



2024/2901

18.11.2024

**COMMISSION IMPLEMENTING DECISION (EU) 2024/2901**

**of 14 November 2024**

**amending Implementing Decision (EU) 2023/1602 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) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union <sup>(1)</sup>, and in particular Article 224(2) thereof,

Whereas:

- (1) Regulation (EU, Euratom) 2024/2509 aligns in its Article 163(5), point (b), the rules laid down in that Regulation for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2014/65/EU of the European Parliament and of the Council <sup>(2)</sup> used by the Commission in the context of its borrowing and lending operations, with rules applicable to such services in Directive 2014/24/EU of the European Parliament and of the Council <sup>(3)</sup>. Therefore, that Regulation aligns how the Commission acquires services needed to perform services which are critical for the autonomous and effective implementation of the Union budget with how the same activities are undertaken by Member States and other institutions. Consequently, Union rules on procurement, with the exception of the principles of transparency and equal treatment, are not to be applied to financial services acquired by the Commission for the conduct of its borrowing and lending operations.
- (2) Serving as lead manager or co-lead manager for syndicated transactions falls within the scope of financial services under Article 163(5), point (b), of Regulation (EU, Euratom) 2024/2509, and concerns directly the issue of Union debt securities. Article 13 of Commission Implementing Decision (EU) 2023/1602 <sup>(4)</sup> establishes the procedure for the selection of primary dealers that will serve as lead or co-lead members for syndicated transactions. Article 13(1) of Implementing Decision (EU) 2023/1602 provides that this selection is to be performed on the basis of a special negotiated procedure in accordance with Union procurement legislation. That Article 13(1) should be repealed to reflect the exemption from procurement rules for financial services acquired by the Commission for the conduct of its borrowing and lending operations.
- (3) Transparent and objective procedures for the selection of the syndicates will continue to be implemented by the Commission, based on Article 13(2) to (5) of Implementing Decision (EU) 2023/1602 and the supporting General Terms and Conditions as published on the Commission website and accepted by each primary dealer. These procedures will be implemented based on the operational manuals which specify in detail the manner in which the Commission services, responsible for the selection of syndicated banks, will carry out these processes. Therefore, the current highly structured process as defined in this decision and in the internal manual on syndicated transactions for syndicate (and co-lead) selection will continue to be implemented in order to ensure the transparency and equal treatment in syndicate selection procedures. This selection will now be organised outside of the legislative framework for procurement, and decisions will not need to be justified by strict reference to procurement legislation.

<sup>(1)</sup> OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>.

<sup>(2)</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, ELI: <http://data.europa.eu/eli/dir/2014/65/oj>).

<sup>(3)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65, ELI: <http://data.europa.eu/eli/dir/2014/24/oj>).

<sup>(4)</sup> 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 (OJ L 196, 4.8.2023, p. 44, ELI: [http://data.europa.eu/eli/dec\\_impl/2023/1602/oj](http://data.europa.eu/eli/dec_impl/2023/1602/oj)).

- (4) Pursuant to Article 163(5) of Regulation (EU, Euratom) 2024/2509, the rules on procurement laid down in that Regulation, with the exception of the principles of transparency and equal treatment, are not to apply to financial services. Accordingly, the negotiated procedure without prior publication of a contract notice would not be applied when selecting lead and co-lead managers for a syndicated transaction. As the primary dealers are to be remunerated through Union funds during syndicated transactions, the common rules, including the provisions applicable to the early detection and exclusion system, would continue to apply in relation to the members of the primary dealer network.
- (5) The membership of the primary dealer network constitutes an ongoing trusted continuous relationship between the EU and the members of the primary dealer network. Such a relationship requires the continued fulfilment of the eligibility criteria to serve as lead or co-lead managers through the fulfilment of commitments and additional undertakings performed by the members. At the same time, the members of the primary dealer network are supervised and licenced entities, which are subject to significant scrutiny under Union and national legislation by the competent authorities at the Member State as well as the Union level.
- (6) Primary dealers should notify the Commission immediately in the case of a material change of status related to their eligibility or any of the documents that they have submitted during their application to the primary dealer network or a subsequent update of such documentation. Primary dealers should also be required to notify the Commission of cases that could give rise to an exclusion situation. In addition to these requirements of immediate notification, the previous system based on the negotiated procedure without prior publication required that the primary dealers resubmit a part of their application documents annually. Continuing such practice would provide limited benefit in addition to the requirement to immediately notify while constituting a heavy documentation requirement. In order to ensure soundness and reliability of the primary dealer network, the primary dealers should be asked to confirm at least annually that the documents submitted during their application for membership, or a subsequent update, remain relevant, and to renew their submitted documentation at least every 3 years even in cases where there have not been substantial changes.
- (7) The occurrence of exclusion situations referred to in Article 138 of Regulation (EU, Euratom) 2024/2509 of a primary dealer should be assessed in line with the respective rules set out therein. At the same time, it is appropriate to recognise, for the purposes of the assessment of an actual or potential exclusion situation, that the ongoing continuous relationship and balance of rights and undertakings of the primary dealership, as well as the close link between primary dealership and debt issuance capacity of the Union constitute a comparable situation to the one where there exists a continual legal commitment between the Union and a beneficiary. In that situation, the legal commitment continues to be carried out until terminated. In the same vein, it is appropriate allowing the continuation of eligibility of a primary dealer to serve as lead or co-lead manager even if an actual or potential exclusion situation occurs.
- (8) Considering that the current system of suspending primary dealers, as provided for in Implementing Decision (EU) 2023/1602 has not proven efficient in practice, it should be amended and made fit for purpose. Since primary dealers have to continually fulfil their obligations as members of the primary dealer network in order to remain eligible on an ongoing basis to serve as lead or co-lead members in syndicated transactions, suspension of a primary dealer from the network would have the same effect as termination of their membership. For this reason, it would be appropriate to make the suspension process distinct and to direct it towards cases where there might be a time sensitive and serious threat to the financial interests of the Union that could not be addressed through an assessment and exclusion of a primary dealer. The primary dealers concerned should be allowed to express their observations and objections. In exceptional cases, this could take place after the suspension, which could then be lifted based on their submitted information.
- (9) In the case of a suspension or decision on termination of membership in relation to an entity that serves as a primary dealer, the Commission would have to assess the effect that the suspension or termination of membership would have on the continuity of business of the primary dealer network and the proportionality of such a suspension or termination of membership.

(10) Implementing Decision (EU) 2023/1602 should therefore be amended.

HAS ADOPTED THIS DECISION:

#### Article 1

Implementing Decision (EU) 2023/1602 is amended as follows:

(1) in Article 5(1)(e), point (iii) is replaced by the following:

- ‘(iii) each primary dealer shall immediately notify the Commission of any judgment or administrative decision, even if not final, relevant under Articles 137 to 148 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council (\*) taken 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, and the initiation of any investigation or action related to any of the misconducts listed in Article 138(1), point (d) of Regulation (EU, Euratom) 2024/2509;

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(\*) Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>).’;

(2) in Article 7(d), point (ii) is replaced by the following:

- ‘(ii) repurchase transactions as defined in Article 3(9) of Regulation (EU) 2015/2365 of the European Parliament and of the Council<sup>1</sup>, in cases where such transactions are conducted in order to support secondary market liquidity’;

(3) Article 13 is amended as follows:

(i) paragraph 1 is replaced by the following:

‘1. The selection of syndicates shall respect the principles of transparency and equal treatment in accordance with the provisions of Article 163(5), point (b), of Regulation (EU, Euratom) 2024/2509.’;

(ii) paragraph 6 is replaced by the following:

‘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 9 of this Decision 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 Commission Implementing Decision (EU, Euratom) 2023/2825 (\*);

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(\*) Commission Implementing Decision (EU, Euratom) 2023/2825 of 12 December 2023 establishing the arrangements for the administration and implementation of the Union borrowing and debt management operations under the diversified funding strategy and related lending operations (OJ L, 2023/2825, 18.12.2023, ELI: [http://data.europa.eu/eli/dec\\_impl/2023/2825/oj](http://data.europa.eu/eli/dec_impl/2023/2825/oj)).’;

(4) in Article 15, paragraph 4 is replaced by the following:

‘4. In order to perform the annual review, the primary dealers shall be invited to represent and declare to the Commission that they continue to fulfil all the eligibility criteria for the membership laid down in Article 4, and that all of the documents submitted by the primary dealers during their application for membership or a subsequent update remain relevant.’;

- (5) the following Article 16a is inserted:

*‘Article 16a*

**Monitoring and suspensions**

1. Primary dealers shall periodically, and at least every 3 years, renew the information submitted to the Commission during their application process.
2. A primary dealer who is in an exclusion situation shall continue to remain eligible to serve as lead and co-lead manager for syndicated transactions during the assessment by the authorising officer by delegation of whether the primary dealer is to be excluded pursuant to Article 138 of Regulation (EU, Euratom) 2024/2509.
3. The Commission may suspend primary dealers from serving as lead or co-lead managers in syndicated transactions when their selection for the implementation of Union funds would constitute a serious and imminent threat to the financial interests of the Union. The Commission shall communicate the basis for its suspension decision to the primary dealer concerned as soon as possible and give the primary dealer at least 3 days to submit observations before adopting the final suspension decision. In exceptional circumstances, the Commission may adopt the suspension decision and allow the primary dealer concerned to submit observations and objections afterwards.’;

- (6) Article 17 is replaced by the following:

*‘Article 17*

**Termination of membership in the primary dealer network**

1. The Commission shall terminate the membership of a primary dealer in the primary dealer network in either of the following cases:
  - (a) the primary dealer ceases to fulfil any of the conditions referred to in Article 4;
  - (b) non-compliance with obligations laid down under Article 5, point (c).
2. The following procedure shall apply to the termination referred to in paragraph 1:
  - (a) the primary dealer is to be invited, by means of a notice, to submit its observations within a time-limit of no less than 7 days from the receipt of the notice;
  - (b) the decision on termination is to be notified to the primary dealer and is to take effect on the first business day following the date of its notification.
3. The Commission may terminate the membership of a primary dealer in the primary dealer network in any of the following cases:
  - (a) non-compliance with obligations laid down under Article 5, points (a), (b), (d), (e) and (f);
  - (b) exclusion of the primary dealer pursuant to Articles 137 to 148 of Regulation (EU, Euratom) 2024/2509;
4. The following procedure shall apply to the situations referred to in paragraph 3:
  - (a) the primary dealer concerned is to receive a notice indicating the reasons for a finding of 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 to set a time-limit to submit observations of no less than 7 days from the receipt of the notice;
  - (b) taking into account the submitted observations and communicated corrective measures, if any, the decision to terminate membership of the non-compliant primary dealer from the primary dealer network may be taken;
  - (c) the decision on termination is to state the grounds on which the termination is based;
  - (d) the decision on termination is to take effect on the first business day following the date of its notification to the excluded primary dealer.

5. Termination of the membership in the primary dealer network pursuant to paragraphs 1 to 4 of this Article, or resignation from the primary dealer network pursuant to Article 7, point (e), is to 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.

6. The termination of membership of the primary dealer shall not prevent that dealer from reapplying to be, and being readmitted as, a member of the primary network, where the reasons for the termination are no longer present and have been fully remedied. If membership in the primary dealer network is terminated due to an exclusion pursuant to Articles 137 to 148 of Regulation (EU, Euratom) 2024/2509, no reapplication is possible during the duration of the exclusion. Article 14 shall apply to any reapplication.’

#### *Article 2*

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

Done at Brussels, 14 November 2024.

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

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