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COMMISSION DECISION (EU) .../...

of 14.4.2021

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

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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 Union¹,

Whereas:

- (1) To help address the economic and social consequences of the COVID-19 crisis, the Commission is empowered by Decision (EU, Euratom) 2020/2053² to borrow up to EUR 750 000 million in 2018 prices on the capital markets on behalf of the Union. In accordance with Council Regulation (EU) 2020/2094³, those borrowings are to finance the recovery in the aftermath of the COVID-19 crisis. The Union will provide repayable and non-repayable support under different programmes, and in particular support public investments and reforms under the Recovery and Resiliency Facility established by Regulation (EU) 2021/241 of the European Parliament and of the Council⁴.
- (2) The Commission is already empowered to act as a borrower on the capital markets on behalf of the Union to finance loans for financial assistance granted in accordance with Council Regulation (EU) No 407/2010⁵, Council Regulation (EC) No 332/2002⁶, and the Decisions of the European Parliament and of the Council providing macro-financial assistance to various countries on the basis of a provisioning in accordance with, in particular, Council Regulation (EC, Euratom) No 480/2009⁷, Decision (EU)

¹ OJ L 193, 30.7.2018, p. 1.

² 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).

³ Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433 I, 22.12.2020, p. 23).

⁴ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.02.2021, p. 17).

⁵ Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).

⁶ Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

⁷ Council Regulation (EC, Euratom) No 480/2009 of 25 May 2009 establishing a Guarantee Fund for external actions (OJ L 145, 10.6.2009, p. 10).

2020/701 of the European Parliament and of the Council⁸, and Council Regulation (EU) 2020/672⁹.

- (3) The Commission is also authorised by Council Decision 77/270/Euratom¹⁰, to borrow funds on the capital markets on behalf of the European Atomic Energy Community (Euratom) to finance certain investment projects in the nuclear energy industry in the Member States and in some third countries of Central and Eastern Europe.
- (4) In accordance with Article 282(3) of the Financial Regulation, the provisions of Title X of the Financial Regulation regarding financial assistance started to apply on 1 January 2021.
- (5) Recourse to the capital markets will take place on a large scale, and issuance will have a high frequency. The absorption capacity of capital markets is finite. As a consequence, the organisation of funding operations has to be flexible. In the light of this, it is necessary for the Commission to reinforce its capacity to call on a capable and qualified network of credit institutions 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.
- (6) 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 experience in the selection of credit institutions under existing financial assistance programmes. It also draws on best practices of sovereign and supranational issuers.
- (7) To achieve the smooth and efficient conduct of borrowing and debt management activities, the arrangements regarding the network of primary dealers should apply to any borrowing activity of the Commission.
- (8) Credit institutions should be entitled to membership of the primary dealer network if they fulfil the eligibility criteria. Those 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 requirements¹¹ and supervision thereof¹². In

⁸ Decision (EU) 2020/701 of the European Parliament and of the Council of 25 May 2020 on providing macro-financial assistance to enlargement and neighbourhood partners in the context of the COVID-19 pandemic (OJ L 165, 27.5.2020, p. 31).

⁹ Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak (OJ L 159, 20.5.2020, p. 1).

¹⁰ Council Decision 77/270/Euratom of 29 March 1977 empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations (OJ L 88, 6.4.1977, p. 9).

¹¹ 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).

¹² 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

compliance with the principle of transparency, those criteria and the decisions admitting a credit institution as primary dealer should be published in the *Official Journal of the European Union*.

- (9) Membership of primary dealer networks operated by a Member State or a supranational issuer entitles the credit institution 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 upon membership of at least one Member State or European supranational issuer's primary dealer network or primary dealership mechanism.
- (10) 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. Those dealers should buy a minimum weighted average of auctioned volumes and should comply with certain reporting obligations.
- (11) 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 from and on the possibility to withdraw from the primary dealer network.
- (12) The issuance of debt securities under the borrowing programmes referred to under recitals (3) and (4) is carried out, in addition to auctions, also through syndication or private placements. To this end, credit institutions fulfilling established eligibility requirements for syndicated transactions and private placements are appointed by the Commission for the purpose of each borrowing transaction.
- (13) Members of the primary dealer network, which buy a higher weighted average percentage of auctioned volumes than required to be a member of the primary dealer network and with a sufficient secondary market share in debt securities of the Union and the Euratom should be eligible to serve as lead and co-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 a market-making activity, to provide fair advice and market intelligence to the Commission and to promote the Union and the Euratom issuances with investors.
- (14) 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. This procedure should include the sending of a request for proposals to eligible dealers and the evaluation of proposals received by the Commission.
- (15) 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 and co-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

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).

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.

- (16) 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 dealers 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.
- (17) Borrowing and debt management activities taking place through public institutions and through electronic platforms do not involve selection of financial counterparties. For that reason, this Decision should not apply to them,

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 the Euratom, where the Commission selects private financial counterparties.

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 the Euratom programmes involving borrowing activities on the financial markets, in particular, financial assistance decided in accordance with Regulation (EU) No 407/2010, Regulation (EC) No 332/2002, the Decisions of the European Parliament and of the Council providing

macro-financial assistance to various countries on the basis of a provisioning in accordance with Regulation (EC, Euratom) No 480/2009 or Decision (EU) 2020/701, as well as Regulation (EU) 2020/672, the Euratom programme under Decision 77/270/Euratom, and borrowing on the basis of Article 5 of Decision (EU, Euratom) 2020/2053;

- (3) 'credit institution' means credit institution as defined in Article 4, paragraph 1 (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹³;
- (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 the Euratom;
- (5) 'members of the primary dealer network' means any credit institutions fulfilling the eligibility criteria set out in Article 4 and included in the list referred to in Article 11;
- (6) 'European supranational issuer' means the Council of Europe Development Bank, the European Financial Stability Facility, European Stability Mechanism, the European Investment Bank and the Nordic Investment Bank;
- (7) 'affiliate' means any entity belonging to the same group as defined by Article 2(12) of Directive 2002/87/EC¹⁴.

Article 3

Establishment of the primary dealer network

The Union primary dealer network ('primary dealer network') shall be a group of credit institutions 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 the Union and the 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 the Union and the Euratom debt securities.

¹³ 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)

¹⁴ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003).

Chapter 2

Membership of the primary dealer network

Article 4

Eligibility criteria for the primary dealer network

Credit institutions 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 authorised to carry out the business of credit institution in the Union in accordance with Directive 2013/36/EU of the European Parliament and of the Council¹⁵ and being supervised by a Union competent authority; 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 intended 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

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 A of the Annex;
- (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. The quality of the reporting shall be regularly assessed and the results notified the interested

¹⁵ 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).

- primary dealer. The primary dealer shall be notified if the data provided are not accurate;
- (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;
 - (e) to comply with market practices and ethics, in particular
 - (i) Primary dealers shall comply with conduct rules and highest standards in market practices applicable to their operations on EUR-fixed income business.
 - (ii) The Commission will evaluate the primary dealers’ conduct during the execution of syndicated transaction and other debt management operations in terms of readiness, market neutrality, orderly and efficient execution;
 - (iii) Each primary dealer shall notify the Commission immediately 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. Each primary dealer shall notify the Commission of any measure or decision taken as a result of these proceedings;
 - (iv) Each primary dealer shall notify the Commission immediately if the primary dealer or one of its affiliates 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) The primary dealers and their affiliates 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. 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) No 2015/849 and listed in Delegated Regulation (EU) 1675/2016 or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information and breaches of sanction regimes, in particular restrictive measures under Article 215 TFEU.
 - (f) to treat all information received from the Commission confidentially.

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;
 - (b) establish the content of and procedure for the annual review;
 - (c) establish the details of 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.
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 shall not be counted as falling within the time limit;
 - (b) time limits expressed in days shall include business days only. Business days shall 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 shall 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 shall 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 shall 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 are entitled to 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 the 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 11 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 Council¹⁶;
 - (iii) swaps as defined in Section 1, point 10, of Annex III to Commission Delegated Regulation (EU) 2017/583¹⁷.
- (e) Right to resign at any moment its membership of the primary dealer network by notifying it to the Commission. The withdrawal shall take effect the first business day of the second month following the date of the notification.

Chapter 3

Lead and co-lead mandates for syndicated transactions

Article 8

Eligibility criteria for lead and co-lead mandates for syndicated transactions

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

- (a) having bought a minimum of 2,00% of auctioned volumes by the Union and the Euratom, on weighted average based on the last three auctions on a rolling basis;
- (b) having provided evidence, based on the transaction data reported in accordance with this Decision, of having a market share in Union and Euratom debt securities on the secondary markets of at least 2,00%;
- (c) having agreed with the general terms and conditions for lead and co-lead mandates for syndicated transactions, which may be part of GTC; and
- (d) having agreed with the fee schedule.

Article 9

Fee schedule

The fee schedule referred to in point (d) of Article 8 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.

¹⁶ 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).

¹⁷ 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).

Article 10

Additional commitments

Members of the primary dealer network fulfilling the eligibility criteria laid down in Article 8 may be selected to lead and co-lead mandates 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 11

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 10, soliciting an offer for participation as lead or co-lead managers.
3. The selection of the subgroup of eligible primary dealers to whom the request for proposals shall be sent, 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 10. 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.

Chapter 4

Application for membership and establishment of the list of the members of the primary dealer network and monitoring

Article 12

Application for membership and list of primary dealers

1. Interested credit institutions 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 Commission website.
2. Applications for admission to the primary dealer network shall include proof of compliance with Articles 4 and 5. To such end, evidence and supporting documents to be enclosed are detailed in the application form and its annexes.
3. In case of an incomplete application form, incomplete information or insufficient data, the applicant may be requested 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 15 of this Decision.
5. In the application form each primary dealer shall declare to accept the GTC, thereby acknowledging their binding nature and committing to them.
6. The application form and the GTC shall be signed and the GTC shall also be paraphed 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 made at the address for notice elected by primary dealers in their application form and shall be addressed to the person therein designated as ‘coordinator’.

Article 13

Admission to primary dealer network

1. The decision on 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 12, 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 two months. The decision shall be notified to the applicant.

The non-admission decision shall state reasons on which it is based.

2. 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*.
3. In view of performing 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 14

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 General terms and conditions for Union primary dealers referred to in Article 5, point (c);
- (b) notify the Commission of any downgrade by the European Securities and Markets Authority recognised rating agencies in the Union;
- (c) promptly 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 15

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 point (iii) of paragraph (e) of Article 5;
 - (b) initiation of procedure, which may result in the cessation of membership in the network or the mechanism referred to in point (c) of Article 4;

Primary dealer shall be invited by a pre-suspension notice to submit its observations within a time limit of no less than 7 days from the receipt of the notice. The suspension decision shall take effect the first business day following the date of the notification to the non-compliant primary dealer.

The suspension may be lifted upon request from the suspended primary dealer. The primary dealer shall submit sufficient evidence that, as applicable, either the proceedings referred to under 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 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 point (c) of Article 4. The presented evidence shall be assessed and decision taken within 15 working days as of the request.

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) No 1046/2018¹⁸.
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;
 - (b) commitment of an infringement referred to in Article 30 of Regulation (EU) 596/2014,¹⁹ 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 subparagraph (v) of point (e) of Article 5, or relating to AML and CTF laws and regulations;
 - (d) non-compliance with subparagraph (vi) of point (e) of Article 5; or
 - (e) disclosure of information, which is subject to confidentiality obligation under point (f) of Article 5.
5. The following procedure shall apply in cases laid down under paragraph 4:

¹⁸ 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).

¹⁹ 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).

- (a) The primary dealer concerned shall receive a notice specifying the grounds for non-compliance and setting a time-limit to submit observations of no less than 7 days from the receipt by the primary dealer of the notice.
 - (b) Taking into account the submitted observations, if any, the primary dealer shall receive a warning notice, inviting it to take relevant corrective measures to restore and/or ensure compliance with the relevant criteria and/or obligations.
 - (c) The primary dealer shall communicate the corrective measures that it intends to adopt, within a set deadline, which is no shorter than one week from the date receipt of the warning notice.
 - (d) If no information has been communicated within the time limit referred to under paragraph (c), the primary dealer shall receive a second warning notice, inviting it to take the corrective measures referred to in paragraph (b). Paragraph (c) shall apply *mutatis mutandis*.
 - (e) The primary dealer shall provide sufficient evidence of the implementation of the corrective measures within a set deadline set which is not shorter than one month from the date of the communication of the warning notice referred to in point (b). Where no or insufficient evidence is provided, the pre-exclusion notice shall be addressed to the primary dealer with an invitation to submit observations within a time-limit of no less than 7 days from the receipt of the notice. Taking into account the submitted observations, if any, the decision to exclude the non-compliant primary dealer from the primary dealer network may be taken.
 - (f) The exclusion decision shall state reasons on which the exclusion is based.
 - (g) 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 6 and resignation on membership in primary dealer network pursuant to point (e) of Article 7 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 point (f) of Article 5 and under Article 14.

Chapter 5

Transitional provisions

Article 16

Transitional provision

After the date of publication of the list in accordance with Article 13 and until the Commission has sufficient data available to assess the fulfilment of the eligibility criteria under Article 8, each member of the primary dealer network fulfilling the eligibility criteria under Article 4 shall be eligible for the lead and co-lead mandate.

This Decision shall apply to borrowing and debt management activities of the Commission launched after the date of the first publication of the list in accordance with Article 13. Until that date, the appointment of dealers for the purpose of borrowing and debt management activities shall be carried out on the basis of the internal operational framework in place under the existing borrowing programmes.

Article 17

Final provision

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

Done at Brussels, 14.4.2021

For the Commission
The President
Ursula VON DER LEYEN