

JUDGMENT OF THE COURT OF FIRST INSTANCE  
(Second Chamber, Extended Composition)

18 January 2005\*

In Case T-93/02,

**Confédération nationale du Crédit mutuel**, established in Paris (France),  
represented by A. Carnelutti and J.-P. Gunther, lawyers,

applicant,

supported by

**French Republic**, represented by G. de Bergues and F. Million, acting as Agents,  
with an address for service in Luxembourg,

intervener,

v

**Commission of the European Communities**, represented by G. Rozet, acting as  
Agent, with an address for service in Luxembourg,

defendant,

\* Language of the case: French.

ACTION for annulment of Commission Decision 2003/216/EC of 15 January 2002 on State aid granted by France to Crédit mutuel (OJ 2003 L 88, p. 39), in the form of excess compensation for collection and management costs of regulated savings under the '*Livret bleu*' system,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES  
(Second Chamber, Extended Composition),

composed of J. Pirrung, President, V. Tiili, A.W.H. Meij, M. Vilaras and N.J. Forwood, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 June 2005,

gives the following

## Judgment

### Background to the dispute

- 1 By this action, the Confédération nationale du Crédit mutuel asks the Court to annul Commission Decision 2003/216/EC of 15 January 2002 on State aid granted by France to Crédit mutuel (OJ 2003 L 88, p. 39, hereinafter 'the contested decision').

*Crédit mutuel*

- 2 Crédit mutuel is a non-centralised banking group consisting of a network of local Crédit mutuel branches with the status of cooperative companies. Each local Crédit mutuel branch must belong to a regional federation and each federation must belong to the Confédération nationale du Crédit mutuel, the central body of the network for the purposes of Article L511-30 of the French Monetary and Financial Code. That organisation, the applicant in this case, has the status of a non-profit-making association.
  
- 3 The number of local Crédit mutuel branches, each of which may have one or more counters, declined from 2 031 in 1991 to 1 820 in 2001. When the contested decision was adopted, those branches were owned by about 5.7 million members. Between 1999 and 2001, Crédit mutuel was the fifth biggest French bank in terms of savings and the third in terms of its branch network.

*Livret bleu*

- 4 The *Livret bleu*, created by Law No 75-1242 of 27 December 1975 implementing the corrective law on finance for 1975 (JORF of 28 December 1975, p. 13435), is a regulated savings product, aimed at the general public, for which Crédit mutuel was granted exclusive distribution rights by the authorities.
  
- 5 Crédit mutuel's interest rates on *Livret bleu* deposits are regulated by the Government. The net-of-tax interest rate applied to savers is identical to that of

the *Livret A* (distributed by the Caisses d'épargne and La Poste), its main rival savings product. That rate was 3% per year at the time of the adoption of the contested decision. The amount of savings per *Livret* cannot exceed a ceiling which is identical to that set for the *Livret A*, which, from 1991, was FRF 100 000 (EUR 15 245) for private customers and which has been EUR 15 300 since 1 January 2002.

- 6 The payment of interest on *Livret bleu* savings is subject to tax treatment which derogates from the taxation rules normally applied to savings. While the general tax legislation enables natural persons to opt, as regards particularly interest on savings if the person liable for such interest is established in France, for deduction of tax at source instead of paying income tax, such an option does not exist for the payment of interest on the *Livret bleu* which is subject, in all cases, to deduction of tax at source. However, only a third of that interest is subject to such deduction.
  
- 7 The funds collected via the *Livret bleu*, the amount of which fluctuated during the 1990s from FRF 80 to 100 thousand million, have been allocated in different ways from the outset. Originally, Crédit mutuel was obliged to allocate 50% of the funds (raised to 65% in 1983) to general interest assets (hereinafter 'GIA'), particularly to finance local authorities and to subscribe for securities issued by the State and its public undertakings, any balance being at the bank's disposal.
  
- 8 With effect from a Decree of 27 September 1991 (JORF of 26 November 1991, p. 15383), an increasing part of the total was allocated to public housing, particularly by centralising the funds with the Caisse des dépôts et consignations (hereinafter 'the CDC'), which assigns the funds allocated to it to the financing of public housing, by granting loans to bodies managing low rent accommodation, in the same way as the funds from the *Livret A*, the Caisses d'épargne and La Poste. Since the Decree of

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

- 9 Since 1991, the CDC pays Crédit mutuel, solely in respect of centralised funds, a fee corresponding to the gross interest rate set by the authorities, passed on to savers, as well as a brokerage commission equal to 1.3% of the total (hereinafter ‘the brokerage commission’).
- 10 During the period examined by the contested decision, three uses of the funds from the *Livret bleu* can be distinguished:
- the funds centralised with the CDC from 1991 (intended to finance public housing and subject to payment of the brokerage commission);
  - the GIA other than the abovementioned funds (consisting above all in long-term loans to public authorities, hereinafter ‘the other GIA’);
  - assets chosen by Crédit mutuel.

The last two categories of assets were, however, intended to be phased out gradually during that period.

- 11 The *Livret bleu* played an important role for Crédit mutuel. Its relative importance in quantitative terms declined, however, in the course of the years prior to 2002. The share accounted for by the *Livret bleu* in Crédit mutuel's deposits, which was 70 % in 1975 and still almost 60 % in 1985, has fallen to under 25 % since 1997.

*Administrative procedure*

- 12 On 25 January 1991, a complaint was made to the Commission concerning the aid granted by the French Republic to Crédit mutuel in respect of the *Livret bleu*. By letter of 6 February 1998, the Commission informed the French authorities that it had decided to initiate the investigation procedure laid down in Article 88(2) EC (OJ 1991 C 146, p. 6).
- 13 Crédit mutuel sent a letter to the Commission on 18 June 1998 setting out arguments to refute the description of the measures covered by the proceedings as State aid, together with analytical accounts for the *Livret bleu*. Numerous interested parties, including the complainants, also submitted their comments to the Commission.
- 14 In the light of the file submitted by Crédit mutuel, the Commission decided to conduct an audit of the *Livretbleu's* analytical accounts. For that purpose, it recruited a consultant whose final report was submitted to the French authorities and to Crédit mutuel for their consideration on 10 January 2000. In May 2000, the applicant instructed another consultant to review the methodology used in Crédit mutuel's analytical accounts and to draw up a profit and loss account for the *Livret bleu*. That task was completed in September 2000 with the submission of a detailed report. In April 2001, the Commission extended its consultant's contract to allow him to identify the discrepancies between the two accounting reports and to

determine which modifications of figures or methodology could legitimately be accepted and integrated into his previous evaluation. The consultant's final report was sent to the French authorities on 23 July 2001. Crédit mutuel and its consultant announced that they disagreed with the final conclusions of the Commission's consultant.

*Contested decision*

- 15 On 15 January 2002, the Commission adopted the contested decision.
- 16 After summarising the facts and observations received in the course of the administrative procedure, the Commission devotes Section V of the contested decision to the assessment of the compensation measures granted to Crédit mutuel. That section contains five subsections.
- 17 Subsection V.1 of the contested decision is devoted to '[t]he distortion of competition and the effect on trade between Member States' and ends, in recital 92, with the following conclusion:

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

- 18 After examining, in Subsection V.2 of the contested decision, the 'Definition of State resources', the Commission explains, in recital 100, which, by itself, forms Subsection V.3, entitled 'The competitive advantage', that:

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

- 19 In recital 101 in the contested decision, in Subsection V.4, devoted to '[a]ssessment of the amount of State aid', the Commission defines its approach as regards the determination of the amount of the aid in the following terms:

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

- 20 Following the various accountants' reports, the Commission reached the following findings concerning the results of the *Livret bleu* profit and loss account:

— the management of the funds transferred to the CDC resulted in losses throughout the 1990s, but produced a profit in 1998;



- the management of the other GIA produced profits estimated, during the 1990s, at an annual amount between FRF 59 million and FRF 957 million;
- the management of the assets chosen by *Crédit mutuel* resulted in losses.

21 Those results were summarised, in recital 179 of the contested decision, in the following table (in FRF million):

Year	1991	1992	1993	1994	1995	1996	1997	1998	Total
Funds transferred to CDC	... <sup>1</sup>	...	...	...	...	...	...	...	- 399
General interest assets	...	...	...	...	...	...	...	...	2 592
Freely chosen assets	...	...	...	...	...	...	...	...	- 1 119
Total pre-tax margin	1 096	505	301	- 471	- 135	- 87	- 156	20	1 074

22 As regards the establishment of the overall balance of the income and expenditure connected to the performance of the general economic interest service linked to the *Livret bleu* system, the Commission states:

‘[109] The income from the general interest assets must be taken into account in any case since it forms an integral part of the obligations imposed by the

1 — Confidential data omitted.

State in the context of the *Livret bleu* system. It should also be noted that excluding some assets that are profitable would be absurd: the State would have to compensate for losses made by some assets, even though sufficient profit was being made from other assets within the *Livret bleu* system, which is not taken into account.

[110] The situation is less clear in relation to the assets freely [chosen] by Crédit mutuel, which recorded a loss of approximately FRF [1 000 million] over the period under review. These losses affect the State budget since, if they did not exist, it would be balanced, thus requiring the collection commission to be lowered accordingly. The Commission considered, however, that the net cost of the assets freely chosen by Crédit mutuel should be included.'

23 In respect of the final assessment, the Commission states in recital 180 in the contested decision:

'Insofar as the sum of the financial benefits entered in the accounts that were generated by the *Livret bleu* (collection commission, profit from management of general interest assets, profit from management of funds on its own account, in other words using them for assets chosen by the bank) exceeds the costs incurred by Crédit mutuel in managing the collection process and funds, there is a transfer of public resources that constitutes State aid.'

24 The Commission therefore evaluates the amount of aid accumulated over the period 1991 to 1998 at the total of the results appearing in the table reproduced in paragraph 21 above, namely FRF 1 074 million.

25 After examining, in Subsection V.5, the compatibility with the Treaty of the aid granted to *Crédit mutuel*, the Commission concludes in Section VI of the contested decision:

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

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

26 Article 1 of the contested decision provides:

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

2. The aid is not eligible for any derogation under Article 87(2) and (3) [EC]. It may be partly eligible for the derogation provided for in Article 86(2) [EC], insofar as it is essential for the performance of the general economic interest task entrusted to

Crédit mutuel by the State. The aid exceeding the cost of collecting and managing the *Livret bleu* cannot be regarded as compatible with the general interest.'

27 Under Article 2(1) of the contested decision, 'France shall recover from Crédit mutuel the aid incompatible with the common market granted to it since 1 January 1991'. That paragraph also contains instructions for determining the amount of aid which France is required to recover.

28 Paragraphs (2) to (5) of Article 2 provide as follows:

'2. France shall modify the rate of commission for the *Livret bleu* savings paid by the [CDC] to Crédit mutuel with a view to eliminating in future all aid that exceeds the management and collection costs that may be taken into account.

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

4. The French authorities shall send to the Commission the bank's annual report and a [triennial] report on the *Livret bleu* accounts.

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

## **Procedure and forms of order sought by the parties**

- 29 By application lodged at the Court Registry on 28 March 2002, the applicant brought this action.
- 30 By order of 11 September 2002, the French Republic was granted leave to intervene in support of the forms of order sought by the applicant.
- 31 Upon hearing the report of the Judge-Rapporteur, the Court (Second Chamber, Extended Composition) decided to open the oral procedure and, by way of measures of organisation of the procedure as provided for in Article 64 of the Rules of Procedure, requested the parties to produce certain documents and to reply to written questions. The parties gave their replies and produced the documents within the time-limit laid down.
- 32 The parties presented oral argument and their replies to oral questions from the Court at the public hearing on 8 June 2004. They were requested to reply, in writing, to two additional questions, which they did within the time-limit laid down. The oral procedure was closed on 14 July 2004.
- 33 The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, annul Article 2 thereof in so far as it orders recovery of the aid identified;

— order the Commission to pay the costs.

34 The French Republic, as intervener, claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

35 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

## **Law**

### *Preliminary observations*

36 In support of its claim for annulment, the applicant raises seven pleas in law. By the first plea in law, alleging infringement of Article 87(1) EC, it claims that the measures covered by the contested decision cannot constitute aid. The second to fourth pleas in law, raised in the alternative, seek to show that if it were aid it could

not constitute existing aid. By the fifth plea in law, also in the alternative, the applicant claims that the Commission infringed the provisions of Article 14 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 (OJ 1999 L 83, p. 1), in that it ordered the repayment of the alleged aid. By its sixth plea in law, the applicant accuses the Commission of having infringed the applicant's procedural rights and the principle of sound administration. The seventh plea in law alleges breach of Article 253 EC.

- 37 It emerges from all the pleas in law of the parties that the main question raised by these proceedings is that of the identification, by the contested decision, of the aid, that is to say of the State measure which conferred an advantage on *Crédit mutuel*. It is therefore necessary to determine whether the contested decision states, with sufficient clarity, the measures and advantages which constitute, in this case, aid which is incompatible with the Treaty.

*The contested decision's reasoning with regard to the identification of the aid*

Arguments of the parties

- 38 The applicant's complaints concerning the identification of the aid appear, first, in the third to fifth parts of the seventh plea in law, alleging infringement of the duty to state reasons. Secondly, the applicant puts forward, particularly as part of its first and fourth pleas in law, arguments intended to show that the contested decision's reasoning is insufficient and contradictory in so far as it relates to various aspects of the definition of the aid. Likewise, the Commission deploys arguments concerning the identification of the aid as part of its arguments on the first, fourth and seventh pleas in law.

39 The parties' arguments concern, in essence, three aspects of the definition of the aid in issue, namely:

— the identification of the measure capable of having conferred an advantage on Crédit mutuel;

— the identification of the State resources by means of which the advantage in question was conferred;

— the description, in relation to the *Livret bleu* scheme, as new aid since 1975.

— The identification of the measure which conferred an advantage

40 In the context of the first part of its first plea in law, the applicant submits that the contested decision is ambiguous and contradictory in relation to the identification of the measures which, according to the Commission, conferred an advantage on Crédit mutuel.

41 The applicant argues first that, in the contested decision, the Commission did not identify any advantage capable of constituting State aid and also of being readily quantified.



- 42 It points out that the only element identified by the Commission as capable of 'leading to aid' (but without, in itself, constituting aid) is the brokerage commission. The applicant, however, takes the view that the Commission implicitly held that the advantage arose just as much from the other *Livret bleu* products, because it adopted an 'overall method', by which all the income obtained by Crédit mutuel from the *Livret bleu* and all the costs connected to that product's distribution were taken into account in order to evaluate whether the remuneration which Crédit mutuel obtains for its task of distributing the *Livret bleu* is appropriate. It submits that the contested decision is vitiated by a lack of clarity in that regard.
- 43 The applicant criticises the Commission's reasoning, first, in relation to the decision as to the partial tax exoneration and exclusive distribution of the *Livret bleu*; secondly, as regards the consideration of the *Livretbleu's* assets, and, thirdly, as regards the evaluation of the brokerage commission.
- 44 As regards, first, the tax exoneration and exclusivity, the applicant points out that the Commission, although it abandoned any allegation relating to possible 'loss-leader effect' of the *Livret bleu*, persists in alleging, by allusion, that because of its tax exoneration and the fact that it is distributed only by a single credit institution, the *Livret bleu* confers particular advantages on Crédit mutuel. In its reply, the applicant observes that the contested decision contained no evidence that the exclusivity conferred any advantage. It submits that that is a clear failure to state reasons to be raised, if need be, of the Court's own motion.
- 45 Secondly, in relation to the *Livret bleu's* assets, the applicant submits that the contested decision is vitiated by a manifest failure to state reasons on the point whether the income from the other GIA can constitute an advantage. In its submission, the mere fact that those operations constituted one of the uses of the sums deposited under the *Livret bleu* system does not, in any event, lead to the conclusion that Crédit mutuel obtained conditions more favourable than those resulting from normal market operations.

46 Thirdly, the applicant takes the view that it is also impossible to regard the brokerage commission as an economic advantage conferred in non-market conditions. It submits that the Commission mistakes the nature of that brokerage commission. The applicant argues, further, that it is not clear, from the wording of the contested decision, whether the aid identified by the Commission consists in the brokerage commission in its entirety or only in a fraction thereof and, in that case, what fraction is capable of being so described.

47 In its reply, the applicant adds that the application of the 'overall method' in the contested decision contains an obvious contradiction and leads to an incoherent result. It states that, at several places in the contested decision, brokerage commission is alone identified as possible aid, although the other assets (other GIA and assets chosen by Crédit mutuel) are not taken into account in calculating the system's net cost. It does not deny that the brokerage commission could constitute aid were it greater than the cost of managing the *Livret bleu* and if all the other conditions for the application of Article 87 EC were satisfied, since the activity remunerated would be profitable and it would be inappropriate to pay for it. According to the applicant, the Commission however found that the amount of the aid corresponds not to the brokerage commission, but to the (positive) balance of Crédit mutuel's business connected to the *Livret bleu*. Thus, the Commission included in the amount of the aid all the profits made by Crédit mutuel and particularly those arising from other GIA. The applicant states that that contradiction makes it impossible to understand what the aid identified by the Commission consists of and justifies, by itself, the annulment of the contested decision.

48 Finally, the applicant describes as aberrant the results of the Commission's action from the point of view of the amounts which must be repaid to the State by Crédit mutuel. It points out that, if one examines the *Livret bleu's* profit and loss account, between 1991 and 1998, it is clear from the contested decision that only the first three years produced an operating profit, which amounted to FRF 1 096 million in 1991, to FRF 505 million in 1992 and to FRF 301 million in 1993. In its submission, those profits are entirely due to products other than the brokerage commission which, during the same years, brought in receipts of FRF 8, 62 and 113 million respectively. By contrast, during the years 1994 to 1997, an operating loss was recorded even though the share of the brokerage commission in the *Livret bleu's* income continued to increase. The applicant points out that the brokerage

commission could not have contributed to the first three years' profits, nor did it prevent a loss in the course of the four following years. According to the applicant, while the positive results of the first three years could, in those circumstances, preclude payment of brokerage commission during those same years, there is, conversely, no justification for totalling the figures over a long period to arrive at repayments substantially exceeding the amounts arising from the brokerage and management commission for the years which produced a net profit.

- 49 The Commission takes the view that the wording of the contested decision is not ambiguous. In support of that argument, it refers to recital 203 in the contested decision (see paragraph 25 above) and to Article 1(1) of its operative part (see paragraph 26 above).
- 50 In reply to the questions put by the Court, the Commission states that the payment of brokerage commission is the only measure which, according to the contested decision, conferred State aid on *Crédit mutuel*. In its submission, that is clear from recitals 14, 28, 30, 66, 98, 167 and 168 and particularly from Article 2(2) of the operative part of the contested decision.
- 51 On the other hand, the Commission states that the contested decision treated neither the tax exoneration nor the exclusive right to distribute the *Livret bleu* as advantages. In its submission, it is clear from the contested decision that the tax reduction, which involves a use of State resources, directly benefits individual consumers and not the bank.
- 52 In relation to the *Livret bleu's* assets, the Commission states that it is wrong to maintain that the contested decision found that the normal income ('profits') from managing the *Livret bleu* constituted State aid incompatible with the common market. It takes the view that that complaint is the result of confusion between, on

the one hand, the concept of competitive advantage resulting from excess compensation by State resources of the net costs of the general economic interest task and, on the other hand, the concept of financial advantages taken into account (just as are the expenses and costs incurred) to establish the net costs of performing that task. The Commission takes the view that recital 100 in the contested decision (reproduced in paragraph 18 above) explains, without ambiguity, the question of competitive advantage. At the hearing, the Commission explained, in reply to a question from the Court, that certain passages in the contested decision which mention the concept of advantages in the context of the cost of the *Livret bleu*'s resources appear in the section devoted to establishing the balance from the business and therefore cover exclusively the second abovementioned concept.

53 As regards the arguments put forward in the reply, the Commission contends that the applicant is raising a completely different claim to that raised initially in the application. It submits that the applicant misconstrues the definition of the aid in Article 1 of the contested decision and takes no account of the fact that the analysis of the accounts enabled a balance to be established not only of the expenditure linked to the performance of the task of serving the general economic interest entrusted to *Crédit mutuel*, but also a balance of all the resources (income from commercial operation and State resources) obtained from the performance of that task. The Commission notes that the balance of that account represents 'the fraction of the State resources granted to *Crédit mutuel* which exceeds the net costs of managing and collecting the *Livret bleu* [taking account] of a normal profitability margin'.

54 Finally, the Commission maintains that the sum of FRF 1 074 million mentioned in recital 178 and Article 2(1) of the contested decision constitutes, in effect, for the period 1991 to 1998, the amount of public resources received during that period in excess of the costs of collecting and managing the *Livret bleu*.

## — The identification of the State resources

- 55 The applicant takes the view that the Commission did not state sufficient reasons for classifying certain elements in the system of the *Livret bleu* as State resources.
- 56 First, as regards the partial tax exoneration, no reasons are given as regards the fact that the *Livret bleu* system leads to the taxation of persons not otherwise subject to tax. The applicant points out that the contested decision found that consumers alone benefit from that exoneration.
- 57 Secondly, the reasoning in the contested decision does not make clear whether the income from the other GIA is classified as State resources. The contested decision confines itself to holding that it is part of the *Livret bleu* system, without more details. The applicant takes the view that, if that observation means that such income is State resources, it is ambiguous and, for that reason, inadequate. In the reply, the applicant maintains that it is paradoxical that the Commission denies that the income from the other GIA could have constituted State resources whereas, in the contested decision, that income was included in the total of the sums which must be repaid by *Crédit mutuel* to the State. It submits that it is inconceivable that sums have been made the subject of a demand for repayment without having been treated as State aid and, therefore, without having been assimilated to State resources.
- 58 Thirdly, the applicant and the intervener take the view that the Commission has not stated sufficient reasons for its finding that the brokerage commission is a State resource.
- 59 The Commission points out that the provisions of Article 253 EC require it to state reasons only for positions adopted in a legal measure. It takes the view that the conclusion of the contested decision in recital 203 states, without the least

ambiguity, that, since the State's financial intervention creates excess compensation for the net costs caused by the task of serving the general economic interest imposed on Crédit mutuel, that excess compensation constitutes State aid incompatible with the common market.

60 It states that the tax exoneration was not treated, by the contested decision, as State resources or aid for the benefit of Crédit mutuel.

61 The Commission also disputes the argument that the contested decision treats the income from the other GIA as State resources. It observes that the applicant's and the intervener's argument on that subject result from confusion between, on the one hand, the competitive advantage arising from excess compensation by the State for the costs of the general economic interest task entrusted to Crédit mutuel and, on the other hand, the financial advantages taken into account to establish the net costs of that task.

62 In the rejoinder, the Commission points out that the contested decision condemns only the brokerage commission, paid since 1991, as a State resource. At the hearing, the Commission added, in reply to a question from the Court, that that is obvious from recital 14 and Article 2(2) of the contested decision. It submits that the reasoning in the contested decision is sufficient as regards the treatment of that commission as a State resource.

— The treatment of the *Livret bleu* system as new aid when it was established in 1975

63 The applicant claims that the contested decision states, in recital 92, that the *Livret bleu* system must be regarded as new aid from 1975, without giving any reasons in that regard. The arguments in that context, relating to the evaluation of its effect on

trade and competition, do not state the reasons why that system partook of the nature of aid in 1975. That treatment is, furthermore, contradicted by the statements in the decision that it is impossible to go back earlier than 1991 to determine whether there was aid. At the hearing, the applicant submitted that there is a flagrant contradiction between the statement that the aid dates from 1975 and that according to which the financing of the *Livret bleu* is an aid scheme or new aid since 1991. In the applicant's submission, the Commission confused two alleged aids, that of 1975 and that of 1991, and that confusion is also found in the method used to calculate the alleged aid. The applicant takes the view that that confusion makes the contested decision difficult to understand.

64 In that context, the applicant argues that the Commission could not conclude that the *Livret bleu* system should be treated as new aid without proving, first, that it was aid. The contested decision contains no evidence, however, that it was aid when the *Livret bleu* was created.

65 The Commission takes the view that the contested decision states sufficient reasons in relation to the *Livret bleu's* treatment as aid since 1975. It observes that the analysis criticised is developed in Subsection V.I of the contested decision, entitled 'The distortion of competition and the effect on trade between Member States'. In reply to a question from the Court, it stated, at the hearing, that it undertook the analysis in that section of the contested decision before expounding the other characteristic elements of the concept of State aid, and particularly before taking position on the question of State resources. The analysis of the *Livret bleu's* effects on trade and competition from 1975 is explained, according to the Commission, by the fact that it was bound to rule on the complainants' arguments relying, in particular, on an element of aid resulting from the *Livret bleu's* 'loss-leader effect', such effect, assuming that it contains an element of aid, having existed since the introduction of the *Livret bleu* in 1975. Furthermore, it cites Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 *Alzetta and Others v Commission* [2000] ECR II-2319, paragraphs 142 to 148, according to which it is required to examine whether, when the aid was established, the market concerned was open to competition. It observes that recital

92 of the contested decision, which contains the conclusion of that section, speaks of 'potential aid', which shows that the measure was not yet classified definitively at that stage. It submits that the adjective 'potential' subsequently disappeared from the wording of the contested decision in an effort to make it succinct and for reasons of material contingency.

- 66 The Commission maintains that the contested decision states that the relevant fact in this file results from the use made by Crédit mutuel of the funds collected by means of the *Livret bleu* which were available to it. In its submission, it is in that respect that there is distortion of competition.

### Findings of the Court

- 67 As a preliminary point, it must be borne in mind that the obligation to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (Case 367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, paragraph 67, and Case C-17/99 *France v Commission* [2001] ECR I-2481, paragraph 35).
- 68 The statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The requirements of a statement of reasons must be appraised by reference to the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article



253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 809, paragraph 19, Case C-350/88 *Delacre and Others v Commission* [1990] ECR I-395, paragraphs 15 and 16, Case C-56/93 *Belgium v Commission* [1996] ECR I-723, paragraph 86, *Commission v Sytraval and Brink's France*, cited in paragraph 67 above, paragraph 63, and *France v Commission*, cited in paragraph 67 above, paragraphs 35 and 36).

- 69 As to the point whether the contested decision is sufficiently reasoned with regard to the identification of the aid held to be incompatible with the Treaty, it is therefore necessary to determine whether that decision enables the persons concerned to ascertain the State measure or measures held by the Commission to constitute aid and the Court to exercise its power of review over the assessment of those measures. On the other hand, it is not relevant to ask whether, for the purposes of examining the statement of reasons, the treatment of those measures as aid is justified.

— Operative part and ‘Conclusion’ of the contested decision

- 70 It must be observed, first of all, that Article 1(1) of the contested decision, according to which ‘the measures taken by [the French Republic] for *Crédit mutuel* involving the collection and management of regulated savings under the *Livret bleu* system comprise State aid that is incompatible with the common market’, does not explicitly state which State measures relative to the *Livret bleu* system are found, by that decision, to have granted aid to *Crédit mutuel*.
- 71 The Commission’s case that Article 2(2) of the operative part of the contested decision states clearly that the brokerage commission was alone found to be State aid cannot be accepted.

- 72 Admittedly, that provision, which requires the French Republic to modify the rate of commission for the *Livret bleu* savings paid by the CDC with a view to eliminating in future all aid that exceeds the management and collection costs refers only to the brokerage commission. It does not, however, identify the aid, but the measures which the French Republic is required to take in future in order to avoid paying aid in the form of the brokerage commission. It is common ground that the centralisation of the *Livret bleu* savings with the CDC was completed in 1999 and that, from that time, the brokerage commission is the only income drawn by Crédit mutuel from the management of the *Livret bleu*. Therefore, that paragraph of the operative part enables no conclusion to be drawn as regards the definition of the aid held in Article 1(1) of the contested decision to be incompatible with the common market for the years prior to the completed centralisation.
- 73 It follows that the designation of the aid in the operative part of the contested decision is not sufficient to enable the persons concerned and the Court to ascertain the measure or measures found, in this case, to constitute aid.
- 74 It is settled law that the operative part of a measure is indissociably linked to the statement of reasons and, when it has to be interpreted, account must be taken of the reasons that led to its adoption (Case C-355/95 P *TWD v Commission* [1997] ECR I-2549, paragraph 21; Joined Cases T-213/95 and T-18/96 *SCK and FNK v Commission* [1997] ECR II-1739, paragraph 104; Case T-136/94 *Eurofer v Commission* [1999] ECR II-263, paragraph 171, and *Alzetta and Others v Commission*, cited in paragraph 65 above, paragraph 163).
- 75 In that regard, in Section VI of the contested decision, entitled 'Conclusion', the Commission finds, in recital 202: '[t]he granting to Crédit mutuel of the right of distribution of the *Livret bleu* contains State aid within the meaning of Article 87(1) [EC]'. Recital 203 (reproduced in paragraph 25 above), upon which the Commission relies, refers to 'the compensation granted' and to 'the measures in question' before finding that 'the fraction of State resources granted to Crédit mutuel which exceeds the ... costs of managing and collecting the *Livret bleu*, "mindful of a normal profitability margin", ... constitutes State aid'.

- 76 Since recital 202 of the reasons gives no details in relation to the operative part, and since recital 203 does not expressly identify the offending measures, it is necessary to examine whether the analysis, by the contested decision, of the conditions which must be satisfied for State intervention to be treated as aid enables the measures found to have conferred aid on *Crédit mutuel* to be identified exactly.

— Analysis as regards the meaning of State aid

- 77 Under Article 87(1) EC four conditions must be satisfied in that respect. First, there must be an intervention by the State or through State resources. Second, the intervention must be liable to affect trade between Member States. Third, it must confer an advantage on the recipient. Fourth, it must distort or threaten to distort competition (Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 75).
- 78 The Commission examined those conditions in Subsections V.1 to V.4 (recitals 76 to 181) of the contested decision. It did not follow, however, in its analysis, the order in which those conditions are set out above. In fact, it dealt first of all, in Subsection V.1, with '[t]he distortion of competition and the effect on trade between Member States', before considering, in Subsection V.2, the 'Definition of State resources'. It continued in Subsection V.3, entitled 'The Competitive advantage', and finally, it devoted Subsection V.4 to '[t]he assessment of the amount of the State aid'. As will appear below, from the examination of the content of those various subsections, that progression gives rise to certain problems of comprehension which the contested decision poses. Therefore, it is appropriate to examine, following the order chosen by the Commission, whether the explanations contained in those four subsections enable the measures giving rise to the offending aid to be identified.

## — Analysis of the distortion of competition and the effect on trade

- 79 The Commission starts by examining, in recitals 76 to 92 in the contested decision, the second and fourth of the conditions mentioned in paragraph 77 above. Its analysis is divided into three stages, the first of which constitutes a detailed study of '[t]he effect [of the aid] on trade since 1975'; the second, a presentation of '[t]he completion of liberalisation of the banking sector in the European Union since the end of the 1970s and the strengthening of competition', and the third, a reminder of '[t]he position of Crédit mutuel on the French banking market'.
- 80 As regards, first, the analysis of the effects on trade since 1975 (recitals 76 to 84 of the contested decision), it must be said that that part of the contested decision creates the impression that the Commission decided that the measures established in 1975 included aid to Crédit mutuel, without specifying, however, which of those measures were taken into account in this respect. The fact that the Commission made clear in the course of the proceedings before the Court that the aid consists of the brokerage commission established in 1991 is likely only to increase the confusion in that regard.
- 81 The explanation relating to that approach put forward by the Commission at the hearing, in reply to the Court's questions, cannot remove the impression that the Commission may have decided that the aid at issue results, at least in part, from measures adopted in 1975.
- 82 First of all, the statement that the examination of the effects on trade preceded the examination of State resources reveals a problem as regards the method followed by the Commission in this case. Admittedly, the criterion of a measure's ability to affect trade between Member States is the dividing line between the scope of the Commission's scrutiny of aid and the area reserved to the independent action of the Member States, and the Commission has no power to intervene in respect of a State measure unless that criterion is satisfied. It is therefore desirable, particularly in the

context of an investigation of a complex system made up of various State measures such as the *Livret bleu*, that the Commission should establish provisionally, when it opens the procedure and prior to initiating the analysis of the individual measures, whether that system as a whole is capable of affecting trade. However, in the Commission's final decision, that provisional assessment must be replaced by a definitive assessment of the potential effects on trade between Member States of the measures classified definitively as aid. That is even more the case when the final decision classifies as aid only some of the measures covered by the investigation, which, according to the Commission, is precisely the position in this case. The Commission's argument is therefore incapable of removing the ambiguity created, because the examination of the *Livret bleu's* effects on trade in 1975 is set out in the contested decision in relation to the classification as aid of the measures adopted in 1975.

- 83 Next, the obligation to reply to the complainants cannot force the Commission to take the approach it followed. While the complaints made to the Commission covered the measures adopted in 1975, and it was therefore bound to investigate them, nothing required it to find that those measures were capable of affecting trade, if it considered that they could not be classified as aid for other reasons.
- 84 Finally, as regards the consequences to be drawn from *Alzetta and Others v Commission* (paragraph 65 above), the Commission correctly observes that it is obliged, in order to determine whether aid granted in the context of an aid scheme is to be treated as existing or new, to determine whether, when that scheme was established, the market concerned was open to competition or not. That explanation confirms the impression that, according to the contested decision, the aid scheme investigated was established in 1975.
- 85 Secondly, the consideration of the consequences of the liberalisation of the banking sector in recitals 85 to 89 in the contested decision leads to the finding that 'the effect on trade of aid granted to a banking establishment became extremely serious'

from 1990. Although the brokerage commission is not mentioned in recitals 85 to 89, they can be understood as intended to demonstrate that that measure could have a considerable effect on trade. That analysis sheds no light on the point whether, apart from the brokerage commission, other measures were taken into consideration as giving rise to the aid at issue.

86 Thirdly, the explanations in recitals 90 and 91 in the contested decision, concerning Crédit mutuel's position on the French banking market, are intended to refute the argument that the limited local competence of Crédit mutuel's local branches precludes the aid having any impact on trade, and also contain some succinct findings as regards the distortion of competition, the Commission stating particularly:

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

87 Recitals 90 and 91 in the contested decision do not therefore rule, definitively, on the existence of distortion of competition in this case, but confine themselves to providing some details as regards the assessment criteria which the Commission intends to use. That passage does not enable it to be determined whether, apart from the brokerage commission, other measures could have contributed, according to the contested decision, to excess compensation for the costs of collection and management, to an increase in its own funds and, thereby, to distortion of competition.

- 88 Finally, the conclusion of those explanations, in recital 92 in the contested decision (reproduced in paragraph 17 above), uses some particularly vague terms in relation to the identification of the aid, referring to ‘potential aid granted to Crédit mutuel as operating aid’ and declaring that ‘the potential aid was new when introduced in 1975’. The brokerage commission is not even mentioned in that conclusion.
- 89 While paragraph 92 in the contested decision describes the aid whose effects are being assessed as ‘potential’, it must be observed that that description is omitted when it is a question, in recital 130 in the contested decision, of the ‘legal analysis of the nature of the aid granted in the context of the *Livret bleu*’. Nevertheless, the Commission maintains that ‘there was new aid since the end of 1975’. The Commission also finds, admittedly, that the amount of that aid cannot be calculated for the period prior to 1991. That does not necessarily mean that, according to the contested decision, there was no aid before 1991. The terms used show, rather, that the Commission could have found that there were already prior to 1991 measures capable of constituting aid, but that it declined to calculate the amount thereof.
- 90 By attributing, at the hearing, the omission of the adjective ‘potential’ in recital 130 in the contested decision to an effort to be succinct and to considerations of ‘pure material contingency’, the Commission merely acknowledges that the drafting of the contested decision reveals weaknesses, without disposing of the uncertainties as to the content of that decision which result therefrom.
- 91 It follows that the analysis in the contested decision of the distortion of competition and of the effect on trade does not permit a clear determination as to which of the measures forming part of the *Livret bleu* system are regarded in the contested decision as having an effect on trade and creating distortion of competition.

## — Analysis of State resources

92 Secondly, the Commission examined in recitals 93 to 99 in the contested decision the question of the State resources by means of which the aid in question was, in its view, granted. It must be said that the reasoning followed in the contested decision in that regard is neither clear nor exhaustive.

93 In recital 94 in the contested decision, the Commission announces the following plan:

‘[It] must check ... to see from which State resources *Crédit mutuel* may have benefited: (1) the tax advantage accorded to savers, (2) the fund collection commission ..., (3) the revenue from the [other GIA], (4) the possible advantages and costs indirectly linked to the *Livret bleu* system.’

94 As regards, first, the tax exemption, the contested decision states that the system involves the use of State resources and the adoption of a more favourable regime for the saver compared to the usual situation, and that it carries a cost for the State. It continues in recital 96 in the contested decision:

‘This aid appears to benefit individual consumers directly and not the bank, therefore it cannot be said that *Crédit mutuel* is the direct beneficiary of the tax aid. However, this tax aid, having a social character, is associated with a product distributed by only one player, *Crédit mutuel*. Therefore the aid does not satisfy the condition of compatibility laid down in Article 87(2)(a) [EC], which requires that aid is granted “without discrimination related to the origin of the products concerned”.’



- 95 That analysis does not enable it to be determined clearly whether the Commission considered that the tax exemption is capable of constituting a transfer of State resources to *Crédit mutuel*. Such an interpretation of the contested decision cannot however be excluded, given that it is not necessary, in order to found a finding of the existence of intervention by means of State resources in favour of an undertaking, that the undertaking must be the direct recipient. It follows from Article 87(2)(a) EC that aid having a social character granted to individual consumers is capable of coming within the scope of Article 87(1) EC. Likewise, the fact that a Member State renounces tax revenue may involve an indirect transfer of State resources, capable of being treated as aid to economic operators other than those to which the tax advantage is accorded directly (Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraphs 24 to 28).
- 96 The contested decision is, therefore, ambiguous in relation to the treatment of the tax exemption in the light of the criterion of State resources.
- 97 Secondly, the Commission considers the ‘general interest service entrusted to *Crédit mutuel*’ and states in recital 98 in the contested decision:

‘*Crédit mutuel* was entrusted with the task of distributing the *Livret bleu*, a task to which strict prerogatives and constraints pertained. The prerogatives consisted of the exclusive distribution of the *Livret bleu* and the payment of [the] fund collection commission ... . The obligations concern the use of the funds collected through the *Livret bleu*. These obligations changed over time ... . All the saving funds are now transferred to CDC. The latter pays *Crédit mutuel* a commission corresponding to the gross interest rate fixed by the authorities passed on to savers, plus an intermediation commission of 1.3 %. Since CDC is a public enterprise that receives State resources to perform general interest tasks, the fund collection commission must be regarded as a State resource. The interest is paid to the savers, hence *Crédit*

mutual receives this commission only. The commission forms an integral part of the public service entrusted to *Crédit mutuel*, and is therefore attributable to the State.'

98 The fund collection (brokerage) commission is therefore clearly treated as a State resource.

99 Thirdly, regarding the income from the other GIA, the Commission declares in recital 99 in the contested decision:

'Based on the information received, the compulsory nature of these assets combined with the fact that the rates had been regulated by the State and were not freely determined by the market means that there are grounds for considering that the [other] general interest assets form an integral part of the *Livret bleu* system. It will be demonstrated below that these compulsory conditions enabled *Crédit mutuel* to achieve very considerable profits on these funds. The definition of [those GIA] was amended in the Decree of 27 September 1991: the assets covered are now exclusively loans to finance social housing and the allocation to the CDC ... . But it was only very slowly during the 1990s that these new tasks replaced the old ones: only the new funds collected were immediately fully allocated to these new tasks as of 1991.'

100 It is clear from the above that the Commission is not explicitly treating the income from the other GIA as State resources. Such treatment does not however appear to be excluded. The meaning, in this context, of the statement that 'the [other] GIA form an integral part of the *Livret bleu* system' is not clear, in light of the fact that a similar statement had been made, in recital 98 in the contested decision, in order to justify the statement that the brokerage commission was attributable to the State (see paragraph 97 above).

101 Therefore, the result of the examination, in the contested decision, of the question whether the income drawn by *Crédit mutuel* from the management of the other GIA amounts to a transfer of State resources is also ambiguous.

102 As regards, fourthly, the examination of the possible advantages and costs indirectly linked to the *Livret bleu* system, announced in recital 94 in the contested decision, it must be stated that it was not carried out in that part of the decision. By contrast, certain explanations concerning the indirect advantages and costs of the *Livret bleu* system appear, on the one hand, in the part devoted to the assessment of the amount of the State aid, particularly in recitals 119 to 127, where the Commission considers the possible ‘loss-leader effect’ of the *Livret bleu*, and, on the other hand, in the part devoted to the compatibility of the aid with the Treaty, particularly in recitals 190 to 194 regarding the question whether *Crédit mutuel* was obliged to maintain branches in rural areas. However, no assessment of the possible indirect advantages in the light of the condition of State resources is made.

103 In brief, it must be held that, while the analysis of the question of State resources by the contested decision is clear in relation to the brokerage commission, it is ambiguous in relation to the treatment of the tax exemption and of the income from the other GIA and incomplete in relation to the other advantages, the examination of which was envisaged by the Commission.

— Analysis of the competitive advantage

104 Subsection V.3 of the contested decision, entitled ‘The competitive advantage’, contains only recital 100, reproduced in paragraph 18 above.

- 105 That subsection of the contested decision is confined to stating the criterion which the Commission intends to apply to determine whether a competitive advantage can be established in the case and, thus, whether the third and fourth conditions of Article 87(1) EC, set out in paragraph 77 above, are satisfied. That criterion is defined, in recital 100 in the contested decision, in relation only to the brokerage commission and makes no mention of any of the other measures forming part of the *Livret bleu* system.
- 106 The analysis of those two conditions, concerning, first, the advantage conferred on the recipient and, second, the point whether the measure under consideration distorts or threatens to distort competition appears also in Subsection V.4 of the contested decision, entitled 'Assessment of the amount of State aid', containing recitals 101 to 181. Those explanations are, also, hardly clear on the point whether the payment of the brokerage commission is the only measure taken into account which was regarded as having conferred a competitive advantage on *Crédit mutuel* or whether other measures adopted in the context of the *Livret bleu* system also played a role.
- 107 The Commission first defines the 'procedures for taking into account all income and expenditure linked to the total *Livret bleu* funds' and states in that regard in recital 103 in the contested decision:

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

- 108 That wording creates the impression that the tax exoneration of the *Livret bleu* was taken into consideration to determine whether that mechanism bestowed an advantage on *Crédit mutuel*.

- 109 The impression that the tax exoneration was taken into consideration is confirmed by recital 108, according to which '[t]he *Livret bleu* deposits have enabled Crédit mutuel to obtain resources under more advantageous conditions than would have been possible if it had simply obtained refinancing on the financial markets'. In addition, in recital 111, the Commission points out that the 'costs of the resources' from the *Livret bleu* are 'different from [the] normal market costs'. Recital 117 mentions the 'special features associated with this way of collecting funds'. Similarly, recital 175 justifies taking into consideration the assets chosen by Crédit mutuel, because they are 'back-to-back to a specific resource, the deposits collected thanks to the monopoly over distributing the *Livret bleu*'. The same recital also observes that, '[i]n competitive conditions, it is likely that Crédit mutuel would not have been able to obtain this resource at the same price'.
- 110 The passages cited are ambiguous as regards the definition of the measure or measures giving rise to the competitive advantage conferred on Crédit mutuel.
- 111 The Commission's explanation that it is important to distinguish the concept of 'competitive advantage resulting from an excess compensation of the costs caused by the performance of a general economic interest task' from the concept of 'financial advantages' taken into account for the overall balance of the *Livret bleu* intended to establish whether there is excess compensation does not afford the necessary clarification.
- 112 Admittedly, several passages of the contested decision dealing with advantages, particularly recitals 106, 107, 180 and 198, can be understood as referring to the economic advantage taken into consideration for the purposes of the overall balance. On the other hand, where it indicates, on several occasions, particularly in recitals 108, 111 and 175, that Crédit mutuel obtained resources in conditions more favourable than market conditions, the contested decision alludes to a competitive advantage arising from the *Livret bleu* system and not only to an economic advantage to be taken into consideration for the purposes of the overall balance of that system.

- 113 The Commission stated in that respect, at the hearing, that it did not draw any legal consequences from elements other than the brokerage commission. However, assuming that to be correct, mentioning at several points of the contested decision 'advantages' which, in the end, are not taken into consideration for the purposes of identifying the aid, without explicitly so stating, creates confusion which makes understanding the contested decision on that point even more difficult.
- 114 In addition, the argument that the brokerage commission alone was taken into consideration is hardly compatible with the examination carried out, in recitals 119 to 127 in the contested decision, of the 'loss-leader effect' inherent in the *Livret bleu* system and invoked by the complainants. According to them, the exclusive right to distribute a savings product which is attractive because it is tax-free is capable of enabling Crédit mutuel to attract and retain a clientele, to which the network is then in a position to suggest other banking products and services. The Commission explained in recitals 126 and 127 in the contested decision that it did not rely on that effect for the purposes of the contested decision because it was not possible to evaluate precisely its financial impact. That 'effect' of the *Livret bleu* has no connection with the payment of the brokerage commission, however, but is connected solely to the right to distribute a tax-free savings product. The examination of such effect helps therefore to create the impression that the exclusive right and the tax exoneration count among the measures amounting to the aid established by the contested decision. Admittedly, the Commission was bound to reply to the complainants' arguments thereon and it was inevitable, for that purpose, that it would rule on measures other than the brokerage commission. However, in order to avoid the contested decision being understood as meaning that it treats those measures as having contributed to the grant of the offending aid, there was even greater need for the Commission to indicate clearly that the brokerage commission alone was regarded as having conferred the aid, if such was effectively its position.
- 115 The impression that the brokerage commission was not the only measure taken into consideration in respect of the aid bestowed on Crédit mutuel is also reinforced by the result of the assessment of the amount of State aid in Subsection V.4 of the contested decision. It is instructive in that regard to add to the table of the results of

the *Livret bleu's* profit and loss account, reproduced in paragraph 21 above, the data relating to the brokerage commission, provided by the parties in reply to the Court's questions:

Year	1991	1992	1993	1994	1995	1996	1997	1998	Total
Brokerage commission	10	60	110	240	390	490	540	780	2 620
Savings funds	...	...	...	...	...	...	...	...	- 399
[Autres] EIG	...	...	...	...	...	...	...	...	2 592
Emplois libres	...	...	...	...	...	...	...	...	- 1 119
Confidential data omitted.	1 096	505	301	- 471	- 135	- 87	- 156	20	1 074

116 That table confirms the applicant's argument that the amount of the aid established in the contested decision is explained essentially by taking into consideration the profits made by *Crédit mutuel* between 1991 and 1993, at a time when the brokerage commission did not yet contribute significantly to the results of the management of the *Livret bleu*, whereas the profits of the *Livret bleu* system arose essentially from revenue derived from the other GIA.

117 The disproportion between the amount of the aid relating to those years and the amount of the brokerage commission paid during the same period is striking and seems difficult to justify, at first sight, if the aid arises effectively from the payment of that commission alone without any of the measures previously adopted in the context of the *Livret bleu* being taken into account in that respect. In those circumstances, the analysis of the competitive advantage as set forth in the contested

decision does not support the Commission's argument that the brokerage commission alone was treated as aid.

118 As a result, given that the Commission did not clearly express, in the contested decision, its position on the identification of the measures which conferred the aid in question on *Crédit mutuel*, the Court is not in a position to exercise its power to review the appraisal of the *Livret bleu* system by the contested decision.

119 Finally, the Commission's reasoning in the contested decision cannot exclude the possibility, raised by the applicant, that the contested decision covers, in essence, two potential aids, granted in 1975 and 1991 respectively, without clearly distinguishing them in its analysis.

120 It is appropriate to add that the Commission could not take into account, in its analysis, certain clarification given by the Court of Justice after the adoption of the contested decision, regarding State measures intended to compensate for expenditure connected to the performance of public service tasks, particularly in *Altmark Trans and Regierungspräsidium Magdeburg* (see paragraph 77 above). While certain weaknesses in setting out the reasoning adopted in the contested decision can be explained by the fact that the Commission had not had the advantage, at the date of adoption of the contested decision, of the lessons of that case, it was nevertheless necessary, in view of the complexity of this file, that the Commission's reasoning be set out with particular clarity in relation to the identification and evaluation of the measures which conferred the aid in question on *Crédit mutuel*.

121 It follows from the foregoing analysis that the reasoning followed in the contested decision, as a whole, does not enable it to be determined whether or not the Commission considered, as measures which granted the aid in question to *Crédit mutuel*, in addition to the brokerage commission, the tax exoneration, the exclusive distribution right and the conditions of remuneration of the other GIA.



- 122 It follows that the contested decision did not state sufficient reasons in regard to the identification of the measures treated as aid.
- 123 The Commission stated in the course of these proceedings that, according to the contested decision, the brokerage commission alone gave rise to the aid in question. However, such reasoning, developed by the Commission's agents before the Court, does not appear in the contested decision and is contradicted by numerous passages in the grounds thereof, analysed above.
- 124 As the Court of Justice ruled in Case C-137/92 P *Commission v BASF and Others* [1994] ECR I-2555, paragraphs 66 to 68, the operative part and the statement of reasons of a decision — which must be reasoned under Article 253 EC — constitute an indivisible whole, with the result that it is for the College of Commissioners alone, in accordance with the principle of collegiate responsibility, to adopt both the one and the other, any alternation to the statement of reasons going beyond simple corrections of spelling or grammar being the exclusive province of that college.
- 125 Those considerations founded on the principle of collegiate responsibility are equally relevant to the contested decision, which also had to be reasoned pursuant to Article 253 EC and by which the College of Commissioners exercised its specific power to rule on the compatibility of State aid with the common market which was conferred on it by Article 88 EC.
- 126 It follows that the arguments presented by the Commission's agents before the Court cannot make good the insufficiency of the contested decision's reasoning (see, to that effect, Joined Cases C-329/93, C-62/95 and C-63/95 *Germany and Others v Commission* [1996] ECR I-5151, paragraphs 47 and 48, and Joined Cases T-371/94 and T-394/94 *British Airways and Others v Commission* [1998] ECR II-2405, paragraphs 116 to 119).

- 127 It follows that the contested decision must be annulled, without the need to decide upon the other pleas in law invoked by the applicant.

## **Costs**

- 128 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the applicant has applied for costs and the defendant has been unsuccessful, the latter must be ordered to bear its own costs and to pay the costs incurred by the applicant.
- 129 The French Republic must bear its own costs, in accordance with the first subparagraph of Article 87(4) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE  
(Second Chamber, Extended Composition)

hereby:

- 1. Annuls Commission Decision 2003/216/EC of 15 January 2002 on State aid granted by the French Republic to Crédit mutuel;**

- 2. Orders the Commission to bear its own costs and to pay the applicant's costs;**
  
- 3. Orders the French Republic to bear its own costs.**

Pirrung

Tiili

Meij

Vilaras

Forwood

Delivered in open court in Luxembourg on 18 January 2005.

H. Jung

Registrar

J. Pirrung

President

## Table of contents

Background to the dispute .....	II - 147
Crédit Mutuel .....	II - 148
Livret bleu .....	II - 148
Administrative procedure .....	II - 151
Contested decision .....	II - 152
Procedure and forms of order sought by the parties .....	II - 158
Law .....	II - 159
Preliminary observations .....	II - 159
The contested decision's reasoning with regard to the identification of the aid .....	II - 160
Arguments of the parties .....	II - 160
— The identification of the measure which conferred an advantage .....	II - 161
— The identification of the State resources .....	II - 166
— The treatment of the Livret bleu system as new aid when it was established in 1975 .....	II - 167
Findings of the Court .....	II - 169
— Operative part and 'Conclusion' of the contested decision .....	II - 170
— Analysis as regards the meaning of State aid .....	II - 172
— Analysis of the distortion of competition and the effect on trade .....	II - 173
— Analysis of State resources .....	II - 177
— Analysis of the competitive advantage .....	II - 180
Costs .....	II - 187
	II - 189