II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 22 March 1988

amending, as regards the investment policies of certain UCITS, Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS)

(88/220/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the third sentence of Article 57 (2) thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Article 22 (1) and (2) of Directive 85/611/EEC (4) limits the investment of UCITS assets in transferable securities from the same issuer to 5 %, a limit which may, if required, be increased to 10 % ;

Whereas that limit poses special problems for UCITS established in Denmark in cases where they wish to invest an appreciable proportion of their assets on the domestic bond market, since that market is dominated by mortgage credit bonds and the number of institutions issuing such bonds is very small ;

Whereas those mortgage credit bonds are subject in Denmark to special rules and supervision designed to protect holders and are treated under Danish legislation as equivalent to bonds issued or guaranteed by the State ;

Whereas Article 22 (3) of Directive 85/611/EEC derogates from paragraphs 1 and 2 of that Article in the case of bonds issued or guaranteed by a Member State and authorizes UCITS to invest in particular up to 35 % of their assets in such bonds ;

Whereas a similar derogation, but of a more limited extent is justified with regard to private sector bonds which, even in the absence of a State guarantee, nevertheless offer special guarantees to the investor under the specific rules applicable thereto ; whereas it is necessary therefore to extend such a derogation to the totality of such bonds which fulfil jointly fixed criteria, while leaving it to the Member States to draw up the list of bonds to which they intend, where appropriate, to grant a derogation, and providing for a procedure for informing the other Member States identical to that provided for in Article 20 of Directive 85/611/EEC,

HAS ADOPTED THIS DIRECTIVE :

Article 1

In Article 22 of Directive 85/611/EEC, the following paragraphs shall be added :

'4. Member States may raise the limit laid down in paragraph 1 to a maximum of 25 % in the case of certain bonds when these are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of these bonds

(1) OJ No C 155, 21. 6. 1986, p. 4.
(2) Opinion published in OJ No C 125, 11. 5. 1987, p. 162 and Decision of 10 February 1988 (not yet published in the Official Journal).
(3) OJ No C 333, 29. 12. 1986, p. 10.
(4) OJ No L 375, 31. 12. 1985, p. 3.