COMMISSION DECISION

of 24 May 2011

on State aid C 88/97 implemented by France in favour of Crédit Mutuel

(notified under document C(2011) 3436)

(Only the French text is authentic)

(Text with EEA relevance)

(2011/747/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2), first subparagraph, thereof,

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

Having given interested parties notice to submit their comments pursuant to those Articles [1], and having regard to those comments,

Whereas:

1. PROCEDURE

(1) On 25 January 1991 the Association française des banques (AFB), the Chambre syndicale des banques populaires and Crédit Agricole lodged a complaint alleging that France had granted State aid to Crédit Mutuel.

(2) The Commission first requested information concerning the *Livret bleu* in a letter dated 27 May 1991.

(3) 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 EC Treaty (now Article 108(2) TFEU) in respect of the potential aid measures contained in the *Livret bleu* savings vehicle [2].

(4) On 8 April 1998 the French authorities replied to the questions raised by the Commission in its opening Decision.

(5) 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 opening Decision as State aid, together with a cost account files concerning the *Livret bleu*. A number of interested parties also submitted their comments to the Commission (see Sections 3 and 4, recitals 48 to 59), which forwarded them to the French authorities on 3 September 1998.

(6) 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, which the Commission forwarded to the French authorities on 21 February 2000 and 3 November 2000.

(7) On 5 February 2001, the Commission forwarded to France the documents received from the AFB.

(8) From November 1998 to December 1999, at the Commission's request, a consultant [3] (hereinafter: 'the Commission's consultant') carried out an audit of the cost accounts of the *Livret bleu*. The consultant's report was submitted to the French authorities and to Crédit Mutuel for examination on 10 January 2000. A technical meeting on the report was organised on 7 February 2000 for the Commission, assisted by its consultant, the French authorities and Crédit Mutuel.

(9) By letter dated 14 September 1999, the Commission asked the French authorities to explain the general interest tasks entrusted to Crédit Mutuel. On 21 February 2000, 3 November 2000 and 5 February 2001, the Commission sent to the French authorities for comment various documents [4] submitted to the file by the complainants concerning the potential 'pull effect' of the *Livret bleu* (see subsection 7.2.3, recitals 110-118). The French authorities presented their comments on 1 February 2001.

[1] OJ C 146, 12.5.1998, p. 6, and OJ C 210, 1.9.2006, p. 12.

[2] This is the commercial name of the savings account in question, referred to by the name of '*compte spécial sur livret du crédit mutuel*' (special savings account of the crédit mutuel) until 31 December 2008 in Article L221-1 of the Monetary and Financial Code.

[3] The chartered accountants Littlejohn Frazer, assisted by two French accountancy firms, Auditec and Scacchi.

[4] Including two statistical studies by the consultants Concurrence et Stratégie headed by professor of economics Michel Glais.

(10) On 11 April 2000, the European Banking Federation (EBF) lodged a complaint with the Commission against the aid granted by the French State to Crédit Mutuel in the form of exclusive rights to distribute the *Livret bleu*.

(11) In May 2000 the Confédération nationale du Crédit Mutuel commissioned the Arthur Andersen accountancy firm to review the methodology used in the Crédit Mutuel cost accounts and to draw up the operating statement for the *Livret bleu*. This task was completed in September 2000 with the submission of a detailed report on the *Livret bleu* operating statement, which assessed the result of the *Livret bleu* cost accounts at a pre-tax loss of FRF 498 million. This conclusion was based on the taking into account of 'adjustments'. A meeting on this report was organised on 2 February 2001 for the Commission and Crédit Mutuel. 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 (Crédit Mutuel's general insurance business ([5]))', which had been criticised by the Commission.

(12) In April 2001 the Commission asked its consultant to identify the differences between its report and that of Arthur Andersen and to determine the changes to data or methodology that could, if necessary, be included in its previous report. A new final report from the Commission consultant was handed over on 23 July 2001. It evaluates the result of the *Livret bleu* cost accounts at a cumulated non-capitalised profit of FRF 1,074 billion (EUR 163,7 million). The report was sent to the French authorities on the same day. At a meeting on 26 July 2001 between the Commission, the French authorities, 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 2001, forwarded as an annex to a memo by the French authorities dated 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 perspective of Community competition law, as well as a memo of 7 January 2002 concerning the cost of the public-service task, reiterating the figures already presented by Crédit Mutuel without providing any new information.

(13) The memo sent to the Commission by the French authorities on 26 October 2001 explained why, according to them, (i) the *Livret bleu* scheme did not constitute State aid; (ii) if the Commission did classify the scheme as aid, it could only be existing aid, and (iii) in any event it was compatible aid.

(14) By Decision of 15 January 2002 ([6]) (hereinafter: 'the annulled Decision'), the Commission declared the State aid granted by France to Crédit Mutuel incompatible with the common market.

(15) The Decision of 15 January 2002 was annulled by judgment of the Court of First Instance on 18 January 2005 ([7]).

(16) The Commission did not appeal against the judgment. In accordance with Article 266(1) TFEU, the Commission is required to take the necessary measures to comply with the judgment. With regard to State aid, this means that, following the annulment of the Decision, the procedure is returned to the formal investigation stage.

(17) By Decision of 7 June 2006 ([8]) (hereinafter: 'the extension Decision'), the Commission extended the formal investigation procedure and clarified the purpose of its assessment of potential aid.

(18) France submitted its comments on the extension Decision to the Commission by letters dated 1 September 2006 and 7 September 2006.

(19) On 19 September 2006 the Commission received a complaint from the *Association des Victimes du Crédit Mutuel* (Association of Victims of Crédit Mutuel).

(20) The Commission received the comments of Crédit Mutuel by letter dated 13 October 2006.

(21) By letter dated 31 October 2006, the Commission forwarded the observations by Crédit Mutuel to the French authorities.

([5]) IARD stands for 'Incendie, Accidents, Risques Divers' (fire, accident, other risks).

([6]) Commission Decision 2003/216/EC of 15 January 2002 on State aid granted by France to Crédit Mutuel (OJ L 88, 4.4.2003, p. 39).

([7]) Judgment of 18 January 2005 in Case T-93/02 *Confédération nationale du Crédit Mutuel* v *Commission* [2005] ECR II-143.

([8]) Commission Decision C 88/97 of 7 June 2006 on Crédit Mutuel (*Livret bleu*) — Invitation to submit comments pursuant to Article 88(2) of the EC Treaty (OJ C 210, 1.9.2006, p. 12).

(22) Following two requests for further information from the Commission dated 22 September 2006 and 28 November 2006, France submitted additional comments by letters dated 8 November 2006 and 28 February 2007.

(23) The Commission met the French authorities on 19 December 2006 and Crédit Mutuel on 15 January 2007.

(24) On 10 May 2007 the Commission adopted a decision pursuant to Article 86(3) of the EC Treaty (now Article 106(3) TFEU) in conjunction with Articles 43 and 49 of the EC Treaty (now Articles 49 and 56 TFEU) requiring France to put an end to the special rights ([9]) of Crédit Mutuel, Caisses d'Épargne and Banque Populaire for the distribution of the *Livret bleu* (Crédit Mutuel) and *Livret A* (Caisses d'Épargne and Banque Postale) ([10]).

(25) Since France did not put an end to the special rights for the distribution of the *Livret A* and *Livret bleu* within the nine-month deadline set by the Decision of 10 May 2007, the Commission opened infringement proceedings pursuant to Article 226 of the EC Treaty (now Article 258 TFEU) by sending France on 5 June 2008 a letter of formal notice for not complying with the Decision.

(26) On 19 September 2009 the Commission asked France for more information, which was provided on 13 October 2009.

(27) On 8 October 2009 the Commission terminated the infringement proceedings because France, by adopting the reform of 1 January 2009 liberalising the distribution of the *Livret A* and *Livret bleu* ([11]), had complied with its obligation to put an end to the special rights for the distribution of the *livrets* ([12]).

(28) Over the course of 2010 the Commission sent e-mails with several questions to Crédit Mutuel, to which e-mailed replies were received.

([9]) Crédit Mutuel has an exclusive right to distribute the *Livret bleu*. However, this right was called 'special right' in the Decision of 10 May 2007 because the *Livret bleu* is almost identical to the *Livret A*.

([10]) Decision C(2007) 2110 of 10 May 2007, available on the European Commission's website at: http://ec.europa.eu/competition/liberalisation/livret_a_en.pdf

([11]) See recital 41.

([12]) See the Commission press release dated 8 October 2009, available on the Commission's website at: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1482&format=HTML&aged=1&language=EN&guiLanguage=en

(29) This Decision closes, pursuant to Article 13 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([13]), the procedure relating to the potential aid contained in the *Livret bleu* savings vehicle.

2. DESCRIPTION OF THE *LIVRET BLEU* SAVINGS VEHICLE

2.1. Description of Crédit Mutuel

(30) Crédit Mutuel is a decentralised banking and insurance group consisting of a national network of branches with the status of cooperative companies with open-ended capital. Crédit Mutuel is governed by the law of 10 September 1947, which laid down the principles of cooperation. It is organised on three levels: local, regional and national.

(31) The Crédit Mutuel group, under the group's two trade names (Crédit Mutuel and Crédit Industriel et Commercial (hereinafter: 'CIC')), has almost 6 000 outlets and more than 72 000 employees. Crédit Mutuel's local branches are attached to 18 regional federations that are members of Crédit Mutuel's national confederation, the central body of the network. The CIC federates 6 regional banks and specialised subsidiaries in France and abroad.

(32) Crédit Mutuel is a group with a single management that pursues a global policy. It maintains internal financial solidarity at the level of the confederation, which ensures the liquidity of the regional federations. The group has the features of a single undertaking from the perspective of competition law because is has a single decision-making body at central level.

2.2. Description of the *Livret bleu*

(33) The *Livret bleu* was a savings product regulated by the State and distributed exclusively by Crédit Mutuel.

(34) The product was partially tax-exempt under the terms of the Amending Finance Act for 1975 ([14]). The interest on sums deposited paid to savers qualified for a tax exemption to the tune of two thirds. The State set the gross interest rate on the *Livret bleu* for savers in such a way that, after deduction of tax ([15]), the net rate was identical to that earned on the *Livret A*, which was fully tax-exempt.

([13]) OJ L 83, 27.3.1999, p. 1.

([14]) Article 9 of Law No 75-1242 of 27 December 1975, Amending Finance Act for 1975 (French Official Gazette, 28.12.1975).

([15]) Through the compulsory system of withholding tax at source, paid by Crédit Mutuel on behalf of savers.

(35) The State set the interest rate on the *Livret bleu* at a level above inflation, indexed to the money market. The last net rate of remuneration on the *Livret bleu* before this savings product was discontinued by the reform of 1 January 2009 (see recital 41) was 4 % ([16]). The maximum amount that savers could deposit in their *Livret bleu* account was EUR 15 300. The amount invested in the *Livret bleu* rose from EUR 13 billion (FRF 85 billion) in 1991 to EUR 22 billion in 2008.

(36) The *Livret bleu*'s features — immediate availability of funds, minimum initial deposit authorised from EUR 15, no costs (in particular on opening the account), etc. — led to great liquidity. In addition, it was possible to set up direct debits from the *Livret bleu* account to the national exchequer or public companies such as EDF or France Télécom. The *Livret bleu*, which was a savings product aimed at the general public, was therefore similar in some respects to a current account.

(37) The obligations associated with the use of the funds collected through the *Livret bleu* changed over time.

(38) Initially Crédit Mutuel was obliged to allocate 50 % of the resources (in 1983 ([17]) this proportion was increased to 65 % of the resources and 80 % for new deposits) to general-interest uses (notably the financing of local authorities and other public bodies), with the balance being left to the bank to dispose of freely (hereinafter: 'non-earmarked uses').

(39) The system was radically reformed by a Decree of 27 September 1991 ([18]) to bring the *Livret bleu* gradually into line with the *Livret A* system. After the Decree was adopted, all new deposits ([19]) were centralised with the Caisse des Dépôts et Consignations (hereinafter: 'CDC') which, in return, paid Crédit Mutuel a brokerage commission. This commission, which was initially set at 1,3 % of the *Livret bleu* deposits allocated to the CDC, was reduced to 1,2 % on 1 January 2005, then to 1,1 % on 1 November 2005. The CDC uses the funds collected by Crédit Mutuel mainly to finance social housing.

(40) Moreover, this radical reform of the system was reflected in a gradual reallocation of existing deposits ([20]). Since the Decree of 27 September 1991 until the end of the first half of 1999, the share of existing 'general-interest uses' and 'non-earmarked uses' fell until all the deposits were allocated to the CDC.

FRF billion and %	1991	1992	1993	1994	1995	1996	1997	1998	1999
Annual average deposits	85,5	83	80,2	83,4	88,7	91,5	92,7	98,1	98,7
Centralised allocation CDC	1 %	7 %	12 %	24 %	39 %	46 %	51 %	69 %	100 %
General-interest uses	67 %	54 %	46 %	35 %	27 %	20 %	15 %	10 %	0 %
Non-earmarked uses	32 %	39 %	42 %	41 %	35 %	34 %	34 %	21 %	0 %

Source: Littlejohn Frazer.

(41) On 1 January 2009 a reform of the *Livret A* and *Livret bleu* came into force that granted all banking institutions the right to distribute *Livret A* accounts and ended the distinction between the *Livret A* and *Livret bleu* accounts. Since 1 January 2009, the Crédit Mutuel *Livret bleu* has simply been a *Livret A* marketed under a different name. On that date the *Livret bleu* ceased to exist, and so did the exclusive right of distribution by the Crédit Mutuel.

2.3. **Reasons for initiating the procedure/extending the procedure**

(42) As set out in the extension Decision ([21]), the Commission took the view that it was possible that France had granted aid to Crédit Mutuel through the brokerage commission.

([16]) The rate was 3 % on the date of the annulled Decision, see footnote 6. On 1 February 2011 the rate of remuneration on the *Livret A* was 2 % net of tax.

([17]) Decree of 31 October 1983 'Amount of the obligation by Crédit Mutuel to use funds for the general interest', French Official Gazette, 9 November 1983, p. 3278.

([18]) Decree of 27 September 1991 defining the general-interest uses of the Crédit Mutuel, French Official Gazette No 275, 26 November 1991, p. 15383.

([19]) Whereas the stock of *existing* deposits was gradually transferred to the CDC; see recital 40.

([20]) Unlike the *new* deposits, which were fully centralised with the CDC after the Decree of 27 September 1991, see recital 39.

([21]) See recitals 36 and 50.

(43) The *Altmark* case-law of the Court of Justice holds that public-service compensation does not constitute State aid within the meaning of Article 107 TFEU if it satisfies certain cumulative conditions referred to in the *Altmark* judgment of 24 July 2003 ([22]).

(44) In its extension Decision, the Commission took the view that the fourth condition under the *Altmark* case-law might not be satisfied where the State did not assign this public-service task of collecting deposits intended for social rented housing to the highest bidder in a tendering procedure, but entrusted it directly through negotiations with Crédit Mutuel, which does not allow for any guarantee, by deduction, that the remuneration awarded to Crédit Mutuel is not higher than the amount required by a well-run undertaking. The Commission also took the view that the French authorities had not demonstrated that the level of compensation had been determined by reference to the costs of a typical, well-run undertaking in the banking sector. It is not enough for the French authorities to highlight that Crédit Mutuel is a well-run undertaking to establish that the level of compensation has been determined on the basis of an analysis of the costs which a typical undertaking, within the meaning of the *Altmark* case-law, would have incurred.

(45) The Commission's view is that the brokerage commission was a state resource that could constitute a selective advantage likely to distort competition and affect trade between Member States, which had not been notified. The brokerage commission could therefore contain elements of unlawful aid.

(46) In its extension Decision, the Commission thought it possible that the measure was not compatible with Article 86(2) of the EC Treaty (now Article 106(2) TFEU) and took the view that none of the exceptions referred to in Article 87(2) and (3) of the EC Treaty (now Article 107(2) and (3) TFEU) seemed to apply.

(47) It seemed possible to the Commission, on the basis of the calculations by its consultant, that the amount of the compensation had exceeded what was necessary to cover the costs incurred in discharging the public service obligations (the collection of deposits intended for social rented housing), taking into account the related income and a reasonable profit for discharging that obligation. The Commission, having reiterated that the amount of the compensation had to include all the advantages granted by the State or through state resources in any form whatsoever, took account in the calculation of the compensation not only of the net cost of collecting the deposits centralised with the CDC, but also of the net result (cost or profit) of the general-interest uses and non-earmarked uses. The report by the Commission's consultant revealed over-compensation to Crédit Mutuel for the years 1991, 1992, 1993 and 1998.

([22]) Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg* [2003] ECR I-7747.

3. THE COMPLAINANTS' ARGUMENTS

(48) The complainants' arguments were presented by the Commission in its Decision of 6 February 1998 on the initiation of proceedings pursuant to Article 88(2) of the EC Treaty (now Article 108(2) TFEU). The additional written statements submitted since then contain the following new arguments.

(49) A paper (updated at the end of February 1999 and communicated to the Commission in October 1999) on the pull effect of the *Livret bleu* assessed the net banking income generated by this effect at FRF 17 billion (EUR 2,6 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*.

(50) A study conducted by Caisse Nationale du Crédit Agricole, submitted in May 2000, analysed developments in 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 in 1990. This trend differed according to the regions: the number of permanent, and subsequently non-permanent, branches of Crédit Mutuel dropped in the regions in which Crédit Mutuel was traditionally very strong (Loire Region, 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 tend to show that Crédit Mutuel is capable of maintaining an exceptionally dense network of branches even after the removal of all controls by the authorities.

(51) On 4 June 1998 the AFB sent the Commission a letter stating that the commission of 1,3 % on *Livret bleu* deposits centralised with the CDC was excessive given that, at the same time, the Caisses d'Épargne and la Poste received 1,2 % and 1,5 % respectively on *Livret A* savings, which were also held centrally by the CDC. The AFB pointed out in this letter that it proposed to the French authorities in 1997 that it would ensure the collection of *Livret bleu* deposits 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 of collecting savings for an average Caisse

d'épargne such as that of Burgundy was 0,96 % of its total funds, and that there was no reason why Crédit Mutuel's management costs should be higher.

(52) A memorandum produced by the Glais consultancy dated August 2000, submitted at the request of the AFB, contains statistics concerning the competitive advantage thought to be enjoyed by Crédit Mutuel as a result of the exclusive rights to distribute the *Livret bleu*. An examination of time-series data shows the total amount of *Livret bleu* deposits and the total amount of other deposits increased considerably 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 deduced that 'the *Livret bleu* effect therefore seems to have worked by attracting customers and, from the mid-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 concluded that Crédit Mutuel's (essentially credit) activities appear to have been unrelated to average developments in the banking market, notably on the basis of an indicator of the persistence of random economic shocks on activity variables and by creating a model based on a simple credit-demand equation. The expert explains this phenomenon 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*.

(53) In a second memorandum (December 2000), the Glais consultancy proposed a new econometric analysis of the degree of loyalty of each set of customers to each banking network. According to the expert, the figures corroborate the hypothesis that Crédit Mutuel and Caisses d'Épargne have much better means of retaining their customers' loyalty than other banks. 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.

(54) 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*, which increased 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 (EUR 99 million) in 1974 to FRF 47,3 billion (EUR 7,2 billion) in 1997.

(55) Finally, the complaint by the Association of Victims of Crédit Mutuel dated 19 September 2006 contains a simple allegation of 'diversion of public savings for private and commercial ends […] to the detriment of savers and of the French economy', which is not backed up by any serious arguments or evidence relating to potential unlawful State aid.

4. COMMENTS FROM THIRD PARTIES

(56) Following the publication of the opening Decision of 6 February 1998, the Commission received comments from numerous third parties.

(57) Some of Crédit Mutuel's competitors cited the damage they had suffered as a result of exclusive distribution rights for the *Livret bleu* being granted to Crédit Mutuel. These banks generally argued that the *Livret bleu* generated a pull factor making them lose clients to Crédit Mutuel and they wanted to see the end of this exclusive right. 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 Économique 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.

(58) At the same time, in addition to the comments in defence of Crédit Mutuel, presented in Section 4, the Commission received comments from the following third parties which were in favour of the *Livret bleu* vehicle:

M. Mr Bertholet, MP (Drôme Department)

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

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

Mr Cormorèche, Mayor of Montluel

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

Mr Chavannes, Mayor of Angoulême

Mr Crépeau, MP (Charente Maritime Department)

Mr Debavelaere, Senator (Pas-de-Calais Department)

Mr Decool, Mayor of Brouckerque

Mr Delevoye, Senator (Pas-de-Calais Department)

Mr Delnatte, MP (Nord Department)

M. Mr Dolez, MP (Nord Department)

M. 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 Department)

Mr Galiègue, President of the Solesmes Caisse de Crédit Mutuel

Ms Gournay, Mayor of Caëstre

Ms Armelle Guinebertière, Member of the European Parliament

Mr Hervé, Mayor of Rennes

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

Ms Ingelaere, President of *Flandr'action*

Mr Juppé, Mayor of and MP for Bordeaux

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

Mr Lazaro, MP (Nord Department)

Mr Lebreton, President of the General Council of Côtes d'Armor Department

M. Mr Ledieu, Mayor of Le Cateau-Cambrésis

Mr Leleu, Director of Crédit Mutuel Nord

Mr Maille, President of the Brest urban area

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

Mr Méhaignerie, President of the General Council of the Ille et Vilaine Department

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

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

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

M. Mr Albert Rivaux, Member of the General Council of the Pas-de-Calais Department

Mr de Rohan, President of the Brittany Regional Council

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

Mr Vanlerenberghe, Mayor of Arras

Mr Villain, Mayor of Cambrai

Mr de Villiers, MP (Vendée Department).

(59) 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 people in lower income groups, from which a large part 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 better able than centralised institutions to meet local needs and respond to the requirement of balanced regional development.

5. **CRÉDIT MUTUEL'S COMMENTS**

(60) Crédit Mutuel criticises the Commission for having taken a particularly long time in dealing with the case.

(61) Furthermore, according to Crédit Mutuel, the judgment by the Court of First Instance, in addition to stressing the failure to state valid grounds, contained criticism of the argument presented by the Commission, which was not taken into account in the extension Decision, in particular as far as the calculation of any overcompensation was concerned. In this respect, Crédit Mutuel accuses the Commission of adding together the positive full-year amounts without deducting the figure for the negative full-year amounts, contrary to the method put forward in the Community framework for State aid in the form of public service compensation (hereafter 'the 2005 Community framework') ([23]).

([23]) OJ C 297, 29.11.2005, p. 4.

(62) According to the bank, the brokerage commission fulfils the four conditions of the *Altmark* case-law:

(a) With respect to the first condition, Crédit Mutuel was engaged in the provision of two services of general economic interest, firstly by maintaining a significant branch presence in rural areas for regional development purposes and secondly by gathering deposits intended to finance social housing. As far as maintaining branches in rural areas is concerned, it disputes the Commission's conclusion that French laws and regulations remain too vague to entrust Crédit Mutuel with any such role and thus for the first condition of the *Altmark* case-law to be fulfilled. According to Crédit Mutuel, the Commission draws this conclusion from the fact that this legislation did not place any specific constraints on Crédit Mutuel since it applied to the banking sector as a whole. Crédit Mutuel also holds that the Commission is trying to transfer to it the burden of proof that the first condition of the *Altmark* case-law has been met, which is not what is laid down in the case-law in question.

(b) With respect to the second condition, Crédit Mutuel stresses that the brokerage commission was created at the same time as the obligation to centralise to centralise deposits with the CDC and that the conditions for calculating the commission were drawn up in an objective and transparent manner.

(c) As for the third condition, the bank states that the compensation was not sufficient to cover the costs of gathering deposits, since the activity relating to the funds transferred to the CDC posted a loss over the whole of the 1991-2005 period.

(d) Crédit Mutuel further holds that the fourth condition was met. The level of the brokerage commission was based on the costs actually incurred by Crédit Mutuel in distributing the *Livret blue*. Crédit Mutuel is a well-run undertaking within the meaning of the *Altmark* case-law, since its administrative costs are amongst the lowest. The Commission is, moreover, said to have acknowledged this in its extension Decision ([24]); It is of the opinion that the Commission has not provided sufficient grounds to underpin its view that this condition has not been met.

(63) In any event, Crédit Mutuel holds that the measure is compatible with the internal market on the basis of Article 106(2) TFEU. Crédit Mutuel criticises, inter alia, the method used to calculate the overcompensation to which reference was made in the extension Decision. In its view, the Commission made calculation errors in its assessment of gross operating profit for the *Livret bleu* by making its own the mistaken conclusions of its consultant, despite the areas of disagreement outstanding between the Commission's consultant and Crédit Mutuel's consultant ([25]).

(64) Crédit Mutuel also disagrees with the annual approach used by the Commission (that is the fact of taking into account only the amounts relating to years of overcompensation, without offsetting them with the amounts for years of undercompensation), which it believes runs counter to a number of precedents, the annulled Decision and, in its view, the Community framework of 2005 ([26]). The Commission should adopt an overall approach (that is offsetting all of the amounts relating to years of overcompensation by those for years of undercompensation) for the whole of the 1991-98 period, on the one hand, and for the whole of the period beginning in 1999, on the other.

(65) In addition, in its extension Decision the Commission did not take reasonable profit into account properly. It based its assessment of reasonable profit on the costs of regulatory capital, estimated at 6 %, whereas these costs represent a cost accounting expense, not a margin. The Commission should have taken into account the return on equity recommended by Arthur Andersen ([27]). Moreover, the calculation of reasonable profit was made on the basis of a rapidly diminishing base, which falls to zero on the complete centralisation of deposits

([24]) Crédit Mutuel simply refers to paragraph 13 of the extension Decision where the Commission mentions Crédit Mutuel's financial results for 2004 (balance sheet total, net profit, cost-to-income ratio, shareholders' funds and solvency ratio).

([25]) These were (i) non-life insurance restatement; (ii) the calculation of a normal margin (reasonable profit); and (iii) member liability. See Annex 1 of the extension Decision.

([26]) Crédit Mutuel refers to point 21 of the Community framework of 2005, according to which, when services of general economic interest have costs that vary significantly each year, overcompensation in excess of 10 % in certain years may prove necessary.

([27]) Arthur Andersen suggested a method for calculating shareholders' funds which increased the cost of equity compared to the initial assessment made by Crédit Mutuel. Arthur Andersen suggested using a rate calculated as the ratio between pre-tax profit and own funds. This rate, in Arthur Andersen's view, would reflect more accurately the overall profitability of the bank, whereas Crédit Mutuel had adopted as the cost of own funds the amount of dividends actually distributed, giving a rate of profitability for all its activities of 6 %.

with the CDC, since such deposits incur no cost in terms of regulatory capital. Crédit Mutuel emphasises that the indicator used by the Commission leads to it being deprived of any normal margin on the *Livret bleu*. In its view, any bank must be able to generate a normal margin, even on a centralised use incurring no cost of capital within the strict regulatory meaning of the solvency ratio.

(66) Nor did the Commission correctly take into account the expenses arising from the other service of general economic interest which Crédit Mutuel regards itself as providing, that is maintaining a branch presence in rural areas with a view to encouraging saving by the general public throughout the country's territory by facilitating access to banking services to the greatest number of people.

(67) Crédit Mutuel also denies that there was ever any pull factor. It notes that the Commission had acknowledged in its annulled Decision that there was no formal evidence attesting to a pull factor and is of the view that no new evidence has appeared since then.

(68) With respect to the proceedings, Crédit Mutuel relies on a number of general principles of Community law to dispute the recovery of potential aid, inter alia, the principle of legitimate expectation and the duty to act within a reasonable time.

6. **COMMENTS BY FRANCE**

(69) France is of the opinion that the conditions of the *Altmark* case-law have been met:

(a) With respect to the first condition, it emphasises that the Commission has acknowledged that Crédit Mutuel was attributed the task of providing a service of general economic interest by gathering deposits to finance social housing. It recalls that the Commission stated in its extension Decision that maintaining branches in rural areas for regional development purposes could also be regarded as a service of general economic interest ([28]), but does not react to the arguments raised by the Commission in its extension Decision that the first condition of the *Altmark* case-law has not been met because there is no national legislation or regulations requiring, in a sufficiently clear manner, the institution to perform this task pursuant to Article 106(2) TFEU ([29]).

(b) With respect to the second condition, France is of the opinion that the parameters for calculating the compensation were established in advance in an objective and transparent manner.

(c) As for the third condition, it argues that the amount of compensation (the brokerage commission) did not exceed what was necessary to cover the costs of the system and refers in this respect to Crédit Mutuel's detailed profit-and-loss accounts for the *Livret bleu* for the years 1999 to 2005.

(d) The fourth condition is also fulfilled, with France stating that Crédit Mutuel's management meets the efficiency requirements ([30]).

(70) With respect to the conditions relating to the existence of aid, France refers to the arguments it put forward before the annulment of the 2002 Decision:

(a) The state resources condition is not fulfilled since the income derived by Crédit Mutuel from the deposits not centralised with the CDC (non-earmarked uses and general-interest uses) arose from resources of private origin (monies deposited by savers) which were not at the disposal of the public authorities.

(b) Trade between Member States could not have been affected before completion of the single market for banking and financial activities on 1 January 1993, following the adoption of Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (hereinafter 'the Second Banking Directive') ([31]) The French authorities considered that, after that date, given the absence of an official European statute for cooperative societies and the constraints that this situation produced in terms of the cross-border expansion of cooperative societies such as Crédit Mutuel, the latter's constituent regional entities did not operate across national borders. Moreover, the *Livret bleu* accounts opened for non-residents represented less than 0,1 % of the total. The French authorities also stated that foreign banks in France were targeting a very different market to that of Crédit Mutuel.

([28]) See paragraph 25 of the extension Decision.
([29]) See paragraph 28 of the extension Decision.
([30]) France simply refers to paragraph 13 of the extension Decision where the Commission mentions Crédit Mutuel's financial results for 2004 (balance sheet total, net profit, cost-to-income ratio, shareholders' funds and solvency ratio).
([31]) OJ L 386, 30.12.1989, p. 1.

(c) The brokerage commission paid by the CDC to Crédit Mutuel on the total *Livret bleu* deposits centralised with 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 %. The French authorities underlined the scale of the management costs for the *Livret bleu* because of the number of accounts with deposits totalling less than FRF 5 000 (EUR 762). They referred to the cost accounts produced by Crédit Mutuel (after the measure at hand was adopted), concluding that this level of remuneration was fully justified. The French authorities argued that the advantages which Crédit Mutuel received from the *Livret bleu* should be examined in the light of the costs relating to a general economic interest objective. In this respect, they drew the attention of the Commission to the increase in the attribution of the deposits to financing objectives of general interest, for which the proportion rose from 50 % of *Livret bleu* deposits between 1975 and 1983, to 65 % between 1983 and 1991, to 100 % of deposits centralised with the CDC from 1998 onwards.

(d) Even assuming that there had been aid, it would have been existing aid as the *Livret bleu* scheme was set up before the liberalisation of the banking sector on 1 January 1993 (the deadline for transposing the Second Banking Directive).

(71) In their letter of 26 October 2001, the French authorities provided the reason why, were the Commission to conclude the existence of aid, that aid would in any event be compatible with the internal market in accordance with Article 106(3) TFEU. They criticise the Commission for making mistakes in its calculation of the gross operating profit from the *Livret bleu* by not following the method put forward by Crédit Mutuel's consultant ([32]). They also contend that the Commission should take into account a reasonable profit, which they estimate at […] (*).

(72) In their comments on the extension Decision, the French authorities also criticise the Commission for its 'asymmetrical reasoning', in that it did not offset the amounts for years in which overcompensation was found (1991, 1992, 1993 and 1998) by those for years of undercompensation (1994 to 1997) and for repeating in their entirety in Annex 1 to the extension Decision the conclusions of its consultant on the three areas of disagreement between France and the Commission. France specified that for the whole of the 1999-2005 period the system relating to the *Livret bleu* was undercompensated by the state. The amount of the brokerage commission did not exceed what was required to cover the distribution costs of the *Livret bleu* as reflected in the cost accounts for the *Livret bleu*, which were drawn up in partnership with the Commission (subject to two adaptations ([33])) and meet the requirements of Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings ([34]). France also explained that the recent reductions in the brokerage commission were made to meet the requirements of those engaged in financing social housing ([35]).

(73) The French authorities explained that a mechanism for the repayment of any overcompensation has existed since 1999.

(74) France also explained that the risk of a lack of liquidity for the first month was borne by Crédit Mutuel and the risk of a lack of liquidity beyond that was borne by the CDC. With respect to deposits collected for *Livret bleu* accounts, France further explained that the risk-weighting percentage for the calculation of capital requirements needed for the solvency margin was zero. It pointed out that the risk weighting for Crédit Mutuel's capital requirements for other savings products and resources other than the *Livret bleu* ranged from […]% to […]% from 1999 to 2005. The French authorities specified that, given the irrelevance of applying the European solvency ratio after the complete transfer of the deposits to the CDC in 1999, in order to calculate the reasonable profit corresponding to the *Livret bleu*, Crédit Mutuel factored in a cost of capital in reference to its other savings products and resources, which it capped ([…]% to […]% between 1999 and 2005). At the Commission's request, France also provided precise information on the margin of compensation relating to the establishment of a compulsory reserve fund with the Banque de France.

([32]) On the areas of disagreement between the Commission's consultant and Crédit Mutuel's consultant, see footnote 25.

(*) Covered by the business secret obligation

([33]) The first change concerns the inclusion of the compulsory payments to the deposit guarantee fund introduced by the Law of 25 January 1999 on savings and financial security, and the second concerns the change in the calculation of own funds to take account of reasonable profit from 1999.

([34]) OJ L 195, 29.7.1980, p. 35. This Directive was repealed by Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).

([35]) According to the French authorities, the reduction in the brokerage commission enabled the CDC to lower the cost of financing for social landlords.

7. **ASSESSMENT**

7.1. **Existence of aid**

(75) In the extension Decision the Commission considered that the only measure at issue likely to contain aid elements was the brokerage commission paid to Crédit Mutuel by the CDC ([36]).

(76) Such aid as may be hidden in the brokerage commission was introduced on 27 September 1991 by the Order of the same date and, in the present Decision, is analysed up to the liberalisation of the distribution of the *Livret A* and the harmonisation of the *Livret bleu* with it on 1 January 2009 ([37]).

7.1.1. *The conditions of the Altmark judgment are not met*

(77) According to the *Altmark* case law ([38]) compensation paid in consideration of public-service tasks does not constitute State aid within the meaning of Article 107(1) TFEU if four cumulative conditions are met.

(78) In their comments in response to the extension Decision the French authorities and Crédit Mutuel invoke the existence of two services of general economic interest, namely the maintenance of a significant branch presence in rural areas for regional development purposes and the gathering of deposits intended for social housing financing.

(79) However, even before the measure at issue was introduced, Crédit Mutuel was no longer under any obligation to maintain rural branches since the 1987 repeal of the Bank Branches (opening and closing) Act (*loi relative à l'ouverture et à la fermeture des agences bancaires*) and the abolition on 1 July 1991 of the supervision arrangements (which were kept in place with respect to Crédit Mutuel from 1987 to 1991) ([39]). Moreover, neither the French authorities nor Crédit Mutuel challenged the conclusion in the extension Decision that, after 1991 (or, to be precise, 1 July 1991), there was no longer any instrument in force on the basis of which Crédit Mutuel might have been entrusted, within the meaning of Article 86 EC (now Article 106 TFEU), with the task mentioned in paragraph 24, point (iii) of the extension Decision (maintenance of branches in rural areas for regional development purposes) ([40]).

(80) It is therefore only as regards the task of gathering deposits with a view to financing social housing that it falls to be examined whether the *Altmark* case law applies.

(81) The Commission would recall that Member States have a wide margin of discretion as to the nature of services which may be classified as services of general economic interest. It considers that the Decrees implementing the provisions of Article 9 of the Amending Finance Act for 1975 ([41]) and of Article 24 of the Amending Finance Act for 1982 ([42]), and in particular the Order of 27 September 1991, clearly entrust to Crédit Mutuel the task (as defined in Articles R 323-10 and R 331-14 of the Construction and Housing Code) of gathering funds for transfer to the CDC in order that the latter might finance social housing. The Commission is of the opinion that, in classifying this task as a service of general economic interest, France has not committed a manifest error of assessment.

(82) According to the fourth condition of the *Altmark* judgment, 'where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run […] so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations' ([43]).

(83) The Commission considers that the fourth condition is not met in the case of the task of gathering deposits to

([36]) See paragraph 50 of the extension Decision (exists only in French): '[…] la Commission ne vise dans la présente procédure comme mesure pouvant éventuellement contenir des éléments d'aide d'Etat que la commission d'intermédiation'.
([37]) See recital 41.
([38]) See footnote 22.
([39]) The French authorities referred to the Bank Branches (opening and closing) Act, which was repealed in 1987. From 1987 to 1991, supervision arrangements were nevertheless kept in place with respect to Crédit Mutuel. The rules provided for a system for the authorisation, and not a system for the formal prohibition, of branch closures or restructurings, in particular as from 1987. These supervision arrangements were abolished on 1 July 1991 within the more general framework of the renegotiation of the contractual relations between the State and Crédit Mutuel.
([40]) See paragraph 29 of the extension Decision.
([41]) See recital 34 and footnote 14.
([42]) Law No 82-1152 of 30 December 1982 (French Official Gazette of 31.12.1982, p. 3995).
([43]) See paragraph 93 of the *Altmark* judgment, cited above in footnote 22.

be centralised with the CDC for the purpose of financing social housing. It should be noted that the State assigned this task, not to the highest bidder via a public procurement procedure, but directly by negotiation with Crédit Mutuel. The level of brokerage commission was not determined by reference to the costs connected with the performance of the service of general economic interest incurred by a typical, well-run undertaking. The brokerage commission of 1,3 % could not be based on the actual costs incurred by Crédit Mutuel in performing the service of general economic interest because there was no separate accounting for the *Livret bleu* in September 1991 making it possible to trace the costs linked specifically to the *Livret bleu* in the bank's accounts. The separate accounting for the *Livret bleu* was developed several years later and applied retroactively for the years up to 1991. There is therefore nothing to indicate that the level of brokerage commission was determined by reference to the costs of a typical, well-run undertaking performing the general-interest task in question. The French authorities argue that Crédit Mutuel is, on the whole, well run. However, they do not really back up this claim, but instead refer mainly to paragraph 13 of the extension Decision, where the Commission simply mentions the overall financial results (balance-sheet size, net profit or loss, cost/income ratio, equity capital and solvency ratio) of Crédit Mutuel in 2004. At all events, if a Member State has determined the level of compensation on the basis of an analysis of the costs of a typical, well-run undertaking, it should have no difficulty proving it to the Commission and outlining the methodology followed — something which France has not done in this case. Finally, the fact that, as soon as the distribution of *Livrets A* and *Livrets bleus* was liberalised on 1 January 2009, Crédit Mutuel's brokerage commission went down from 1,1 % to 0,6 % seems to indicate that the level of that commission was higher than it would have been had it been based on the costs of a typical, well-run undertaking performing the same general-interest task.

(84) In so far as the conditions of the *Altmark* judgment are cumulative, it is enough that only one of the conditions is not met for the case law not to apply and for the measure at issue to be able to constitute State aid. It follows from the above that the measure at issue does not meet the fourth condition of the *Altmark* judgment. The *Altmark* case law therefore does not apply and it needs to be considered whether the measure does in fact constitute State aid ([44]) ([45]).

([44]) According to point 7 of the 2005 Community framework, 'If the Member States do not respect these criteria [that is to say, the four conditions of the *Altmark* case] and if the general criteria for the applicability of Article 87(1) of the EC Treaty [now Article 107(1) TFEU] are met, public service compensation constitutes State aid' (underlining added).

([45]) This examination is independent of the fact that the reform of 1 January 2009 put an end to the infringement of European public procurement law resulting from the direct assignment to Crédit Mutuel of the public-service task of gathering deposits intended for social rented housing.

7.1.2. *The conditions relating to the existence of aid are met*

(85) Article 107(1) TFEU provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

7.1.2.1. Imputability to the State and state resources

(86) The brokerage commission was paid annually ([46]) to Crédit Mutuel by the CDC under an agreement between the State and Crédit Mutuel laying down detailed rules for implementing the Order of 27 September 1991. The amount of brokerage commission is set by the State to compensate for the public service obligations. Moreover, the CDC is a public undertaking the conduct of which is imputable to the State ([47]). The condition concerning imputability to the State and state resources is therefore met.

7.1.2.2. Selectivity

(87) The brokerage commission was granted exclusively to Crédit Mutuel in return for its gathering savings, to be centralised with the CDC for the purpose of financing social housing, by means of the *Livret bleu*, for which Crédit Mutuel held an exclusive right of distribution. This measure is therefore selective in nature.

7.1.2.3. The conditions of the Altmark judgment being inapplicable, examination as to the existence of an advantage distorting competition

(88) Given that it constituted a transfer of state resources for the benefit of Crédit Mutuel alone, the brokerage commission improved the competitive position of that bank compared with its competitors. According to the case law of the Court of Justice, an improvement in the

([46]) Under the agreement between the State and Crédit Mutuel laying down detailed rules for implementing the Order of 27 September 1991, the CDC must pay annually to Crédit Mutuel […] the amount of compensation due on the last working day of each year.

([47]) See the judgment of the Court of First Instance in Case T-358/94 *Air France* v *Commission* [1996] ECR II-2019, in particular paragraphs 58 to 61. See also the Commission Decision 2010/606/EU of 26 February 2010 on State aid C 9/09 (ex NN 49/08, NN 50/08 and NN 45/08) implemented by the Kingdom of Belgium, the French Republic and the Grand Duchy of Luxembourg for Dexia SA (OJ L 274, 19.10.2010, p. 54), recitals 123, 124 and 125.

competitive position of an undertaking as a result of State aid generally constitutes proof that competition with other undertakings which have not received similar aid is being distorted ([48]).

7.1.2.4. Effect on trade between Member States

(89) Moreover, according to settled case law, there is an effect on trade between Member States where the undertaking in receipt of aid carries on its activities in a sector which is open to competition and in which there is trade between Member States ([49]). From 1979, the share of the market held by foreign banks reached 8 % in the case of lending business (4 % for branches without legal personality, 4 % for subsidiaries constituted under French law) and 4,5 % in the case of deposit business (2 % and 2,5 % respectively). The share held by non-French European banks compared with all foreign banks was 50 % in the case of loans and 70 % for deposits. Crédit Mutuel has therefore been faced since the 1970s with competition from foreign networks on French soil. Moreover, the liquid bank savings market to which the *Livret bleu* belonged, and which also includes the Codevi, the LEP, the *Livret jeune*, ordinary savings accounts and the CEL ([50]), was already open to competition during the period considered.

(90) The Commission concludes, therefore, that the four necessary preconditions for the existence of aid are met.

7.1.2.5. Unlawfulness of the aid measure

(91) Lastly, the aid measure is unlawful because it was not notified to the Commission in accordance with Article 108(3) TFEU and was implemented after the entry into force in France of the Treaty establishing the European Economic Community.

(92) In answer to the French authorities' argument that the aid is existing aid since it was adopted before the expiry of the time limit for transposal of the second Banking Directive, namely 1 January 1993, the Commission would point out that that Directive sought to complete the internal market in the area of credit institutions from the point of view of freedom of establishment and freedom to provide services. It does not imply that the relevant market was closed to competition before the brokerage commission was adopted, but simply that there were still certain obstacles to freedom of establishment and freedom to provide services in the banking sector. The Decision of 10 May 2007 states that the *Livret bleu* belongs to a 'market' for liquid bank savings, which implies that the activity in question is open to competition and in no way supports the French authorities' argument that that activity was not opened to competition until 1993. On the contrary, the Decision refers to the existence of a 'mature' market ([51]).

([48]) Judgment in Case C-730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraphs 11 and 12.

([49]) Judgment in Case C-102/87 *France* v *Commission* [1988] ECR 4067, paragraph 19.

([50]) See recital 45 of the Decision of 10 May 2007.

7.2. **Compatibility of the aid with the internal market**

(93) Since the measure at issue contains elements of State aid, the Commission must analyse the compatibility of the said measure with the internal market.

(94) Article 106(2) TFEU provides that: 'Undertakings entrusted with the operation of services of general economic interest […] shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union'.

(95) According to the case law of the Court of Justice, the decision-making practice of the Commission and the 2005 Community framework, Article 106(2) TFEU signifies that State aid to an undertaking entrusted with the operation of a service of general economic interest may be declared compatible with the internal market if the aid measure fulfils the following conditions:

(a) the service provided has the features of a service of general economic interest;

(b) the undertaking is actually required to perform this service of general economic interest by the State by means of one or more official acts;

(c) the principles of necessity and proportionality are respected; and

(d) the development of trade must not be affected to such an extent as would be contrary to the Union's interests.

([51]) See recitals 58 and 90 of the Decision of 10 May 2007.

(96) Conditions (a) and (b) are fulfilled for the reasons set out in recital 81.

(97) As far as condition (d) is concerned, there is no evidence in the Commission's possession to suggest that intra-Community trade has been affected to such an extent that the aid does not satisfy this condition. In particular, the Decision of 10 May 2007 asked for an end to the exclusivity of the right of distribution of the *Livret bleu* since the special rights connected with the distribution of the *Livret bleu* constituted a restriction on freedom to provide services within the Community ([52]). Nevertheless, provided that it has not overcompensated the general interest service entrusted to Crédit Mutuel, the brokerage commission cannot be considered as affecting the development of trade to an extent contrary to the Union's interests.

(98) The Commission examines, therefore, below whether the principles of necessity and proportionality have in fact been respected, that is to say, whether the amount of the compensation which the brokerage commission constitutes has not exceeded what is necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations ([53]).

(99) In verifying the absence of any overcompensation (see subsection 7.2.5), the Commission follows — for the period from 27 September 1991 (see subsection 7.2.1) to 31 December 2005 — a global approach (see subsection 7.2.2). It takes account of all the advantages connected with the *Livret bleu*, without, however, including a possible pull effect whose scope could not be established (see subsection 7.2.3). A reasonable profit is taken into account (see subsection 7.2.4), including for deposits centralised with the CDC.

7.2.1. *Beginning of the period considered (27 September 1991)*

(100) In the extension Decision, the calculation of the net results of the *Livret bleu* for the purpose of assessing whether there was any overcompensation included the results for the whole of 1991 ([54]). In other words, the net revenue from non-earmarked uses and general-interest uses was factored in as of 1 January 1991.

([52]) See recital 223 of the Decision of 10 May 2007.
([53]) See point 14 of the 2005 Community framework.
([54]) See the tables in paragraphs 68, 69, 73, 75, 76 and 79 of the extension Decision.

(101) As stated in recitals 75 and 76, the only measure at issue in the present case is the brokerage commission, the principle of which was established on 27 September 1991, at the same time as Crédit Mutuel was tasked with centralising its deposits with the CDC with a view to financing social housing. Before that date, neither the brokerage commission nor the centralisation with the CDC existed. Consequently, the Commission must begin its assessment of the proportionality of the aid as from that date.

(102) The costs and revenues connected with the performance of the service of general economic interest cannot therefore predate 27 September 1991. In other words, it is only as from the creation of the aid measure at issue (the brokerage commission) that account can be taken of the costs and revenues connected with the performance of the general economic interest service financed by that aid. The Commission considers in conclusion that its extension Decision was inconsistent in limiting the aid measure to the brokerage commission created on 27 September 1991 while continuing to take into account the net revenue from *Livret bleu* accounts during the period from 1 January 1991 to 27 September 1991.

(103) In view of the fact that Crédit Mutuel is able to communicate the net results of general-interest uses and non-earmarked uses only on an annual basis, the Commission considers that, for the year 1991, account must be taken only of the net results corresponding to the period from 27 September 1991 to 31 December 1991, based on the proportion between the number of relevant days and the net results for the whole of 1991, i.e. 96/365. The net results for deposits centralised with the CDC for the year 1991 can be taken into account in their entirety since, as explained in recital 101, such centralisation was in fact introduced after 27 September 1991, with the result that, by definition, no part of these results relates to the period from 1 January 1991 to 27 September 1991.

7.2.2. *Global approach up to the end of 2005 and each year thereafter*

(104) In its extension Decision, the Commission advocated the adoption of an annual approach to assessing the existence of any overcompensation. This approach stems from the 2005 Community framework and represents a change compared with its previous

practice. When, prior to the adoption of the 2005 Community framework, the Commission had to assess the existence of any overcompensation, it followed an approach which may be described as 'global' whereby the amounts relating to the years of overcompensation could, without limit, be offset by the amounts for the years of undercompensation ([55]).

(105) Pursuant to point 26 of the 2005 Community framework, the Commission will apply the framework's provisions to non-notified aid if the aid was granted after publication of the framework in the *Official Journal of the European Union* and the provisions in force at the time the aid was granted, in all other cases. The aid at issue was granted annually ([56]) and was not notified. The 2005 Community framework was published in the *Official Journal of the European Union* on 29 November 2005. It is therefore necessary to apply the rules in force at the time the aid was granted with respect to the period before 2006 and the 2005 Community framework with respect to the period from 1 January 2006 to the measure's termination on 31 December 2008.

(106) The 2005 Community framework advocates an 'annual' approach inasmuch as the calculation of any overcompensation has to be done annually without it being possible to carry forward the amount of any annual overcompensation to the next year, save where that amount does not exceed 10 % of the amount of annual compensation ([57]).

(107) On the other hand, prior to the adoption of the 2005 Community framework, where the Commission checked whether the undertaking had not been overcompensated for the performance of the public-service task, it followed a 'global' approach (see recital 104) ([58]).

(108) In the global approach, the net results for each year, cumulated year on year, are discounted by applying the reference rate for France on 1 January of each year ([59]).

7.2.3. *Advantages taken into account*

(109) According to the first sentence of point 17 of the 2005 Community framework, 'The revenue to be taken into account must include at least the entire revenue earned from the service of general economic interest'. When checking for the absence of any overcompensation, it is necessary, therefore, to take account of the net result of general-interest uses and non-earmarked uses during the investigation period. The Commission considers that these results are revenue introduced by France as from 27 September 1991 in favour of Crédit Mutuel for its performing the general-interest service of financing social housing through the CDC. These uses are, in cost accounting, backed by a specific resource, the deposits gathered thanks to the distribution of the *Livret bleu*. In competitive market conditions (without the special right to distribute a tax-free savings product), Crédit Mutuel might not have been able to procure that resource at the same cost, with the result that the corresponding uses and resources must be taken into account in the overall structure of the *Livret bleu* system. Moreover, France has itself confirmed the existence of a link between these uses, the *Livret bleu* and the task of financing social housing by redirecting the amounts relating to these uses to the CDC as from 1991 ([60]). In other words, when on 27 September 1991 it entrusted to Crédit Mutuel the general economic interest service consisting in gathering deposits centralised with the CDC and intended for financing social housing, France confirmed the entrustment to Crédit Mutuel of the distribution of the *Livret bleu*. The profit resulting from the use of funds deposited on the latter must therefore be considered as from that date to be revenue granted to Crédit Mutuel for the provision of the service of general economic interest.

([55]) This mostly involved cases in which the undertakings entrusted with a public service task operated in the audiovisual sector (see, for example, the Commission Decision 2004/838/EC of 10 December 2003 on State aid implemented by France for France 2 and France 3 (OJ L 361, 8.12.2004, p. 21)).

([56]) See footnote 46.

([57]) See point 21 of the 2005 Community framework. In answer to Crédit Mutuel's argument (see footnote 26) in favour of application of the global approach under the second and third sentences of point 21 of the 2005 Community framework, according to which, where the service of general economic interest has costs that vary significantly from year to year, overcompensation in excess of 10 % in certain years may, exceptionally, prove necessary, the Commission would point out that, according to the fourth sentence of point 21, such 'exceptional' overcompensation '[…] necessary for the operation of the service of general economic interest' must be justified by the Member State 'in the notification to the Commission' (underlining added). However, the measure at issue was not notified to the Commission and the Commission considers that Crédit Mutuel has not been in a highly specific situation justifying the authorisation, by way of exception, for certain specific years, of overcompensation in excess of 10 %.

([58]) See, for example, the Commission Decision 2004/838/EC of 10 December 2003 on State aid implemented by France for France 2 and France 3 (OJ L 361, 8.12.2004, p. 21).

([59]) See the Commission notice on current State aid recovery interest rates and reference/discount rates for 25 Member States applicable as from 1 January 2007 (OJ C 317, 23.12.2006, p. 2). See also the following webpage: http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html

([60]) See recital 39.

(110) The complainants and other authorities or bodies (the Competition Council and reports by parliamentarians or research organisations ([61]) consider that the exclusive right to distribute the *Livret bleu* has had a 'pull effect' by enabling Crédit Mutuel to attract and retain customers to whom it has sold banking products other than the *Livret bleu*. In its extension Decision the Commission did not rule out the possibility that the *Livret bleu* may have generated indirect revenue via the pull effect ([62]), but it pointed out that such revenue had so far not been quantified ([63]).

(111) Following its investigation into this case, the Commission would observe that, while the existence of a pull effect cannot be ruled out, the data it has collected do not enable it in this case to quantify the potential pull effect in a sufficiently precise manner.

(112) The documents submitted by the complainants presume the existence of pull effects but do not formally prove their existence and succeed even less in precisely determining the financial impact of such effects.

(113) As for the studies by the Glais consultancy (see recitals 52 and 53), the Commission would observe that Crédit Mutuel is right to assert that these statistical analyses provide no certain proof of a quantifiable pull effect.

(114) Three subjective evaluations have been proposed in the complainants' comments. First of all, in view of the fact that other banks had offered to distribute the *Livret bleu* in return for a 1 % commission, the complainants proposed an approximate order of magnitude for the pull effect by calculating the difference between the level of commission charged by Crédit Mutuel and this rate of 1 %, i.e. 0,3 %, which corresponds to approximately FRF 300 million a year. However, there is no evidence to suggest that, during the period considered, Crédit Mutuel's competitors could have performed this task under the same conditions at this level of remuneration of 1 %. Moreover, this first argument does not demonstrate the pull effect but seems to amount to alleging that Crédit Mutuel was over-compensated, which, as will be shown, is not the case. There is no evidence to suggest that the pull effect corresponds to the difference between the brokerage commission and a hypothetical lower commission which Crédit Mutuel's competitors proposed to charge in return for their distributing the *Livret bleu*.

(115) According to the second method proposed by the complainants, the pull effect would be measured by reference to the growth in Crédit Mutuel's market share. Such an evaluation method cannot be adopted as it is based on the assumption that the gains in market share are due solely to the *Livret bleu*, whereas there is no objective basis for this assumption.

(116) The third evaluation of the exclusive distribution right is based on the tax revenue loss due to the tax exemption allowed under the *Livret bleu*. If Crédit Mutuel had wished to distribute a savings account without any tax exemption by offering, irrespective of the saver's tax position, the same net yield as the *Livret bleu*, it would in fact have incurred an opportunity cost equal to the amount of the notional tax (potentially) payable by the saver. According to the complainants, the cumulated tax advantage of the order of FRF 4,5 billion over the period 1991-97 must be considered as having accrued to Crédit Mutuel advantages worth the same amount. This reasoning cannot be accepted as Crédit Mutuel would probably not have distributed the *Livret bleu* under the same conditions if it had had to bear the full cost of the tax exemption, which, besides, benefits members directly.

(117) The advantages in question, if any, are difficult to prove and to quantify. The direct financial advantage deriving from the operation of 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* would be observable in the cost 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, which is not the case. For these reasons, the Commission's consultant was unable to evaluate the potential pull effect using the accounting method applied to assess all the direct financial advantages deriving from the *Livret bleu*.

([61]) See, for example, a Competition Council opinion (opinion No 96-A-12 of 17 September 1996, p. 8), an information report by Senator Alain Lambert (report No 52 of 30 October 1996, p. 72) and a study by Nathalie Daley of the industrial economics centre CERNA (*La banque de détail en France: de l'intermédiation aux services*, February 2001, p. 9).

([62]) See paragraphs 52 and 53 of the extension Decision.

([63]) See paragraph 67 of the extension Decision, 'Les éventuels résultats liés à la distribution exclusive du Livret bleu n'ont pu être quantifiés'.

(118) The more sophisticated attempts by the Commission's consultant at evaluating the pull effect were unsuccessful. Consequently, the Commission considers that it cannot take into account the advantage, if any, due to the pull effect in the calculation of whether or not there is any overcompensation.

7.2.4. *Calculation of a reasonable profit*

(119) When checking for the absence of overcompensation of an undertaking entrusted with a service of general economic interest, account must be taken of a reasonable profit ([64]). The 2005 Community framework states that ' "reasonable profit" should be taken to mean a rate of return on own capital that takes account of the risk, or absence of risk, incurred by the undertaking […] This rate must normally not exceed the average rate for the sector concerned in recent years' ([65]).

(120) The Commission considered in the extension Decision ([66]) that there should be applied to general-interest uses and non-earmarked uses a reasonable profit amounting to on average 6 % of the capital devoted to those uses. This rate, which varies from year to year and averages 6 %, corresponds to the rate of return originally advocated by Crédit Mutuel: Crédit Mutuel had taken as the cost of capital the amount of the dividends actually distributed during the year in question. In this Decision, as regards the taking into account of a reasonable profit when checking for the absence of any overcompensation, the Commission does not deviate, in the case of non-earmarked uses and general-interest uses, from the approach already followed in the extension Decision, described in Section 7.2.5.

(121) In its extension Decision ([67]), the Commission considered, however, that it did not have to apply this reasonable profit to deposits centralised with the CDC in so far as they have no cost of capital from the point of view of the prudential rules, such deposits being not so much invested by Crédit Mutuel as simply assigned to the CDC. From a prudential point of view, the credit risk connected with deposits centralised with the CDC is considered equal to the exposure vis-à-vis the State (the French Republic), i.e. a risk weighting equal to zero and hence requiring no capital.

(122) If it were to be assumed that no reasonable profit is to be derived from deposits centralised with the CDC, this would mean that the total reasonable profit (that relating to general-interest uses and non-earmarked uses and that relating to deposits centralised with the CDC) decreased from 1991 to 1999, disappearing altogether from 2000 following the centralisation with the CDC of the entire stock of deposits in 1999 ([68]).

(123) In their letter of 1 September 2006 presenting their comments in reply to the extension Decision, the French authorities confirmed that the funds centralised with the CDC consumed no regulatory capital. Nevertheless, according to the French authorities, 'in view of the lack of relevance of the application of the European solvency ratio from the time of full centralisation with the CDC in 1999, Crédit Mutuel [proposes to] include, in order to calculate the reasonable profit in the *Livret bleu*, a cost of capital obtained by reference to that of the other savings products and other resources'. The Commission does not consider such an approach to be satisfactory as it results in applying artificially to the resources centralised with the CDC a regulatory capital need dependent on the average capital need of Crédit Mutuel's other assets, which are completely independent of the *Livret bleu*.

(124) The absence of a regulatory capital need illustrates the absence of a credit loss risk, which is the case with the deposits centralised with the CDC. The activity of gathering deposits on behalf of the CDC likewise does not present a liquidity risk (apart from the intra-month risk) or a risk of maturity transformation, since the amount made over to the CDC is adjusted each month in the light of the trend in deposits and the interest paid by the CDC is immediately transferred to depositors. It is therefore certain that this general economic interest service presents a low level of risk to Crédit Mutuel. However, some other types of risk, such as the operational risk, the economic risk (the risk that the level of remuneration will not cover the costs incurred), the legal risk and the risk to reputation, do exist. Moreover, other banking activities such as the distribution of mutualised funds, asset management or the selling of financial products (such as shares and bonds) do not consume any regulatory capital but are nonetheless highly profitable. There is therefore no direct link

([64]) See paragraph 48 of the extension Decision and point 14 of the 2005 Community framework, which provides that: 'The amount of compensation may not exceed what is necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and reasonable profit for discharging those obligations' (underling added).

([65]) See point 18 of the 2005 Community framework.

([66]) See Section 2 of Annex 1 to the extension Decision, paragraphs 124 to 137.

([67]) See Section 2 of Annex 1 to the extension Decision, paragraph 132.

([68]) See recitals 39 and 40.

between the consumption of regulatory capital — calculated on the basis of prudential rules the specific aim of which is in no way to evaluate the profitability of an activity — and the profit expected from an activity.

(125) In the present case, while the Commission authorises Crédit mutuel to earn a reasonable profit in respect of that part of deposits which is centralised with the CDC, it acknowledges that determining the appropriate level of that profit is an exercise which involves a complex economic assessment. The *Livret bleu* is an atypical banking product with the mixed characteristics of a savings product and a current account, the gathered deposits of which are centralised with a public authority. There are therefore no directly comparable products as such which might give an indication of a reasonable profit for a similar activity.

(126) For want of a product sufficiently comparable to the *Livret bleu*, the Commission considers that it can in the present case use two indicators making it possible to evaluate whether, with respect to deposits centralised with the CDC, a given profit may be considered reasonable. The two indicators are:

(a) the profit margin of the French banking sector, that is, the profit before tax divided by turnover (in the present case, the banks' turnover is represented by their operating results). Using the French banking sector's figures for the period considered (from 27 September 1991 to the end of 2008), the profit margin is on average 23 % a year;

(b) the rate of return of the French banking sector, that is, the profit before tax divided by assets. The average annual rate of return throughout the period considered is 45 basis points (0,45 %).

(127) The following table ([69]) shows the profit margin and the rate of return of the French banking sector for the period 1993-2008 (pre-1993 data are unavailable):

([69]) The data in the table are the result of calculations based on Banking Commission data: http://www.banquedefrance.fr/fr/supervi/analyses_comparatives/analyses_comparatives.htm

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008 (**)
Profit before tax (*)	15,2	2,7	25,0	41,0	67,5	14,4	19,8	22,5	24,6	23,5	23,4	29,6	31,3	46,2	34,3	– 4,4
Operating profit (*)	362,4	335,4	345,6	356,1	375,3	60,8	64,6	70,5	74,9	77,0	80,6	83,5	89,5	104,1	98,0	79,1
Profit margin	4,2 %	0,8 %	7,2 %	11,5 %	18 %	23,7 %	30,6 %	31,9 %	32,8 %	30,6 %	29,0 %	35,5 %	35,0 %	44,4 %	35,1 %	– 5,6 %
Average profit margin	**22,8 %**															
Assets (*)	Unavailable	16 333	17 216	18 291	19 894	3 052	3 394	3 452	3 783	3 793	3 960	4 390	5 275	6 041	7 061	7 699
Rate of return	Unavailable	0,02 %	0,15 %	0,22 %	0,34 %	0,47 %	0,58 %	0,65 %	0,65 %	0,62 %	0,59 %	0,68 %	0,59 %	0,77 %	0,49 %	– 0,05 %
Average rate of return	**0,45 %**															

(*) The amounts are in billions of French francs before 1998 and billions of euro thereafter.
(**) The 2008 data are estimates.

(128) To calculate Crédit Mutuel's profit margin and rate of return in respect of the activity of gathering deposits centralised with the CDC, the Commission uses the following values:

(a) for the profit margin denominator, the revenue earned from the activity of gathering deposits centralised with the CDC, that is to say, the annual amount of the brokerage commission;

(b) for the rate of return denominator, the deposits transferred to the CDC;

(c) for the numerator, that is to say, the profit before tax, the Commission considers that, by taking into account as a reasonable profit a margin of 4,2 % on the activity of gathering deposits centralised with the CDC, that is to say, a pre-tax profit amounting to 4,2 % of the brokerage commission received from the CDC, Crédit Mutuel does not receive any overcompensation (see the table in recital 132).

(129) As regards the second indicator (the rate of return), the Commission would point out that, if a rate of return of 5 basis points is taken as a reasonable profit from the activity of gathering deposits centralised with the CDC, that is to say, if account is taken of a pre-tax profit equivalent to 0,05 % of the total amount of deposits transferred to the CDC, then Crédit Mutuel did not receive any overcompensation for administering the *Livret bleu* during the period considered.

(130) According to the 2005 Community framework, the reasonable profit must not exceed the average rate for the sector concerned during the relevant period. A profit margin of 4,2 % represents less than one fifth of the average profit margin of the banking sector (22,8 %). Since, as was stated in recital 124, the activity of gathering deposits centralised with the CDC is a low-risk, and hence low-return, activity, the Commission considers that a profit margin of 4,2 % is not manifestly excessive and may be deemed in this case to be a reasonable profit.

(131) Similarly, the Commission considers that a profit of 5 basis points for deposits centralised with the CDC is reasonable in the light of the average return of 45 basis points of the French banking sector for the relevant period and represents a low, conservative threshold for what may be considered a profit which is not manifestly unreasonable in this case. Moreover, this low profit level reflects appropriately the level of risk incurred by Crédit Mutuel on its activity of gathering deposits for the CDC, which, as indicated in recital 124, is low.

7.2.5. *Verification of the absence of overcompensation*

(132) On the basis of the above considerations the Commission has carried out a verification — set out in the table below — of the absence of overcompensation in accordance with the method outlined in subsections 7.2.1 to 7.2.4 ([70]):

(EUR million)

	COMPENSATION	OVER- OR UNDERCOMPENSATION	
Year	(Annual) brokerage commission	Global approach (*) (up to the end of 2005)	Annual approach (**) (from 2006)
1991 (from 27.9.1991 to 31.12.1991)	1,5	**43,8**	**Not applicable (the global approach was applied until 2005, see subsection 7.2.2)**
1992	9,1	**125,1**	
1993	16,8	**184,0**	
1994	36,6	**127,3**	
1995	59,5	**114,5**	
1996	74,7	**107,8**	
1997	82,3	**88,4**	
1998	118,9	**92,0**	
1999	188,9	**98,3**	
2000	188,2	**106,3**	
2001	181,9	**91,3**	
2002	187,8	**76,3**	
2003	197,7	**61,2**	
2004	204,4	**45,7**	
2005	196,7	**15,0**	
2006	[…]		**– 39,1**

([70]) The following reference rates are used for the years 1992 to 2008: 10,61; 11; 8,93; 7,94; 8,22; 7,01; 5,83; 4,77; 5,7; 6,33; 5,06; 4,8; 4,43; 4,08; 3,7; 4,62; 5,19.

(EUR million)

	COMPENSATION	OVER- OR UNDERCOMPENSATION	
Year	(Annual) brokerage commission	Global approach (*) (up to the end of 2005)	Annual approach (**) (from 2006)
2007	[…]		**– 24,3**
2008	[…]		**– 6,1**

(*) Net cumulative, discounted result, in EUR million, taking into account brokerage commission, net results (costs minus revenue), deposits centralised with the CDC, non-earmarked uses and general-interest uses, and introducing a reasonable profit of 5 basis points for deposits centralised with the CDC together with a reasonable profit amounting on average to 6 % of the own capital allocated to general-interest uses and to non-earmarked uses (see subsections 7.2.1 to 7.2.4).

(**) Net non-cumulative, non-discounted result, in EUR million, taking into account brokerage commission, net results (costs minus revenue), deposits centralised with the CDC, non-earmarked uses and general-interest uses, and introducing a reasonable profit of 5 basis points for deposits centralised with the CDC together with a reasonable profit amounting on average to 6 % of the own capital allocated to general-interest uses and to non-earmarked uses (see subsections 7.2.1 to 7.2.4).

(133) It can be seen that the overcompensation at the end of 2005 (EUR 15 million) is less than 10 % of the compensation for 2005 (EUR 196,7 million). By virtue of point 21 of the 2005 framework this amount may be carried forward to the next year. The final result is undercompensation of EUR – 6,1 million at the end of 2008 for the whole of the period considered.

(134) The Commission can therefore conclude that the brokerage commission has not overcompensated Crédit Mutuel for the service of general economic interest which was entrusted to it from 27 September 1991 until the end of 2008.

8. **CONCLUSION**

(135) The Commission finds that France has unlawfully implemented the measure at issue in infringement of Article 108(3) TFEU. However, the aid may be considered compatible with the internal market under Article 106(2) TFEU, inasmuch as the compensation paid by the State has not exceeded what is necessary to cover the costs occasioned by the discharge of public service obligations, having regard to the revenues relating thereto and a reasonable profit for discharging those obligations,

HAS ADOPTED THIS DECISION:

Article 1

The State aid implemented by France in favour of Crédit Mutuel on the basis of the Decree of 27 September 1991 defining the general-interest uses of Crédit Mutuel is compatible with the internal market.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 24 May 2011.

For the Commission
Joaquín ALMUNIA
Vice-President