COMMISSION DECISION

of 15 January 2002

on State aid granted by France to Crédit Mutuel

(notified under document number C(2001) 3956)

(Only the French text is authentic)

(Text with EEA relevance)

(2003/216/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2), thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 6 February 1998, the Commission informed the French authorities that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the advantages granted by the State to Crédit Mutuel through the *Livret bleu* savings system. The French authorities granted Crédit Mutuel exclusive rights in 1975 to distribute the *Livret bleu*. This decision to initiate proceedings followed the lodging of a complaint on 25 January 1991 by the Association française des banques (AFB), the Chambre syndicale des banques populaires (CSBP) and Crédit Agricole concerning the aid granted by the French State to Crédit Mutuel. The Commission had requested the first information concerning the *Livret bleu* in a letter dated 27 May 1991.

(2) In response to the questions raised in the letter initiating proceedings, the French authorities submitted a file to the Commission, by letter dated 8 April 1998.

(3) The Commission decision to initiate proceedings was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid.

(4) Crédit Mutuel sent a letter to the Commission on 18 June 1998 setting out arguments to reject the description of the measures covered by the proceedings as state aid, together with an analytical account file concerning the *Livret bleu*. A number of interested parties also submitted their comments to the Commission (see Section III).

(5) The complainants sent four additional written statements to the Commission by letters dated 29 October 1999, 16 May 2000, 16 October 2000 and 19 January 2001.

(6) Given the file submitted by Crédit Mutuel, and in particular the analytical accounts relating to the Livret bleu which concluded that not only did the *Livret bleu* system not result in excess compensation of the costs paid by Crédit Mutuel, but in fact involved a net cost for the latter, the Commission decided to conduct an audit of the *Livret bleu* analytical accounts. For this purpose, on the basis of an invitation to tender, it recruited a British consultant, Littlejohn Frazer (hereafter referred to as 'the consultant'), specialised in accountancy and auditing, together with two French accounting consultancies, Auditec and Scacchi. The audit started in November 1998 and continued up until 13 December 1999. Crédit Mutuel sent a memo to the Commission on 21 July 1999 contesting the provisional conclusions produced by the consultant. The consultant's final report was submitted to the French authorities and to Crédit Mutuel for examination on 10

[1] OJ C 146, 12.5.1998, p. 6.

[2] See footnote 1.

January 2000. A technical meeting was organised on 7 February 2000 for the Commission, assisted by its consultant, the French authorities and Crédit Mutuel, to discuss the audit report.

(7) The Commission also received a joint letter on 7 December 1998 from the Banque Nationale de Paris, Crédit Commercial de France and Société Générale submitting a copy of the memorandum of application which these three banks had lodged before the Conseil d'Etat in France, disputing the sale of Crédit Industriel et Commercial (CIC) to Crédit Mutuel by the public insurance group, GAN. In the letter, the three banks called for these proceedings to be extended to the use made by Crédit Mutuel of the aid it had received in connection with the *Livret bleu*, which had for instance enabled it to acquire CIC in April 1998. The Commission noted that the facts set down in the memorandum did not provide any new information to enable it to determine whether the *Livret bleu* system involved aid to Crédit Mutuel or, if so, to assess whether such aid was compatible with the Treaty. The Commission had not therefore acceded to the request to extend these proceedings.

(8) By letter dated 14 September 1999, the Commission asked the French authorities to explain the general interest tasks entrusted to Crédit Mutuel. In three letters dated 21 February 2000, 3 November 2000 and 5 February 2001, the Commission forwarded to the French authorities for comment various items submitted on the case by the complainants concerning the loss-leader effect of the *Livret bleu*, in particular two statistical studies produced by Cabinet Glais, and asked them about the modification of the tax arrangements applicable to the *Livret bleu* following the decision by the Conseil d'Etat on 5 January 2000 concerning the illegal nature of the *Livret bleu* tax arrangements. The French authorities replied by letter dated 1 February 2001.

(9) In April 2000, thus after the initiation of the proceedings, the European Banking Federation lodged a complaint against the aid granted by the French State to Crédit Mutuel in the form of exclusive rights to distribute the tax-free *Livret bleu*. The complaint was underpinned by an additional written statement of 22 January 2001 comprising most of the documents already entered in the file by the AFB, and explaining the tax status of interest on the *Livret bleu* in the light of the decision by the Conseil d'Etat on 5 January 2000.

(10) In May 2000, the Confédération nationale du Crédit Mutuel gave a mandate to the Arthur Andersen firm to review the methodology used in the Crédit Mutuel analytical accounts and to draw up profit and loss accounts relating to the *Livret bleu*. This task was completed in September 2000 with the submission of a detailed report on the *Livret bleu* profit and loss accounts, which assessed the result of the *Livret bleu* analytical accounts at a pre-tax loss of FRF 498 million. The final evaluation of the loss was reached taking into account certain disputable corrective factors. A meeting to discuss the results of the report was held on 2 February 2001. Following observations by the Commission, Crédit Mutuel asked Arthur Andersen to forward a memo dated 8 February 2001 justifying the method used, namely 'correction of the excess weighting granted to the IARD insurance activity' which had in particular been criticised by the Commission.

(11) The Commission extended the consultant's contract in April 2001 to allow him to identify the discrepancies between the two accounting reports and to determine which modifications of figures or methodology could legitimately be accepted and integrated into his previous evaluation. The final report was handed over on 23 July 2001. It evaluates the result of the *Livret bleu* analytical accounts at a cumulated non-capitalised profit of FRF 1 074 million. The report was sent to the French authorities on the same day. On 26 July 2001, a meeting was held between Crédit Mutuel and Arthur Andersen. Crédit Mutuel and Arthur Andersen announced that they disagreed with the final conclusions of the Commission's consultant. Arthur Andersen defended its earlier conclusions in a document dated 13 September 2000, forwarded as an annex to a memo by the French authorities on 15 September 2001. The French authorities sent the Commission a new memo on 26 October 2001 containing a legal analysis of the *Livret bleu* from the point of Community competition law, as well as a memo of 7 January 2002 concerning the cost of the public service mission, reiterating the figures presented by Crédit Mutuel without providing any new information.

(12) Because of the various items of information submitted by the complainants testifying to the loss-leader effects that gave Crédit Mutuel a considerable advantage in terms of attracting clients, the Commission extended its consultant's mission in September 2000 and again in April 2001 to include the evaluation of the loss-leader effects of the *Livret bleu*. The consultant mentioned the major problems it had encountered in obtaining from Crédit Mutuel the data necessary for such a technically

delicate study. It had not therefore been able to apply the methodology devised at the outset. The Commission was unable to obtain any conclusive results from this procedure.

(13) Three of the complainants, the AFB, Crédit Agricole and the CSBP, urged the Commission to take action by letter dated 25 September 2001. A previous letter dated 10 April 2001 had denied allegations in the French press that the complainants no longer wished to continue with their complaint.

II. DESCRIPTION OF THE LIVRET BLEU SYSTEM

1. Introduction

(14) Crédit Mutuel was entrusted with the task of distributing the *Livret bleu*, a task subject to strict prerogatives and constraints. The prerogatives consist of the exclusive distribution to the general public of a tax-free savings product, the *Livret bleu* (see Section II.3) and the payment of a collection commission by the Caisse des Dépôts et Consignations (CDC). The obligations concern the use of the resources obtained through the *Livret bleu*. These obligations have evolved over time: initially Crédit Mutuel was obliged to allocate 50 % (this was later increased to 65 %) of the resources to general interest assets (for instance the financing of local authorities and other public bodies), with the balance being freely available to the bank. As of 1991, a growing part of the total savings was allocated to the financing of public housing, with the resources being channelled through CDC. The total amount of savings is now channelled through CDC. The latter pays Crédit Mutuel a fee corresponding to the gross interest rate set by the authorities, passed on to savers, as well as a brokerage commission equal to 1,3 %.

The Commission will examine the situation to see to what extent the distribution of the *Livret bleu* may have given economic advantages to Crédit Mutuel as a result of the savings commission it received from CDC. If the commission exceeds the system's net costs, in other words the difference between the income from other assets (general interest and non-general interest assets) and the real collection and management costs, and allowing for a normal profit margin, this would constitute excess compensation that is regarded as State aid.

2. Crédit Mutuel

(15) Crédit Mutuel is a decentralised banking group consisting of a national network of Crédit Mutuel branches with the status of cooperative companies. The 1 850 local banks must belong to a regional federation, while each federation belongs to the Confédération nationale du Crédit Mutuel, the 'central body' of the network according to the Banking Act of 24 January 1984. The Crédit Mutuel branches are owned by 5,7 million members. The Federal Branches are members of the Caisse Centrale du Crédit Mutuel, which is the national financial body that ensures the financial liquid assets of the regional groups. The group has the same characteristics as a single undertaking with consolidated accounts. The State is represented in the governing bodies by a Government Commissioner who sits on the Board of Directors and attends the General Meetings of the Confédération Nationale du Crédit Mutuel.

(16) Crédit Mutuel is the fifth biggest French bank in terms of savings and the third biggest in terms of its network of approximately 3 300 branches (end of 1999). Following the merger with CIC, Crédit Mutuel had a workforce numbering 27 500 employees at the end of 1999, a consolidated balance sheet of FRF 941 billion and had produced a net result for the group of FRF 4,1 billion in the 1999 financial year. The group's high financial margins can be explained in particular by a relatively low operating coefficient (the ratio between overheads and net banking income) – 66,7 % in 1996 – which places Crédit Mutuel among the French banks with the lowest expenses. This level is, however, considerably higher than that of the most profitable European banks. The amount of its capital and shares within the Group virtually trebled in the 1990s, amounting to FRF 61 billion in 1999. Its solvency coefficient (the 'Cooke' ratio) was 15,8 % in 1997, hence much higher than the regulation minimum ([3]) of 8 %, and higher than that of its main competitors.

(17) The CIC banking group was privatised in April 1998, and the Government chose Crédit Mutuel from among several banking groups who had applied to take over the group. Following the takeover, the Group consisting of Crédit Mutuel and CIC became one of the biggest French banking groups which, with 4 880 branches, was the second biggest network of bank branches in France, with a total balance sheet of almost FRF 1 300 billion.

([3]) The regulation level was established in Directive 89/647/EEC of 18 December 1989 concerning the solvency ratio for credit institutions (OJ L 386, 30.12.1989, p. 14).

(18) Crédit Mutuel is a bank with a network that has the characteristic of being structurally collection-oriented: its deposits (FRF 408 billion in 1998) are higher than the loans it grants (FRF 345 billion in 1998). This surplus of resources over applications in its banking activity makes this establishment a lending establishment on the market in structural terms. This can be explained by its mutual-interest status and the number of individual customers, whose net savings are positive. Crédit Mutuel plays an important role in financing professionals, craftsmen and retailers, as well as farmers, local authorities and voluntary organisations. Apart from its activities as a credit institution, it is also very active in the field of insurance, where it achieved a net profit of FRF 23 billion in 1998 (life and non-life insurance) which contributes significantly to its results. It also has recognised know-how, which is exported, in electronic payments and in electronic financial transactions (issuing of payment cards and handling of card payments by retailers).

3. **The Livret bleu**

(19) The *Livret bleu* is a regulated savings product, aimed at the general public, for which Crédit Mutuel was granted distribution rights by the authorities pursuant to Law No 75-1242 of 27 December 1975. The interest rates granted by Crédit Mutuel on *Livret bleu* deposits are fixed by the Government. The commercial interest rate applied to savers after tax is identical to its main rival savings product, also for the general public, the *Livret A* (distributed by the Caisses d'épargne and the Post Office). The amount of savings cannot exceed the ceiling which is also set for the *Livret A* ([4]). The *Livret bleu* has played an important role for Crédit Mutuel, forming a key product for its private customers for almost two decades in terms of competition with its rivals. Its relative importance in quantitative terms has, however, been declining in recent years. The share accounted for by the *Livret bleu* in Crédit Mutuel's deposits, which was 70 % in 1975 and almost 60 % in 1985, has fallen to under 25 % since 1997.

(20) Until the end of 1999, the taxation of the *Livret bleu* system derogated from the taxation rules normally applied to savings. In fact, Crédit Mutuel officially paid the State one third of the taxation normally owed on the basis of levies in discharge from savings revenue and social charges, regardless of the tax situation of the savers ([5]). The amount of this tax was not in any case passed on to savers. On 5 January 2000, the AFB referred the matter to the Conseil d'Etat, which declared that *Livret bleu*'s system of partial tax exemption was illegal under national tax rules on levies in discharge. The French authorities decided on 13 January 2000 to raise the pre-tax rate for the *Livret bleu* so that the net amount paid to savers would remain unchanged. It seems that before the entry into force of the Decree of 27 September 1991, Crédit Mutuel benefited from a 'cancellation' mechanism for tax deductions paid under the system described above. In other words, either the State or the Caisse des Dépôts et Consignations (CDC) paid Crédit Mutuel a sum corresponding to the deductions in question, so that the *Livret bleu* was a completely tax-free product from that year on, both for consumers and for Crédit Mutuel, at least with respect to the total amounts transferred through the CDC.

(21) The funds collected via the *Livret bleu*, the amount of which fluctuated during the 1990s from FRF 80 billion to FRF 100 billion, have been allocated in different ways from the outset.

(22) An increasing and compulsory fraction of these funds has been allocated to public housing, with the funds being 'channelled' through the CDC, in other words paid into a deposit account at CDC, or allocated by Crédit Mutuel itself to the same applications as those of CDC. CDC pays Crédit Mutuel a fixed collection commission of 1,3 % for the funds channelled to it (added to the net interest rate paid to savers). The level of the commission has not changed since the start of these channelling operations, i.e. since 1991. CDC uses the funds allocated to finance public housing and to grant loans to public housing bodies, in the same way as the funds collected from the Caisses d'épargne and Post Office's *Livret A*.

([4]) At the date of this Decision, the interest rate was 3 % net of income tax or of the levy in discharge. The ceiling is FRF 100 000 for private individuals.

([5]) Since the levy in discharge has a fixed rate and savers have the option of not paying the levy in discharge and including the income from investments in their income taxable under the personal income tax system (IRPP), they may find themselves in four different situations: not liable for tax on this financial income (if they are not taxable under the personal income tax system), taxed on this income in the personal taxation system at a lower rate or rate equal to the levy in discharge, or liable to pay the levy in discharge. In the event of an error of calculation by them, they may also be taxed on this income under the personal income tax system at a higher rate than the compulsory deduction.

Since the Decree of 27 September 1991, all new funds collected by the *Livret bleu* were used to finance public housing, and the total amount at 31 December 1990 was to be gradually transferred to CDC in annual instalments of 10 %, up to 2000.

(23) Another fraction of these funds was to be used for applications defined by a Decree of 1 March 1976, called 'general interest assets'. Half must go to financing local authorities, and the other half to subscribing to State and other public securities, and to loans to complement low-interest loans for public housing. Loans could not be granted to commercial companies. Under the Law of 27 December 1975, the share of the funds allocated to these tasks was to be 50 % of total funds. This proportion was raised to 65 % (and to 80 % of new funds collected) from the entry into force of two Decrees of 31 October 1983 (until 1991) ([6]).

(24) Lastly, the remainder of the total amount collected, initially half, but from 1983 to 1991 ([7]) 35 %, and subsequently less and less in the 1990s, could be freely used by Crédit Mutuel for its own account, thus it was able to shore up its competitive banking activities using part of the funds collected via the *Livret bleu*.

(25) *Table 1*

Assets corresponding to the funds collected via the Livret bleu

(In FRF billion and as a %)

	1991	1992	1993	1994	1995	1996	1997	1998
Average total annual funds	[…] (*)	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Funds channelled via CDC	1 %	6 %	11 %	22 %	34 %	41 %	45 %	61 %
Other general interest assets	50 %	40 %	34 %	26 %	20 %	15 %	11 %	8 %
Legal reserves/cash flow	26 %	29 %	24 %	22 %	20 %	19 %	18 %	16 %
Total regulated assets	77 %	75 %	69 %	69 %	74 %	75 %	74 %	85 %
Total free funds	23 %	25 %	31 %	31 %	26 %	25 %	26 %	15 %

Source: Crédit Mutuel and Arthur Andersen.

(26) As the authorities stated, this system was designed at a particular time with a view to promoting the development of Crédit Mutuel by allowing it access to cheap resources, so that it could develop its own banking activities which were shored up to a large extent by the funds collected via the *Livret bleu*.

(*) Business secret.

([6]) Under the Amending Finance Law of 1982 dated 30 December 1982, the share to be used to directly finance the State budget or specific needs was increased, with a consequent reduction in loans to local authorities. Crédit Mutuel contributed on an *ad hoc* basis for the first time in 1987-1988 in the financing of public housing (up to FRF 1,8 billion) during an operation organised by CDC to subscribe to securities.

([7]) Before taking into account compulsory reserves and liquidity on these total amounts.

(27) The system was radically changed in 1991 to bring it gradually into line with the *Livret A* system, as the French authorities were obviously aware of the distortions of competition it caused. Technically, all resources are now deemed to be allocated to general interest assets, with the financing of public housing increasingly receiving a greater share ([8]). In practice, all new deposits collected via the *Livret bleu* seem to have been allocated to finance public housing. The existing funds were to be re-allocated over 10 years, between 1991 and 2000, in order to allow Crédit Mutuel to restructure its assets concerning […] of its balance sheet (end of 1990). In return, all administrative controls on the opening and closing of branches were completely abolished in 1991. Moreover, payment of the fixed amount of levies in discharge on interest paid to savers with *Livret bleu* accounts was officially 'cancelled' ([9]), in other words refunded to Crédit Mutuel by CDC or by the State.

(28) When the Commission decided to initiate these proceedings, the prevailing situation was undergoing a transition: the funds recently collected via the *Livret bleu* appeared to have been allocated to public housing, but the total funds collected in the past were being allocated to this purpose very late compared with the initial Agreement concluded between Crédit Mutuel and the State (which provided for a transfer of 10 % of the total funds each year). The non-general interest assets were quite substantial in the last decade (approximately […]) as can be seen from Table 1 above. The channelling of funds to CDC was, however, speeded up in 1997. In fact a new element had accelerated and modified the reform of the assets relating to the *Livret bleu*. Following the initiation of these proceedings by the Commission in December 1997 and the sale of CIC to Crédit Mutuel in April 1998, the State renegotiated the 1991 Agreement with Crédit Mutuel. It was then decided to channel the entire funds collected via the *Livret bleu* to CDC at the end of 1998. This measure was completed in the second half of 1999.

([8]) 'All the sums registered in special savings accounts opened for depositors by Crédit Mutuel banks (…) shall be allocated to general interest tasks' (Art. 1 of the Decree of 27 September 1991). 'The general interest tasks mentioned under Article 1 include: 1. For a fraction determined by Crédit Mutuel, loans covered by (...) the Code on Construction and Housing [public housing]; 2. For the balance, an allocation to the account of CDC' (Art. 2 of the Decree of 27 September 1991).

([9]) 'The following costs for Crédit Mutuel shall be cancelled: 1. Compulsory deductions paid by Crédit Mutuel on the income from amounts entered in the special accounts mentioned under Article 1 and used under the conditions provided for under Article 2' (Article 3 of the Decree of 27 September 1991).

(29) In the notice on the initiation of these proceedings, the Commission noted that State aid might have been granted to Crédit Mutuel under the *Livret bleu* system for the following reasons.

(30) Firstly, the resources of CDC, which is a public institution, are State resources ([10]) within the meaning of Article 87 of the Treaty. The 1,3 % intermediation commission therefore had to be justified to verify the absence of excess compensation of Crédit Mutuel for collection and management charges relating to the *Livret bleu*.

(31) Secondly, under Community case-law the component relating to the tax exemption of the savings scheme may, like the granting by the State of tax concessions, constitute a State resource within the meaning of Article 87(1) of the Treaty ([11]). In the notice on the initiation of these proceedings, the Commission indicated that the beneficiaries of the tax aid were the savers and not the Crédit Mutuel. However, it did point out that it was necessary to determine whether Crédit Mutuel did not benefit from this tax advantage itself through the savings scheme in question.

(32) The third component of the advantage identified (the net intermediation margin achieved by Crédit Mutuel on the non-transferred *Livret bleu* funds, after deducting management costs) might also involve State resources in relation to the general interest assets. Most of the general-interest-task products derive from compulsory loans to public administrations (the State and local authorities) and to public enterprises under interest rate conditions regulated by the State, which are not necessarily the same as market conditions. The State is therefore in a position to control completely the return it chooses to grant Crédit Mutuel for these assets. Because it is compulsory, this aspect forms an integral part of the balance sheet of *Livret bleu* expenditure and income. The result is that Crédit Mutuel was able to derive income exceeding the real management and collection costs of deposits from the funds not transferred to CDC.

(33) Fourthly, when initiating the proceedings, the Commission had mentioned, without taking up a position because of a lack of sufficiently precise information in the file, the complainants' argument

([10]) Case T-358/94 *Air France* v *Commission* [1996] ECR II-2109, paragraphs 55 to 69.

([11]) Case C-387/92 *Banco exterior de España* [1994] ECRI-902, paragraph 14.

pointing to the beneficial effects of the *Livret bleu* as regards attracting customers, a system which can be described, for the sake of simplification, as a 'loss-leader'. According to the complainants, the exclusive right to distribute a savings product that is attractive because it is tax-free might allow Crédit Mutuel to attract and keep customers to whom its network can then sell other banking products or services (loans, investments, insurance and management of payment means). The same reasoning used for the third component could be applied here: the State might take account of the benefits, where appropriate, arising from these loss-leader effects by reducing the amount of the commission it pays for the collection of funds.

III. COMMENTS FROM INTERESTED PARTIES

1. The arguments of the complainants

(34) The complainants' arguments were presented by the Commission in its notice on the initiation of the proceedings pursuant to Article 88(2) of the Treaty. The additional written statements submitted since then contain the following new arguments.

(35) A paper (updated at the end of February 1999) and communicated in October 1999 on the loss-leader effect of the *Livret bleu* assesses the financial advantage obtained by this at FRF 17 billion, assuming that the increase in Crédit Mutuel's market shares in every segment over the period 1986 to 1997 was exclusively the result of distributing the *Livret bleu*.

(36) Another paper dated May 1998 and communicated in October 1999 assesses the loss of tax earnings for the State at FRF 2,9 billion over the same period. In other words this is the cost that the Crédit Mutuel would have had to pay if it had wished to distribute this product without the tax exemption by offering savers the same return after tax.

(37) A study conducted by the Caisse Nationale du Crédit Agricole submitted in May 2000 analyses developments regarding the number of Crédit Mutuel branches. It emerges that the overall number of permanent branches fell between 1991 and 1994, and then increased gradually to reach, in 1998, the same level as 1990. This trend differs according to the regions: the number of branches fell mainly in the Pays de Loire region (-21 %), in Normandy (-8 %) and to a lesser extent in Nord-Pas-de-Calais (-3 %). This situation was accentuated by the slowdown between 1994 and 1998 in the number of non-permanent branches in the Pays de Loire region and in Brittany, and to a lesser extent in Alsace. The study concluded that the number of permanent, and subsequently non-permanent, branches of Crédit Mutuel dropped in the regions in which Crédit Mutuel was traditionally very strong (Pays de Loire, Brittany and Alsace), while the number of branches in other regions grew. It is therefore likely that Crédit Mutuel reduced its establishments in rural areas in order to concentrate on urban areas. These figures appear to refute Crédit Mutuel's allegations that it was obliged to maintain a large number of branches in rural areas in the 1990s. They also show that Crédit Mutuel is capable of maintaining an exceptionally dense network of branches even after the removal of all controls by the authorities.

(38) A memorandum produced by the Glais consultancy dated August 2000 contains statistics concerning the competitive advantage enjoyed by Crédit Mutuel as a result of the exclusive rights relating to the *Livret bleu*. An examination of time series shows the total amount of *Livret bleu* deposits and the total amounts of other deposits increased considerably up until a turning point in 1985 to 1987. The growth in loans to households continues after that date and remains stronger for Crédit Mutuel than for its main competitors. The Glais consultancy expert deduces that 'the *Livret bleu* effect therefore seems to have worked by attracting customers […] and from the 1980s, the positive effect seems to have continued without an increase in deposits. Thus the customers who remained loyal appear to have been the ones who financed Crédit Mutuel's expansionist strategy from that period on'. The expert goes on to point out that Crédit Mutuel's activities (essentially credit activities) appear to be unrelated to average developments on the banking market, notably by establishing an indicator for the persistence of random economic crises based on activity variables and by creating a model based on a simple equation relating to credit demand. In the expert's view, this might be logically explained by the fact that Crédit Mutuel's customers remain much more loyal than those of other banking networks, for example because of the *Livret bleu*.

(39) The second memorandum by the Glais consultancy (dated December 2000) proposed a new econometric analysis of the degree of loyalty of each set of customers with each banking network. The building of a model based on real interest rates permits the establishment of an indicator of sensitivity of credit demand to rates. The auto-regression vector model enables account to be taken of adjustment periods and multiple causal links that may exist between the variables. Based on a very high threshold of statistical confidence, the demand for credit from Crédit Mutuel is not, in absolute terms, very sensitive to the level of interest rates (0,26), and is not at all sensitive (0,01) to the level of rates charged by the competition (in this case the interest rate chosen was that of Crédit Agricole). The levels of sensitivity

obtained for the other banking networks range from 0,86 to 2,93 and from 0,66 to 3,74, with the notable exception of the Caisses d'épargne (0,37 and 0,47), which offer the *Livret A*, a savings account with more or less the same features as the *Livret bleu*. According to the expert, these figures corroborate the hypothesis that the two networks have much better means of retaining their customers' loyalty than other networks do. But it is impossible to determine whether the offer of a tax-free savings account or the use of a dense network of branches in different regions (two instruments shared by these networks) is the reason for the greater customer loyalty.

2. **Comments from interested third parties**

(40) In response to the publication in the Official Journal of the Commission notice on the initiation of these proceedings, the Commission received comments from a number of interested parties.

(41) Crédit Mutuel's competitors unanimously underlined the harm they considered they were suffering because of the monopoly over the *Livret bleu* given to Crédit Mutuel. Most banks considered that the loss-leader effect of this tax-free product was causing them harm by losing them customers attracted by the *Livret bleu*, and they wanted to see an end to this monopoly. The following establishments sent comments to this effect to the Commission:

Banque Dupuy, de Parseval

Banque Natexis

Banque de Picardie

Banque Populaire de Bourgogne

Banque Populaire Bretagne Atlantique

Banque Populaire du Centre

Banque Populaire Centre-Atlantique

Banque Populaire de Champagne

Banque Populaire de la Côte d'Azur

Banque Populaire du Dauphiné et des Alpes du Sud

Banque Populaire de Franche-Comté, du Maconnais et de l'Ain

Banque Populaire du Haut-Rhin

Banque Populaire de La Loire

Banque Populaire de Lorraine

Banque Populaire de Lyon

Banque Populaire du Midi

Banque Populaire du Massif Central

Banque Populaire de l'Ouest

Banque Populaire Provençale et Corse

Banque Populaire des Pyrénées Orientales, de l'Aude et de l'Ariège

Banque Populaire du Quercy et de l'Agenais

Banque Populaire Savoisienne

Banque Populaire de la Région Economique de Strasbourg

Banque Populaire du Sud-Ouest

Banque Populaire du Tarn et de l'Aveyron

B.P.ROP Banque Populaire

Banque de Savoie

Crédit Commercial de France

Crédit Commercial du Sud-Ouest

Crédit Lyonnais

Société Générale

Union des Banques à Paris.

(42) One of the complainants, the AFB, sent the Commission a letter on 4 June 1998 stating that the 1,3 % charge paid by CDC for funds transferred to it was excessive and that there was no justification for the difference between this and the 1,2 % commission paid to the Caisses d'épargne on the funds collected through the *Livret A*. The AFB points out in this letter that it proposed to the French authorities at the beginning of 1997 that it would ensure the collection of *Livret bleu* funds under the same conditions of channelling funds to CDC for a charge of only 1 %, but that the Government had not replied to this offer. The AFB underlined in particular that the April 1998 report by Mr Douyère, a member of parliament, on the modernisation of the Caisses d'épargne indicated that the cost for an average Caisse d'épargne like that of Burgundy to collect savings was 0,96 % of its total funds, and that there was no

reason why Crédit Mutuel's management costs should be higher. Crédit Mutuel did not suffer from the technical constraints facing the Caisses d'épargne which made account management more expensive (the management of the *Livret A* was not yet completely electronic in the 1990s, while management of the *Livret bleu* was fully electronic).

(43) On a matter incidental to these proceedings, the Commission also received an additional statement from the complainants which stated that the purchase by Crédit Mutuel in April 1997 of Crédit Industriel et Commercial (CIC), when the latter was being privatised (it had previously been owned by the public insurance group, GAN), had been possible because of the aid it had received for the *Livret bleu*, enabling it to increase its market share of savings from 2 % in 1969 to approximately 6,9 % in 1997. According to the complainants, the undertaking's own funds had increased rapidly because of the aid in question, rising from FRF 650 million in 1974 to FRF 47,3 billion in 1997.

(44) In addition to the comments made by Crédit Mutuel in its own defence, presented under Section III.3, the Commission received comments from the following third parties which were in favour of the *Livret bleu* system:

Mr Bertholet, MP (Drôme)

Mr Blondel, Member of the General Council of the Nord Region

Mr Cabot, Director of the Youth Information Regional Centre of Toulouse

Mr Cormorèche, Mayor of Montuel

Mr Cornelis, Member of the General Council of the Nord Region

Mr Chavannes, Mayor of Angoulême

Mr Crépeau, MP (Charente Maritime)

Mr Debavelaere, Senator (Pas-de-Calais)

Mr Decool, Mayor of Brouckerque

Mr Delevoye, Senator (Pas-de-Calais)

Mr Delnatte, MP (Nord Region)

Mr Dolez, MP (Nord Region)

Mr Ewald, Regional Delegate of the Association pour le Droit à l'Initiative Economique

Mr Fronton, Union Départementale des Associations Familiales de Haute-Garonne

Mr Foy, Senator (Nord Region)

Mr Galiègue, President of the Caisse de Crédit Mutuel de Solesmes

Ms Gournay, Mayor of Caestre

Ms Armelle Guinebertière, Member of the European Parliament

Mr Hervé, Mayor of Rennes

Mr Humez, President of the Comité départemental de lutte contre la mucoviscidose du Pas-de-Calais

Ms Ingelaere, President of Flandr'action

Mr Juppé, Deputy Mayor of Bordeaux

Mr Lapalu, President of the Association Animation et Gestion d'Organismes Privés

Mr Lazaro, MP (Nord Region)

Mr Lebreton, President of the Conseil Général des Côtes d'Armor

Mr Ledieu, Mayor of Cateau-Cambrésis

Mr Leleu, Director of Crédit Mutuel Nord

Mr Maille, President of the Communauté Urbaine de Brest

Mr Masclet, Member of the Regional Council of Nord-Pas-de-Calais

Mr Méhaignerie, President of the Conseil Général d'Ille et Villaine

Mr Mio, Member of the Regional Council of Nord-Pas-de-Calais

Ms Novak, President of the Association pour le Droit à l'Initiative Economique

Ms Permuy, Member of the Regional Council of Nord-Pas-de-Calais

Mr Albert Rivaux, Member of the Regional Council of Pas-de-Calais

Mr de Rohan, President of the Regional Council of Brittany

Mr Valla, Member of the General Council of the Ardèche Region

Mr Vanlerenberghe, Mayor of Arras

Mr Villain, Mayor of Cambrai

Mr de Villiers, MP (Vendée).

(45) The vast majority of third parties underlined the role played by Crédit Mutuel, particularly at regional level, in financing the social economy, especially non-profit-making organisations. They also stressed the supporting role it plays with respect to working class people, the section of society from which most of its customers come. Several local elected representatives emphasised Crédit Mutuel's role in setting up undertakings and creating jobs, and in developing local initiatives in conjunction with the local authorities. Others considered that because of its decentralised structures, Crédit Mutuel was able to meet local needs better than centralised institutions and to respond better to the requirement of balanced regional development.

3. **Comments from Crédit Mutuel**

(46) Crédit Mutuel sent a letter to the Commission on 11 June 1997 containing its comments in response to the opening of the proceedings. It considers, primarily, that the conditions under which *Livret bleu* funds are collected and managed do not constitute State aid. It adds, alternatively, that even if it does constitute State aid within the meaning of Article 87 of the Treaty, this could be eligible for the exemption provided under Article 86(2) of the Treaty. Only local Crédit Mutuel branches would have, where appropriate, benefited legally from such aid.

(47) Crédit Mutuel reiterated and expanded on these arguments in a detailed file dated 18 June 1998.

(48) Crédit Mutuel justified the freedom of allocation from which it had benefited in the past in relation to one third of the *Livret bleu* resources ([12]) by the fact that it had paid one third of the taxation on the interest paid to savers. It deduced from this that this justified excluding one third of the total amount of *Livret bleu* savings from the scope of these proceedings. Crédit Mutuel explained that the rule for allocating two thirds of the total amount of savings to general interest assets should be looked at from the point of view of the exemption from tax of two thirds of the *Livret bleu* savings. Crédit Mutuel also stated that it took into account the risk of lack of liquidity, for instance in the case of negative net collections (withdrawals).

(49) Crédit Mutuel considered that the savings scheme in question did not involve State resources and could not therefore give rise to State aid within the meaning of Article 87(1) of the Treaty. In particular it underlined the fact that the tax advantage in question did not affect the State budget because of its special features, mentioned earlier. It disputed the calculations in the Annexes to the Finance Law entitled 'Ways and Means', evaluating the tax cost of the partial exemption inherent to this system and presenting an exhaustive account of the cost for the State of the *Livret bleu* system. In return for the exemption from tax of part of the group of savers, it stated that taxation of a group not normally liable for tax or taxed at a low level generated revenue for the State which should be taken into account in the net tax assessment of the mechanism, mindful of the fact that Crédit Mutuel had paid tax equivalent to one third of the levy in discharge. Crédit Mutuel stressed the fact that, according to its estimates, the *Livret bleu* tax regime for the period 1975 to 1996 had generated net resources of […] for the State.

(50) Crédit Mutuel disputed the fact that it could have benefited from the tax advantage of the savers since each year it paid back to the State the deduction at source of one third of the tax normally applicable, so that the real rate of the *Livret bleu* before tax was in fact the nominal interest rate received by savers plus the tax deducted at source by Crédit Mutuel. Crédit Mutuel stated that it had paid back some […] to the State in this way between 1975 and 1996.

([12]) From 1983; this proportion was slowly reduced as of 1991.

(51) In the event that the Commission decided that aid existed, Crédit Mutuel would also dispute the fact that trade between Member States had been affected. According to Crédit Mutuel, this was a product which accounted for only 5,8 % of savings collected in France and 0,72 % in Europe. Crédit Mutuel was an operator whose size was very relative. Given the absence of a European cooperative company statute, local branches were unable to operate outside France. The opening of *Livret bleu* accounts for non-residents represented only a small number of accounts in 1997, roughly 8 600, or 0,16 % of total *Livret bleu* savings. In any case, Crédit Mutuel stated, before the implementation of the second Banking Directive ([13]) in 1993, the fact that the internal banking market was not completed was a barrier to trade.

(52) Crédit Mutuel disputed the earnings lost by the State because of the absence of invitations to tender which had resulted in it being granted exclusive rights to distribute this product (compared with the situation in which an invitation to tender would have allowed the State to select an institution providing the same service at a lower cost). It emphasised that, once the State had decided to have resources collected by means of the system in question for use in a general interest task, it was free to appoint Crédit Mutuel for this purpose since its network corresponded to the conditions of collection required in order to exploit savings by the general public.

(53) Crédit Mutuel considered that the difference between the commission of 1,2 % paid by CDC to the *Livret A* savings banks and the 1,3 % commission paid to Crédit Mutuel for the *Livret bleu* (this was also paid by CDC) could be explained by economy of scale, given the total amount of *Livret A* savings ([14]). Based on the analytic accounting figures it had presented to the Commission, it could be concluded that the average cost of managing *Livret bleu* deposits had dropped by […] in 1993 to […] in 1997, and that before 1997, it had remained permanently higher than the commission margin of 1,3 % which CDC paid it for the transferred funds.

(54) Crédit Mutuel considered that the argument by the AFB banks that the *Livret bleu* savings could be collected at a lower cost, for an intermediation commission of only 1 %, should be assessed in the light of the choice made by banks depending on the amount of the deposits in these accounts. This refusal of cost equalisation by AFB banks would undermine the overall management balance of the system.

(55) Crédit Mutuel sent a report to the Commission containing an analysis of the analytical accounts of the *Livret bleu* system. This analysis concluded, for the period 1991 to 1997, that the collection and management of the *Livret bleu* savings had generated higher costs than the income received, and that the system was in balance only in certain years. Crédit Mutuel concluded that, apart from 1991 to 1992, the margin on the *Livret bleu* was lower than the margin it achieved on its other activities. It also sent the Commission an auditor's certificate concerning this analysis issued by a French auditing firm, Mazars et Guérard.

(56) Crédit Mutuel disputed the fact that it could benefit from a commercial advantage through the *Livret bleu* since:

— the gains in Crédit Mutuel's market shares during the period concerned could be explained by its performance, notably its high level of productivity, and not by the attractiveness of the *Livret bleu*, whose share of the bank's resources had been dropping over time. Crédit Mutuel stated that the average number of customers managed per employee was 364 at the Crédit Mutuel in 1996 compared with 150 in other French credit institutions. From 1991 to 1997, Crédit Mutuel increased its share of the savings market by 1,1 %, while the other banks lost a market share of 0,6 %. Crédit Mutuel emphasised the fact that the Caisses d'épargne, which had a comparable product in the *Livret A*, had, like the other banks, experienced a drop in their share of the savings market during the period under review. This refuted the causal link established by the complainants between the *Livret bleu* and the increase in Crédit Mutuel's market share,

— other regulated savings products such as the Codevi (industrial development accounts) introduced by the authorities in 1983, the Plan d'Epargne Populaire and the *Livret Jeune*, were distributed by the banks and represented a real alternative to the *Livret bleu*, to such an extent that the various possibilities

([13]) Council Directive 89/646/EEC (OJ L 386, 30.12.1989, p. 1).
([14]) The total *Livret A* funds collected by the Caisses d'épargne are approximately seven times greater than those of the *Livret bleu*.

offered by these products permitted, in 1997, a single person of over 25 years of age to accumulate tax-free savings of FRF 1 130 000 (compared with the ceiling of FRF 100 000 on the *Livret bleu*).

(57) Crédit Mutuel stated that the attraction of the *Livret bleu* had had the effect of reducing considerably the amount of deposits on current accounts on which the bank did not pay interest, and which in 1997 represented 15,8 % of its deposits compared with 36,6 % to 40,8 % for its main competitors. This substitution had, it stated, had a negative effect on its profitability and margins, so that the average cost of deposits with Crédit Mutuel was significantly higher than with the AFB banks.

(58) Crédit Mutuel also disputed the fact that the entire Crédit Mutuel group had benefited from aid, in the event that it was decided that aid had been granted. It stressed that it was only the local branches, which were legally independent, which distributed the *Livret bleu* and which might therefore have benefited from aid.

(59) Crédit Mutuel considered that by adopting the legislative measures ([15]) introducing the *Livret bleu* in 1975, the Government had established a general interest system for collecting savings from the general public for allocation to general interest financial assets. Crédit Mutuel's network in rural areas and the extent of its modest-income customers had, in its view, played an important role in this choice. In 1998, 58 % of Crédit Mutuel's customers lived in municipalities of under 20 000 inhabitants and 77 % declared a net monthly income of under FRF 10 000.

(60) Crédit Mutuel underlined the constraints to which it had been subjected:

— the State had, it argued, obliged Crédit Mutuel to maintain […] branches in municipalities with under 2 000 inhabitants, the cost of which was estimated at FRF […] million per year,

— it had to maintain 'special *Livret bleu* accounts', whose management costs were higher than the 1,3 % commission paid by CDC. If these accounts, which contained an average low amount, had been closed, […] of the *Livret bleu* accounts representing only […] of the total savings might disappear. Therefore Crédit Mutuel would make savings estimated at FRF […] million per year. Crédit Mutuel estimated that managing small accounts resulted in a surcharge of […] of the total amount contained in them, given their features, and mindful of the fact that the lower the balance, the greater the number of book entries,

— until 1991, the opening of branches was regulated, so that Crédit Mutuel could not develop in the most attractive areas, outside its own traditional areas of establishment (the East, the North and Brittany),

— Crédit Mutuel also pointed out, rather vaguely and without using figures to support this thesis, that other surcharges relating to *Livret bleu* general interest assets should be taken into account,

— lastly, Crédit Mutuel said that there was a risk of transformation to be borne by it because of the risk of a variation of the margin between the short-term rate (which is regulated) applied to *Livret bleu* resources and the medium and long-term rates applied to the assets.

(61) Based on this information, Crédit Mutuel felt that, without the *Livret bleu*, it would have been unable to perform the general interest tasks required of it. It stated that the share of the *Livret bleu* funds which it could use freely had enabled it to balance the system, given the insufficient margins achieved on general interest assets.

(62) Crédit Mutuel also expressed its legitimate confidence in a system that dated back to 1975. It considered that the length of the investigation of a complaint, going back to 1991, was likely to violate this legitimate confidence.

(63) In a note dated 13 December 2000, Crédit Mutuel criticised the method followed in the first memorandum issued by the Glais firm. It stressed that other reasons could explain the statistical phenomena observed, such as the fact that Crédit Mutuel had a denser network than its competitors at the beginning of the period under review (in terms of NBP per branch). It pointed out that between 1987 and 1998 Crédit Mutuel had

([15]) Law No 75-1242 of 27 December 1975, 1975 Amending Finance Law, Article 9.

won a smaller market share than Crédit Agricole (whose balance sheet was smaller), and that Crédit Mutuel had gained two points on the lending market compared with four points for all the AFB banks (which in fact confirmed Crédit Mutuel's spectacular expansion).

(64) A note dated March 2000 issued by Crédit Mutuel Midi Atlantique emphasised the arbitrary nature of the analytical account figures put forward by the Commission's consultant: the quantitative data were assessed in a contradictory way, and the qualitative data (cost of maintaining the network in rural areas and loss-leader effect) were difficult to gauge. Crédit Mutuel confirmed that it agreed with the general introduction of the *Livret bleu*, in other words its distribution by the other banking networks, but it was against the idea of any refund of aid, which it deemed would penalise over five million members.

IV. **COMMENTS FROM THE FRENCH AUTHORITIES**

(65) In their letter of 8 April 1998, the French authorities considered, in the first instance, that the *Livret bleu* system did not involve any substantial tax cost for the State, as the latter had opted for uniform taxation of the depositors of one third of the levy in discharge on savings revenue, thereby waiving the remaining two thirds of the levy in discharge but collecting, on the other hand, this one third from a group that is normally not liable for tax. On this basis they disputed that Article 87(1) of the Treaty could be applied in any way because of the absence of State resources allocated to the system in question.

(66) The French authorities also stressed the fact that the intermediation commission paid by CDC to Crédit Mutuel on the total *Livret bleu* funds channelled to it did not constitute aid, but rather remuneration for a service rendered by the bank, the price of which had been set in 1991 at 1,3 %. They underlined the extent of the management costs for the *Livret bleu* because of the number of accounts whose totals were under FRF 5 000. They referred to the analytical account analysis produced by Crédit Mutuel, concluding that this amount was fully justified.

(67) The French authorities disputed that trade could have been affected before the completion of the single market in banking and financial activities following the adoption of the second Banking Directive on 15 December 1989 and its incorporation into French law on 1 January 1993. The French authorities considered that, after that date, given the absence of a European cooperative company statute and the constraints that this situation produced in terms of the crossborder expansion of cooperative companies such as Crédit Mutuel, Crédit Mutuel's branches did not operate across national borders. Moreover, the *Livret bleu* accounts opened for non-residents represented less than 0,1 % of the total savings. The authorities also stated that foreign banks in France were targeting a very different market to that of Crédit Mutuel. They therefore disputed any possibility of intra-Community trade being affected by a measure contrary to the common interest.

(68) The French authorities emphasised that the advantages which Crédit Mutuel received from the *Livret bleu* should be examined in the light of the costs connected with a general economic interest task. They pointed in particular to the increasing allocation of the *Livret bleu* funds to general financial interest assets: the fraction rose successively from 50 % of *Livret bleu* funds between 1975 and 1983 to 65 % between 1983 and 1991. They pointed out that following the allocation of funds agreed with Crédit Mutuel in 1991, 100 % of these funds would be allocated to general financial interest assets from 2000. They Stated that they intended to speed up the implementation of the 1991 Agreement so that the Livret bleu funds could be allocated for this purpose earlier than envisaged, from the end of 1998.

(69) The French authorities also stressed that while the opening of bank branches had been liberalised in the rest of the banking sector on 24 November 1986, Crédit Mutuel had remained subject to a system of administrative authorisation up until 1991 because of the decision by CNC (Conseil national du crédit) on 10 January 1967. It was not until 1 July 1991 that the obligation for Crédit Mutuel to obtain authorisation from the Comité des établissements de crédit prior to opening, modifying, transferring or closing any branches had been abolished. The French authorities considered that until 1991, the constraints relating to the geographical distribution of Crédit Mutuel outside the major cities was based on a political decision by the authorities and had resulted in delayed development in urban areas.

(70) Based on these elements, the French authorities concluded that Crédit Mutuel did not receive any State aid for the *Livret bleu*, and, alternatively, in any case such aid, where appropriate, should be declared compatible with the Treaty pursuant to Article 86(2) because of the general interest tasks assigned to Crédit Mutuel. They

underlined the legitimate confidence shown in Crédit Mutuel until the lodging of the complaint with the Commission in 1991.

(71) In a note sent on 1 February 2001, the French authorities unambiguously stated, with regard to the regulatory amendment introduced following the Decision by the Conseil d'Etat on 5 January 2000, that alignment with this Decision did not result in any change in the *Livret bleu* taxation system. Savers continued to receive the same net interest rate as for the *Livret A*. Crédit Mutuel continued to pay the levy in discharge to the public revenue department.

(72) Lastly, the French authorities explained that transfer to CDC of all the funds collected via the *Livret bleu* had been made official in a Protocol dated 31 December 1998 between the Minister of Finance and the President of the Confédération nationale du Crédit Mutuel, and had been fully implemented by 31 March 1999.

(73) Finally, in a note dated 26 October 2001, the French authorities rejected the description of State funds in relation to general interest assets, considering that the condition of trade being affected was not fulfilled before the incorporation into French law of the Second Banking Directive, and that aid introduced in a market originally closed to competition should be regarded as existing aid. They also reiterated the figures produced by Crédit Mutuel and by Arthur Andersen.

V. **ASSESSMENT OF THE COMPENSATION MEASURES**

(74) The Commission would point out that, under established case-law of the Court of Justice, aid must be appraised on the basis of its effects. Before drawing conclusions as to the nature of the aid in the measures examined, the effects of the system on the results of Crédit Mutuel must be studied.

(75) Several conditions must be met if a measure is to be defined as State aid: the aid must be granted by the State or using State resources; it must confer a competitive advantage on the beneficiary undertaking; and it must have an effect on intra-Community trade. The last point will be examined first before going on to analyse the other points. Lastly, the aid will be evaluated.

1. **The distortion of competition and the effect on trade between Member States**

1.1. *The effect on trade since 1975*

(76) In 1979, the market share of foreign banks was 8 % for credit activities (4 % for branches without legal status, and 4 % for subsidiaries incorporated under French law), and 4,5 % for deposit activities (2 % and 2,5 % respectively). The share of non-French European banks compared with all foreign banks was 50 % for credit and 70 % for savings deposits. These shares changed very little between 1975 and 1979 ([16]). Crédit Mutuel therefore faced competition from foreign networks in France from the 1970s. The number of banks in Paris under foreign control has increased rapidly since 1968, rising from 47 banks to 86 in 1975 and to 111 in 1979.

(77) According to established case-law, the effect on trade is regarded as sufficient if the position of the undertaking has been strengthened compared with its competitors in the context of intra-Community trade ([17]). It is not necessary for the beneficiary to have an exporting operation: aid to the national undertaking is likely to reduce the export opportunities for undertakings in other Member States ([18]). Several indicators show that the effect on trade is present in this case.

(a) The need to take account of all the activities of Crédit Mutuel, particularly credit activities

(78) Until 1999 Crédit Mutuel had the possibility of using part of the *Livret bleu* deposits for very diverse banking activities. The distortion of competition is not, therefore, confined to the deposits market, but also concerns at least the credit market. The information which the

([16]) The 1979 figures of the French Commission de contrôle des banques (Banking Supervisory Committee) are used as this was the first year for which detailed figures on foreign banks are available.

([17]) Case 730/79 *Philip Morris* v *Commission*, [1980] ECR p. 2671.

([18]) Joined cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECRI-4103. Moreover, this statement is not affected by the fact that the aid is relatively low, by the small size of the beneficiary or by the latter's small Community market share, or even by the absence of exporting activity by the beneficiary or the fact that the undertaking exports almost all of its products outside the Community.

Commission obtained essentially relates to the end of the 1980s and the 1990s. In 1975, operations involving Crédit Mutuel's assets seem to be essentially loans and purchases of State securities. The funds collected via the *Livret bleu* played an important role in the development of Crédit Mutuel's credit operations. The *Livret bleu* funds enabled Crédit Mutuel to grant loans of an identical volume to that of the funds collected. As the growth in the funds collected was very rapid in the second half of the 1970s, the *Livret bleu* accounted for 60 % of total deposits until the mid-1980s. The *Livret bleu* enabled the bank to expand its offer on the credit market once competition with foreign banks had been introduced.

(b) The criterion of partial liberalisation of capital movements

(79) With regard to the deposits market, it is worthwhile pointing out that payment transfers and capital movements were possible and in fact even standard practice (for instance for immigrant workers) before the incorporation into French law of Council Directive 88/361/EEC (OJ L 178, 8.7.1998, p. 5), which fully liberalised capital movements. According to the Commission's information, the control of capital movements was liberalised in France as of 1968 ([19]). From 1975, French residents could, and did, lodge funds abroad. The rules apparently provided for a system of *ex ante* administrative declarations to the Bank of France, which was temporarily tightened up as of 1981 because of the flight of capital. It was more or less abolished in 1986 ([20]). Residents of other Member States could deposit funds in France, notably in *Livret bleu* accounts ([21]).

(80) Community law concerns the liberalisation of certain capital movements and payments. The first Council Directive applying Article 67 of the Treaty refers to the liberalisation of capital movements as soon as possible. This Directive, and the following ones amending it ([22]), have gradually liberalised these movements unconditionally to the extent that Directive 88/361/EEC refers to 'full liberalisation' (recital 7). Case-law shows that the liberalisation of capital movements and payments was from the outset closely linked to freedom of movement of persons, goods and services and freedom of establishment ([23]).

(c) The effect on trade between Member States in the absence of liberalisation

(81) The effect on trade between Member States was recognised by the Court even in the absence of liberalisation of the market, as can be seen from the judgment in the Van Eycke ([24]) case concerning a national regulation dating from 1983 and 1986 which in practice set the level of interest rates for certain categories of savings deposits entitling the holder to tax benefits. The Court did not rule out the possibility of an infringement of Article 85, based implicitly on the fact that the measure was likely to have an effect on intra-Community trade within the meaning of Article 85 of the Treaty. The Community system applicable was that of the first Council Directive of 11 May 1960, and not Directive 88/361/EEC. This interpretation is confirmed in the conclusions of Advocate General Mancini: in reply to the complainant who invoked the absence of effects on trade, the Advocate General pointed out that 'there is no doubt that the banking sector is subject to the rules of competition' (paragraph 3).

(82) Mention might also be made of a prior case, Züchner ([25]), in which a national court wanted to know whether bank charges on a cheque drawn on 17 July 1979 on a German bank in favour of a beneficiary living in Italy might be contrary to Article 85 of the Treaty. The Court refused to rule out the application of the rules of competition because of Article 90(2) and Article 104 *et seq.* of the Treaty, thus taking the view that this practice was liable to have an effect on trade.

([19]) With the Decree of 4 September 1968 on freedom of financial relations with other countries.

([20]) With regard to currency outflows shown as capital transactions on the balance of payments.

([21]) This concerns a very small group of savers, since the main advantage of the product is the tax exemption, and non-residents will have their financial centres in France in exceptional cases only, and are therefore taxed in France in exceptional cases only.

([22]) Council Directive 63/21/EEC (OJ 9, 22.1.1963, p. 62/63), 85/583/EEC (OJ L 372, 31.12.1985, p. 39) and 86/566/EEC (OJ L 322, 26.11.1986, p. 22).

([23]) For instance, see Case 15/78 *Koestler* [1978] ECR 1971, Case 203/80, *Casati* [1981] ECR 2595, Joined Cases 286/82 and 26/83 *Luisi et Carbone* [1984] ECR 377, Case C-484/93 *Svensson and Gustavsson* [1995] ECRI 3955, and Case C-222/95 *Parodi* [1997] ECR I-3899.

([24]) Case C -267/86 *Van Eycke* [1988] ECR 4769.

([25]) Case 172/82 *Züchner* [1981] ECR 2021.

(83) As long ago as the second report on Competition Policy published in 1972 (paragraphs 50 to 53), the Commission confirmed that the rules of competition applied in principle to the banking sector. The report stated that the Commission had already examined a case involving banking in the light of Article 85 and that it was in the process of examining European cooperation agreements between banks in different Member States ([26]).

(84) If all of these cases involved an effect on trade within the meaning of Article 85, it may be deduced that there was also an effect on trade pursuant to the rules on State aid.

1.2. *The completion of liberalisation of the banking sector in the European Union since the end of the 1970s and the strengthening of competition*

(85) While the completion of the internal market dates from the Second Banking Directive of 1989, it should be noted that the market began to be gradually liberalised and competition gradually strengthened as of the 1970s.

(86) The complete liberalisation of the single banking market in the European Union was achieved over a period of more than 30 years. The First Banking Council Directive 77/780/EEC (OJ L 322, 17.12.1977, p. 30) established the first rules on the coordination of national laws and regulations relating to the taking-up and pursuit of the business of credit institutions in other Member States. It must be pointed out that freedom of establishment of subsidiaries already existed in the European Community countries, and most large banks had subsidiaries abroad, as well as branches without legal status (even in the absence of uniform regulation at EU level). The subsidiaries and branches in France of other European Union countries were thus in a position to suffer from unfair competition from Crédit Mutuel before the date of the entry into force of the first and second Banking Directives.

(87) A decisive stage in the completion of the single banking market was taken with the liberalisation of capital movements in Directive 88/361/EEC, to be incorporated into national law by the Member States by 1 July 1990 at the latest. In practice, this measure considerably increased the cross-border flows of deposits and investments. In the past these capital flows were controlled by the authorities, if only by means of exchange controls. France incorporated into national law the Directive on the liberalisation of capital movements in Decrees 89-938 and 90-58, which came into force on 30 December 1989 and 16 January 1990 respectively. The exchange control introduced in 1981 was abolished in 1986.

(88) Freedom of establishment in the banking sector was completed in France in July 1992 with the incorporation of the second Banking Directive 89/646/EEC ([27]). Article 6(2) of the said Directive states that 'host Member States may not, as a condition of the authorisation of branches of credit institutions, authorised in other Member States, require initial endowment capital exceeding 50 % of the initial capital required by national rules for the authorisation of credit institutions of the same nature' ([28]). This measure was to be incorporated by 1 January 1990 at the latest. The Council thereby intended to prevent any attempt by a Member State from restricting freedom of establishment of a branch by unfair regulations after 1990.

(89) The result is that gradually, and in particular from 1990 on, the effect on trade of aid granted to a banking establishment became extremely serious ([29]), since any bank could perform banking activities in the other Member States through the establishment of branches (no longer subject to authorisation) or by providing services freely across borders.

1.3. *The position of Crédit Mutuel on the French banking market*

(90) The Commission examined the arguments put forward by Crédit Mutuel on limited local competence of the local Crédit Mutuel branches and the absence of an impact on trade arising from this system. It points out,

([26]) The Eighth Report, published in 1978, (paragraphs 32 to 37) states that the rules of competition had already been applied in cases relating to traveller's cheques in Belgium, Eurocheques in France and in the *Sarabex* case (concerning the Foreign Exchange and Current Deposit Brokers' Association). The European cooperation agreements mentioned in 1972 are referred to once again. In a table on page 36 of the report, 40 banks are listed, including five French banks (Banque Nationale de Paris; Société Générale; Crédit Lyonnais; Crédit Commercial de France and Crédit Agricole).

([27]) This Directive was incorporated into French law by Law 92-665 of 16 July 1992 (JORF (French National Gazette) of 17.7.1992, p. 9576) and Regulations 92/11-12-13-14 of 23 December (JORF of 9.1.1993, p. 512).

([28]) This was even before the actual abolition of authorisation by the host country of bank branches authorised in other Member States provided for under Article 6(1) of the Directive (to be incorporated by 1 January 1993 at the latest).

([29]) See, among others, the Commission Decisions concerning Crédit Lyonnais, Banco di Napoli, Banco di Sicilia, Société Marseillaise de Crédit and Westdeutsche Landesbank.

however, that Crédit Mutuel is a group with legal status and consolidated accounts, which also enjoys internal financial solidarity in the form of the confederation, which ensures the liquidity of the regional federations. It points out that the group has considerable own funds which facilitates its access to capital markets and that the rating agencies give it an overall group rating. It states that each local branch did not reply, in the context of these proceedings, but that Crédit Mutuel sent it a single reply. Neither the Commission nor the main financial partners of Crédit Mutuel nor the financial markets had any doubt that Crédit Mutuel was an undertaking that could reallocate within its structure any aid paid to a particular internal group entity. It noted that, given its size — it being one of the biggest French credit institutions – Crédit Mutuel was in a position to finance itself or to invest its funds on the financial markets.

(91) Crédit Mutuel is a going concern that has made considerable profit in recent years. Any excess compensation for the net cost of collecting and managing general economic interest tasks would enable it to increase its profit and to accumulate additional own funds. The constraint of solvency (in the financial market economy) laid down in the European banking rules ([30]) introduces an obligation which limits the growth capacity of credit institutions. Any operating aid represents a considerable lever in overcoming these constraints, in that it increases own funds. Because of these constraints on solvency, it is easier to ascertain that a distortion of competition has taken place in the case of aid granted to credit institutions. If the direct or indirect effect of the aid is to increase own funds, then a distortion of competition can be reflected in the increased activity of the bank.

1.4. *Conclusion*

(92) Given the nature of the potential aid granted to Crédit Mutuel as operating aid as well as the economic situation in the European banking sector and the solvency constraints specific to the banking sector, this aid has had an effect on trade from the entry into force of the *Livret bleu* and has had an increasing effect of distorting competition in the financial sector. Consequently it must be considered that the potential aid was new aid when introduced in 1975.

([30]) The basic level of own funds is set at a minimum of 4 % of weighted assets, while that of own funds in the broad meaning of the term is a minimum of 8 %. Cf. Council Directive 89/647/EEC of 18 December 1989 concerning a solvency ratio for credit institutions (OJ L 336, 3.12.1989, p. 14).

2. **Definition of State resources**

(93) It is settled case-law that the concept of State aid means any advantages serving from State resources granted by the authorities to an undertaking, provided that this advantage is fully or partly granted without any financial consideration in return, in other words granted without any remuneration or subject to a remuneration that does not reflect the price at which the said advantage might be assessed. This definition therefore covers the allocation of resources to an undertaking, the reduction of charges that it should normally have to pay or any other advantage that enables the undertaking to make savings that influence its production costs ([31]).

(94) Under EU case-law, only advantages granted directly or indirectly from State resources are to be regarded as aid within the meaning of Article 87(1). The Commission must check first to see from which State resources Crédit Mutuel may have benefited: (1) the tax advantage accorded to savers, (2) the fund collection commission paid by CDC, (3) the revenue from the general interest assets, and (4) the possible advantages and costs indirectly linked to the *Livret bleu* system.

2.1. *Tax exemption*

(95) The system in force until the end of 1999 contained a derogation from the general system of taxation on savings. Normally this allowed savers to choose between a gross interest rate with the financial revenue being included in their taxable income, or an interest rate net of the levy in discharge (deducted at source). In this particular case, since no levy was applied to Crédit Mutuel, it theoretically assumed responsibility for paying a tax equal to one third of the levy in discharge.

([31]) Case 30/59 *De Gezamenlijke Steenkolenmijnen in Limburg* v *High Authority* [1961] ECR3; English special edition 1961, p. 1, Case 61/79 *Denkavit italiana* [1980] ECR 1205 and Case 387/92 *Banco exterior de Espana* [1994] ECRI-902.

(96) The reduction of the tax to one third of the normal levy in discharge means that the system involved the use of State resources and the adoption of a more favourable regime for savers compared with the norm. The system involves an expense for the State since the latter could perhaps have obtained more tax resources had it chosen to apply the general rule and not to limit the compulsory levy to one third. This aid appears to benefit individual consumers directly and not the bank, therefore it cannot be said that Crédit Mutuel is the direct beneficiary of the tax aid. However, this tax aid, having a social character, is associated with a product distributed by only one player, Crédit Mutuel. Therefore the aid does not satisfy the condition of compatibility laid down in Article 87(2)(a) of the Treaty, which states that aid is granted 'without discrimination related to the origin of the products concerned' ([32]).

(97) With respect to the payment by Crédit Mutuel of a tax set at one third of the normal levy in discharge, it might be considered legitimate for Crédit Mutuel to record the amount of this in the costs linked to the *Livret bleu* system. However, the conclusions in the Council of State judgment of 5 January 2000 stating that the tax system in force is illegal explicitly confirm the fact that Crédit Mutuel in practice benefited as of 1991 from the 'cancellation' of the taxes to which interest received on *Livret bleu* accounts is subject, in other words the State or CDC refunded the levies in discharge paid by Crédit Mutuel. This means that all the interest on *Livret bleu* accounts, and not just two thirds of it, was exempt, at least dating from the decree of 27 September 1991 concerning the transferred funds.

2.2. *The general interest service entrusted to Crédit Mutuel*

(98) Crédit Mutuel was entrusted with the task of distributing the *Livret bleu*, a task to which strict prerogatives and constraints pertained. The prerogatives consisted of the exclusive distribution of the *Livret bleu* and the payment of a fund collection commission by CDC. The obligations concerned the use of the funds collected through the *Livret bleu*. These obligations changed over time: initially Crédit Mutuel had the obligation of allocating 50 % of resources (this proportion was later increased to 65 %) to general interest assets (notably the financing of local authorities and other public bodies), with the balance being left to the bank to dispose of it freely. It is worthwhile noting that Crédit Mutuel had no obligation relating to financing conditions involving the funds at its disposal, for instance as regard interest rates. As of 1991, a growing part of the funds was allocated to the financing of public housing by channelling the funds to the Caisse des Dépôts et Consignations (CDC). All the savings funds are now transferred to CDC. The latter pays Crédit Mutuel a commission corresponding to the gross interest rate fixed by the authorities passed on to savers, plus an intermediation commission of 1,3 %. Since CDC is a public enterprise that receives State resources to perform general interest tasks, the fund collection commission must be regarded as a State resource. The interest is paid to the savers, hence Crédit Mutuel receives this commission only. This commission forms an integral part of the public service entrusted to Crédit Mutuel, and is therefore attributable to the State.

2.3. *The income from the general interest assets*

(99) The general interest assets listed exhaustively in the Decree of 1 March 1976 consisted mainly of loans to local authorities and subscriptions of securities issued or guaranteed by the State (for instance government bonds) and loans to public housing management bodies. Based on the information received, the compulsory nature of these assets combined with the fact that the rates had been regulated by the State and were not freely determined by the market, means that there are grounds for considering that the general interest assets form an integral part of the *Livret bleu* system. It will be demonstrated below that these compulsory conditions enabled Crédit Mutuel to achieve very considerable profits on these funds. The definition of general interest task was amended in the Decree of 27 September 1991: the assets covered are now exclusively loans to finance social housing and the allocation to the CDC (see the transfer of deposits mentioned above). But it was only very slowly during the 1990s that these new tasks

([32]) In this case, tax aid to consumers is granted only to savers with a *Livret bleu* account at Crédit Mutuel (or with *Livret A* accounts at the Caisses d'Epargne et de la Poste).

replaced the old ones: only the new funds collected were immediately fully allocated to these new tasks as of 1991.

3. **The competitive advantage**

(100) If the compensation received by Crédit Mutuel for the public service, taking the form of a fund collection commission paid by CDC, exceeds the net costs arising from the public service (mindful of all the costs and benefits relating to the provision of the service), Crédit Mutuel benefits from a competitive advantage over other banks since it receives additional resources that are not granted to other banks.

4. **Assessment of the amount of State aid**

(101) Since the French authorities have invoked the existence of a general economic interest task linked to the *Livret bleu* system, the Commission must focus on obtaining a balance of the income and expenditure linked to the performance of this service in order to determine a justifiable level of compensation paid by the State.

(102) Firstly, the procedures for taking into account all the income and expenditure relating specifically to the *Livret bleu* are explained. Secondly, the principles underlying the Crédit Mutuel analytical accounts system are described. Thirdly, the remaining points of disagreement between the experts are decided by the Commission while, fourthly, the results of the accounts relating to the *Livret bleu* system are given, after taking into account the abovementioned expenditure and income.

4.1. *Procedures for taking into account all income and expenditure linked to the total Livret bleu funds*

(a) The balance of income and expenditure linked to the total *Livret bleu* funds

(103) The financial mechanism relating to the Crédit Mutuel *Livret bleu* system must be assessed from the point of view of the overall economy of this savings system, in other words account must be taken of all the costs and benefits arising from the system, in particular the benefits drawn directly from the use of the funds collected from the distribution of a tax-free savings product of this kind.

(104) To make it easier to analyse the direct effects, it is useful to recall some of the Crédit Mutuel accounting elements of the *Livret bleu* system. Three types of assets stand back to back to the total amount of *Livret bleu* savings (featured on the liabilities side):

— the funds transferred to CDC (in line with the provision on channelling funds to CDC),

— the general interest assets,

— the assets left to Crédit Mutuel.

With regard to the liabilities side of the balance sheet, the system is characterised by State regulated interest charges (revisable fixed rates, hence not very volatile), while on the assets side the main features are variable interest rate income on general interest assets and on the assets left to Crédit Mutuel, and the fixed fund collection commission paid by CDC. Table 2 summarises briefly the main elements in the *Livret bleu* profit and loss account.

(105) *Table 2*

Outline of the *Livret bleu* profit and loss account

Livret bleu profit and loss account	
Expenditure	Income
Net interest on *Livret bleu* (3 % [a])	CDC commission (3 % [a] + 1,3 %)
	Margin on general interest assets (var.)
	Margin on CM assets (var.)

[a] In July 2001.

(106) The Commission analysed the system as a whole to assess the general economic advantages obtained by Crédit Mutuel through the *Livret bleu*. First the State grants a fund collection commission to Crédit Mutuel via CDC for the provision of the collection service. Account must also be taken of the economic advantages other than the CDC commission that Crédit Mutuel obtains from the *Livret bleu*.

(107) Should the amount of the financial advantages which it is possible to evaluate in accounting terms (collection commission plus income from management) exceed, where appropriate, the costs incurred (including a normal commercial margin) by Crédit Mutuel in collecting and managing the deposits, the State would authorise excess compensation of the cost of distributing the *Livret bleu* through an excessively high collection commission. To arrive at this evaluation, it is essential to take into account all the financial advantages of distributing the *Livret bleu*, as well as all the income and expenditure linked to this system and to the assets and matching liabilities, for two main reasons.

(108) — Firstly, the Court has ruled that aid must be assessed on the basis of its effects. It must be pointed out that the *Livret bleu* generates income which is not limited to the revenue from the general interest assets or the funds transferred to CDC. The *Livret bleu* deposits have enabled Crédit Mutuel to obtain resources under more advantageous conditions than would have been possible if it had simply obtained refinancing on the financial markets, and to obtain profits by using this resource for compulsory general interest assets or for assets freely chosen by it ([33]). The State has a duty to reduce the amount of the resources it pays for the performance of this service if Crédit Mutuel draws benefit from it in other ways.

(109) The income from the general interest assets must be taken into account in any case since it forms an integral part of the obligations imposed by the State in the context of the *Livret bleu* system. It should also be noted that excluding some assets that are profitable would be absurd: the State would have to compensate for losses made by some assets, even though sufficient profit was being made from other assets within the *Livret bleu* system, which is not taken into account.

(110) The situation is less clear in relation to the assets freely undertaken by Crédit Mutuel, which recorded a loss of approximately FRF 1 billion over the period under review. These losses affect the State budget since, if they did not exist, it would be balanced, thus requiring the collection commission to be lowered accordingly. The Commission considered, however, that the net cost of the assets freely chosen by Crédit Mutuel should be included.

(111) The independent consultant's task concerned the evaluation of the *Livret bleu* analytical accounts system (expenditure and also income from the assets to which the resources relate) and an analysis of the coherence of the data provided by Crédit Mutuel. Given this, the consultant was asked to identify all the advantages linked to the income obtained from the *Livret bleu* assets and the costs of the resources (different from normal market costs). Following the deduction of the normal profitability margin known as ' own funds cost' ([34]) by experts, the residual profit (from the commission paid by the State) may consist of incompatible State aid, for the State should have paid Crédit Mutuel a lower commission for the collection service that corresponded to the net costs, rather than excess compensation.

(112) — Secondly, Crédit Mutuel mentioned, during the proceedings, a large number of constraints and special features relating to the management of the *Livret bleu* (see part III on the arguments put forward by Crédit Mutuel). The approach adopted by the Commission allows these problems to be dealt with by reference to the accounts, hence on the basis of practice. It permits a correct evaluation of the real financial weight of these constraints based on past figures from the *Livret bleu* account management.

([33]) In other words, if Crédit Mutuel had had to obtain similar resources in terms of stability on the interbank market, it would have had to pay higher refinancing charges. The monopoly over the *Livret bleu* has therefore had the effect of reducing the bank's normal expenses. It is therefore necessary to take account of all the charges linked to deposits (increased charges due to collection, but also reduction in normal charges because of the lower cost of this resource), and all the income from assets and matching liabilities, including the funds freely available to the bank.

([34]) If the cost of own funds measuring the profitability of activities is taken into account, this enables one to distinguish in the *Livret bleu* results the share corresponding to a normal return on own funds (hence the members' capital) from the share which exceeds the average profitability of a bank. See section 4.4. concerning the analysis of the cost of own funds.

(b) Some technical explanations

(113) The collection of savings through the *Livret bleu* also has certain specific economic features that differentiate it from the normal collection of savings by a bank.

(114) The nature and special taxation system relating to the *Livret bleu* cushion the impact of interest rate variations on savings reallocation movements, and this form of saving is less volatile than investments at market rates. The behaviour of savers is, first and foremost, influenced by the net rates of the *Livret bleu*, compared with alternative investments with the same degree of risk and liquidity: the net rate of the *Livret bleu* is higher than that of the *Livret B* (taxed). All things being equal, as investments at market rates are taxed, they must have a considerably higher gross return in order to be chosen instead of savings accounts.

(115) Secondly, the behaviour of savers is also tied to certain sociological and psychological parameters that are quite specific in the case of tax-free accounts. Since the return on the *Livret bleu* is set by the State, savers have more confidence in it. By selecting this type of saver, a relatively paradoxical situation results: although this is the most liquid 'placement with return', it is also one of the least volatile.

(116) This confidence shown by savers has traditionally allowed the authorities to set low rates of return net of inflation. Even in a context of much higher returns on market placements, withdrawals of savings were very limited in the 1990s ([35]).

(117) In any case, the special features associated with this way of collecting funds compared with obtaining financing on the interbank market or the financial markets requires a specific evaluation of the benefits which Crédit Mutuel obtained from the management of these funds, and this can only be done through the network's analytical accounts.

([35]) During the 1990s, there was a single year during which there was a significant drop in collections for the *Livret bleu*: 1993 (-4 %). The drop in collections for the *Livret A* was higher: in 1996 (-10 %) and in 1999 (-8 %). Collections should be positive again in 2001.

(118) The Commission's consultant takes into account the income and expenditure arising from the system for Crédit Mutuel by separating the analysis into three parts depending on how the funds collected are allocated: funds transferred to CDC, funds allocated to general interest assets and assets freely selected by Crédit Mutuel. The Consultant's method permits a response to Crédit Mutuel's argument that the system involves a cost ([36]) for it since it must pay tax on revenue to the State ([37]). This method also allows a normal return on own funds to be taken into consideration.

(c) The question of the loss-leader effect

(119) In order to determine the net cost and appropriate level of resources paid by the State in compensation, the analysis of the effects of the *Livret bleu* system must, in addition to the abovementioned direct advantages, cover any advantages and costs derived from the system if these effects have a significant impact.

(120) The exclusive right to distribute a savings product that is attractive because of tax exemption is likely, according to the complainants, to allow Crédit Mutuel to attract and to maintain the loyalty of customers, to whom its network can then sell other banking products and services (loans, financial investments, insurance, etc.). The increasing sale of financial investments and insurance products by branches would demonstrate the advantages inherent in this. If, moreover, the market of the product in question was characterised by an unequal situation between the seller and the buyer, as regards information, as is the case in particular for financial products, an institution's reputation for distributing quality products or products that are advantageous for customers would become a decisive factor. In this case,

([36]) Crédit Mutuel states that it contributed an amount of […] to the State budget between 1975 and 1996 by way of payment on behalf of savers of the partial taxes on the *Livret bleu*. As we know, this cost was 'cancelled', in any case from 1991 on, by CDC.

([37]) It is worthwhile noting that other banks have to pay indirectly a cost of the same kind which, with regard to the setting of (gross) interest rates on deposits, must take account of the returns on other comparable products and the fact that the saver compares net tax rates, which has the effect of forcing banks to raise their gross rates in order to compete with tax-free products. In the new system of transfer of all funds to CDC, the resources collected through the *Livret bleu* are entirely tax-free.

the fact of distributing an advantageous product like the *Livret bleu* to attract customers could constitute an advantage for the institution, as this would enable it to target customers more ([38]). In other words, this would give rise to the same effects as costly marketing campaigns or the distribution of a product at a loss in a bid to attract customers.

(121) In the documents provided by the complainants, it is assumed that a loss-leader effect exists, but there is nothing to demonstrate formally the existence of this effect and the financial impact of this effect is not evaluated precisely.

(122) With regard to the research conducted by the Glais firm, the Commission points out that Crédit Mutuel may quite rightly State that these statistical analyses do not provide certain proof of a quantifiable loss-leader effect.

(123) Three subjective evaluations were put forward in the complainants' observations. First, given the fact that other banks offered to distribute the *Livret bleu* on the basis of a 1 % commission, the complainants proposed an approximate figure for this advantage for the present and the future ([39]) by calculating the differential with the level of commission received by Crédit Mutuel, hence 0,3 %, which corresponds to roughly FRF 300 million per year. However, there is nothing to prove that Crédit Mutuel's competitors could perform this service under the same conditions with this level of commission.

(124) Under the second method used by the complainants, the advantage gained by Crédit Mutuel in the past can be measured by reference to the rise in its market shares. This method of assessing aid cannot be accepted as it is based on the hypothesis that gains in market shares are solely due to the *Livret bleu*, a claim that is not supported by any objective proof.

(125) The third evaluation of the exclusive right of distribution is based on the loss of tax earnings caused by the tax exemption allowed under the *Livret bleu*. If Crédit Mutuel had wished to distribute a savings account without tax exemption by offering the same net return as the *Livret bleu* regardless of the tax situation of savers, it would in fact have had to pay a cost equal to the amount of the (potential) notional tax paid by the savers. According to the complainants, the cumulated tax advantage over the period 1991 to 1997 of approximately FRF 4,5 billion must be regarded as having provided Crédit Mutuel with advantages equal to this amount. This reasoning cannot be accepted, because Crédit Mutuel would quite probably not have distributed the *Livret bleu* under the same conditions if it had had to pay the full cost of the tax exemption, which, moreover, directly benefited the members.

(126) The possible advantages in question are difficult to prove and to quantify. The direct financial advantage of operating the *Livret bleu* is directly measurable from the *Livret bleu*'s accounts. However, the financial advantage arising from the sale of other products or services to customers who remained loyal because of the *Livret bleu* could be observed in the analytical accounts of these other products if it were possible to distinguish immediately between what was sold to customers who remained because of or were attracted by the *Livret bleu*, and what was sold to customers who came to Crédit Mutuel for other reasons. The Commission Consultant was therefore unable to assess the loss-leader effects following the accounting method applied to evaluate the overall direct financial advantages of the *Livret bleu*.

(127) Attempts by the Commission Consultant to conduct a more sophisticated evaluation did not prove successful. The Commission was unable to obtain a reasonable evaluation of the theoretical financial impact of these effects. This decision is therefore based exclusively on the conclusions obtained in the context of evaluating the analytical accounts of the *Livret bleu*.

4.2. *Structure of analytical accounts of the Livret bleu*

(128) Before presenting the results of the analysis conducted by the Commission consultant, it is necessary to make a comment concerning methodology. When producing his estimates, the consultant had to cope with the fact that there was no real analytical accounts system for the *Livret bleu* and no homogenous treatment of the

([38]) The opinion by the Competition Council, No 96-A-12 of 17 September 1996, reiterates the argument whereby a tax-free account 'places the institutions distributing it in a privileged situation to offer other products'.

([39]) In the context of the complete transfer of all *Livret bleu* funds to CDC. This subjective reasoning cannot be applied to the past since the total funds were not fully transferred then.

accounts of each Crédit Mutuel federation. Moreover, the entire accounting structure is based on the accounts for one year (1996), with the other years having been extrapolated from this structure. Secondly, it is also based on a sampling of federations, whose management ratios are then extrapolated from the net banking revenue of the confederation. This is the best estimate the Commission was able to obtain following four contradictory expert assessments (see the description of the procedure under section I).

(129) The experts encountered considerable problems in reconstructing the analytical accounts system of the *Livret bleu* as can be seen from the significant differences in the estimates produced by the first assessments. The accounting figures for the different federations, which are fully independent in legal and accounting terms, turned out to be not at all homogenous. The role of the confederation has concerned policy coordination more than management, at least until the beginning of the 1990s. In 1991 the *Livret bleu* system was radically changed and, from that year on, the parameters characterising the activity and the scope of Crédit Mutuel remained sufficiently stable to apply the same accounting analysis method to the entire period 1991 to 2000.

(130) It emerged from the legal analysis of the nature of the aid granted in the context of the *Livret bleu* that there was new aid since the end of 1975. Therefore the question of calculating the aid for the period 1976 to 1990 arose. Two factors were taken into account to produce this evaluation in practice:

— it may be considered that the method used for the years 1991 to 2000 was, despite its weaknesses, sufficiently sound to provide a reasonable assessment of the aid, but it is impossible to extrapolate figures for the period prior to the 1990s because this period was based on the structure of federations and activities for 1996. In the 1970s and 1980s, the federations witnessed a change in their fields of activity, with some even merging. The structure that resulted from the 1996 sampling is not, therefore, applicable. The further we move back in time from 1996, the more approximate the results become,

— the only alternative would be to organise one or more samples for the distant past. This appears to be unreasonable in practice: the accounting figures for such a long time ago would be difficult to obtain and to process, since the memory of the accounting departments has to a large extent disappeared by now. Material verification of accounting documents has become very difficult. The sampling technique can only produce good results if the sample data are not at all questionable.

In conclusion, the absence of analytical accounts within the confederation has meant that the accounting reconstruction has had to be confined to the period starting with the 1991 financial year. It emerged that there was no satisfactory method for calculating the accounting result of the *Livret bleu* during the oldest period (1976 to 1990). The Commission therefore limited the calculation of the aid to the period 1991 to 2000.

(131) The Commission's consultant takes account of expenditures and incomes for Crédit Mutuel from the *Livret bleu* system by separating the analysis into three parts, depending on how the resources collected were allocated: the resources transferred to CDC, those assigned to general interest assets and those used freely by Crédit Mutuel. The method used by the consultant also provides a response to the argument by Crédit Mutuel whereby the system involved an expense ([40]) for it since it had to pay levies to the State. The method also takes into account, at last, a normal commission for own funds.

(132) It is important, in the first instance, to describe concisely the methodological framework used to construct the Crédit Mutuel analytical accounts system. All the activities performed by Crédit Mutuel were divided into five sectors:

— savings (comprising three activities: collection of deposits through the *Livret bleu*, the collection of other deposits and other forms of savings),

— credit,

— insurance (IARD),

— payments management,

([40]) Crédit Mutuel states that it contributed an amount of […] to the State budget between 1975 and 1996 by way of payment on behalf of savers of the partial taxes on the *Livret bleu*. As we know, this cost was 'cancelled', in any event from 1991 on, by CDC.

— management of cash flow and securities operations,

— operating capital.

(133) The construction of the analytical accounts system involves an evaluation of the share of the income and, what is even more complicated, of the overheads that can be allocated to each sector. The entire construction is, of course, very easily affected by hypotheses based on the way the bank chose to allocate results and costs. In this context, the consultant's role, and hence that of the Commission, is confined to a large extent to verifying the internal inconsistencies of the proposed construction and the corrections added subsequent to the construction.

(134) Following the first evaluation of the results of the *Livret bleu* analytical accounts provided by Crédit Mutuel (and 'certified' by the auditors, Mazars et Guérard), a new estimate was produced by the Commission consultant. Crédit Mutuel called in the firm Arthur Andersen to perform a full review of the methodology and accounting figures to permit the drawing up of the *Livret bleu* profit and loss account. Arthur Andersen used the same structure for the profit and loss account. However, two changes were made concerning the processing and data used compared with the previous studies, and three ad hoc corrections were made:

(i) the original sample used by Crédit Mutuel was extended to two new federations […] and […];

(ii) the formulae for allocating the overheads for customer service relations were refined;

(iii) the ad hoc corrections relate to the method of adjustment of the excess weighting given to the IARD (insurance) activity in the sample, the method of calculating the cost of own funds and the introduction of a charge for coverage of shareholder liability.

(135) For his evaluation the Commission consultant had already used a sample extended to include […]. As a result he checked the procedures used to incorporate new data for […] and validated the use of the data in the enlarged sample. While the sample originally set up by Crédit Mutuel represented […] of the group's overheads, it now accounts for […] of the group's overheads following the inclusion of the two biggest Crédit Mutuel regional federations.

(136) One point on which there was disagreement between the initial evaluation by Crédit Mutuel and the one by the consultant concerned the imputation of overheads to the after-sales service. After a few improvements made by Arthur Andersen, Crédit Mutuel and the consultant agreed on a joint method for imputing overheads.

(137) When the sample was being set up, the accounting data was being chosen and the treatment of these data in the *Livret bleu* profit and loss account was being decided, the evaluations by Arthur Andersen and the Commission consultant coincided. The only points of disagreement concerned the ad hoc corrections mentioned above that were adopted by Arthur Andersen. The Commission will, initially, decide on the final points of disagreement persisting between the Commission consultant and Crédit Mutuel. Then it will present different evaluations of the *Livret bleu* results for each application to which the funds collected were assigned.

4.3. *The points of disagreement between the consultant and Crédit Mutuel*

(138) As the task given to the Commission consultant to examine the analyses by Arthur Andersen did not result in an agreement between the consultant and Crédit Mutuel, the Commission must decide between the proposals by the independent consultant and those by the Arthur Andersen auditors mandated by Crédit Mutuel.

(a) The method of correcting the excess weighting given to the IARD activity in the sample

(139) When it came to describing the final sample, Arthur Andersen proposed two statistics aimed at assessing the 'representativeness' of the sample in terms of proportion of overheads allocated to the various sectors. In other words, the aim is to check whether the allocation of overheads to the different sectors in the sample complies with that of the total group (all the federations in the Crédit Mutuel group). The basic postulate is that

the sectors should be represented in the same proportions (measured in terms of overheads) as in the total population in order to have a perfectly 'representative' sample.

(140) The statistic created consists of comparing the share of total overheads in the sample […] with the share of overheads in the savings sector in the sample […]. The difference between the two percentages may seem to be sufficiently low for this difference to be regarded as statistically admissible because of the inherent fluctuation of the samples in the sampling technique ([41]), and Arthur Andersen may have grounds for regarding this difference as 'coherent'. Although the text ([42]) by Arthur Andersen is not very explicit, the statistic means that out of the total overheads allocated to the savings sector, […] are allocated to (included in) the reference sample ([43]). Let us recall the conclusion drawn by Arthur Andersen at this juncture: the construction of the sample has an acceptable structure as far as the savings sector is concerned, and hence a fortiori the *Livret bleu* activity. Consequently, the statistics created for the *Livret bleu* cannot be influenced by problems relating to the structure of the sample.

(141) A similar statistic is created for the IARD sector. 'The sample […] which represents […] of the total overheads, represents […] of the IARD commission collected' ([44]). We agree with the first part of Arthur Andersen's statement: the IARD sector appears to be over-represented in the sample, hence some statistics relating to the IARD sector drawn from the sample may be biased.

([41]) Although it is not a 'real' random sample.

([42]) 'With regard to the share of the overheads allocated to the savings sector, we note that the reference sample represents approximately […] of the total overheads, and approximately […] of the overheads allocated to Savings, which in our view is consistent' (our emphasis), extract from the report by Arthur Andersen, *Mission Livret bleu*, p. 29.

([43]) The additional information presented by Arthur Andersen in a note on 8 February 2001 states, in this respect: 'For example, in 1996, the respective weights [of the sample] are the following: share of savings (total funds): […]'. This percentage, which we interpret to be the share of total savings featured in the sample, is identical to the share of overheads, which would suggest a perfect match in the sample between the volume of savings and the volume of overheads allocated to the savings. We would add, moreover, that the method of construction of the sample uses allocation formulae mainly established in 1996 (p. 4, *ibid.*). There are therefore grounds for considering that this proportion is very close if not the same for the other years.

([44]) P. 32, *ibid.*

(142) Arthur Andersen deduces from this ([45]) that this over-representation of the IARD sector implies an excessively high allocation of management costs to the IARD sector in the sample ([46]), and that these costs must be reduced by reallocating them to other sectors. The second deduction seems to be incorrect: it is quite likely that the management costs allocated to the IARD in the sample are in the right proportion compared with the income from the sector ([47]). Yet Arthur Andersen has in fact pointed out that the income (IARD commission) is over-represented in the sample (see recital 141). To reduce the IARD expenses without adjusting the IARD income would have the immediate consequence of distorting the IARD profit and loss account in the sample (not enough expenses for the same volume of income) ([48]), but would also distort the savings profit and loss account if part of the IARD expenses is transferred to savings (too high a level of IARD and savings expenses for the same volume of savings income).

(143) Postulating that too large an amount of management costs was assigned to the IARD sector and not enough to other sectors, Arthur Andersen next proposed correcting this over-representation with an ad hoc measure. A fictitious sample excluding the IARD was set up based on the previous one but completely excluding the IARD activity. The consultant pointed out (and this was not refuted) that the management costs relating to IARD had in practice been mainly broken down among the other sectors. A 'theoretical' sector was set up

([45]) '... […] of the IARD commission received. Hence a certain distortion which, if not corrected, would mean that the IARD sector would be allocated too high a share of overheads compared with the other sectors' (p. 32, *ibid.*) Note the vague wording.

([46]) In reality, this first deduction is not at all logical. It is logical to doubt the fact that the over-representation of the insurance sector would have the direct effect of distorting the calculation of the result of the analytical accounts system of the insurance sector. An allocation to the insurance sector of higher overheads in the sample is the counterpart of income that is also higher (noted by Arthur Andersen in the form of the IARD commission or the IARD turnover). It is true that one could conceive of the result being 'amplified' (increased by a given multiplying factor) since the extrapolation of the sample would result in Crédit Mutuel being regarded as having a more important activity in this sector than is in fact the case. But there is not necessarily a directional bias (in the statistical sense), in other words an error in the result in a specific direction (systematic increase or reduction), since if the management costs are increased, the income in the sector in question may also be increased (for instance more insurance premiums collected).

([47]) Otherwise if the costs allocated are too high compared with the income, this would mean that the analytical accounts are wrong and have been poorly constructed.

([48]) The methodology note of 13 September 2001 does not touch on this key issue at all. The experts attempt to estimate the balance of the profit and loss account (income – costs), not the costs taken alone.

combining the real sample and the sample excluding IARD, with a variable weighting according to the year, in order to obtain an IARD/non IARD structure identical to the one observed for the total population (entire group).

(b) The Commission cannot accept the proposed correction for three reasons

(i) The fact that the IARD sector is over-represented in the sample does not at all mean that the management costs assigned to the savings sector are insufficient.

(144) In fact, the interest-rate variable in the construction of the *Livret bleu* analytical accounts system is the distribution of management costs to the savings sector, not to the IARD ([49]). Arthur Andersen concludes that the statistic it chose as a reference suggested that there was no bias in the distribution of management costs to the savings sector in the sample. In other words, it is illogical to conclude that the bias of over-representation of the IARD sector must result in the reallocation of management costs to the savings sector, whereas the first argument concluded that there was no bias of over-representation of the savings sector.

(145) In fact, it must be understood that while there is a stronger representation of the IARD sector in the sample, the other sectors (loans, management of payment means, management of securities) are represented less in the sample than in the total population. But the first statistic showed that this was not the case for the savings sector.

([49]) Crédit Mutuel sent a document by Arthur Andersen to the Commission on 13 September 2001 which discusses this problem. The paper does not specify that what is concerned is the drafting of a profit and loss account (the question of allocating income corresponding to the costs in the form of overheads is not considered at all) or that the interest rate variable is the assigning of overheads to savings. The two experts concerned were therefore unable to give a view on the suitability of the statistical method chosen compared with the variable they were attempting to estimate. It must be pointed out that an acceptable adjustment method to improve an estimator is likely to undermine the quality of another estimator.

(ii) The methodology used is not valid from the statistical point of view.

(146) It may be conceivable from a statistical point of view to improve the quality of the statistics drawn from the sample (reducing the variation of the estimators) by fitting the sample to the structure in terms of sector of total population, both in relation to the structure of net banking products and in relation to that of management costs. The method proposed by Crédit Mutuel and adopted by Arthur Andersen ([50]) does not, however, have any statistical basis and introduces a number of biases. Professor Tillé, consulted only about the structure of the sample for the IARD sector (whereas what interests us is the structure of the savings sample), warned prudently of the consequences of the proposed method: 'a modification of the estimation procedure modifies the proportions of all the sectors', and hence the proportion of the savings sector. It is clear that while initially there was no excess weighting (bias) in the costs for savings (as proved apparently by the statistic proposed by Arthur Andersen), the correction introduces such a bias, hence influencing in the statistical sense the statistic of our interest-rate variable.

(iii) The methodology used has the result of arbitrarily reallocating the management costs to the savings sector.

(147) As pointed out by the consultant, the IARD management costs in the theoretical sample excluding the IARD were artificially allocated to the other sectors, whereas the purpose of the analytical accounts exercise is precisely to identify the costs relating to each sector. Even when combined in variable proportion with the real sample ([51]), the result achieved (and sought) is to arbitrarily allocate management costs from the IARD sector to the other sectors. Moreover, there is absolutely no doubt that artificially reducing the costs assigned to this sector without adjusting in the same proportion the income corresponding to the same sample of federations has the effect of distorting the accounting balance of income and expenditure.

(148) It must be stressed that if the proposed methodology were valid, it should also have been applied to the

([50]) Not without some precautionary words: 'this methodology could be criticised from a theoretical point of view. However, we consider that if no correction is made, this would be even more disputable'. We will not comment on the second part of the sentence in the light of earlier comments.

([51]) According to the proportions calculated in line with the IARD structure of the total population.

savings sector (which is also over-represented). The result would then have been a significant reduction of the management costs assigned to the savings sector, and consequently an increase in the *Livret bleu* result. It is not surprising, therefore, that Crédit Mutuel preferred to apply arbitrarily the correction to the IARD sector. It must also be pointed out that the original statistic used by Arthur Andersen would show, after the adjustment, an even higher proportion of management costs allocated to the savings sector in the sample (using the amounts of the management costs resulting from the combination of the real sample and the sample without IARD, mentioned above), hence an over-representation of the savings management costs in the sample, this time certainly greater than the over-representation of income in the savings sector. This adjustment thus leads to the emergence of a bias, this time perfectly clear, in the calculation of the analytical accounts result for all the components in the savings sector.

(149) In conclusion, the Commission must agree with the consultant in rejecting the proposed adjustment since there are no grounds for it and it therefore distorts the *Livret bleu* profit and loss account.

(c) The method of calculating the profitability of own funds

(150) The structure of the analytical accounts system allows the achievement of a normal margin in the various activities to be taken into account. In the case of the banking sector where the margins compared with the net banking income do not have the same significance as in other activities, the result is evaluated in this case using the concept of the cost of own funds. The term 'cost' may give rise to confusion: it is not an accounting charge but the cost of (economic) opportunity ([52]) which measures the profitability of a given activity. To calculate the profit made from the *Livret bleu* activity that exceeds the result corresponding to normal profitability for such an activity, it is therefore necessary to subtract from the profit a 'cost of own funds' which represents the achievement of a normal margin from the activity ([53]).

(151) The Commission considers that the level of profitability of […] as shown in Crédit Mutuel's internal analytical accounts ([54]) is the most objective in this case. It accepted the rate of profitability that Crédit Mutuel uses internally to calculate the cost and prices of its products. This means that the State guaranteed to Crédit Mutuel the same margin of profitability on the *Livret bleu* activity for the public service mission as the profitability used by Crédit Mutuel for its other competitive risk activities. This rate of profitability does not include the corporate tax paid subsequently and, where appropriate, the tax on profits, for in analytical accounts only the taxes recorded on charges (for instance on operating charges) are taken into account, not the tax on profits.

(152) Deposit activity involves less risk than credit or investment activities. The internal rate of profitability of a deposit activity is by necessity lower. Yet the Commission accepted the same rate of profitability for the deposit activity and other more risky activities, namely […]. The acceptance of the same rate of profitability for collecting deposits and for other

([52]) Suppose that the result after deducting the cost of own funds is negative, this means that the bank would be better to drop the activity in order to shore up its own funds with its other activities which are profit-making after taking into account the cost of own funds. The problem is, of course, to calculate what is the level of remuneration of a benchmark shareholder.

([53]) In its report of September 2000, Arthur Andersen proposed a new method of calculating the cost of own funds which has the effect of increasing by […] the cost of own funds compared with the initial evaluation by Crédit Mutuel. Arthur Andersen in fact suggested using a rate calculated on the basis of the ratio between the pre-tax result (after withdrawal of provisions and FGBR) and own funds. This rate, in its view, reflects better the overall profitability of the bank, whereas Crédit Mutuel had adopted as the cost of own funds the amount of dividends actually distributed.
It is essential to take into account the fact that setting this rate of profitability is of a political nature for the bank management since a particular activity will be profitable depending on the level of the cost of own funds chosen. Arthur Andersen explains in this respect that '[the method of calculating the cost of own funds depends] not only on the way banks are organised, but also on the management targets set by the General Management'. Arthur Andersen does not criticise in principle the initial evaluation by Crédit Mutuel, which it regards as 'globally consistent'. The second method proposed by the auditor is unambiguously an alternative method which is 'recommended' in so far as Crédit Mutuel's method 'does not appear to be fully suitable'. In its note of 13 September 2001 Arthur Andersen completely drops these reservations. Crédit Mutuel sent this note to the Commission following a meeting at which the Commission officials and the consultant explained the reasons why their evaluation was based on the initial evaluation by Crédit Mutuel.

([54]) Memorandum of 12 June 1998.

activities has the effect of increasing the internal profitability rate accepted for the deposit activity in a disproportionate manner compared with the risks inherent in this activity. Consequently it is impossible to accept Crédit Mutuel's argument that this profitability rate would be too low in the case of the *Livret bleu* activity.

(153) It must be pointed out that Crédit Mutuel is not incorporated as a limited liability company: it has the status of a mutual benefit company. Members in fact draw direct benefits in the form of rates or services for customers that reduce the apparent profitability rate of the bank. As the members are also the customers, they have an obvious interest, in the context of such a mutual interest structure, in drawing benefit from Crédit Mutuel by availing themselves of more interesting rates rather than by receiving profits that are taxable. This management strategy is not one that is followed by banks incorporated as limited liability companies. As Crédit Mutuel has a special organisation, it may therefore choose a specific own funds remuneration policy. The Commission therefore agrees with the consultant and with Crédit Mutuel's original position that the real financial cost of Crédit Mutuel's own funds must be taken into account.

(154) The Commission therefore considers that the independent consultant has grounds to accept the own funds cost initially proposed by Crédit Mutuel.

(d) Coverage of member liability

(155) The consultant considered that the cost of providing Crédit Mutuel members with a guarantee on total assets, charged by Crédit Mutuel (in its memorandum of June 1998), which reduced its *Livret bleu* result, was not justified because this was not an analytical accounts operational figure and the risk in question was completely dissociated from the *Livret bleu* system. This correction resulted in an increase in the *Livret bleu* operating result of […] over the period 1991 to 1998.

(156) The report by Arthur Andersen proposes a more sophisticated model to evaluate this cost, resulting in a reduction of the 'cost' of this coverage of around 80 % of the cost evaluated by Crédit Mutuel ([…] compared with […] over the period 1991 to 1998). The Commission also took note of the reservation expressed by the auditors regarding the relevance of these costs ([55]).

(157) In a note sent on 21 July 1999, Crédit Mutuel acknowledged that this coverage of liability was not reflected in the accounts. But the network confirmed that it accumulated own funds in a sufficient amount to prevent any members from being held liable. The Commission considered that a high level of own funds, as demonstrated by Crédit Mutuel, could be maintained for all kind of reasons and that there was no information in the accounts that identified the share of these own funds that was effectively allocated to such coverage.

(158) The Commission points out that in the account certification forwarded to it, Arthur Andersen considered that this cost should be given the same treatment as the operating costs because Crédit Mutuel did not intend to make its members bear this risk should it occur. The legal obligation simply states that such a cost shall be paid by its members. In other words the Commission recognises that the risk of members being held liable exists, but that it arises from the articles of association and must be accepted as such by any person wishing to become a member in return for the benefits accruing from membership.

(159) Therefore paying this liability cost for members was based on a discretionary decision by Crédit Mutuel. The legal obligation is borne by the members, hence Crédit Mutuel itself is under no obligation to guarantee its members. It is in fact not in the spirit of its articles of association that such liability should be looked after by the mutual interest body, since this mechanism of liability is in fact a specific feature of such a structure ([56]).

([55]) Arthur Andersen considers that it 'is unable to provide a decisive argument to support either side in [the] debate [on the relevance of such a cost]' (p. 45, *ibid.*). Arthur Andersen's assessment of this point has also changed considerably in its note of 13 September: 'we consider it wrong to consider that this is a purely theoretical cost'.

([56]) If the same reasoning were applied to limited liability companies, it would be obviously absurd: a limited liability company has no 'moral' duty to cover the risk of loss of funds committed by the shareholders up to the amount of the capital subscribed.

(160) Crédit Mutuel has invoked the Banking Act of 24 January 1984, but this concerns the mechanisms of offsetting losses between federations in the mutual interest establishment: it does not concern the coverage of personal liability of members ([57]). These obligations bear no relationship to the constraints of profitability and own funds mentioned in this respect by the French authorities in their memorandum of 26 October 2001. In its memorandum of 13 September 2001, Arthur Andersen justifies the solidarity mechanisms for shareholder liability by the fact that Crédit Mutuel had apparently paid to the banks that were in deficit an amount of almost […] over the period in question. These transfers between profit centres, which are not peculiar to Crédit Mutuel but are engaged in by all large national and multinational companies, do not at all demonstrate that members are being held liable, but rather that a realignment has taken place between federations that replaces shareholder liability. The implementation of this realignment between federations would be quite insufficient to guarantee members against major risks, which proves yet again the difference in nature between realignment mechanisms and the model of liability coverage presented. The Commission points out that, in any case, the operating results of any federations in deficit benefiting from this realignment mechanism are already taken into account in the *Livret bleu* analytical accounts. As a result, entering an additional charge for the mutualisation of losses would result in any operating losses by these federations being entered twice.

(161) In conclusion, the Commission considers, like its consultant, that Crédit Mutuel has no legal obligation to cover the risks borne by its members by means of operations other than those resulting from the mutualisation of losses between federations ([58]), that no information in the accounts proves that such coverage was introduced and that therefore the alleged costs for covering member liability are purely fictitious and cannot be accepted.

(e) Conclusion

(162) Having examined these three points of disagreement between the consultant and Crédit Mutuel, the Commission considers that the evaluation produced by the independent consultant recruited to perform the evaluation of the *Livret bleu* analytical accounts should be accepted.

(f) Further explanations

(163) In accordance with the policy generally pursued by the Commission, corporate tax is not included in the calculation of the final amount of State aid.

(164) The rate used for the capitalisation of results each year will be the Commission reference rate for France at 1 January of the year.

(165) *Table 3*

Commission annual reference rate for France

1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
10,61	11,00	8,93	7,94	8,22	7,01	5,83	4,77	4,76	5,70

([57]) The central bodies 'shall take all necessary measures to guarantee the liquidity and solvency of each of these establishments and of the network as a whole' (Article 21). They may decide to introduce or to limit the distribution of a dividend to members or of remuneration of company shares to shareholders of credit institutions or of investment companies affiliated to them.

([58]) The accounting effect of which is already taken into consideration by the experts.

4.4. *Results of the Livret bleu profit and loss account*

(166) It is worthwhile indicating, for the record, the results of the various intermediary expert evaluations ([59]) conducted before the final evaluation of the consultant, which was accepted by the Commission.

(a) Funds transferred to CDC

(167) According to Crédit Mutuel, the intermediation commission of 1,3 % had become necessary because the transfer of funds to CDC left the bank with management charges for the *Livret bleu* whereas the income from the same resources no longer existed. The grounds given for the commission paid by the State is the fact that profits from other activities should not be used to cover the costs of the *Livret bleu* system. According to calculations recently produced by Crédit Mutuel, the overall management cost for the *Livret bleu* was between […] and […] of total funds between 1990 and 1993, and then gradually fell to […] in 1997. This commission does not seem excessive, according to Crédit Mutuel, given higher commission paid by the State to banks managing the Codevi and to the Post Office for the management of the *Livret A* (1,5 %). While it is true that the savings banks themselves manage the *Livret A* for a lower commission (1,2 %), this could be justified by the economy of scale from which the Caisses d'épargne benefit, the total *Livret A* savings managed being almost four times higher than that of the *Livret bleu*.

(168) In this respect it should be pointed out that the State did not assign this service to the most suitable bidder in a tendering procedure, but entrusted it directly through negotiations with Crédit Mutuel, which does not allow for any guarantee, by deduction, as to whether or not the commission is appropriate. The lower rate of commission granted to the Caisses d'épargne might be justified by the greater amount of savings accrued by the *Livret A*, but, on the other hand, the automation of the Livret blue, unlike the *Livret A*, could result in lower management costs. Moreover, it is not proven that the State is paying the Caisses d'épargne the right commission for the collection service they are performing. In any case, the purpose of this decision concerns the question whether Crédit Mutuel received State aid, and not the other savings collection systems of other banks.

(169) The work of the Commission's consultant shows that over the period 1991 to 1998, this part of the total savings generated gross income of over […]. Following the deduction of the related costs, the consultant concluded that the balance for this activity had become profitable again in 1998 (by FRF 26 million) after losses throughout the 1990s. It may be deduced from these results that the consultant's evaluation was, to say the least, 'conservative', as it is not conceivable that Crédit Mutuel would have accepted in 1991 to continue in the long term collecting savings through the *Livret bleu* solely with a view to transferring the funds to CDC if it had not considered the collection commission to be sufficient. On the contrary, the coherence of the estimates by Crédit Mutuel and, to a lesser extent, by Arthur Andersen, is clearly questionable in relation to this type of activity.

([59]) The second approach by Crédit Mutuel is presented 'which likens the *Livret bleu* fully to the *Livret A*, omitting the partial taxation aspect' certified by Mazars and Guérard (the information in the file in fact allow us to conclude that Crédit Mutuel was compensated by the authorities for having fully offset the effects of partial taxation), which is the basic hypothesis of the two scenarios drawn up by Arthur Andersen (this hypothesis is the most favourable one for Crédit Mutuel, mindful of the fact that in any case the difference between the two scenarios is only slight).

(170) *Table 4*

Net results of the *Livret bleu* on the funds transferred to CDC for the period 1991 to 1998 (net margin in FRF million and as a percentage)

(in FRF million)

Margin	1991	1992	1993	1994	1995	1996	1997	1998	Total
Initial estimate by Crédit Mutuel	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Initial estimate by consultant	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Second assessment by AA	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Commission estimate	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Margin (as a %)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Arthur Andersen, Littlejohn Frazer.

(171) While the 1,3 % commission might have been relatively insufficiently in itself during the 1990s, after 1998 it more than compensated Crédit Mutuel for the management costs of this part of the *Livret bleu* funds. Given that the consultant's work stops in 1998 and that Crédit Mutuel could benefit in future from productivity gains on the management of the *Livret bleu*, there are grounds for raising the possibility that this commission is excessive in the context of the transfer of all the funds. It should be noted that the margin increased regularly since 1996, in other words with the speeding up of the transfer of *Livret bleu* funds to CDC. Transfer of all funds to CDC may have improved the profitability of this activity for Crédit Mutuel because of the economy of scale.

(b) General interest assets

(172) General interest assets produced gross income of almost […] over the period 1991 to 1998. Following the deduction of related costs, the residual margin for Crédit Mutuel was approximately […]. It must be noted that Crédit Mutuel's initial evaluation proposed a much higher estimate.

(173) *Table 5*

Net *Livret bleu* results on general interest assets for the period 1991 to 1998 (net margin in FRF million and as a percentage)

(in FRF million)

Margin	1991	1992	1993	1994	1995	1996	1997	1998	Total
Initial estimate by Crédit Mutuel	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Initial estimate by consultant	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Second assessment by AA	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Commission estimate	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Margin (as a %)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Arthur Andersen, Littlejohn Frazer.

(174) This level can be explained by the fact that these are long-term assets granted at high nominal fixed rates which later enjoyed a drop in interest rate plus a State guarantee. A second factor which explains this, and which is not insignificant, is that these assets have no risk since they are government-guaranteed, therefore the profitability of these assets is not affected by any need for funds arising from the insolvency of the beneficiaries. Crédit Mutuel is opposed to the taking into account of these profits since they arise from income on loans granted or bonds purchased before 1991. We should point out that the Commission considers that, given the considerable profits achieved after 1991 on these assets, the State should have adjusted the amount of the State resources it chose to grant Crédit Mutuel through CDC ([60]).

(c) Assets chosen by Crédit Mutuel

(175) Crédit Mutuel and the French authorities considered that these assets, being freely chosen by the bank, do not generate for it income that has the character of State resources, therefore the Commission could not use them in the context of these proceedings. However, in analytical accounts, these tasks are back-to-back to a specific resource, the deposits collected thanks to the monopoly over distributing the *Livret bleu*. In competitive conditions, it is likely that Crédit Mutuel would not have been able to obtain this resource at the same price, therefore these assets and the corresponding resources must be taken into account in the overall economy of the *Livret bleu* system. In any case, as the rate of collecting funds for assets freely chosen by the bank is set by the State, it is logical to take this cost into account.

(176) It may seem paradoxical that the assets freely chosen by the bank generated negative margins for Crédit Mutuel. The consultant obtained the same result, although it was lower in absolute terms than the one declared by Crédit Mutuel. This situation is in principle due to the fact that the assets generated insufficient profitability compared with the rate of commission and management rates of the *Livret bleu*. The Commission considers that these figures illustrate once again the extremely conservative nature of the consultant's estimate, which having incorporated some corrections proposed by Arthur Andersen, arrived at an estimate of a higher loss than that initially evaluated by Crédit Mutuel.

(177) *Table 6*

Livret bleu profit and loss account for freely chosen assets during the period 1991 to 1998 (net margin in FRF million and as a percentage)

(in FRF million)

Margin	1991	1992	1993	1994	1995	1996	1997	1998	Total
Initial estimate by Crédit Mutuel	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Initial estimate by consultant	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Second assessment by AA	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Commission estimate	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Margin (as a %)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Arthur Andersen, Littlejohn Frazer.

([60]) Conversely, in the event that the general economic interest asset had shown a deficit, the payment of the liability by the State would have been regarded as aid compatible with the Treaty by virtue of the general economic interest service.

(d) Summary: the overall result of the profit and loss account

(178) The summary of the evaluations for each sector gives the final evaluation of the *Livret bleu* profit and loss account. This Commission decision evaluates the amount of aid accumulated over the period 1991 to 1998 at FRF 1 074 million.

(179) *Table 7*

Livret bleu profit and loss account for each sector over the period 1991 to 1998 (net margin in FRF million and as a percentage)

(in FRF million)

Margin	1991	1992	1993	1994	1995	1996	1997	1998	Total
Funds transferred to CDC	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	−399
General interest assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	2 592
Freely chosen assets	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	−1 119
Total pre-tax margin	1 096	505	301	−471	−135	−87	−156	20	1 074

Source: Arthur Andersen, Littlejohn Frazer.

(180) Insofar as the sum of the financial benefits entered in the accounts that were generated by the *Livret bleu* (collection commission, profit from management of general interest assets, profit from management of funds on its own account, in other words using them for assets chosen by the bank) exceeds the costs incurred by Crédit Mutuel in managing the collection process and funds, there is a transfer of public resources that constitutes State aid. This amount does not take into account:

— the results of the profit and loss accounts for 1999 and 2000, which can be obtained easily by applying the accounting methodology defined by the experts for the years 1991 to 1998,

— the capitalisation of the results at the Commission reference rates on the exact date of recovery of aid by the French authorities.

(181) To obtain the amount of the excess compensation relating to the period 1991 to 2000, the French authorities must add to this amount the account balance for the years 1999 and 2000 using the method validated by Arthur Andersen and the Commission consultant, and capitalise this amount year by year at the Commission reference rate until the date of recovery of the incompatible aid.

5. Verification of compatibility with the Treaty of aid granted to Crédit Mutuel

5.1. *Verification of compatibility with Article 87 of the Treaty*

(182) While the system of collecting and allocating partially tax-exempt savings comprises a support mechanism having a social character granted to the beneficiaries of the *Livret bleu* general interest assets, the measures in question do not, in this case, consist of aid having a social character granted to individual consumers, or of aid to promote the execution of an important project of common European interest. Neither is the aid intended to remedy a serious economic disturbance.

(183) As this is not aid intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, or to facilitate the development of certain areas in France, the derogations provided for under Article 87(3)(a) and the first part of (c) of the Treaty cannot be taken into account.

(184) Since Crédit Mutuel is a profitable institution that does not benefit from any restructuring or rescue plan, the derogation provided for under the first part of the first phrase in Article 87(3)(c), cannot be taken into account.

(185) At the end of these proceedings, the Commission concludes that the aid in question is operating aid. It must be pointed out that operating aid is particularly distortive and that there is no derogation under Article 87 of the Treaty that would permit the present case to be declared compatible with the common market. The French authorities have not, in any case, provided any information to the Commission during these proceedings that would allow this aid to come within the scope of one of the derogations under Article 87.

5.2. *Verification of compatibility with Article 86(2) of the Treaty*

(186) As mentioned by the Commission when it initiated these proceedings, if there is no possible derogation under Article 87 of the Treaty, the only possibility that the aid is compatible with the common market lies in a potential derogation from the prohibition on aid under Article 86(2) of the Treaty, relating to a general economic interest service entrusted to Crédit Mutuel through the *Livret bleu* system.

(187) If the derogation provided for under Article 86(2) of the Treaty is to be applied, the State support must be in proportion to the objective: Article 86(2) states that undertakings entrusted with the operation of services of general economic interest (…) shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of these rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. In its 1996 Communication on general interest services in Europe, the Commission pointed out that, where appropriate, exceptions to the rules in the Treaty under Article 86(2) were subject to the observance of the principle of proportionality, which consisted of checking that the means used are in proportion to the general interest objectives being pursued ([61]).

([61]) General Interest Services in Europe, Commission Communication (OJ C 281, 26.9.1996, point 21, retained in the updated version of 20.9.2000).

(a) Existence of services of general economic interest relating to the *Livret bleu* system

(188) First of all the various services of general interest performed by Crédit Mutuel must be identified. Emphasising the character of a service of general economic interest, Crédit Mutuel and the French authorities referred to three separate services: (i) collection of deposits destined to finance general interest assets, (ii) maintaining branches in certain areas for regional development purposes, and (iii) encouraging savings by the general public. The Commission will not give its opinion on the task of encouraging savings ([62]), which would not change the decision one way or another.

(i) The collection of deposits through the *Livret bleu* destined for financing general interest assets

(189) The Commission may accept ([63]) that the task of collecting deposits through the *Livret bleu* (and in particular the allocation of all or part of these funds to general interest assets or the transfer of these deposits to CDC) may, when looked at on the whole, constitute a general interest service assigned by the State ([64]).

(ii) Maintaining branches in rural areas

(190) The Commission notes that Crédit Mutuel stated, in response to the initiation of these proceedings, that because of the obligation to maintain a local presence in

([62]) This is traditionally the first objective pursued by the authorities. The Minister of Finance had stated in debates preceding the vote on the 1975 law that 'Based on the principle of mutual interest, and with many branches operated by voluntary staff, [Crédit Mutuel] is a way of attracting saving by the general public which must be encouraged'.

([63]) On the question of the general economic interest service, the French authorities wrote on 8 April 1998 that 'if the Commission were to consider [...] that there was an element of State aid in the *Livret bleu* system, it should regard it as compatible with the Treaty in the light of the objectives pursued by this regime and of Article [which became] 86(2)', reserving 'the right to develop the necessary arguments'.

([64]) The operation of freely chosen assets is not in itself a general interest service, but as the resources underpinning these assets were obtained as a result of such a service, it shows that there are grounds for considering the overall structure of the *Livret bleu* system as a whole, with all its components.

rural districts, it had had to deal with costs ranging from […] to […] per branch, in other words an annual cost which it estimates at […]. Crédit Mutuel considers that collecting savings through a network of branches in rural areas forms part of the general economic interest service entrusted to it. This argument put forward by Crédit Mutuel is looked at in three stages: verification of the legal reality of the alleged public service constraint, examination of the evaluation of the costs produced by Crédit Mutuel, and examination of the development of the Crédit Mutuel network since 1991 following the abolition of all State Controls (at 1 July 1991).

(191) The Commission points out that the Crédit Mutuel network of rural agencies already existed when the *Livret bleu* was created in 1975. The French authorities, which maintain that the Crédit Mutuel network structure is a result of the constraints they imposed, refer only to the law concerning the opening and closure of bank branches, which was repealed in 1987. Between 1987 and 1991, a system of control was, however, maintained for Crédit Mutuel. The rules provide for an authorisation system, not a formal prohibition on the closure of branches or on restructuring, in particular from 1987 onwards. This system of control was abolished on 1 July 1991 in the more general context of the renegotiation of contractual relations between the State and Crédit Mutuel.

(192) The existence of a State control does not prove the existence of specific constraints. The French authorities have not produced any legal document (specifications, note mentioning obligations regarding geographic coverage) proving the public service constraints relating to the geographic distribution of the Crédit Mutuel network with respect to a general economic interest service. By the same token, Crédit Mutuel has not produced any document proving that this system of regulatory control undermined its restructuring plans or redeployment of the network (for instance in the form of a refusal by the Comité des Etablissements de Crédit to shut down a branch). In conclusion, no proof has been produced of the existence of a public service constraint on the non-closure of branches in rural areas before July 1991. This argument is therefore not admissible. No legal measure governed the management of the Crédit Mutuel network after 1 July 1991. The French authorities therefore have no grounds in invoking the existence of public service constraints after 1991.

(193) With regard to the evaluation of the 'surcharges' relating to the rural network, the report by Arthur Andersen does not mention these costs in its evaluation of the *Livret bleu* analytical accounts. The evaluation produced by Crédit Mutuel takes into account costs for maintaining the rural network over the period 1991 to 1997 amounting to approximately […]. In this evaluation, all the fixed expenses of the rural branches were allocated to the *Livret bleu*, without any justification ([65]).

(194) Following the criticism by the Commission consultant, Crédit Mutuel presented another evaluation orally at the meeting of 7 February 2000 showing an amount that was three times lower. This time Crédit Mutuel assumes that the rural branches have a *Livret bleu* activity that is as important as that of the other branches, in relative terms compared with their other activities. In fact, only a marginal part of the activity of these agencies relates to the *Livret bleu*, and this method involves allocating to the *Livret bleu* the same share of fixed costs as that adopted for branches that dedicate a greater part of their activity to the *Livret bleu*. This approach runs counter to the construction of analytical accounts. That is why Arthur Andersen did not use it. Similarly, the Commission bases itself on the analytical accounts system and, in accordance with the request made by the French authorities on 7 January 2002, it accepted exactly 'the share of costs corresponding to that of the *Livret bleu* activity in branches', and not the arbitrarily higher costs as in the Crédit Mutuel evaluation.

(195) Crédit Mutuel also mentions, for the period 1991 to 1998, 'a considerable loss of earnings caused by quotas placed on branches up to 1991'. The Commission observes that the legal system referred to does not concern quotas but a control and that no proof of quotas has been produced. Mindful of the fact that Crédit Mutuel had plenty of time to restructure its network after 1991, it is paradoxical, to say the least, to blame the State for a delay of seven years in the restructuring of the network. If Crédit Mutuel recorded a loss of earnings as a result of the late restructuring of its network (not proven), this was clearly due to an independent management decision since it was not subject to any control whatsoever.

([65]) As has been noted, no legal obligation was established to maintain branches in rural areas. Moreover, the *Livret bleu* activities were marginal in relation to the total activities of these branches. Only about […] of these costs were apparently already entered in the *Livret bleu* analytical accounts system, which means that the Crédit Mutuel analytical accounts in rural areas wrongly affect the *Livret bleu* […] costs arising from other activities.

(196) Lastly, it is not clear from the evolution of the Crédit Mutuel network that it underwent major restructuring after July 1991, in other words after the removal of all controls. Crédit Mutuel kept a rural network of an equivalent size even though it was not obliged to do so. The comparison in the note of 7 January 2002 shows, moreover, that the importance of the Crédit Mutuel rural network is quite relative. Compared with the Crédit Agricole (Crédit Mutuel's main competitor in terms of private banking market position), Crédit Mutuel has a smaller share of branches in rural areas ([…] compared with […]), and in semi-rural areas ([…] compared with […]). Crédit Mutuel enjoys a good position on the private banking market, notably in rural areas. The rural network is not a public service constraint, but forms part of a corporate strategy.

(197) Crédit Mutuel also invoked the fact that the quota of total Codevi funds (industrial development accounts) transferred up to 1994 was higher for Crédit Mutuel than for other banks. While this is another tax-exempt savings account, the Codevi accounts are distributed separately from the *Livret bleu*. No proof has been produced to show that the nature of the contractual arrangements between Crédit Mutuel and the State regarding the Codevi is linked precisely to the *Livret bleu*.

(b) Proportionality of aid to costs associated with the services entrusted to Crédit Mutuel

(198) The above developments have enabled us to reach the conclusion that Crédit Mutuel obtained from the *Livret bleu* system a cumulated non-capitalised profit of FRF 1 074 million, which exceeded the costs (including a normal profit margin) of the task of distributing the *Livret bleu* entrusted to it by the State, even before the results from the *Livret bleu* for 1999 and 2000 are taken into account.

(199) The Commission underlines the fact that the derogation provided by the Treaty under Article 86(2) must be applied rigorously and on an exceptional basis. That is in fact the interpretation of the Court which states that this provision lays down the conditions in which undertakings entrusted with the operation of services of general economic interest may exceptionally not be subject to the rules of the Treaty ([66]). This strict application appears in all circumstances to be incompatible with a situation in which there is over-compensation of costs that arise from a service of general economic interest for which there is no justification.

(200) It may therefore be concluded that the derogation provided by Article 86(2) is not applicable in a case of excess compensation, as in this case, and that the net profit drawn from operating the *Livret bleu* has the character of State aid that is incompatible with the Treaty.

5.3. *The question of legitimate confidence*

(201) The Commission considers that invoking legitimate confidence would not in this case allow Crédit Mutuel and the French authorities to be regarded as exempt from the normal rules of competition. The continuous exchanges of correspondence during the investigation from 1991 on and the many evaluations conducted from the time the proceedings were opened rule out the recognition of legitimate confidence in this case based on the complaint lodged. These exchanges clearly show that the French authorities and Crédit Mutuel were fully informed of the existence of a problem of compatibility with the rules of competition at least as from 1991.

VI. **CONCLUSION**

(202) The granting to Crédit Mutuel of the right of distribution of the *Livret bleu* contains State aid within the meaning of Article 87(1) of the Treaty. This aid is not eligible for any of the derogations provided for in Article 87(2) and (3) of the Treaty.

(203) The derogation provided for in Article 86(2) of the Treaty can be only partly applied since, as demonstrated by the audit conducted on behalf of the Commission, the compensation granted during the period is not strictly limited to the excess costs relating to the general economic interest service which may be taken into account. As this was the only possible derogation permitting the exemption of the measures in question from the obligations laid down in the rules of competition, notably the prohibition under Article 87(1), the result is that the fraction of State resources granted to Crédit Mutuel which exceeds the net costs of managing and collecting the *Livret bleu*, mindful of a

([66]) Case C-159/94 *Commission* v *France* [1997] ECRI-5815, paragraph 48.

normal profitability margin, constitutes excess compensation of the costs of the public service and therefore constitutes State aid that is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

1. The measures taken by France for Crédit Mutuel involving the collection and management of regulated savings under the *Livret bleu* system comprise State aid that is incompatible with the common market.

2. The aid is not eligible for any derogation under Articles 87(2) and (3) of the Treaty. It may be partly eligible for the derogation provided for in Article 86(2) of the Treaty, insofar as it is essential for the performance of the general economic interest task entrusted to Crédit Mutuel by the State. The aid exceeding the cost of collecting and managing the *Livret bleu* cannot be regarded as compatible with the general interest.

Article 2

1. France shall recover from Crédit Mutuel the aid incompatible with the common market granted to it since 1 January 1991. The amount of the incompatible aid over the period 1991 to 1998 is determined by capitalising at the Commission reference rate the following annual flows:

(in FRF million)

	1991	1992	1993	1994	1995	1996	1997	1998
Flows	1 096	505	301	−471	−135	−87	−156	20

The result of the *Livret bleu* analytical accounts for the years 1999 and 2000, which the French authorities are required to evaluate according to the method adopted by Arthur Andersen, and given the corrections made by the Commission consultant, must be added to this amount. The French authorities must then capitalise these amounts at the Commission reference rate up to the date of recovery of the incompatible aid.

2. France shall modify the rate of commission for the *Livret bleu* savings paid by the Caisse des Dépôts et Consignations to Crédit Mutuel with a view to eliminating in future all aid that exceeds the management and collection costs that may be taken into account.

3. The French authorities shall ask Crédit Mutuel to introduce and publish separate accounts for the *Livret bleu*.

4. The French authorities shall send to the Commission the bank's annual report and a three-year report on the *Livret bleu* accounts.

5. The Commission shall conduct any checks it deems appropriate to verify that the aid to Crédit Mutuel is strictly in proportion with the general economic interest task entrusted to it. It shall, if it deems necessary, mandate consultants to audit the *Livret bleu*'s analytical accounts.

Article 3

France shall inform the Commission, within two months of notification of this Decision, of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 15 January 2002.

For the Commission

Mario MONTI

Member of the Commission