development of European agencies. However, neither the credibility thesis nor learning and institutional isomorphism can explain patterns of variation across member states in the design of agencies: why in some countries do they constitute real regulatory agencies while in other they do keep on depending on ministerial departments?

According to Thatcher (2001:127) “the minimum requirements for inclusion as an independent regulatory agency refer to the formal institutional position and comprise the following: the agency has its own powers and responsibilities under public law; it is organizationally separated from Ministries; and it is neither directly elected nor managed by elected officials”. Franch (2002:339) argues that the independence of the European and the Spanish food agencies can be only regarded as one of “technical character”. They are public agencies with legal personality for the management of an activity of the administration that establishes them, but the matrix administration keeps on having competencies on food safety and control over the agency. They are not agencies where powers are delegated. Their role within risk analysis is limited to risk evaluation and communication and they have no power in risk management. Once a risk is identified and evaluated, it must be communicated to the matrix administration responsible for its management. Agencies have neither decision-making capacity, nor enforcement sanctioning power. Finally, their members are designated by the administration matrix and they are revocable and renewable.

Contextual factors, such as state tradition and structures are important to explain patterns of delegation to independent agencies (Thatcher, 2001:137). In Spain, setting up a real independent regulatory agency was constrained because of the lack of tradition on these bodies (see López de Lerma, 2002:10) and the embedded institutional context around food safety policy, which constraints institutional reforms. When the

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<sup>140</sup> New Plant and Animal Health Laws were passed in 2002 and 2003 (Law 43/2002 and Law 8/2003) but a General Food Law has not been approved yet. It is probably waiting for the approval of European legislation developing Regulation 178/2002/EC (hygienic pack) entering into force in 2006.

<sup>141</sup> To guarantee its compatibility with the EFSA the AESA statute (Royal Decree 709/2002) was not passed until Regulation 178/2002/EC was approved.

<sup>142</sup> As Van Zwanenberg and Millstone (2003:36) point out, Britain after the BSE established the Food Standards Agency and in recent years analogous developments have taken place in several other EU members. The Irish government established the Food Safety Authority of Ireland, the French government the Agence Française de la Sécurité Sanitaire des Aliments and the German government the Bundesamt für Verbraucherschutz und Lebensmittelsicherheit.

establishment of the AESA was decided, the distribution of competences among Ministries caused a conflict between the MISACO and the MAPA for its ministerial control and direction. Since the agency modified their organizational structures and competences both Ministries tried to retain its control<sup>143</sup>.

Structural reforms included also changes in state-society relations. The AESA *Consejo Consultivo* involved for the first time, the establishment of a structured and a permanent interest intermediation body, including representatives of all the food chain, from farmers to consumers. This body helped to strengthen the marginal position of consumer organizations that used the BSE scandal and European reforms to get access to the policy-making. To strengthen the role of consumers, the CCU was also given legal personality by means of Royal Decree 1203/2002. The government started to talk about the need to give the CCU legal personality in 1996, but action did not take place after the BSE scandal. The arrival of “mad cows” opened a “policy window” (Kingdon, 1984) to introduce the necessary institutional reforms to increase association’s involvement in policy-making. It contributed to politicize food safety and made increasingly difficult to exclude groups from policy-making. After the BSE scandal, Spain also transposed Directive 99/34/EC by means of Law 14/2000, establishing that agrarian producers were liable for the damages caused by their products. This showed the government’s commitment to the new “farm to table” approach and involved the end of the “agrarian” tradition in Spain according to which food safety was supposed to be solely an industrial responsibility (Hinojosa, 2002:5). Like in Europe, the BSE crisis may involve a movement toward a more opened issue network. From a situation characterized by a sectorial approach with negotiations through informal and “ad hoc” meetings with industrial affected sectors, to a more open issue network with increasing role for previously excluded actors. Institutional reforms promoted a more integrated, open, transparent and consultative approach with social organizations. However, like in Europe, their role was limited to the consultative one, so we cannot magnify the impact of reforms. Since the new European paradigm opened new opportunities for domestic actors to participate in policy-making, we can say that European developments had feed-back effects at a domestic level.

#### 4. CONCLUSION

In both cases, the regulation of SRM and the food safety reforms, domestic reforms took place because of a combination of national and supranational reform pressures. Reforms in line with EU requirements occurred, although there was not initially a positive profile for change neither from the misfit perspective nor from domestic factors facilitating a flexible response to adaptational pressure. From the misfit perspective, in both cases there was a high incongruity between domestic and national arrangements. Regarding domestic factors, the impact of the Spanish decentralized political system as veto point was attenuated since the CCAA had only limited capacity to participate in policy formulation. However, the CCAA heterogeneity, conflict oriented decision-making culture and the lack of effective coordination mechanisms, complicated policy implementation. No factual veto point came from the participation of associations in decision-making. Interest groups access to the political system was constrained by institutional factors and by traditional patterns of interest intermediation. The central government then, enjoyed a high level of autonomy from the CCAA and interest groups to introduce policy and structural reforms. The Popular government, with absolute majority in the Parliament, strongly opposed SRM regulation and the Spanish food safety reform was not initially a policy priority within public agenda. Veto points came also from the horizontal distribution of competences. Since a number of Ministries have responsibility on food safety issues, it was difficult to build the necessary consensus around policy reforms. They opposed the introduction of institutional reforms, particularly the establishment of a food agency, since it involved the redistribution of competences and the loss of power for different Ministries. The institutional framework reinforced “path dependency” and promoted stability over time. The reactive and incremental Spanish policy style did not facilitate either the introduction of European requirements.

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<sup>143</sup> The AESA assumed, among other competences, the coordination of the Alert System, and the management of the *Registro General Sanitario de Alimentos*. Within the MISACO the following bodies were suppressed: *Subdirección General de Seguridad Alimentaria*; *Subdirección General de Sanidad Exterior y Veterinaria* and *Dirección General de Relaciones Institucionales y Alta Inspección*. Within the MAPA the *Subdirección General de Fomento y Desarrollo Agroindustrial* and the *Subdirección General de Mercados y Producción Agroalimentaria* were suppressed and the competences of the *Dirección General de Alimentación* and the *Subdirección General de Ordenación Alimentaria* were modified. The MISACO retained finally the ministerial control of the agency. However, it is necessary to analyse the extent to which the AESA establishment involved and in depth institutional reform or just the reorganizing of different Ministerial departments.

Taking into account policy misfit and domestic constraints, what did account for the introduction of SRM regulation and food safety reforms? Europeanization was a decisive factor. However, a shock originated outside the political system reinforced the impact of multi-level governance. The crisis caused by the arrival of “mad cows” in Spain opened a “policy window” (Kingdon, 1984) facilitating adjustment to EU requirements. This food outbreak and the accumulation of policy failures in its management contributed to politicize food safety issues, and to overcome domestic constraints and veto points. The regulation of SRM became a policy priority, and the accumulation of policy failures made the reform of the Spanish food safety policy and structures necessary for the government to recover its policy credibility, after years of arguing that the BSE was not a Spanish problem.

Why Europeanization was a decisive factor? In SRM Europeanization manifested directly, when passing national legislation to bring national arrangements in line with EU law requirements. Although the government strongly opposed SRM regulation, the pass of legislation by QMV in the Council reduced state autonomy to control national policy. Even if “mad cows” had not appeared, the government would have been forced to implement EU regulation. However, the BSE scandal contributed to finish with the Spanish implementation delay. Only when “mad cows” arrive to Spain effective measures were taken to implement SRM regulation. In food safety reforms, Europeanization manifested indirectly, when policy-makers decided to change food safety policy and structures to bring it into line with the new European paradigm. A process of policy learning made European principles and procedures to enter food safety discourse before the BSE scandal, but effective reforms to implement them only took place after the arrival of “mad cows”. There was not in food safety reforms a reduction in the state autonomy comparable to the SRM regulation case. The government decided to introduce domestic policy change (a new problem solving approach and policy instruments) and structural reforms (establishment of a food agency and new consultation procedures with interest groups) in line with European developments when no compulsory EU requirement existed.

What does our case imply for the theoretical issues involved in the analysis? We confirm the importance of supranational influences but underlying the weight of domestic mediating variables. When a high policy misfit between domestic and European arrangements exist, the presence of mediating factors determine domestic change adjusting to Europeanization. We find evidence to support a strong role for institutional factors as variables prohibiting adjustment to Europeanization pressures. Only an exogenous shock to the political system, such as a food safety scandal, or a performance crisis, overcome institutional constraints and veto points and facilitate domestic adjustment.

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