

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**

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 ⁽¹⁾,

Whereas:

- (1) Membership of European sovereign and supranational primary dealer networks is typically opened to credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council ⁽²⁾ and to investment firms authorised under Directive 2014/65/EU of the European Parliament and of the Council ⁽³⁾.
- (2) Article 4, point (c), of Commission Decision (EU, Euratom) 2021/625 ⁽⁴⁾ lays down as one of the eligibility criteria for membership of the Union primary dealer network the membership of credit institutions of a European sovereign or supranational primary dealer network. Given their experience gained through the membership of European sovereign or supranational primary dealer networks, investment firms authorised to carry out the activities of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis under Directive 2014/65/EU should also be eligible for membership of the Union primary dealer network. Those activities are relevant for the tasks of the members of the Union primary dealer network, which may participate in auctions on a firm commitment basis and may act as lead managers for syndicated transactions committing to underwrite debt securities.
- (3) In addition, in accordance with the new regulatory framework applicable to investment firms, in particular Regulation (EU) 2019/2033 of the European Parliament and of the Council ⁽⁵⁾, certain investment firms carrying out the activities of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis under Directive 2014/65/EU should qualify as credit institutions from 26 June 2021. Nevertheless, until that date and as long as authorisation as credit institution under the new regulatory framework is granted, those entities would still transitorily qualify as investment firms.
- (4) Decision (EU, Euratom) 2021/625 should therefore be amended accordingly.
- (5) Taking into account the need to set up the first list of the Union primary dealer network, for which a call for application has already been launched and selection is ongoing, as well as the transitory period under the new regulatory framework and in the interest of legal certainty of the interested applicants for membership in the Union primary dealer network, this Decision should enter into force as a matter of urgency and should apply retroactively as from the date of entry into force of Decision (EU, Euratom) 2021/625,

⁽¹⁾ OJ L 193, 30.7.2018, p. 1.

⁽²⁾ 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).

⁽³⁾ 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).

⁽⁴⁾ 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).

⁽⁵⁾ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

Decision (EU, Euratom) 2021/625 is amended as follows:

(1) Article 2 is amended as follows:

(a) the following point (3a) is inserted:

“Investment firms” means investment firms as defined in Article 4(1), point 1 of Directive 2014/65/EU of the European Parliament and of the Council (*);

(*) 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).;

(b) point (5) is replaced by the following:

“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 11’;

(2) in Article 3, the introductory part is replaced by the following:

‘The Union primary dealer network (“primary dealer network”) shall be a group of credit institutions and investment firms referred to in Article 4, point (b)(ii), eligible to participate in the following borrowing and debt management activities of the Commission:’;

(3) Article 4 is amended as follows:

(a) the introductory part is replaced by the following:

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

(b) point (b) is replaced by the following:

‘(b) being supervised by a Union competent authority and being authorised to carry out the business of either of the following:

(i) credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council (*); or

(ii) investment firm authorised to carry out the activity of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis in accordance with Directive 2014/65/EU; and

(*) 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).;

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

‘(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 or investment firm referred to in Article 4, point (b)(ii). Each primary dealer shall notify the Commission of any measure or decision taken as a result of these proceedings’;

(5) in Article 12, paragraph 1 is replaced by the following:

‘1. Interested credit institutions and investment firms referred to in Article 4, point (b)(ii), 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.’

Article 2

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

It shall apply from 17 April 2021.

Done at Brussels, 27 May 2021.

For the Commission
The President
Ursula VON DER LEYEN
