

**COMMISSION IMPLEMENTING DECISION (EU) 2023/1602****of 31 July 2023****on the primary dealer network and the definition of eligibility criteria for lead and co-lead mandates for syndicated transactions for the purposes of the borrowing activities by the Commission on behalf of the Union and of the European Atomic Energy Community**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union <sup>(1)</sup> and in particular Article 220a(2) thereof,

Whereas:

- (1) In the context of the actions adopted by the Union in the aftermath of the COVID-19 crisis a primary dealer network was established by Commission Decision (EU, Euratom) 2021/625 <sup>(2)</sup> to function as a qualified network of credit institutions and investment firms on which the Commission calls on for the primary placement of debt securities, for the promotion of such placements and, as the case may be, for the provision of relevant financial services, such as the provision of fair market advice and intelligence.
- (2) In accordance with Article 220a of Regulation (EU, Euratom) 2018/1046 as amended by Regulation (EU, Euratom) 2022/2434 <sup>(3)</sup>, borrowings authorised under Article 5(1) of Council Decision (EU, Euratom) 2020/2053 <sup>(4)</sup> and, except in duly justified cases, borrowing and debt management operations to fund programmes of financial assistance should be done by the Commission under a diversified funding strategy. A diversified funding strategy is a general borrowing method allowing for flexibility regarding the timing and maturity of single funding transactions and for regular and steady disbursements to beneficiaries.
- (3) Following two years of functioning of the primary dealer network, some improvements are needed in particular in relation to the processes of notifications provided by the primary dealers, and in relation to the suspension or exclusion of a primary dealer from the network.
- (4) Recourse to the capital markets takes place on a large scale, and issuances are performed very frequently. As a consequence, the organisation of funding operations should be flexible.

<sup>(1)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

<sup>(2)</sup> Commission Decision (EU, Euratom) 2021/625 of 14 April 2021 on the establishment of the primary dealer network and the definition of eligibility criteria for lead and co-lead mandates for syndicated transactions for the purposes of the borrowing activities by the Commission on behalf of the Union and of the European Atomic Energy Community (OJ L 131, 16.4.2021, p. 170).

<sup>(3)</sup> Regulation (EU, Euratom) 2022/2434 of the European Parliament and of the Council of 6 December 2022 amending Regulation (EU, Euratom) 2018/1046 as regards the establishment of a diversified funding strategy as a general borrowing method (OJ L 319, 13.12.2022, p. 1).

<sup>(4)</sup> Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L 424, 15.12.2020, p. 1).

- (5) Primary dealers admitted to the network are entitled to participate in auctions conducted by the Commission for borrowing on capital markets. The definition of the eligibility criteria builds on the Commission's experience in selecting credit institutions and investment firms under existing financial assistance programmes. It also draws on best practice by sovereign and supranational issuers.
- (6) Credit institutions and investment firms should be entitled to membership of the primary dealer network if they fulfil the eligibility criteria. Such criteria aim to guarantee the efficient performance of the primary dealers' function, in particular the proficient conduct of market operations and the compliance with underwriting commitments. In this regard, it is crucial that eligible primary dealers demonstrate a solid organisational structure, professional and management capacity, significant market activity in underwriting sovereign and supranational bond issuance, and compliance with the relevant regulatory framework, especially with regard to Union prudential requirements <sup>(5)</sup> and supervision thereof <sup>(6)</sup>. In compliance with the principle of transparency, those criteria and the decisions admitting a credit institution or an investment firm as a primary dealer should be published in the *Official Journal of the European Union*.
- (7) Membership of primary dealer networks operated by a Member State or a supranational issuer entitles the credit institution or investment firm to participate in public debt auctions of that issuer. Regular and active involvement in sovereign or supranational auction procedures is a reliable demonstration of experience in public debt management operations. Eligibility for membership of the Union primary dealer network should therefore be conditional on membership of at least one Member State or European supranational issuer's primary dealer network or primary dealership mechanism.
- (8) Once admitted to the primary dealer network, primary dealers should be permitted to carry the title of 'Member of the European Union Primary Dealer Network' and to participate in all auctions of debt securities of the Union and the Euratom. These dealers should buy a minimum weighted average of auctioned volumes and should comply with certain reporting obligations.
- (9) The primary dealers should also adhere to the general terms and conditions governing participation in the primary dealer network, in particular the rights, commitments and obligations of the members of the primary dealer network, annual review, reporting obligations, as well as rules on controls, on suspension of membership, on the exclusion and on the possibility to withdraw from the primary dealer network.
- (10) In addition to auctions, the issuance of debt securities under borrowing programmes is carried out through syndication or private placements. To this end, credit institutions or investment firms fulfilling established eligibility requirements for syndicated transactions and private placements are appointed by the Commission for the purpose of each borrowing transaction.
- (11) Members of the primary dealer network which buy a higher weighted average percentage of auctioned volumes than that required to be a member of the primary dealer network, who maintain a sufficient secondary market share in debt securities of the Union and the Euratom and who fulfil the minimum requirements of the quoting arrangements should be eligible to serve as lead managers in syndicated transactions. This group of dealers should also undertake to promote liquidity of debt securities of the Union and the Euratom through an additional market-making activity, to provide fair advice and market intelligence to the Commission and to promote the Union and the Euratom issuances with investors.

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<sup>(5)</sup> See, in particular, Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>(6)</sup> See, in particular, Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ L 141, 14.5.2014, p. 1) and Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

- (12) The tasks connected with the roles of lead manager and co-lead manager should be considered financial services as referred to in Chapter 1, Section 2, point 11.1, point (j), of Annex I to Regulation (EU, Euratom) 2018/1046. The appointment of eligible primary dealers as members of the syndicate for a specific issuance transaction should therefore be based on a negotiated procedure without prior publication of a contract notice. The procedure for appointment of lead managers should include the sending of a request for proposals to eligible dealers and the evaluation of proposals received by the Commission.
- (13) Taking into account the expected high frequency of the Commission's recourse to the capital markets, it is necessary to establish a smooth, swift and efficient mechanism to appoint banks as lead managers for syndicated transactions. It is therefore necessary to provide a fair and transparent basis for limiting the request for proposals to a subset of the primary dealers eligible to participate in syndicates. This additional selection is necessary to balance the need for competition in the procurement procedure for the services of supporting the syndicate with the need for efficient preparation of time-sensitive transactions, and to avoid duplication of effort by primary dealers in bidding for syndicate mandates. This selection of banks should be based on qualitative and quantitative criteria, relating to the proven capacity of eligible primary dealers in supporting sovereign and supranational issuance in primary and secondary markets, and their ability to distribute debt securities to investors. This process should also provide a rotation mechanism ensuring an equal chance for participation across all eligible primary dealers.
- (14) Primary dealers should notify the Commission of any instances of non-compliance with market practices and ethics, including notifying the Commission of any proceedings, judgements, decisions or sanctions concerning the relevant provisions of Regulation (EU, Euratom) 2018/1046 related to the early-detection and exclusion system, in particular Articles 135 to 142 thereof. These notifications should relate solely to primary dealers themselves and their parent entities. Such notification should be without prejudice to the obligation of primary dealers to immediately inform the Commission of any changes in the situations as declared during the application process.
- (15) In order to provide for greater secondary market liquidity of the Union and the Euratom debt securities, and to improve price discovery and transparency, it is appropriate to introduce a quoting arrangement which should encourage primary dealers to act as market makers and quote the Union and the Euratom debt securities on recognised electronic platforms. Members of the primary dealer network should be provided with appropriate incentives to engage in such market making activities. To this effect it is appropriate to set the criteria for the fulfilment of the quoting arrangement.
- (16) In order to provide additional incentives for all primary dealers to engage in market making activities, it is appropriate to provide simpler access to the co-lead mandates for syndicated transactions also to those primary dealers that support the secondary market liquidity in the Union and the Euratom debt securities and fulfil the minimum criteria of the quoting arrangement, but do not fulfil the eligibility criteria to serve as lead managers for syndicated transactions. Such access to co-lead mandates would allow the Commission to provide additional incentives to a broader range of primary dealer network members, which take steps to support the Union and the Euratom debt issuance. The eligibility criteria for co-lead mandates for syndicated transactions should therefore be established. The Commission should consider co-lead mandates for at least one transaction within the period covered by a funding plan established in accordance with Article 4 of Commission Implementing Decision (EU, Euratom) 2022/2544 <sup>(7)</sup>.

<sup>(7)</sup> Commission Implementing Decision (EU, Euratom) 2022/2544 of 19 December 2022 establishing the arrangements for the administration and implementation of the EU borrowing and debt management operations under the diversified funding strategy and related lending operations (OJ L 328, 22.12.2022, p. 109).

- (17) It is appropriate to clearly define and distinguish commitments concerning lead and co-lead mandates and to make the co-lead eligibility criteria proportionate to the benefits of the role. To that effect, co-lead mandates may also be awarded to primary dealers which meet the relevant eligibility criteria but may not carry out all additional commitments that are required to receive a lead mandate. All primary dealers fulfilling the co-lead eligibility criteria should be invited to participate as co-leads in a syndicated transaction, except in cases where operational efficiency would be better ensured by a sub-set of eligible co-leads. In such cases the eligible co-leads should be chosen on the basis of an alphabetical order with a rotation mechanism.
- (18) In order to further enhance the protection of the Union's financial interests, suspension and exclusion processes of primary dealers should be clear and efficient. It is important to ensure that in cases of need a suspension of a primary dealer could be done without undue delay. In cases where an exclusion process is initiated, such a process should allow for sufficient time for primary dealers to respond to a notice of non-compliance communicated by the Commission, and, where applicable, to take corrective measures in cases where such non-compliance can be corrected.
- (19) Taking into account the need to protect the financial interests of the Union, monitoring rules should be established in order to ensure compliance by the members of the primary dealer network with the obligations set forth under this Decision and other relevant applicable provisions, in particular the general terms and conditions. The European Anti-Fraud Office (OLAF) should be involved, where appropriate, in that supervision.
- (20) Decision (EU, Euratom) 2021/625 established the primary dealer network and defined in particular eligibility criteria for the selection of its members. Commission Decision (EU) 2021/857<sup>(8)</sup> amended Decision (EU, Euratom) 2021/625 and expanded the eligibility criteria by including certain investment firms authorised to carry out the activities of underwriting financial instruments and/or placing financial instruments on a firm commitment basis under Directive 2014/65/EU<sup>(9)</sup>. This Decision builds upon the principles established by the aforementioned decisions. This Decision should therefore replace Decision (EU, Euratom) 2021/625, which should accordingly be repealed,

HAS ADOPTED THIS DECISION:

## CHAPTER 1

### SUBJECT MATTER, SCOPE AND DEFINITIONS

#### *Article 1*

#### **Subject matter and scope**

1. This Decision establishes the primary dealer network and lays down the eligibility criteria and procedural provisions for the selection of its members as well as the rights and obligations of those members.
2. This Decision applies to any borrowing and debt management activity carried out by the Commission on behalf of the Union and Euratom, where the Commission selects private financial counterparties.

<sup>(8)</sup> Commission Decision (EU) 2021/857 of 27 May 2021 amending Decision (EU, Euratom) 2021/625 as regards the inclusion of certain investment firms in the eligibility criteria for membership of the Union primary dealer network (OJ L 188, 28.5.2021, p. 103).

<sup>(9)</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

*Article 2***Definitions**

For the purposes of this Decision, the following definitions apply:

- (1) 'auction' means the issuance process of the Union and Euratom debt securities based on competitive bids through an auction platform on primary market;
- (2) 'borrowing programmes' means the Union and Euratom programmes involving borrowing activities on the financial markets;
- (3) 'credit institution' means credit institution as defined in Article 4, paragraph 1 (1), of Regulation (EU) No 575/2013;
- (4) 'debt securities' means notes and/or short term financial instruments, such as treasury bills, as well as any other financial instrument, issued by the Union and/or Euratom;
- (5) 'investment firms' means investment firms as defined in Article 4(1), point 1 of Directive 2014/65/EU;
- (6) 'interdealer platform' means a dealer to dealer electronic trading venue, established in the European Union, as defined in Article 4(1), point (24) of Directive (EU) 2014/65/EU, where primary dealers participate as market makers for secondary market trading;
- (7) 'quote' means firm bid and ask rates or prices placed on interdealer platforms which lead to the automatic conclusion of a transaction if corresponding bid or ask rates or prices have been provided by another participant (central limit order book);
- (8) 'members of the primary dealer network' means any credit institutions or investment firms fulfilling the eligibility criteria set out in Article 4 and included in the list referred to in Article 15;
- (9) 'European supranational issuer' means the Council of Europe Development Bank, the European Financial Stability Facility, the European Stability Mechanism, the European Investment Bank or the Nordic Investment Bank.

*Article 3***Establishment of the primary dealer network**

The Union primary dealer network ('primary dealer network') shall comprise a group of credit institutions and investment firms that are eligible to participate in the following borrowing and debt management activities of the Commission:

- (a) the placement of debt securities on the primary capital markets, in particular through auctions and syndicated transactions;
- (b) the promotion of liquidity of Union and Euratom debt securities on the financial markets;
- (c) the provision of fair advice and market intelligence to the Commission;
- (d) the promotion and development of the placement of Union and Euratom debt securities.

## CHAPTER 2

**MEMBERSHIP OF THE PRIMARY DEALER NETWORK***Article 4***Eligibility criteria for the primary dealer network**

Credit institutions and investment firms fulfilling the following criteria shall be eligible for membership of the primary dealer network:

- (a) being a legal entity established and having its head office in the Union or in a European Economic Area country;
- (b) being supervised by a Union competent authority and being authorised to carry out the business as either of the following:
  - (i) a credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council <sup>(10)</sup>; or
  - (ii) an investment firm authorised to carry out the activity of underwriting of financial instruments or placing of financial instruments on a firm commitment basis in accordance with Directive 2014/65/EU; and
- (c) being a member of a European sovereign or supranational primary dealer network established for the purpose of serving as counterparty of a Member State or of a European supranational issuer. For the purpose of this Decision a European sovereign or supranational primary dealer network shall be understood as either of the following entities:
  - (i) a network, group or organised system of financial institutions that is appointed by a sovereign or supranational issuer to serve as market counterparty in the framework of public debt management, whose membership typically entails participation in public debt securities issuances through auctions;
  - (ii) a primary dealership mechanism that is substantially equivalent to the network, group or organised system referred to in point (i).

*Article 5***Commitments**

1. Members of the primary dealer network shall undertake the following commitments:
  - (a) to buy a minimum weighted average of 0,05 % of volumes auctioned by the Union and/or the Euratom on a semi-annual basis in accordance with part 1 of the Annex I;
  - (b) to comply with the obligation to accurately, timely and integrally report on a monthly basis to the Commission the traded volumes on Union and Euratom debt securities, according to the harmonised reporting format for trading on the secondary European sovereign debt market established by the Sub-Committee on EU Sovereign Debt Markets of the European Union Economic and Financial Committee;
  - (c) to submit a signed copy of the 'General terms and conditions for European Union primary dealers ('GTC)';
  - (d) to ensure that the trading authorisations provided to its trading personnel are quarterly reviewed and validly in force;

<sup>(10)</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (e) to comply with market practices and ethics, in particular:
- (i) ensure compliance with conduct rules and highest standards in market practices applicable to their operations on EUR-fixed income business;
  - (ii) primary dealers and their parent entities shall apply measures relating to anti-money laundering (AML) and counterterrorism financing (CTF) in accordance with applicable national and Union laws and regulations in force;
  - (iii) each primary dealer immediately shall notify the Commission of any proceedings initiated against it by a competent authority of a Member State concerning the activity carried out by the primary dealer as credit institution or investment firm. Each primary dealer shall notify the Commission of any measure or decision taken as a result of these proceedings;
  - (iv) each primary dealer shall immediately notify the Commission if the primary dealer or its parent entity is convicted of a criminal charge, including tax evasion, or subjected to administrative or disciplinary sanctions, or suspended or excluded from an industry organisation in any Member State;
  - (v) If a competent authority of a Member State identifies any AML or CTF deficiencies or imposes any AML or CTF sanction, the primary dealers shall notify the Commission immediately and report on their remedial measures;
  - (vi) The primary dealer shall ensure not to conclude transactions concerning Union and Euratom debt securities, which would involve any counterparty incorporated or established in a country included in the EU list of non-cooperative jurisdictions for tax purposes or identified as high risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849 and listed in Delegated Regulation (EU) 2016/1675 or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information or breaches sanction regimes, in particular restrictive measures under Article 215 TFEU;
- (f) to treat all information received from the Commission confidentially.
2. For the purposes of the paragraph 1, point (b), the quality of the reporting shall be regularly assessed and the results notified the interested primary dealer. The primary dealer shall be notified if the data provided are not accurate.
3. For the purposes of the first paragraph 1, point (e), the Commission shall evaluate the primary dealers' conduct during the execution of syndicated transaction and other debt management operations in terms of readiness, market neutrality and, orderly and efficient execution.

#### *Article 6*

### **General terms and conditions**

1. The GTC shall apply to any borrowing and debt management activity carried out by the Commission under the borrowing programmes under this Decision.
2. The GTC shall, in accordance with this Decision:
  - (a) establish the details of the obligations for the duration of the participation in the primary dealer network and the details of the eligibility criteria for lead and co-lead mandates;
  - (b) establish the content of and procedure for the annual review;

- (c) establish the detailed rules for reporting obligations;
  - (d) establish rules on controls;
  - (e) establish the details of the rules and procedure for the suspension of membership, lifting of that suspension, and exclusion from the primary dealer network; and
  - (f) regulate the possibility to withdraw from the primary dealer network;
  - (g) establish the detailed rules for the quoting arrangements, including the observation period and requirements and the process for recognition of interdealer platform;
3. Any time limit shall be calculated as follows:
- (a) where a time limit is expressed in days or months from a certain date or event, the day or month on which that date falls or that event occurs is not to be counted as falling within the time limit;
  - (b) time limits expressed in days shall include business days only. Business days are to be determined in accordance with Luxembourgish calendar of public and bank holidays (<https://www.abbl.lu/fr/topic/bank-holidays/>);
  - (c) a time limit expressed in months is to end with the expiry of the day in the last month corresponding to the same day on which the date or the event, from which the time-limit is calculated, fell or occurred;
  - (d) if, in a time limit expressed in months, the day on which it should expire does not occur in the last month, the time limit is to end with the expiry of the last day of that month;
  - (e) if a time expressed in months expires on a public or bank holiday day, it is to be extended until the end of the first subsequent business day.

#### Article 7

### **Rights of members of the primary dealer network**

Members of the primary dealer network shall have the following rights:

- (a) to advertise themselves as 'Member of the European Union Primary Dealer Network';
- (b) to participate and bid in any auction of debt securities of the Union or Euratom;
- (c) to receive on a regular basis, at least yearly, feedback on its performance, especially in relation to its ranking in the auctions and in the secondary markets; this feedback shall be based on the internal evaluation process referred to under Article 13 with objective criteria to be communicated to the primary dealers;
- (d) without prejudice to Chapter 3, to be eligible for debt management operations, including the following operations:
  - (i) private placements;
  - (ii) repurchase transactions as defined in Article 3(9) of Regulation (EU) 2015/2365 of the European Parliament and of the Council <sup>(11)</sup>;
  - (iii) swaps as defined in Section 1, point 10, of Annex III to Commission Delegated Regulation (EU) 2017/583 <sup>(12)</sup>;

<sup>(11)</sup> Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

<sup>(12)</sup> Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (OJ L 87, 31.3.2017, p. 229).



- (e) to resign at any moment its membership of the primary dealer network by notifying such resignation to the Commission; such a resignation shall take effect the first business day of the first month following the date of the notification.

### CHAPTER 3

#### LEAD AND CO-LEAD MANDATES FOR SYNDICATED TRANSACTIONS

##### *Article 8*

##### **Eligibility criteria for lead mandates for syndicated transactions**

Members of the primary dealer network are eligible to serve as lead managers for syndicated transactions, subject to the fulfilment of the following criteria:

- (a) having bought a minimum share of auctioned volumes by the Union and the Euratom, on weighted average based on the last auctions on a rolling basis;
- (b) having provided evidence, based on the transaction data reported in accordance with this Decision, of having a minimum market share among primary dealers in Union and Euratom debt securities on the secondary markets on a rolling basis;
- (c) having complied with the minimum requirements of the quoting arrangements during the observation period;
- (d) having agreed, as part of the GTC, with the general terms and conditions for mandates for syndicated transactions and with the fee schedule.

The minimum shares referred to in first paragraph, points (a) and (b), the minimum requirements referred to in the first paragraph, point (c), as well as other detailed rules for lead mandates shall be based on best market practices in particular of peer issuers and shall reflect the balance of benefits and obligations for the members of the primary dealer network. Where the criterion includes relative shares, the percentages shall take into account the total number of primary dealers.

##### *Article 9*

##### **Eligibility criteria for co-lead mandates for syndicated transactions**

Members of the primary dealer network are eligible to serve as co-lead managers for syndicated transactions, subject to the fulfilment of the following criteria:

- (a) having agreed, as part of the GTC, with the general terms and conditions for co-lead mandates for syndicated transactions and with the fee schedule;
- (b) having complied with the minimum requirements of the quoting arrangements during the observation period; and
- (c) not having been awarded the lead mandate during the observation period.

The minimum requirements referred to in the first paragraph, point (b) and the observation period referred to in first paragraph, points (b) and (c), as well as other detailed rules for co-lead mandates shall be based on best market practices including those of peer issuers and shall reflect the balance of benefits and obligations for the members of the primary dealer network.

##### *Article 10*

##### **Fee schedule**

The fee schedule referred to Article 8, first paragraph, point (d) and Article 9, point (a) shall apply to borrowing and debt management operations. The fee schedule shall establish a remuneration commensurate with the costs and risks born by the eligible primary dealers in carrying out Union and Euratom borrowing and debt management operations, while

ensuring cost-efficiency for the Union and taking into account specificities of the Union's debt issuances, in particular volumes and maturities. The fee schedule shall be referred to in an annex to the general terms and conditions for lead and co-lead mandates for syndicated transactions.

#### *Article 11*

##### **Quoting arrangements**

The minimum requirements of the quoting arrangements referred to under Article 8, first paragraph, point (c) and Article 9, first paragraph, point (b) shall refer to trading time, number of quotes and spreads quoted for specified Union debt securities and on a recognised interdealer platform during the observation period.

#### *Article 12*

##### **Additional commitments for lead mandates**

Members of the primary dealer network fulfilling the criteria laid down in Article 8 may be awarded a mandate for lead manager for syndicated transactions on the basis of the assessment of their commitment to carry out any of the following activities:

- (a) on a best effort basis, to promote the liquidity of Union and Euratom debt securities with a market-making activity, thereby contributing to price discovery, to the efficiency of the secondary market and to an orderly execution of trading;
- (b) to provide fair advice and market intelligence to the Commission in order to design and implement the borrowing programmes, and, in particular, to provide advice prior to the publication of the funding programme and in the context of the preparation of the debt management transactions under the borrowing programmes;
- (c) to provide the Commission with regular information on market trends, analysis and research on functioning of fixed-income markets and, in particular, the sovereigns, supranationals and agencies;
- (d) to promote and develop the placement of Union and Euratom debt securities within a diversified and broad investor community as part of their business strategy.

#### *Article 13*

##### **Selection of the syndicate**

1. Syndicates shall be selected pursuant to Chapter 1, Section 2, point 11.1, point (j), of Annex I to Regulation (EU, Euratom) 2018/1046 in a negotiated procedure without prior publication of a contract notice.
2. The Commission shall send the requests for proposals to a subgroup of eligible members of the primary dealer network fulfilling the criteria laid down in Articles 8 and 12, soliciting an offer for participation as lead managers.
3. The selection of the subgroup of eligible primary dealers to whom the request for proposals shall be sent by the Commission, shall be based on objective qualitative and quantitative criteria, relating to the proven capacity of eligible primary dealers in supporting sovereign and supranational issuance in primary and secondary markets, and their ability to distribute debt securities to investors. Those criteria shall also include an assessment of the performance of the activities listed in Article 12. The Commission shall implement a rotation criterion to ensure that all eligible members of the primary dealer network are regularly invited to respond to requests for proposals.
4. The proposals received from eligible members referred to in paragraph 2 shall be evaluated on the basis of an additional set of objective qualitative and quantitative criteria and in view of the establishment of a syndicate, whose composition is the best possible combination of managers for the optimal performance of a given transaction.

5. The criteria for the transmission of requests for proposals and for the evaluation of the received proposals shall be communicated to the subgroup of members of the primary dealer network together with the request for proposals.
6. The Commission may invite primary dealers to express their interest in a mandate as co-lead managers to a syndicated transaction, in addition to joint lead manager or managers, based on the market circumstances and with a view to ensure the optimal performance of a given transaction. The Commission may invite either all primary dealers eligible in accordance with Article 8 or a subgroup of them based on alphabetical order and a rotation mechanism. Such invitation shall be considered for at least one syndication transaction within the period covered by a funding plan established in accordance with Article 4 of Implementing Decision (EU, Euratom) 2022/2544.
7. The Commission shall award all primary dealers, who accepted the invitation referred to in paragraph 6, with the mandate for co-lead managers.

#### CHAPTER 4

### **APPLICATION FOR MEMBERSHIP AND ESTABLISHMENT OF THE LIST OF THE MEMBERS OF THE PRIMARY DEALER NETWORK AND MONITORING**

#### *Article 14*

#### **Application for membership and list of primary dealers**

1. Interested credit institutions and investment firms, shall submit to the Commission an application for membership to the primary dealer network by filling in and submitting the application form and the annexed checklist in respect of admission criteria available on the Commission website.
2. Applications for admission to the primary dealer network shall include proof of compliance with Articles 4 and 5. Evidence and supporting documents to be enclosed are detailed in the application form and its annexes.
3. In the case of an incomplete application form, incomplete information or insufficient data, the applicant may be requested by the Commission to submit necessary additional information. Failure to provide the necessary additional information within a specified deadline shall result in rejection of the application form.
4. Provision of false, misleading or incorrect information or documents during the application process shall result in non-admission to the primary dealer network or, as the case may be, may lead to an exclusion from the primary dealer network in accordance with Article 17.
5. In the application form each primary dealer shall declare its acceptance of the GTC, thereby acknowledging the binding nature of the GTC and committing itself to respecting them.
6. The application form and the GTC shall be signed and the GTC shall also be initialled on each page by a duly authorised representative of the primary dealer who, based on applicable laws of the relevant jurisdiction and on the relevant corporate documents is empowered to validly commit such primary dealer for the purpose of the performance of the obligations and activities under the GTC. To such end, an extract from the relevant company register shall be provided when submitting the application form.
7. Any communication, notice or information relating to this Decision and the GTC shall be sent to the address for notice elected by the primary dealers in their application form and shall be addressed to the person who is designated as 'coordinator' in the application form.

*Article 15***Admission to primary dealer network**

1. The decision as to whether to include an applicant in the list of the primary dealer network shall be adopted, at the latest, within two months of the submission of the relevant application. If an applicant is requested to submit additional information in accordance with paragraph 3 of Article 14, the time limit for a decision relating to that applicant shall be suspended until the date of submission of that additional information. If the applicant informs the Commission that it considers the application to be complete, the decision shall be adopted within 2 months. The decision shall be notified to the applicant.
2. The non-admission decision shall state reasons on which it is based.
3. The up-dated list of members of the primary dealer network shall be published once a year in the *Official Journal of the European Union*.
4. In order to perform the annual review the primary dealers shall be invited to represent and declare to the Commission that they still fulfil all the eligibility criteria for the membership laid down in Article 4.

*Article 16***Monitoring**

The Commission may conduct, or may appoint a third party to conduct, verifications to check the compliance of members of the primary dealer network with this Decision. Members of the primary dealer network shall cooperate with and facilitate the conduct of those verifications, especially by providing necessary information and data as well as access thereto.

Each member of the primary dealer network shall:

- (a) provide the Commission with the risk limit set for the trading activity of the debt securities of the Union and the Euratom in accordance with the GTC;
- (b) notify the Commission of any downgrade by rating agencies in the Union recognised the European Securities and Markets Authority;
- (c) immediately notify the Commission of any supervening non-compliance with any eligibility criterion laid down in Article 4.

By accepting the GTC, the primary dealer gives its consent to possible audits and verification related to the data transmitted to the Commission in the framework of its reporting obligations, in particular with regard to the data to be used to assess its performance on the secondary market.

*Article 17***Suspension and exclusion from the primary dealer network**

1. The membership of the primary dealer in the primary dealer network may be suspended in the following cases:
  - (a) initiation of proceedings against a primary dealer as referred to in Article 5, paragraph 1 point (e)(iii);
  - (b) initiation of procedure, which may result in the cessation of membership in the network or the mechanism referred to in Article, 4 point (c);

- (c) there is a basis for exclusion of the primary dealer pursuant to Article 136 of Regulation (EU, Euratom) 2018/1046.

Primary dealer shall be invited by a pre-suspension notice to submit its observations within a time limit of no less than 3 days from the receipt of the notice, except in duly justified exceptional cases, including in particular those related to reputational risk. The suspension decision shall take effect the first business day following the date of the notification to the non-compliant primary dealer. Suspended primary dealers shall not receive lead or co-lead mandates for the period of their suspension.

The suspension may be lifted upon request from the suspended primary dealer. Along with the request, the primary dealer shall submit sufficient evidence that, as applicable, either the proceedings referred to under first paragraph, point (a) of the first subparagraph are no longer pending and have not resulted in a sanction of whichever nature against the suspended dealer, or the procedure referred to under first paragraph, point (b) of the first subparagraph is no longer pending and has not resulted in the cessation of membership in the network or the mechanism referred to in Article 4 point (c). The presented evidence shall be assessed and a decision taken within 15 working days as of the request being received, provided sufficient evidence has been supplied.

2. Primary dealer shall be excluded from the primary dealer network in the following cases:

- (a) primary dealer ceases to fulfil any of the conditions referred to in Article 4;
- (b) exclusion of the primary dealer pursuant to Articles 135 to 142 of Regulation (EU, Euratom) 2018/1046;
- (c) non-compliance with obligations laid down under points (a) and (c) of Article 5.

3. The following procedure shall apply to the exclusion from the primary dealer network in cases laid down under paragraph 2:

- (a) the primary dealer shall be invited with a pre-exclusion notice to submit its observations within a time-limit of no less than 7 days from the receipt of the notice;
- (b) the exclusion decision shall be notified to the primary dealer. The exclusion decision takes effect the first business day following the date of its notification to the excluded primary dealer.

4. Primary dealer may be excluded from the primary dealer network in the case of:

- (a) non-compliance with obligations laid down under Article 5, points (b), (d) (e) and (f);
- (b) commitment of an infringement referred to in Article 30 of Regulation (EU) No 596/2014 of the European Parliament and of the Council <sup>(13)</sup>, as decided in a final decision adopted by relevant competent authority;
- (c) a final decision by the competent authority taken as a result of any proceeding referred to under Article 5, first paragraph point (e)(v) or relating to AML and CTF laws and regulations.

5. The following procedure shall apply in cases laid down under paragraph 4:

- (a) the primary dealer concerned shall receive a notice specifying the grounds for non-compliance, a request to submit observations and corrective measures that it intends to take to restore and/or ensure compliance with the relevant criteria and/or obligations and setting a time-limit to submit observations of no less than 7 days from the receipt by the primary dealer of the notice;

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<sup>(13)</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

- (b) taking into account the submitted observation and communicated corrective measures, if any, the decision to exclude the non-compliant primary dealer from the primary dealer network may be taken;
- (c) the exclusion decision shall state reasons on which the exclusion is based;
- (d) the exclusion decision shall take effect the first business day following the date of its notification to the excluded primary dealer.

6. Suspension of membership pursuant to paragraph 1, exclusion from a membership pursuant to paragraphs 2 to 5 and resignation on membership in primary dealer network pursuant to Article 7, point (e) shall have no effect on the rights and obligations of the primary dealer in question in respect of contracts concluded prior to the effective date of exclusion, suspension or resignation respectively.

7. Suspension shall not entail the suspension of obligations under Article 5, first paragraph point (f) and under Article 16.

## CHAPTER 5

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article 18*

Decision (EU, Euratom) 2021/625 is hereby repealed.

References to the repealed Decision shall be construed as references to this Decision and shall be read in accordance with the correlation table in Annex II.

#### *Article 19*

Article 8(a) and (b) of Decision (EU, Euratom) 2021/625 shall continue to apply to syndicated transactions starting before 1 November 2023.

Articles 8, first paragraph, points (a) and (b), Article 9, first paragraph, points (a) and (c) and Article 11 shall apply to syndicated transactions starting as of 1 November 2023;

Article 8, first paragraph, point (c), Article 9, first paragraph, point (b) and Article 13(6) and (7) shall apply to syndicated transactions starting as of 1 July 2024.

#### *Article 20*

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 31 July 2023.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

## ANNEX I

**1. Fulfilment of the obligation to purchase a minimum weighted average of 0,05 % of volumes auctioned by the Union and/or the Euratom on a semi-annual basis**

- (a) Auctions shall be carried out through an auction system operated by an auction provider selected by the Commission ("auction provider").
- (b) Participation in the auctions and purchase of auctioned debt securities shall take place in accordance with auction rules arranged by the auction provider and endorsed by the Commission. The primary dealers shall subscribe to the auction rules and comply with them.
- (c) It should be understood by all primary dealers, that they act and participate in the auctions at their own risk and that the Commission shall not be responsible in any manner for the decisions of any participant in the auctions and in particular for any losses, direct or indirect, arising in relation to any transaction entered into by such participants.
- (d) The primary dealers shall take all measures to ensure that they are able to participate in the auction, in particular conclude the contracts with the auction provider, complete any step and formality necessary to participate in the auctions, and have in place the technical infrastructure to participate.
- (e) The Commission shall not bear any costs or responsibility towards the primary dealer in relation to the contracts between the auction provider and the primary dealer or in relation to the technical infrastructure for the auction.
- (f) Primary dealers may only be dispensed from the fulfilment of their obligation under Article 5(a) in cases of force majeure, which shall in particular not comprise cases of malfunctioning or technical issues relating to the infrastructure.
- (g) The calculations of the volume purchased by primary dealers over the relevant 6-month period shall be weighted according to the following table:

Residual maturity	< 3,5 m	3,5 m-1Y	1Y-4Y	4Y-8Y	8Y-12Y	12Y-17Y	17Y-23Y	> 23Y
Coeff.	0,5	1	2,5	5,5	10	15	20	25

- (h) This calculation shall be applied for 6-month periods, running from April to September and from October to March. In 2023, the following period shall apply: from January to June and from July to March of the following period. Article 5(a) of this Decision shall temporarily not apply to primary dealers that have been admitted to the primary dealer network after the beginning of the 6-month period defined in point (h). It shall start applying at the end of the successive 6-month period following the date on which the respective primary dealer is admitted to the primary dealer network.

**2. Reporting obligations**

- (a) The primary dealers shall, on request, submit information on the risk limit that this primary dealer has set, for the purpose of its own position management, for the trading activity of the debt securities of the Union and the Euratom as well as on the extent to which the risk limit is used. The information to be submitted shall be specified in the request.
- (b) The primary dealers shall immediately notify the Commission in case it is subject to rating upgrades or downgrades by one of the external rating agencies recognised by ESMA in accordance with Article 18(3) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council <sup>(1)</sup>.

<sup>(1)</sup> Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

- (c) The primary dealers shall promptly notify the Commission of non-compliance with any eligibility criterion laid down in Article 4.
  - (d) The primary dealers shall submit to the Commission any change in contact details communicated through the application form by using the template attached to the application form within two weeks of the date when the change took effect.
  - (e) The primary dealers shall submit to the Commission, on its request, any information relevant for the execution of its activities of primary dealer, in particular on its primary or secondary market activities related to the debt securities of the Union and the Euratom.
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## ANNEX II

## Correlation table

<b>Correlation table</b>	
<b>Decision (EU, Euratom) 2021/625 of 14 April 2021</b>	<b>This Decision</b>
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 10
Article 10	Article 12
Article 11	Article 13
Article 12	Article 14
Article 13	Article 15
Article 14	Article 16
Article 15	Article 17
Article 16	Articles 18 and 19
Article 17	Article 20