

16th November 1990

To the members of the Committee of Governors

Please find attached the draft Statute and the accompanying Commentary which have been revised in the light of discussions of the Committee of Governors on 13th November 1990. The Secretariat would be grateful if you could send your comments to Basle not later than by lunch time on 20th November 1990.

The drafts of the "Introductory Report" and the letter of transmittal will be telefaxed to you early next week.

With kind regards,



Gunter D. Baer

Committee of Governors of the
Central Banks of the Member States
of the European Economic Community

DRAFT STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

AND OF

THE EUROPEAN CENTRAL BANK

15TH NOVEMBER 1990

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER I	CONSTITUTION OF THE SYSTEM 1
Article 1	The System 1
CHAPTER II	OBJECTIVES AND TASKS OF THE SYSTEM 1-2
Article 2	Objectives 1
Article 3	Tasks 1
Article 4	Advisory functions 2
Article 5	Collection of statistical information 2
Article 6	International co-operation 2
CHAPTER III	ORGANISATION OF THE SYSTEM 3-7
Article 7	Independence 3
Article 8	General principle 3
Article 9	The European Central Bank 3
Article 10	The Council 4
Article 11	The Executive Board 4
Article 12	Responsibilities of the decision-making bodies 5
Article 13	The President 6
Article 14	National central banks 6
Article 15	Inter-institutional co-operation and reporting commitments 7
CHAPTER IV	MONETARY FUNCTIONS AND OPERATIONS OF THE SYSTEM 8-10
Article 16	Notes and coins 8
Article 17	Accounts with the ECB and the national central banks 8
Article 18	Open market and credit operations 8
Article 19	Minimum reserves 9
Article 20	Other instruments 9
Article 21	Operations with public entities 9
Article 22	Clearing and payment systems 9
Article 23	External operations 10
Article 24	Other operations 10
CHAPTER V	PRUDENTIAL SUPERVISION 10
Article 25	Supervisory tasks 10
CHAPTER VI	FINANCIAL PROVISIONS OF THE SYSTEM 10-13
Article 26	Financial accounts 10
Article 27	Auditing 11
Article 28	Voting on financial matters 11
Article 29	Capital of the ECB 11
Article 30	Transfer of foreign reserve assets to the ECB 12
Article 31	Foreign reserve assets held by national central banks 13
Article 32	Distribution of income of the System and allocation of net profits and losses of the ECB 13

TABLE OF CONTENTS - CONTINUED

	<u>Page</u>
CHAPTER VII GENERAL PROVISIONS	13-15
Article 33 Regulatory power	13
Article 34 Enforcement	13
Article 35 Judicial control and related matters	13
Article 36 Staff	14
Article 37 Seat	14
Article 38 Professional secrecy	14
Article 39 Privileges and immunities	15
 CHAPTER VIII TRANSITIONAL PROVISIONS FOR THE SYSTEM	 15
 CHAPTER IX AMENDMENT AND COMPLEMENTARY PROVISIONS FOR THE SYSTEM	 15
Article 40 Simplified amendment procedure	15
Article 41 Complementary legislation	15

CHAPTER I - CONSTITUTION OF THE SYSTEM

Article 1 - The System

Pursuant to Article ... of the EEC Treaty, a system, consisting of a central institution to be known as "The European Central Bank" (hereinafter "the ECB") and of the participating central banks of the Member States of the Community (hereinafter "national central banks"), is hereby established and shall be known as the "European System of Central Banks" (hereinafter the "System").

CHAPTER II - OBJECTIVES AND TASKS OF THE SYSTEM

Article 2 - Objectives

2.1 The primary objective of the System shall be to maintain price stability.

2.2 Without prejudice to the objective of price stability, the System shall support the general economic policy of the Community.

2.3 The System shall act consistently with free and competitive markets.

Article 3 - Tasks

The basic tasks to be carried out through the System shall be:

- to formulate and implement the monetary policy of the Community;
- to conduct foreign exchange operations in accordance with the prevailing exchange rate regime of the Community as referred to in Article 4.3;
- to hold and manage [the] official foreign reserves of the participating countries;
- to ensure the smooth operation of payment systems;
- to participate as necessary in the formulation, co-ordination and execution of policies relating to prudential supervision and the stability of the financial system.

Article 4 - Advisory functions

4.1 The ECB shall be consulted regarding any draft Community legislation and any envisaged international agreements in the monetary, prudential, banking or financial field. In accordance with Community legislation, the ECB shall be consulted by national authorities regarding any draft legislation within its field of competence.

4.2 The ECB may give opinions to any Community or national authority on matters within its field of competence.

4.3 The ECB shall be consulted with a view to reaching consensus consistent with the objective of price stability prior to any decision relating to the exchange rate regime of the Community, including, in particular, the adoption, abandonment or change in central rates [or exchange rate policies] vis-à-vis third currencies.

4.4 The ECB may publish its opinions.

Article 5 - Collection of statistical information

5.1 In order to undertake the tasks of the System, the ECB, assisted by the national central banks, shall collect the necessary statistical information either from the competent national authorities or directly from economic agents. For these purposes, it shall co-operate with the competent authorities of the Community, the Member States or third countries and with international organisations.

5.2 The national central banks shall carry out, to the extent possible, the tasks described in Article 5.1.

5.3 The ECB shall promote the harmonisation, where necessary, of the conditions governing the collection, compilation and distribution of statistics in the areas within its field of competence. Community legislation shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 6 - International co-operation

6.1 In the field of international co-operation involving the tasks entrusted to the System, the ECB shall decide whether the System shall be represented by the ECB and/or the national central banks.

6.2 The ECB and, subject to its approval, the national central banks may participate in international monetary institutions.

CHAPTER III - ORGANISATION OF THE SYSTEM

Article 7 - Independence

In exercising the powers and performing the tasks and duties conferred upon them by the Treaty and this Statute, neither the ECB nor a national central bank nor any member of their decision-making bodies may seek or take any instructions from Community institutions, governments of Member States or any other body. The Community and each Member State undertake to respect this principle and not to seek to influence the ECB, the national central banks and the members of their decision-making bodies in the performance of their tasks.

Article 8 - General principle

The System shall be governed by the decision-making bodies of the ECB.

Article 9 - The European Central Bank

9.1 The ECB is hereby established and shall have legal personality.

9.2 In each of the Member States the ECB shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

9.3 The property of the ECB shall be exempt from all forms of requisition or expropriation.

Disputes between the ECB, on the one hand, and its creditors, debtors or any other person, on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice.

9.4 The function of the ECB shall be to ensure that the tasks conferred upon the System under Article 3 shall be implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Article 14.

9.5 The decision-making bodies of the ECB shall be the Council and the Executive Board.

Article 10 - The Council

10.1 The Council shall comprise the President, the Vice President, the other members of the Executive Board and the Governors of the national central banks.

10.2 Subject to Article 10.3, only members of the Council present in person shall have the right to vote. Each member shall have one vote. The Rules of Procedure may provide that a member of the Council who is prevented from voting for a prolonged period may appoint an alternate as a member of the Council.

Save as otherwise provided for in the Statute, the Council shall act by a simple majority. In the event of a tie, the President shall have the casting vote.

In order for the Council to vote, there shall be a quorum of two-thirds of the members. If the quorum is not met, the President may convoke an extraordinary meeting at which decisions may be taken without regard to the quorum referred to above.

10.3 Weighted voting shall apply in accordance with the provisions of Article 28. If a Governor is unable to be present, he may nominate an Alternate to cast his weighted vote.

10.4 The proceedings of the meetings shall be confidential. The Council may decide to make the outcome of its deliberations public.

10.5 The Council shall meet at least ten times a year.

Article 11 - The Executive Board

11.1 The Executive Board shall comprise the President, the Vice-President and four other members.

The members of the Executive Board shall be selected among persons of recognised standing and professional experience in monetary or banking matters.

The members shall perform their duties on a full-time basis. No member shall, without approval of the Council, receive a salary or other form of compensation from any source other than the ECB or occupy any other office or employment, whether remunerated or not, except as a nominee of the ECB.

11.2 The President and the Vice-President shall be appointed for a period of eight years by the European Council, after the Council has given its opinion, and after consultation with the European Parliament.

11.3 The other members of the Executive Board shall be appointed, for a period of eight years, by the European Council after the Council has given its opinion.

11.4 The terms and conditions of employment of the members of the Executive Board, in particular their salaries, pensions and other social security benefits shall be laid down in contracts with the ECB and shall be fixed by the Council on the proposal of a Committee comprising three members appointed by the Council and three members appointed by the Council of the European Communities. The members of the Executive Board shall not have the right to vote on matters referred to in Article 11.4.

11.5 If a member of the Executive Board no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council or the Executive Board, compulsorily retire him.

11.6 Each member of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements will be specified in the Rules of Procedure.

11.7 The Executive Board shall administer the ECB.

Article 12 - Responsibilities of the decision-making bodies

12.1 The Council shall take the decisions necessary to ensure the performance of tasks entrusted to the System under the present Statute. The Council shall formulate the monetary policy of the Community including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the System, and shall establish the necessary guidelines for their implementation.

[The Council shall delegate to the Executive Board such operational powers as it thinks fit for implementing the monetary policy decisions and guidelines. The Council may delegate other powers as it may specify to the Executive Board.] [The Executive Board shall implement

monetary policy in accordance with the decisions and guidelines laid down by the Council. The Council may delegate powers as it may specify to the Executive Board.]

12.2 When implementing monetary policy in accordance with the decisions and guidelines established by the Council, the Executive Board shall give the necessary instructions to national central banks.

The Executive Board shall have responsibility for the preparation of Council meetings.

12.3 The Council shall adopt Rules of Procedure which determine the internal organisation of the ECB and its decision-making bodies.

12.4 The Council shall exercise the advisory functions referred to in Article 4.

12.5 The Council shall take the decisions referred to in Article 6.

Article 13 - The President

13.1 The President, or, in his absence, the Vice President shall chair the Council and the Executive Board of the ECB.

13.2 The President or his nominee shall represent the ECB externally.

Article 14 - National central banks

14.1 The Member States shall ensure that national legislation including the statutes of the national central banks is compatible with this Statute and the EEC Treaty.

14.2 The statutes of the national central banks shall in particular provide that the Governor of a national central bank is appointed by the national authorities of the Member State after consultation with the Council. The term of office shall be no less than 5 years. The Governor may be relieved from office only for serious cause resting in his person. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Council.

14.3 Subject to Article 14.5, the national central banks are an integral part of the System and shall act in accordance with the guidelines and instructions of the ECB.

The Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

14.4 [The Executive Board shall, to the extent possible and appropriate, make use of the national central banks in the execution of the operations arising out of the System's tasks.] [To the full extent possible in the judgement of the Council, the national central banks shall execute the operations arising out of the System's task.]

14.5 National central banks may perform on their responsibility and liability functions other than those specified in this Statute unless the Council finds, by a qualified majority of two-thirds of the votes cast, that these interfere with the objectives and tasks of the System. Such functions shall not be regarded as being part of the System.

14.6 For the purpose of this Statute, the Institut Monétaire Luxembourgeois shall be regarded as a national central bank.

Article 15 - Inter-institutional co-operation and reporting commitments

15.1 The President of the Council of the European Communities and a Member of the Commission may attend meetings of the Council. They may take part in the Council's deliberations but not in the voting.

15.2 The President of the ECB shall be invited to participate in meetings of the European Council and Council of the European Communities when matters relating to the System's objectives and tasks are discussed.

15.3 The ECB shall draw up an annual report on the activities of the System and on the monetary policy of both the previous and current year at a date to be established in the Rules of Procedure. The President shall present the annual report to the European Council, the Council of the European Communities and the European Parliament. The President and members of the Executive Board may attend meetings of the European Parliament's specialised committees, if circumstances justify.

15.4 The ECB shall draw up reports on the activities of the System at regular intervals. These reports and statements are to be published and to be made available to interested parties free of charge.

15.5 A consolidated financial statement of the System shall be published each week.

CHAPTER IV - MONETARY FUNCTIONS AND OPERATIONS OF THE SYSTEM

Article 16 - Notes and coins

16.1 The Council shall have the exclusive right to authorise the issue of notes within the Community. The notes issued by the ECB and the national central banks shall be the only notes to have legal tender status.

16.2 Provisions concerning the legal tender status of Community currencies shall be regulated according to the Community legislation. The Council shall make the necessary arrangements for the exchange of notes denominated in Community currencies by the national central banks at par value.

16.3 The volume and denomination of coins issued within the Community shall be subject to approval of the Council. The coins shall be put into circulation by the ECB and/or the national central banks.

Article 17 - Accounts with the ECB and the national central banks

In order to conduct their operations, the ECB and the national central banks may open accounts for credit institutions, public entities and other market participants and accept assets including book-entry securities as collateral.

Article 18 - Open market and credit operations

18.1 In order to achieve the objectives of the System and to carry out its tasks, the ECB and the national central banks shall be entitled:

- to operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement claims and marketable instruments, whether in Community or in foreign currencies, as well as precious metals;
- to conduct credit operations with credit institutions and other market participants [,with lending being based on adequate collateral].

18.2 The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks including the announcement of conditions under which they stand ready to enter into such transactions.

Article 19 - Minimum reserves

The ECB shall be entitled to require credit institutions to hold minimum reserves on accounts with the ECB and national central banks. Regulations concerning the calculation and determination of the required minimum reserves shall be established by the Council. In cases of non-compliance the ECB shall be entitled to levy penalty interest and to take steps to pursue the matter in the supervisory sphere.

Article 20 - Other instruments

The Council may decide by qualified majority of two-thirds of the votes cast upon the use of such other operational methods of monetary control as it sees fit.

Article 21 - Operations with public entities

21.1 The ECB and national central banks shall not grant overdrafts or any other type of credit facility to Community institutions, governments or other public entities of Member States or purchase debt instruments directly from them.

21.2 The ECB and national central banks may act as fiscal agents for Community institutions, governments or other public entities of Member States.

21.3 The function of fiscal agent shall comprise all banking transactions except those referred to in paragraph 1 of this Article.

21.4 Community institutions, governments and other public entities of Member States for which the ECB and national central banks act as fiscal agents shall issue debt instruments either through the System or in consultation with it.

21.5 The provisions under this Article shall not apply to publicly-owned credit institutions.

Article 22 - Clearing and payment systems

The ECB and national central banks may provide facilities, and the ECB may issue regulations to ensure efficient and sound clearing and payment systems inside the Community and with third countries.

Article 23 - External operations

The ECB and the national central banks shall be entitled:

- to establish relations with central banks and financial institutions in third countries and, where appropriate, with international and supranational organisations;
- to acquire and sell spot and forward all types of foreign exchange assets and precious metals. The term "foreign exchange asset" shall include securities and all other assets in currency of any country or units of account and in whatever form held;
- to hold and manage the assets defined above;
- to conduct all types of banking transactions in relation to third countries and international and supranational organisations, including borrowing and lending operations.

Article 24 - Other operations

In addition to operations arising from their tasks, the ECB and the national central banks may enter into operations that serve their administrative purposes or for their staff.

CHAPTER V - PRUDENTIAL SUPERVISION

Article 25 - Supervisory tasks

25.1 The ECB shall be entitled to offer advice and to be consulted on the interpretation and implementation of Community legislation relating to the prudential supervision of credit and other financial institutions and financial markets.

25.2 The ECB may formulate, interpret and implement policies relating to the prudential supervision of credit and other financial institutions for which it is designated as competent supervisory authority.

CHAPTER VI - FINANCIAL PROVISIONS OF THE SYSTEM

Article 26 - Financial accounts

26.1 The financial year of the ECB and the national central banks shall begin on the first day of January and end on the last day of December.

26.2 The annual accounts of the ECB shall be drawn up by the Executive Board in accordance with the principles established by the Council. The accounts shall be approved by the Council and shall thereafter be published.

26.3 For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the System, comprising the assets and liabilities of the ECB and those assets and liabilities of the national central banks that fall within the System.

26.4 For the application of this Article, the Council shall establish the necessary rules for standardising the accounting and reporting of operations undertaken by the national central banks.

Article 27 - Auditing

27.1 The accounts of the ECB and the national central banks shall be audited by independent external auditors recommended by the Council and approved by the Council of the European Communities. The auditors shall have full power to examine all books and accounts of the ECB and national central banks, and to be fully informed about their transactions.

27.2 The provisions of Articles 203 and 206a of the Treaty shall not apply to the ECB or to the national central banks.

Article 28 - Voting on financial matters

28.1 For any decisions to be taken under Articles 29 to 32, the votes in the Council shall be weighted according to the key attached to the Statute. A decision by a qualified majority shall be deemed to be approved if it carries [...] votes on the total of [...].

28.2 The key referred to in paragraph 1 shall be reviewed every [5] [10] years and may be modified in accordance with the simplified amendment procedure laid down in Chapter IX. The review shall take into consideration changes in the criteria on which the key was established.

Article 29 - Capital of the ECB

29.1 The capital of the ECB shall, upon its establishment, be ecu [x] million. The capital may be increased from time to time by such amounts as may be decided by the Council acting by qualified majority.

29.2 The national central banks shall be the sole subscribers to and holders of the capital of the ECB. The subscription of capital shall be according to the key attached to this Statute.

29.3 The Council, acting by qualified majority, shall determine the extent to which and the form in which capital shall be paid-up.

29.4 The shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached other than in accordance with a decision taken by the Council.

29.5 If the key attached to this Statute is modified in accordance with Article 28.2, the national central banks shall transfer among themselves capital shares to the extent necessary to ensure that the distribution of capital shares corresponds to the revised key. The Council shall determine the terms and conditions of such transfers.

Article 30 - Transfer of foreign reserve assets to the ECB

30.1 Without prejudice to the provisions of Article 29, the ECB shall be endowed by the national central banks with foreign reserve assets, other than Community currencies and ecus, up to an amount equivalent to ecu (x). The Council shall decide about the proportion to be called up by the ECB at the entry into force of this Statute and the amounts called up at later dates.

30.2 The contributions of each national central bank shall be fixed in accordance with the key attached to this Statute.

30.3 Each national central bank shall be credited by the ECB with a claim equivalent to its contribution. The Council shall determine the denomination and remuneration of such claims.

30.4 Further calls of foreign reserve assets beyond the limit set in Article 30.1 may be effected by the ECB in accordance with Community legislation.

30.5 The ECB shall be authorised to accept the pooling of IMF reserve positions and SDRs.

30.6 The Council shall determine all other conditions required for the application of this Article.

Article 31 - Foreign reserve assets held by national central banks

31.1 The national central banks shall be allowed to perform transactions in fulfilment of the obligations towards international organisations in accordance with Article 23.

31.2 All other operations in foreign reserve assets remaining with the national central banks after the transfers referred to in Article 30 shall be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Community.

31.3 The Council shall issue guidelines with a view to facilitating such operations.

Article 32 - Distribution of income of the System and allocation of net profits and losses of the ECB

To be drafted.

CHAPTER VII - GENERAL PROVISIONS

Article 33 - Regulatory power

33.1 The Council and the Executive Board shall, in accordance with their respective responsibilities, make regulations and take decisions, necessary for the performance of tasks entrusted to the System under the present Statute.

33.2 To be drafted.

Article 34 - Enforcement

The ECB and national central banks shall be entitled to impose sanctions on market participants and other economic agents which fail to comply with their obligations under regulations and decisions issued under this Statute.

Article 35 - Judicial control and related matters

35.1 The acts of the ECB shall be open to review and interpretation by the Court of Justice under the conditions laid down for the legal control of the acts of Community institutions and in case of failure the ECB may

institute proceedings in the same conditions as Community institutions. Articles 173 to 176, 178, 183 and 184 of the EEC Treaty shall be applicable accordingly.

35.2 The ECB shall be subject to the liability regime as provided for in Article 215 of the EEC Treaty.

35.3 The Court of Justice shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by or on behalf of the ECB, whether that contract be governed by public or private law.

35.4 The decision of the ECB to bring action before the Court of Justice shall be taken by the Council.

35.5 The national central banks shall be liable according to their respective national laws.

Article 36 - Staff

36.1 The Council of the ECB, on a proposal from the Executive Board, shall lay down the Staff Regulations of officials and the Conditions of Employment of other servants of the ECB.

The Court of Justice shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the Staff Regulations and the Conditions of Employment.

36.2 The Staff Regulations shall include the conditions of recruitment and promotion, the salaries, pensions and other social security benefits, the limitation of external activities, the Unions' rights and their relations with the Executive Board, the exchange of staff members from the national central banks.

Article 37 - Seat

The seat of the ECB shall be established at (...).

Article 38 - Professional secrecy

38.1 Members of the governing bodies, officials and other servants of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

38.2 Persons having access to data covered by specific secrecy Community legislation shall be subject to such legislation.

Article 39 - Privileges and immunities

The Protocol on the privileges and immunities of the European Community shall apply to the ECB, the members of its decision-making bodies, its officials and other servants to the extent necessary for the performance of the ECB's tasks.

CHAPTER VIII - TRANSITIONAL PROVISIONS FOR THE SYSTEM

To be drafted.

CHAPTER IX - AMENDMENT AND COMPLEMENTARY PROVISIONS FOR THE SYSTEM

Article 40 - Simplified amendment procedure

To be drafted.

Article 41 - Complementary legislation

To be drafted.

COMMITTEE OF GOVERNORS OF THE CENTRAL BANKS
OF THE MEMBER STATES
OF THE EUROPEAN ECONOMIC COMMUNITY

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Danmarks Nationalbank

For the attention of Mr. Hoffmeyer (copies for Mrs. B.N. Andersen and Mr. Dalgaard)

Deutsche Bundesbank (for information)

For the attention of Mr. Pöhl

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Bank of Greece

For the attention of Mr. Chalikias (copies for Messrs. Papademos, Marathakis, Karamouzis)

Banque de France (Telefax no. 00331 42 96 04 23 and 00331 42 92 47 47)

For the attention of Mr. de Larosière (copies for Messrs. Lagayette, Cappanera)

For the attention of Mr. Raymond (Telefax no. 42 92 26 25)

Central Bank of Ireland

For the attention of Mr. Doyle (copies for Messrs. Coffey and Reynolds)

Banca d'Italia (Telefax no. 47 92 35 14)

For the attention of Mr. Ciampi (copies for Messrs. Dini, Santini, Saccomanni)

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For the attention of Mr. Jaans

Nederlandsche Bank

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Banco de Portugal

For the attention of Mr. Tavares Moreira (copy for Messrs. Borges, Amorim)

Bank of England (Telefax no. (441) 601 49 53)

For the attention of Mr. Leigh-Pemberton (copies for Messrs. Crockett and M.D.K.W. Foot)

Commission of the European Communities

For the attention of M. Delors (copies for Messrs. Ravasio, Pons and Kees and Secretariat of the Monetary Committee)

From: For the attention of Mr. Christophersen (Telefax no. (322) 236 07 46)
The Secretariat

If this transmission is not complete, please call 61/280 85 12

TRANSMITTED BY:
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M

B.I.S., Basle/Switzerland
Telefax number: 61/280 91 00
Telex number: 962487
Telephone number: 61/280 80 80