

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 8 July 1999

on aid granted by France to the Crédit Agricole group in connection with the collecting and keeping of notaries' deposits in rural municipalities

(notified under document number C(1999) 2147)

(Only the French text is authentic)

(Text with EEA relevance)

(2000/480/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Populaires (CSBP) concerning the rights granted by the State to Crédit Agricole.

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

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

Having called on interested parties to submit their comments pursuant to those provisions,

Whereas:

- (2) The French authorities replied by letter dated 9 April 1998, providing a fully detailed reply to the questions asked in the letter initiating the procedure and announcing that they planned to end the right of Crédit Agricole to collect notaries' deposits by mid-1998. Following publication of the notice on the initiation of proceedings in the *Official Journal of the European Communities* ⁽¹⁾, Crédit Agricole, in a letter to the Commission dated 5 June 1998, explained why the measures in question did not constitute State aid. By letter dated 22 September 1998, the Commission asked the French authorities for further details on the basis of their reply of 9 April. The French authorities replied on 7 January 1999. The Commission sent a further letter on 25 January asking the French authorities to confirm that the rights granted to Crédit Agricole were to be abolished. The authorities informed it by letter dated 28 April 1999 of the measures it planned to take to put an end to the rights in question by 1 April 2000.

I

PROCEDURE

II

- (1) By letter dated 22 January 1998, the Commission informed the French authorities that it had initiated a procedure under Article 88(2) in respect of the advantages granted by the French State to Crédit Agricole through the exclusive right to collect deposits from notaries in rural areas. The procedure was initiated following a complaint lodged by Association Française des Banques (AFB) and Chambre Syndicale des Banques

CRÉDIT AGRICOLE — DESCRIPTION OF THE NOTARIES' DEPOSIT SYSTEM

- (3) Before the merger of Société Générale and Paribas announced in February 1999, the Crédit Agricole group was the leading French banking group and the fifth

⁽¹⁾ OJ C 144, 9.5.1998, p. 6.

largest banking group in Europe ⁽²⁾. It consists of a group of mutual societies, the first of which was set up at the end of the 19th century to meet the financial needs of farmers. The 'Caisse nationale du Crédit Agricole' (CNCA), responsible for the allocation of advances among the branches, was set up by the State in 1926. CNCA was privatised in 1988 and the group has since then been completely private, being owned by the group's 'Caisses régionales' (91 %) and by its employees (9 %). The Caisses régionales are themselves owned by the 'Caisses locales' consisting of some 5 million shareholders. The group's activities evolved towards large-scale deposit and universal banking. By the end of 1997 it had a network of some 8 200 branches and 9 200 'green points', services delegated to traders for simple operations. In rural areas, Crédit Agricole accounts for about 33 % of branches, far more than the three main AFB banks together.

- (4) The Crédit Agricole group continues to play an essential part in the financing of agriculture, but its customers have considerably diversified towards other socioprofessional categories of the population and other sectors of the economy. It held the monopoly for the distribution of subsidised loans to agriculture until 1990, when the subsidies were opened up to banking competition.
- (5) Although notaries are members of a profession, they are public officers subject to specific rules laid down by the public authorities. In particular, they may not hold deposits of their customers relating to transactions subject to notarial acts: the State requires notaries to place such deposits in establishments listed by it. The funds temporarily held by the notaries stem chiefly from inheritances, real estate transactions, the setting-up of companies and transfers of goodwill. When it initiated the Article 88(2) procedure, the Commission, on the basis of the information submitted by the complainants and the French authorities, stated that, in 1972, the State (by Decree of 25 August) had adopted a list of establishments authorised to collect and keep deposits of less than three months, which includes Caisse des dépôts and consignations (CDC), the Service des chèques postaux and Caisses de Crédit Agricole (for municipalities with under 5 000 inhabitants). In 1973 the State authorised

Caisses de Crédit Agricole to receive funds held by notaries in municipalities with under 30 000 inhabitants ⁽³⁾.

- (6) The funds deposited earn a 1 % commission ⁽⁴⁾ paid to the notaries. As the Commission also pointed out when it initiated the procedure, until 1990 Crédit Agricole had given nothing in exchange for its access to virtually free financial resources. In 1990 a fund for easing the financial burden on farmers (FAC) was set up (by agreement between the State and Crédit Agricole on 26 September 1990), to which Crédit Agricole agreed to contribute FRF 500 million in 1991 and 1992, FRF 600 million in 1993 and FRF 500 million in 1994 and 1995. An agreement between the public authorities and Crédit Agricole was reached in 1996 on the renewal of the contribution to FAC, amounting to FRF 1 billion for the period 1996 to 1999. FAC is financed by the Caisses régionales of Crédit Agricole, in proportion to the resources obtained for managing the notaries' deposits. The fund grants interest subsidies (especially to young farmers) and funding loans and also finances debt write-offs, in particular to facilitate cessation of farming. Crédit Agricole has full freedom to manage FAC funds according to those criteria.
- (7) When it initiated this procedure, the Commission took the view that the reserved rights granted to Crédit Agricole to collect and keep notaries' deposits:
- distorted competition to an extent liable to affect trade between Member States,
 - gave Crédit Agricole an advantage it would not have obtained on the market,
 - mobilised State resources.
- (8) On that basis, the Commission considered that the measures in question were liable to contain a large proportion of State aid within the meaning of Article 87 of the Treaty. On the basis of the information in its possession, it took the view that, should such aid be identified, it would be fresh aid within the meaning of the Treaty and that therefore the procedure laid down in Article 88(2) of the Treaty should be initiated in order to examine the measures.
- (9) The arguments of the complainants (AFB and CSBP) were set out in the notice initiating the proceedings ⁽⁵⁾.

III

COMMENTS FROM INTERESTED PARTIES

- (10) Apart from the comments from Crédit Agricole, no other comments from interested parties were received by the Commission.

⁽³⁾ With the exception of municipalities with between 5 001 and 30 000 inhabitants forming part of areas with over 50 000 inhabitants, and municipalities in areas of rural renewal and hill-farming areas forming part of areas with over 50 000 inhabitants.

⁽⁴⁾ The commission consists of an annual interest rate of 1 %, applied pro rata temporis to the amounts deposited. Thus an average amount of FRF 20 billion over one year would give rise to commission payments to notaries of some FRF 200 million.

⁽⁵⁾ See footnote 1.

⁽²⁾ Moody's 1997 ratings.

- (11) Like the French authorities, *Crédit Agricole*:
- stressed that its branches had been authorised to collect notaries' deposits since 1930 and that the rights granted were not exclusive as CDC and the Service des chèques postaux were entitled to such deposits throughout the country, including rural areas,
 - pointed out that the notaries' deposits could not be regarded as State resources and could not therefore constitute State aid under Article 87,
 - referred to the public service tasks of notaries and the statutory constraints attached to the scheme in question,
 - pointed out that the costs of managing the notaries' deposits amounted to some 1,77 % of the total deposits,
 - referred to the ceiling on short-term loans to farmers to which it had been subject until February 1997 and which it considers was imposed on it in exchange for the notaries' deposits,
 - referred to the setting-up of the FAC and the FRF 3,9 billion it had allocated since it was set up in 1990, financed in proportion to the resources provided by the notaries' deposits and hence constituting a counter-concession to the deposits,
 - denied that trade between Member States had been adversely affected on the grounds of the rural and local nature of its clientele and the small amounts involved, which account for an infinitesimal proportion of total deposits in France.
- (12) *Crédit Agricole* pointed out that only the *Caisses régionales* were entitled to receive notaries' deposits. It considered that, by opening the procedure in respect of the whole network formed by those *Caisses* and CNCA as the possible recipient of aid stemming from the notaries' deposits, the Commission had committed a legal and factual error. *Crédit Agricole* referred to the modest extent of its international development and considered that the notaries' deposits could not have financed its international development, i.e. that of the CNCA, the recipients of the notaries' deposits being the group's regional branches. It stated that the monetary resources, which include the notaries' deposits, were entered solely in balance sheets of the *Caisses régionales*. Any surpluses from the *Caisses régionales*, which include notaries' deposits, would certainly be reinvested in CNCA, but at market rates and without yielding any profits for the latter.
- (13) *Crédit Agricole* denied that the State waiver of any return on the notaries' deposits and the resulting loss of earnings from the scheme constituted aid; it stated that many aid measures were implemented by the State and that an obligation to produce a return would jeopardise the discretionary nature of financial assistance from the State as well as the principle that administrative acts must not be profitable. *Crédit Agricole* also denied that there was any obligation under Community law for the State to derive benefit from the rights granted to *Crédit Agricole*.
- (14) *Crédit Agricole* claimed that, because of the obligations attached to the scheme, it would in any event have been chosen by the public authorities, irrespective of the list of financial establishments eligible for the notaries' deposits.
- (15) It pointed out that the judgment of the French Council of State of 27 March 1997 had held that the arrangements for the notaries' deposits were compatible both with Article 82 and with Article 86 of the Treaty and were therefore not incompatible with Article 87 of the Treaty. *Crédit Agricole* considered in particular that the member banks of AFB offered a comparable guarantee to that of *Crédit Agricole* only since the adoption of a regulation by AFB on 8 February 1994 providing that notaries' deposits would if necessary be reimbursed in full if an AFB bank were to fail.
- (16) *Crédit Agricole* also considered that the Commission had confused the hypothetical aid with the benefit of the aid. It pointed out in particular that, in its assessment of the benefit derived by *Crédit Agricole* from collecting and keeping notaries' deposits, the Commission failed to take account of the 'natural' market share held by *Crédit Agricole* in France in rural areas (if the scheme became generally available) or the share of which it is currently deprived in urban areas. *Crédit Agricole* calculated that, on the basis of its 'natural' market share of notaries' deposits in the event of generalisation of the scheme, it would acquire deposits totalling FRF 12,1 billion which, on the basis of total deposits of FRF 21 billion in 1996, would therefore mean that the extra amount collected through its reserved rights would total only about FRF 9 billion.
- (17) *Crédit Agricole* considered that, in view of the auditing obligations accompanying the right to hold notaries' deposits, it was incompatible with the objective of security for such deposits to be collected by establishments located abroad.
- (18) Lastly, *Crédit Agricole* considered that assistance for agriculture in the form of short-term loan subsidies was justified on the grounds of public interest.

IV

COMMENTS FROM FRANCE

(19) By letter dated 9 April 1998 to the Commission, the French authorities commented on a number of points raised by the Commission when it initiated the procedure.

(a) *Origin of the rights granted to Crédit Agricole*

(20) The French authorities stated in their letter of 9 April 1998 that the possibility granted to Crédit Agricole to collect and keep notaries' deposits of under three months was established by a law of 9 March 1953, without any limit being placed on such deposits. According to the French authorities, the later decisions adopted by decree of the Garde des Sceaux on 25 August 1972, supplemented on 7 June 1973, had the effect of imposing restrictions in relation to the earlier situation by limiting the rights to deposits of under three months in rural areas.

(21) In response to the Commission's request of 22 September 1998 for documentary evidence that the rights granted to Crédit Agricole preceded the entry into force of the Treaty, on 7 January 1999 the French authorities provided the Commission with:

- a copy of the decree of the Garde des Sceaux of 9 March 1953 stating that the so-called 'untied' funds of notaries (apart from the deposits of more than three months which must be transferred to CDC) could, on the basis of an earlier Circular of 1930, be deposited in several establishments, including the Caisses de Crédit Agricole,
- a copy of a Chancellery circular of 24 December 1930 showing that Crédit Agricole was already one of the establishments entitled to collect notaries' deposits as early as 1924.

(b) *Reasons and aims underlying the decision by the French State to introduce and maintain the rights to collect and keep notaries' deposits*

(22) The French authorities considered that the rights in question were justified on three grounds: the specificity of the profession of notary and the need for efficient supervision; the accessibility of banking services for notaries in country areas; the absolute safety of the funds collected. They pointed out that notaries are engaged in a public service activity while being members of a profession. In particular, they pointed out that notaries are subject to specific supervision and that, in a judgment of 19 November 1914, the French Court of Cassation had held that notaries' accounts were public

documents. Secondly, the French authorities stressed the geographical location of Crédit Agricole in a rural area where it is by far the largest banking network in France, currently still accounting for some 34 % of branches. Of its permanent branches, 64 % are located in rural areas. Thirdly, the authorities referred to the security offered by Crédit Agricole to the notaries' deposits, based on a system of unlimited preventive guarantees based on the solidarity of all the regional branches and CNCA, so that the group's internal guarantees made it unlikely that the regional branches would default and the notaries' funds were thus fully guaranteed.

(23) As noted by the Commission when it opened the procedure, the French authorities also referred to the setting-up of a fund for easing the financial burden on farmers which, they claimed, constituted a 'counterpart' in exchange for the notaries' deposits. From 1990 to 1999, Crédit Agricole contributed FRF 3,6 billion to the fund from earnings on notaries' deposits, in addition to FRF 300 million also earned from investing notaries' deposits in the national fund for agricultural disasters.

(c) *Deposit levels*

(24) The French authorities provided a summary of the notaries' deposits received by Crédit Agricole since 1973 which shows that, from 1973 to 1997, the amount fluctuated between FRF 15,6 billion and FRF 25,4 billion (calculated at 1997 rates) and that, discounting medium-term economic cycles, total deposits remained remarkably stable over the period. In 1997, they totalled FRF 19,6 billion (average value).

(d) *Cost of managing the notaries' deposits*

(25) In response to a question by the Commission concerning the costs of managing the deposits, the French authorities stated that the costs amounted in 1997 to 1,77 % of the total amount and that they could be broken down as follows:

- (i) 0,29 % relating to the cost of managing deposit transactions and transactions involving means of payment like any business account;
- (ii) 1,49 % for the extra costs relating to the particular characteristics of managing notaries' accounts, of which:
 - 0,11 % for additional costs relating to certain specific transactions,
 - 0,96 % relating to exclusion of the usual rules on transactions,
 - 0,42 % relating to specific staff costs.

The French authorities considered that this cost had tended to decrease over a long period owing to the gains in productivity achieved by *Crédit Agricole* in all its activities and in this one in particular. This was why it had been higher in the past.

enjoyed by the French economy had subsequently reduced the value of a specific protective device for agriculture.

(e) *Limitation by *Crédit Agricole* of the cost of short-term financing for agriculture*

- (26) In addition to the recent allocation of funds to FAC, the authorities stated in their letter of 9 April 1998 that the net financial return on the deposits managed by *Crédit Agricole* had from the start been used to limit the costs of providing short-term financing for agriculture. The financing had, until 1981, been granted at rates fixed by decree of the Ministers for Agriculture and Economic Affairs. Thereafter the rates were fixed by CNCA within a margin of fluctuation of approximately 30 % of the monthly average money market rate. According to the authorities, the rule establishing a maximum for short-term rates was abrogated only recently by Decree of 3 February 1997. They stressed that the low-rate context

(f) *Average cost of the *Crédit Agricole* resources*

- (27) In reply to a request by the Commission when it initiated the procedure, the French authorities submitted data showing that, over the last decade, the average cost of the *Crédit Agricole* resources had fallen from [...] % (*) in 1987 to [...] % (*) in 1996 and that it had consistently remained within that bracket.

(g) *Utilisation of FAC allocations*

- (28) In their letter to the Commission of 9 April 1998, the French authorities provided a number of details concerning the annual allocations to FAC and their use.
- (29) According to the authorities, the amounts allocated to FAC and their utilisation from the beginning were as follows:

TABLE 1

Amounts allocated to and by FAC

(million FRF)

	1991	1992	1993	1994	1995	1996	Total
Rescheduling of farmers' debts	600	394	564	494	467	197	2 716
— defrayal of interest	295	213	410	340	324	160	1 742
— consolidation loans	86	45	46	51	45	17	290
— waivers of claims	219	136	108	103	93	15	674
— carried forward					5	5	10
Other (agricultural disasters)			40	8	33	203	284
Total	600	394	604	502	500	400	3 000

Source: French authorities.

- (30) The French authorities stated that the transactions referred to above concerned the restructuring of the debts of *Crédit Agricole* farming customers and that another part of FAC was earmarked for specific actions, especially allocations to the National Agricultural Disaster Guarantee Fund. They pointed out that FAC's priorities were agreed every year by *Crédit Agricole* and the State. They felt that public interest tasks in agriculture were attached to the scheme and that the beneficiaries of FAC were *Crédit Agricole*'s farming customers and not *Crédit Agricole*. They justified the allocations on the ground that *Crédit Agricole* held some 80 % of the farmers' bank debts. They also pointed out that budgetary resources having the same purpose had been made available at other banks benefiting from an annual allocation of FRF 20 million.
- (31) The French authorities considered that FAC's activities did not constitute a substitute for *Crédit Agricole*'s provisioning policy inasmuch as the bad loans granted by the *Caisses régionales* of *Crédit Agricole* had benefited, depending on the year, from only 15 to 19 % of FAC allocations, 10 % of the

(*) Business secret.

transactions having been in the form of waivers of claims, the larger part being allocated according to the situation in various production sectors and to the setting-up of young farmers. The average amount of aid per farmer (some FRF 6 000) is modest and, according to the French authorities, has a social purpose.

(h) *General comments on the notaries' deposit scheme*

- (32) The French authorities denied that notaries' deposits were State resources and that competition had been distorted as stated by the Commission when it initiated the proceedings. In particular, they challenged the notion that State resources should produce a return, on the ground that administrative acts should not be profitable. They therefore disputed that there were any aid elements attached to the notaries' deposit scheme. They also considered that the scheme was not liable to affect trade between Member States.
- (33) The French authorities also considered that the notaries' deposit scheme had been set up in order to safeguard, in rural areas, essential public interest requirements relating in particular to the profession of notary.
- (34) Lastly, the French authorities referred to a decree of the French Council of State of 27 March 1997 pursuant to which the rules governing notaries' deposits were not contrary to Article 82 of the Treaty.

(i) *Future of the notaries' deposit scheme*

- (35) In their letter of 9 April 1998, the French authorities informed the Commission that the notaries' deposit scheme would be revised before the summer of 1998 so that only the Caisse des dépôts et consignations would in future manage all notaries' deposits, irrespective of duration; in this way, Crédit Agricole would lose the financial benefit derived from the returns on notaries' deposits (see the reference below in recital 61 to the undertakings given by the French authorities in their letter of 28 April 1999).

V

ASSESSMENT OF THE AID

V.1. State aid content of the measures in question

(a) *The aid recipient*

- (36) In its reply to the initiation of the procedure, Crédit Agricole considered that the Commission had made a factual and legal error by treating all the parts of the Crédit Agricole group as one and the same recipient, i.e. Crédit Agricole.
- (37) The Commission notes that:
- although Crédit Agricole has specific characteristics, especially at local level, owing to its mutual status, and although each Crédit Agricole branch appears to enjoy administrative autonomy, it is nevertheless an economic entity forming a coherent whole. According to Crédit Agricole's 1997 report, it forms a united and decentralised group, based on a structure with three levels (Caisses locales, Caisses régionales and Caisse nationale) which therefore has a financial capacity that must be assessed as a whole. The 1997 report notes that owing to the common interest which binds together the Caisses régionales and the Caisse nationale, Crédit Agricole produces financial statements which reflect its economic position and are comparable to the consolidated accounts of the other major banking groups. Thus neither the Commission nor the interlocutors and partners of Crédit Agricole have any doubt at all that Crédit Agricole has all the legal and economic structures to allow it to be defined as an enterprise. The consolidated accounts, showing a consolidated balance of FRF 2,514 billion at 31 December 1997, are the basis for the AA rating given to Crédit Agricole by Standard & Poor's and the Aa1 rating by Moody's. A group's rating, especially that of a financial institution, determines its terms of access to the financial markets and is therefore a basic element in the formation of the costs that are likely to give it an advantage or a disadvantage in relation to its competitors,

- Crédit Agricole, as part of this procedure, submitted a single set of observations, co-signed by the Director-General of the Fédération nationale du Crédit Agricole and the Deputy Director-General of CNCA. The reply was submitted on behalf of Crédit Agricole; if CNCA considers it is not covered by this procedure, the Commission does not understand why it considered it necessary to present observations jointly and severally with those presented by the Fédération nationale du Crédit Agricole,
- the French authorities pointed out that one of the reasons why Crédit Agricole had been regarded as eligible for the notaries' deposits was because of the security offered by the joint guarantee provided by all the Caisses régionales and CNCA.

(38) On the basis of the foregoing, which clearly classifies the Crédit Agricole group as an enterprise, the Commission has no reason to alter its assessment as to the beneficiary of the rights to the notaries' deposits, i.e. Crédit Agricole as a group (see judgment of the European Court of Justice in Intermills Case 383/82) ⁽⁶⁾. The question of the allocation within the group of the advantages gained from the notaries' deposits is a matter of secondary importance not covered by this procedure.

(b) State aid content of the funds collected by notaries

(39) As the French authorities pointed out, notaries are public and ministerial officials whose profession is strictly regulated by the State. The French authorities referred in particular to a Court of Cassation judgment which held that notaries' accounts, which are strictly regulated, were public documents. They therefore concluded, in their letter of 9 April 1998, that the body of regulations in force showed that the funds deposited by notaries are not ordinary funds. The rules governing notaries' deposits cannot therefore be assessed solely pursuant to the rules governing banking, but must also be assessed in the light of public interest considerations. It is quite clear from the information presented by the authorities in the course of this procedure that Crédit Agricole was at different times considered eligible to receive notaries' deposits on the basis of formal acts of the public authority, subject to certain well-defined conditions.

(40) The Commission can thus clearly confirm, as it stated when it initiated the procedure, that:

- discretionary action by the State, involving the granting of the reserved rights in question, provides Crédit Agricole with resources as a direct result,
- the State exercises directive control over the allocation of the resources constituted by the mandatory deposits by notaries, who are public officers subject to public authority.

(41) Accordingly, it must be concluded in view of the foregoing that the notaries' deposits mobilise resources which constitute State resources. This conclusion is upheld by the French authorities' statement that, according to case-law of the French Court of Cassation, notaries' accounts are public documents.

(42) In the course of the procedure, the French authorities described factors which it considered constituted concessions granted by Crédit Agricole in exchange for the return on notaries' deposits, cancelling the advantage gained from the virtually free notaries' deposits. These factors do not detract from the finding that the scheme in question mobilises State resources.

(c) Advantage to Crédit Agricole and aid content of the measures in question

(43) As the Commission stated when initiating the procedure, 'the concept of aid covers both positive measures such as grants and public measures which, in various forms, reduce the charges usually made on a firm's budget and have identical effects to grants' ⁽⁷⁾.

⁽⁶⁾ [1984] ECR 3809, paragraph 11.

⁽⁷⁾ Case C-387/92 *Banco exterior de Espana* [1994] ECR I-902, paragraph 13.

- (44) The Commission also pointed out at the same time that, by waiving any return on the notaries' deposits (apart from the 1 % commission to the notary), the State was waiving the profits it could earn through the mechanism in question. If the transaction had been defined in accordance with normal commercial conditions, the State could, from the start, have obtained a return on the deposits in question. It could also have imposed a price (the interest on the deposits) which would have been regularly revised to take account of changes in interest rates and gains in productivity in the banking industry and the institutions eligible under the mechanism in question. The revision would have benefited from competition between the different banking establishments in order to select the most competitive ones, on condition that they satisfied a minimum number of prudential requirements in order to guarantee the security of the deposits, so that the revenue in the form of commission on interest levied by the State could have been increased.
- (45) Remuneration of the additional banking resources obtained by *Crédit Agricole* through the reserved rights granted to it by the State would certainly normally be chargeable to a bank's budget if the resources had been allocated to *Crédit Agricole* on a competitive basis, for example through an invitation to banks to tender. However, *Crédit Agricole* does not remunerate its notaries' deposits and simply pays notaries a 1 % commission on the amounts collected. Prior to the initiation of this procedure, the authorities had justified the failure to remunerate on the ground of the ban in French law on interest-bearing loans of under one month. In the course of this procedure, however, the French authorities have not explained why, in view of the fact that a large proportion, estimated by the authorities in a letter of 3 April 1997 at some 50 %, of the notaries' deposits held by *Crédit Agricole* are for between one and three months (deposits for more than three months are not kept by *Crédit Agricole* and are transferred to *Caisse des dépôts et consignations*), they cannot be remunerated. Thus the granting of the rights to collect and keep notaries' deposits on virtually free terms derogates from the normal market conditions which would apply to the collecting of such resources.
- (46) In reply to a question put by the Commission concerning the average cost of the *Crédit Agricole* resources, the French authorities stated that the cost was inter alia [...] % in 1987 and [...] % in 1996. However, the average costs of *Crédit Agricole* resources appear to include remunerated resources such as long-term loans and free resources such as customer deposits. In order to determine the aid relating to loans, i.e. the reduction in the charges borne by *Crédit Agricole* in relation to normal market conditions, the reasoning should be based not on the average cost but on the marginal cost. To that end, it should be noted that the short-term interest rates in France were 8,3 % in 1987 and 3,9 % in 1996⁽⁸⁾. Thus there is no doubt that the granting to *Crédit Agricole* of virtually free resources (apart from the 1 % commission to notaries) reduces the costs usually charged to a bank's operating account and has an equivalent effect to a subsidy.
- (47) Accordingly, it must be concluded that the measures in question constitute State aid and more specifically operating aid since they reduce the normal operating charges incurred by the bank.

(d) *Distorting effect of the aid*

- (48) Operating aid has a particularly distorting effect because it has a direct impact on the results of assisted firms and enables them either to maintain higher operating costs than their competitors without being penalised despite their lack of competitiveness, or to achieve higher profits and thus increase their financial capacity. The distortion is all the greater as the aid is permanent, competition is strong and the margins of competitors are narrow.
- (49) The data available shows that, in the 1990s, competition between banks increased and their profit margins were steadily eroded⁽⁹⁾. Furthermore, French banks appear to be in a vulnerable position: in recent years their profitability was among the lowest in the Community (see Table 2), and this has

⁽⁸⁾ Three-month nominal rates. Source: EC economic data pocket book, No 12/1998, European Commission, Office for Official Publications of the European Communities.

⁽⁹⁾ European Central Bank, 'Possible effects of EMU on the EU banking systems in the medium to long term', February 1999, based on OECD data.

improved only recently in 1998 to 1999. Where vigorous competition squeezes interest margins and profitability, operating aid granted to a credit institution obviously has a particularly distorting effect. This recent trend is very likely to continue over the next few years: according to the European Central Bank, completion of economic and monetary union will create a more competitive environment and put greater pressure on banks' profitability⁽¹⁰⁾. It will speed up integration of the sector at European level, in particular in the form of cross-frontier transactions⁽¹¹⁾.

TABLE 2

Return of equity

(net income as a percentage of equity)

	1990	1991	1992	1993	1994	1995	1996	1997
Austria	8,6 %	8,6 %	6,9 %	8,7 %	7,9 %	8,1 %	9,6 %	
Belgium	8,3 %	6,5 %	5,7 %	14,1 %	13,2 %	12,9 %	15,3 %	15,3 %
Denmark ⁽¹⁾	- 3,3 %	- 0,1 %	- 21 %	10,6 %	0,1 %	18,5 %	16,1 %	15,1 %
Finland	5,6 %	- 11 %	- 49 %	- 29 %	- 25 %	- 7,9 %	8 %	15,2 %
France	10,1 %	10,4 %	6,9 %	2,9 %	0,5 %	3,6 %	4,8 %	7,7 %
Germany	11,9 %	14,4 %	13,2 %	13,6 %	11,8 %	12,6 %	12,3 %	
Greece ⁽²⁾	20,8 %	31,5 %	23,1 %	21,6 %	25,9 %	24,4 %	16,7 %	
Ireland						20,2 %	20,1 %	18,4 %
Italy	12,2 %	9,9 %	7,5 %	8,8 %	3,0 %	3,7 %	5,1 %	3,4 %
Luxembourg ⁽²⁾	6,7 %	7,6 %	8,8 %	19,9 %	20,9 %	19,9 %	22,3 %	23,0 %
Netherlands	12,3 %	12,7 %	13,9 %	15,9 %	16,2 %	17,0 %	17,6 %	
Portugal ⁽²⁾	12,5 %	12,4 %	8,8 %	9,2 %	7,3 %	7,7 %	10,7 %	13,1 %
Spain	13,6 %	12,5 %	10,7 %	3,8 %	8,2 %	9,2 %	9,7 %	10,6 %
Sweden ⁽³⁾	3,0 %	56,3 %	17,0 %	5,7 %	19,1 %	21,1 %	24,0 %	13,0 %
United Kingdom	14,4 %	8,6 %	7,3 %	19,3 %	27,4 %	28,6 %	25,6 %	26,4 %
Average EU-14	10,9 %	11,5 %	8,1 %	9,0 %	8,2 %	10,0 %	11,0 %	
Average EU-15						10,1 %	11,1 %	
Average EU-11							12,2 %	12,2 %

Source: European Central Bank, 'Possible effects of EMU on the EU banking systems on the medium to long term', February 1999, based on OECD data.

(1) Commercial banks and savings institutions.

(2) Commercial banks.

(3) Total commercial banks, foreign commercial banks, savings institutions and, until 1991, cooperative banks.

- (50) Furthermore, Crédit Agricole is a viable undertaking which achieved major profits in recent years. The aid in question (unless it was offset by equivalent additional costs), which was not essential to its profitability, thus allowed it to increase its profits and accumulate additional equity with the non-distributed profits. In banking, the solvency requirement introduced by Council

⁽¹⁰⁾ Ibid., page 4.

⁽¹¹⁾ European Central Bank, Monthly Bulletin, April 1999; 'Banking in the euro area: structural features and trends'.

Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions ⁽¹²⁾ (the 'hard' core of own funds is fixed at a minimum of 4 % of weighted assets, while own funds in the broad sense should represent a minimum of 8 % of such assets) introduces an obligation which limits the growth capacities of credit institutions. In practice, such constraints on capitalisation exist in the medium and long term for all forms of enterprise, but in the banking sector it is permanent and immediate, directly quantifiable and cannot, for prudential reasons, be temporarily waived as part of a credit establishment's growth strategy. A credit institution which only narrowly satisfies the solvency requirement does not have any margin for growth until it is able to attract new capital or increase its own equity by achieving significant profit levels. Thus an ineffective institution's growth is subject to very direct constraints, whereas the growth margin of a bank with significant profits is in relation to its profitability.

- (51) It is possible on the basis of the solvency constraint to produce a very indicative conventional estimate of the distortion of competition caused by aid to credit institutions. If the aid has the direct or indirect effect of increasing equity, the distortion of competition can be assessed in terms of weighted assets. Operating aid of FRF 1 billion, producing an increase in profits after tax of FRF 0,6 billion ⁽¹³⁾, would, assuming the profits are not distributed but used to increase the bank's equity, help to increase the weighted assets on its balance sheet (taking account of the statutory solvency requirement of 4 to 8 %) and hence its level of activity. This transaction results in a potential distortion of competition, measured in terms of weighted assets, of between FRF 7,5 billion and FRF 15 billion (without the aid the bank would have been unable to increase its weighted assets). The ratio shows the considerable leverage effect of aid in the financial sector. The equity can also help the assisted institution to acquire minority or majority holdings in other businesses. The Chairman of Crédit Agricole, interviewed by a financial newspaper ⁽¹⁴⁾, stated in February 1999 that of the FRF 140 billion available to Crédit Agricole, one third was earmarked for new operations.
- (52) It must therefore be concluded that, as the aid granted to Crédit Agricole by France constitutes operating aid and taking account of the economic situation in the banking sector in Europe, the low level of profitability achieved by French banks and the particular solvency requirements in banking, the aid clearly distorts competition in the financial sector.

V.2. Effect on trade between Member States

- (53) The Commission noted the arguments of the French authorities and Crédit Agricole rejecting its conclusion that the scheme affected Community trade. The following points should be taken into account.
- (54) First, because the Commission is investigating the possible effects of such aid with regard to the Crédit Agricole group as a whole, the latter's international and especially its European activities should be examined. According to its 1997 annual report, the bank positioned itself in 1997 as a leading bank for major and international customers. Customer transactions in Member States (excluding France) accounted for FRF 37,9 billion in 1997, i.e. a small proportion (about 3 %) of its total customer transactions but involving a significant sum in view of the size of the group which, at the end of 1997, was the largest French banking group and one of the leading groups in Europe ⁽¹⁵⁾. The bank pointed out that with the creation in 1997 of a new subsidiary, Indocam, it had provided itself with an instrument whose target was to become a leading asset management company in Europe. Crédit Agricole is pursuing an active development policy in Europe, and played an active part in setting up the second largest Italian bank, Banca Intesa, formed from the merger of Banco Ambrosiano Veneto and Cariplo, of which Crédit Agricole is the largest shareholder with 30 %. It also holds 20 % of the Banco Espírito Santo group in Portugal. It has branches in Lisbon, Madrid, Bilbao, Gibraltar, Barcelona, Luxembourg, London, Hamburg, Frankfurt, Stockholm, Oslo, Helsinki and Piraeus. The group noted in its 1997 report that it will keep a close watch on any opportunities

⁽¹²⁾ OJ L 336, 3.12.1989, p. 14.

⁽¹³⁾ Assuming, for the sake of simplicity, a level of tax of 40 %.

⁽¹⁴⁾ Interview published in 'Les Echos', 10 February 1999.

⁽¹⁵⁾ According to a list drawn up by the rating agency Moody's (quoted by the 'Le Monde' newspaper, 17 and 18 January 1999), Crédit Agricole was the fifth largest European banking group in terms of assets at the end of 1997.

which may arise in order to strengthen its position on the European market for retail banking. Its solid basis provides it with the resources to achieve such development. International expansion of this sort calls for capital movements to allow it, for example, to acquire a stake in such institutions as Banca Intesa or Banco Espirito Santo and thus affects trade between Member States. Furthermore, the group's merchant bank, Indosuez, is one of the largest French merchant banks, a significant proportion of its business being conducted abroad.

- (55) Second, even if the assessment of the effect of these measures were to be limited to the group's regional entities, as Crédit Agricole suggests in its comments, international transactions are carried out solely by CNCA within the Crédit Agricole group. Contrary to the claim made by the latter in its comments, its 1997 report states that the international activities of the frontier *Caisses regionales* also developed in 1997. The report refers in particular to the development of the *Caisse régionale de Pyrénées Gascogne* in the Spanish Basque Country, as a result of which Bankoa, now majority-owned by Crédit Agricole, became part of the consolidated group in 1997. It also notes that this initiative forms part of the cross-border development of the *Caisses regionales*, which are expanding their retail banking activities, in agreement with CNCA, in adjacent countries. The development thus concerns not only the market and corporate banking activities of Crédit Agricole but also its retail banking activities, which include the notaries' deposits.
- (56) It is thus clear that the additional resources, and the profits they generate, obtained through the notaries' deposits helped directly to finance the development of Crédit Agricole in other Member States.
- (57) In addition, the potential impact of the rights granted to Crédit Agricole are not limited just to the effects on the bank's expansion outside France, in other Member States. As the Commission stated when it initiated the procedure, although in theory there are no frontiers to the principal activities of credit institutions, i.e. collecting deposits, obtaining loans on the market and granting loans, they do encounter obstacles to expansion abroad. These are frequently due to the protective barriers against competition erected by national banks, which make it less attractive for foreign competitors to access the market. This is the case with regard to the aid to Crédit Agricole which is liable to make the French domestic market less open to foreign competition, whether at the national level of CNCA or at the regional level of the *Caisses*. They have the effect of strongly compartmentalising certain bank deposit activities, which runs counter to the opening-up of the market intended by the Treaty at a time when cross-border transactions are about to expand in the banking sector, as noted by the European Central Bank. According to the latter, the resulting closer integration of national banking systems is dependent on the abolition of differences in tax and regulatory systems between the Member States⁽¹⁶⁾.
- (58) It must therefore be concluded that the measures in question are caught by Article 87(1) of the Treaty as they constitute State aid which distorts competition to an extent liable to affect intra-Community trade.

VI

CONCLUSIONS

- (59) The virtually free right to collect⁽¹⁷⁾ and the free right to keep notaries' deposits granted to Crédit Agricole by the French State are measures containing State aid under Article 87(1) of the Treaty.
- (60) In view of the fact that, on the basis of the fresh information received by the Commission in the course of this procedure, it would seem that the aid in question existed prior to the entry into force of the Treaty, it can be concluded that:

— the aid in question is lawful and need not be recovered,

⁽¹⁶⁾ See footnotes 9 to 11.

⁽¹⁷⁾ Apart from the 1 % commission paid to notaries on the amounts collected.

— the Commission should, as for all existing State aid, consider whether it is compatible with the Treaty and, if it concludes that the aid is not compatible with the general interest, it should propose to the Member State the appropriate measures provided for in Article 88(1) of the Treaty for aid considered incompatible with the common market.

- (61) However, in a letter dated 28 April 1999, the French authorities formally informed the Commission of their intention to put an end to the rights granted to Crédit Agricole in respect of notaries' deposits and to centralise the deposits at the Caisse des dépôts et consignations, which would in future be responsible for keeping all notaries' deposits. The Treasury would be responsible for collecting the deposits in rural and urban areas. The authorities stated that the measure would take effect on 1 January 2000. It would gradually be introduced throughout the country and would be completed on 1 April 2000. The authorities undertook to take the necessary regulatory steps to amend the notaries' deposit scheme soon after the adoption of this Decision.
- (62) The Commission has noted the undertaking given by the French authorities. It considers that the period proposed is reasonable and, as the rights granted to Crédit Agricole to collect and keep notaries' deposits are to be abolished completely and permanently, it concludes that the new measure will end the aid to Crédit Agricole in respect of which this procedure was initiated under Article 88(2) of the Treaty. On the basis of the undertaking given, it does not appear necessary to assess the compatibility of the aid with the Treaty or to initiate proceedings under Article 88(1) of the EC Treaty. The Commission is therefore able to terminate this procedure,

HAS ADOPTED THIS DECISION:

Article 1

1. The measures by which France granted Crédit Agricole the right to collect and keep notaries' deposits in rural municipalities constitute State aid within the meaning of Article 87(1) of the Treaty.
2. The measures referred to in paragraph 1 constitute aid which existed prior to the entry into force of the Treaty. As France has undertaken to abolish the aid measures by 1 April 2000 at the latest, this procedure is hereby terminated.

Article 2

France shall inform the Commission within two months of the date of notification of this Decision of the measures it has taken to abolish, by 1 April 2000, the rights granted to Crédit Agricole to collect and keep notaries' deposits.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 8 July 1999.

For the Commission

Karel VAN MIERT

Member of the Commission
