

ASSET MANAGEMENT &
INVESTMENT FUNDS

AIFMD 2: A harmonised loan origination framework for private credit funds in the EEA

The EU's AIFMD 2 introduces a harmonised regime for loan originating AIFs. This is welcome news for managers active in the fast-growing private credit market. After years of fragmented national rules, the reform creates an EU wide framework for open-ended evergreen and closed-ended direct lending funds, clarifying how AIFs can originate loans in all EEA Member States and setting consistent standards for governance, risk management and investor protection.

This spotlight outlines the key loan-origination provisions of AIFMD 2 and the practical implications for managers of private credit funds in anticipation of the Central Bank of Ireland's forthcoming alignment of its domestic AIF Rulebook with the provisions of AIFMD.

Extended scope for AIFs to originate loans

AIFMD 2 aims to broaden access to private credit by expressly permitting managers of alternative investment funds (**AIFMs**) to originate loans as part of their management of AIFs in all EEA Member States. It also seeks to eliminate local divergences in requirements for direct lending funds by introducing an EEA framework for funds that issue loans, aligning with Europe’s Capital Markets Union initiative which seeks to enhance access to alternative sources of finance for EEA companies.

The new regime provides for both closed-ended and open-ended semi-liquid or evergreen private debt funds, provided that the liquidity risks associated with the open-ended features of these funds are appropriately managed. For regulated funds such as Irish ICAVs and ILPs, the existing loan origination rules will be relaxed and streamlined to align with the new EU regime. At the same time, unregulated Irish 1907 LPs and Lux RAIFs will now fall within the scope of the harmonised product level rules. This creates a more level playing field for regulated and unregulated fund structures in Europe while also expanding the choice of fund structure and fund domicile for managers establishing EU AIFs to engage in private credit and direct lending strategies.

In this spotlight, we examine the new risk and liquidity management rules introduced by AIFMD 2 for AIFMs of AIFs involved in loan origination. We distinguish between the obligations applicable to funds classified as ‘Loan Originating AIFs’ and those that apply more broadly to any fund issuing loans, even where lending is not the primary investment strategy. We also look ahead to the harmonisation of Ireland’s domestic framework for regulated loan origination funds as part of Ireland’s transposition of AIFMD 2.

Application

AIFMD 2 ([Directive 2024/927/EU](#)) which amends the Alternative Investment Fund Managers Directive came into force in the European Economic Area (EEA) on 15 April 2024. EEA Member States have until 16 April 2026 to incorporate AIFMD 2 into their national laws. Transitional provisions apply as detailed further below.



How is loan origination defined under AIFMD 2?

AIFMD 2 recognises the right of AIFMs to originate loans by adding “originating loans on behalf of an AIF” and “servicing securitisation special purpose entities” as functions that an AIFM can additionally perform in the course of its collective management of an AIF. This seeks to create a level-playing field by reducing the likelihood of regulatory arbitrage arising from diverging national rules and differing levels of investor protection across the EEA.

“Loan origination” or “originating a loan” means the granting of a loan either: (i) directly by an AIF as the original lender; or (ii) indirectly through a third party or special purpose vehicle (which originates the loan for or on behalf of the AIF or its AIFM in respect of the AIF where the AIFM or AIF is involved in structuring the loan, or defining or pre-agreeing its characteristics prior to gaining exposure to the loan.

AIFMD 2 distinguishes between “Loan Originating AIFs” which have loan origination as their primary investment strategy or principal activity, from other AIFs that may originate loans on a more ancillary basis.

Area	Summary of key requirements
Definition of “Loan Originating AIF”	An AIF is considered a “Loan Originating AIF” if: - its investment strategy is mainly to originate loans; or - the notional value of its originated loans represents at least 50% of its net asset value.
Additional Requirements	Loan Originating AIFs are subject to specific requirements beyond those applicable to all AIFs that originate loans as part of their investment strategy.
Leverage Limits	Loan Originating AIFs must comply with a leverage limit of: 175% if they are open-ended 300% if they are closed-ended The leverage limit is expressed as the ratio between the AIF’s exposure, calculated using the commitment method, and its net asset value. Exclusions: - Borrowing arrangements fully covered by contractual capital commitments from investors are not counted as exposure for this calculation.
Breach of Leverage Limit	If the leverage limit is breached due to circumstances beyond the AIFM’s control, the AIFM must take corrective measures within an appropriate period, taking due account of the interests of the investors.
Exemption for Shareholder Loans	The leverage limit does not apply if the AIF’s lending consists solely of “shareholder loans” provided the notional value of such loans does not exceed in aggregate 150% of the AIF’s capital. “Shareholder loan” means a loan which is granted by an AIF to an undertaking in which it holds directly or indirectly at least 5% of the capital or voting rights, and which cannot be sold to third parties independently of the capital instruments held by the AIF in the same undertaking.

Liquidity Risk requirements for open-ended Loan Originating AIFs

While recognising that Loan Originating AIFs should be closed-ended, AIFMD 2 does permit open-ended evergreen or semi-liquid Loan Originating AIFs subject to safeguards to avoid liquidity risks arising from mismatches between the liquidity profile of investments and the redemption terms.

Open-ended redemption terms may be made available to investors where the AIFM can demonstrate to its home state competent authority that the open-ended Loan Originating AIF’s redemption policy aligns with its investment strategy and liquidity risk management system, and that its key features including its strategy and dealing frequency, allow it to remain sufficiently liquid to be able to meet redemption requests. Open-ended Loan Originating AIFs must also have at least two specified liquidity management tools available to it.

The European Securities and Markets Authority (**ESMA**) is developing draft regulatory technical standards (**RTS**) that

will specify the conditions with which Loan Originating AIFs will be required to comply to maintain open-ended redemption terms, including an appropriate redemption policy, a sound liquidity management system, liquidity stress testing and the availability of liquid assets to meet redemptions, taking account of the underlying loan exposures, the average repayment time of the loans and the overall composition of the portfolio.

ESMA published a [consultation paper](#) on its draft of the RTS and the consultation closed on 12 March 2025. ESMA intends to finalise the RTS in Q3 or Q4 of 2025. AIFMs managing or intending to establish, open-ended Loan Origination AIFs should assess their liquidity management arrangements against ESMA’s proposed requirements as outlined in the draft RTS pending the issue of the final RTS. In its consultation, ESMA concluded that there are no gaps in the existing AIFMD Level 2 requirements on liquidity management that would need to be addressed for open-ended Loan Originating AIFs.

Area	Summary of draft RTS requirements
Sound liquidity management	AIFMs must demonstrate to their NCA that the liquidity risk system of the AIF is compatible with the AIF’s investment strategy and redemption policy.
Redemption policy	AIFMs must define an appropriate redemption policy, considering factors such as redemption frequency, appropriate proportion of liquid assets, portfolio diversification and liquidity profile of the assets, the investment policy and strategy, the credit quality of the loans, expected incoming cash flows, the results of liquidity stress tests, investor base and other factors.
Availability of liquid assets	AIFMs must define an appropriate proportion of liquid assets that the AIF should hold to be able to comply with redemption requests, considering several factors, including expected cash flows from loans granted, the redemption policy, the maturity and number of loans, estimated defaults and rescheduling, the notice period and investor base. AIFMs must also determine the type of assets they consider as liquid.
Liquidity tress testing	AIFMs must conduct liquidity stress tests at least quarterly (or more or less frequently if justified), using conservative scenarios and tailored to the AIF’s strategy.
Ongoing monitoring	AIFMs must implement monitoring arrangements using the non-exhaustive list of specific parameters, such as the level of liquid assets, the level of subscriptions and redemptions or early-warning signs of loan impairment.

Requirements for all AIFs issuing loans (including Loan Originating AIFs)

AIFMD 2 sets out a larger number of new requirements that apply to all AIFs that originate loans, whether an AIF is a “Loan Originating AIF” or not.

Prohibition of originate-to-distribute strategies

AIFMs are prohibited from managing AIFs that originate loans with the sole purpose of transferring those loans or exposures to third parties (originate-to-distribute strategies). This requirement applies to all AIFs (and not just Loan Originating AIFs) and the requirement applies irrespective of whether the AIF originates the loan directly, or indirectly through an SPV. It also applies irrespective of whether an originate-to-distribute strategy would form part of, or all of, the investment strategy of an AIF.

Risk retention

Seeking to maintain the credit quality of loans originated by AIFs and linked to the prohibition on originate-to-distribute strategies, a risk retention requirement is imposed on AIFs originating loans where the

AIF subsequently transfers any such loan to a third party.

An AIF must retain 5% of the notional value of each loan originated by it and subsequently transferred to third parties. This risk retention requirement applies:

- (i) until maturity, for loans whose maturity is a period of up to eight years
- (ii) until maturity, for loans granted to consumers regardless of their maturity
- (iii) for at least eight years for all other loans

However, AIFMD 2 recognises that there are situations where it is necessary to disapply the risk retention rules, and grants a derogation from risk retention where:

- the AIFM sells the AIF’s assets in order to redeem units or shares as part of the liquidation of the AIF;
- the disposal is necessary for compliance with sanctions or product requirements;
- the sale of the loan is necessary to enable the AIFM to implement the investment strategy of the AIF in the best interests of

investors; or

- the sale of the loan is due to a deterioration in the risk associated with the loan, detected by the AIFM as part of its due diligence and risk management process, and the purchaser is informed of that deterioration when buying the loan.

The competent authority of the AIFM may require the AIFM to demonstrate that it satisfies conditions of the applicable derogation.

Concentration limit which applies to loans to financial undertakings and other funds (only)

While AIFMD 2 permits AIFs to lend to financial undertakings and other funds, it does impose a concentration limit on each such loan.

Importantly, this concentration limit does not apply to loans to other types of borrowers, such as private companies which are not financial undertakings.

The notional value of loans originated to any single one of the following types of borrowers is limited in aggregate to 20% of the capital of the AIF:

- (a) a ‘financial undertaking’¹, being a:
- a credit institution, a financial institution, or an ancillary banking services undertaking within the meaning of Article 4(1), (5) and (21) of Directive 2006/48/EC;
 - an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 212(1)(f);
 - an investment firm or financial institution within the meaning of Article 4(1)(1) of Directive 2004/39/EC (MiFID); or
 - a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC;

(b) an AIF; or

(c) a UCITS.

The “capital of the AIF” means the investible capital of an AIF and is defined as the “aggregate capital contributions and uncalled capital committed to an AIF, calculated on the basis of amounts investible after the deduction of all fees, charges and expenses that are directly or indirectly borne by investors”.

The concentration limit applies by the date specified in the AIF rules or prospectus which may be no later than 24 months from the date of the first subscription of units or shares of the AIF. The competent authority of the AIFM may approve an extension of up to 12 months upon submission of a duly justified investment plan.

The concentration limit:

- ceases to apply once the AIFM starts to sell the assets in order to redeem units or shares as part of the liquidation of the AIF;
- will be temporarily suspended where the capital of the AIF is increased or reduced, as strictly necessary, taking due account

of the interests of the investors in the AIF, and for no longer than 12 months; and

- is without prejudice to the thresholds, restrictions and conditions applicable to ELTIFs, EuVECAs and EuSEFs.

Policies and procedures

AIFMs managing AIFs that engage in loan origination, including when those AIFs gain exposure to loans through third parties, are required to implement effective policies, procedures, and processes for the granting of loans by implementing effective policies, procedures, and processes for assessing the credit risk and for administering and monitoring their credit portfolio, keeping those policies, procedures, and processes up to date and effective, and reviewing them regularly and at least once a year.

There is a carve out from this requirement to maintain policies, procedures and processes for the origination of “shareholder loans” (as defined above) provided that the notional value of those shareholder loans does not exceed in aggregate 150% of the capital of the AIF.

¹ As defined by Article 13, point (25) Directive 2009/138/EC (Solvency II Directive).



Connected party transactions

To limit conflicts of interest, AIFs are prohibited from granting loans to the AIFM or the staff of that AIFM, their depositary or the depositary’s delegates in respect of the AIF, the AIFM’s delegates or their staff or to an entity within the same group as the AIFM, unless that entity is a financial undertaking, that exclusively finances borrowers, other than those listed within this paragraph.

Consumer loans

EEA Member States have discretion to prohibit AIFs that originate loans from granting loans to consumers in its territory and may prohibit AIFs from servicing credits granted to such consumers in its territory. This will not affect the marketing in the EEA of AIFs granting loans to consumers or servicing credits granted to consumers.

Loan proceeds and investor disclosures

AIFMD 2 specifies that the proceeds of the loans, minus any allowable fees for their administration, must be attributed to the AIF in full. All costs and fees linked to the administration should be disclosed to investors (in accordance with the investor disclosure requirements under Article 23 of AIFMD, as amended).

AIFMs are also required to report to investors on the composition of the originated portfolio for EU AIFs that they manage and for (non-EU) AIFs that they market in the EU.



Transitional (grandfathering) provisions

Transitional period

AIFMs managing AIFs that originate loans and were established before 15 April 2024 (the date that AIFMD 2 entered into force), benefit from transitional provisions for five years until 16 April 2029. Until then, these AIFMs are considered compliant with:

- the concentration limits (and related provisions) which apply to loan-origination activities of all AIFs;
- the rules on leverage which apply to Loan Originating AIFs only; and
- the requirement to ensure that a Loan Originating AIF is closed-ended unless the AIFM can demonstrate to the competent authority of its home Member State that the AIF’s liquidity risk management system is compatible with its investment strategy and redemption policy.

Limits during transitional period

During this transitional period:

- If the notional value of the loans

originated by an AIF to any single borrower, or the leverage of an AIF, exceeds the AIFMD 2 investment or leverage limits, the AIFMs managing those AIFs must not increase that value or leverage.

- If the notional value of the loans or the leverage is below the AIFMD 2 concentration or leverage limits, the AIFMs managing those AIFs shall not increase that value or leverage above those limits.

Indefinite grandfathering

AIFs that do not raise additional capital after 15 April 2024, benefit indefinitely from these transitional provisions.

Opt-in option

An AIFM managing an AIF that originates loans that was established before 15 April 2024 can however choose to opt into and be subject to these new requirements by notifying its home state competent authority.

Legacy loans

Additionally, loans originated by AIFs before 15 April 2024 are not required to comply with:

- the risk retention requirement;
- the restrictions on lending to certain entities;
- the requirement to attribute the proceeds of the loans, minus allowable fees to the AIF in full, and disclosure requirements;
- the requirement to implement effective policies, procedures and processes for the granting of loans;
- the restrictions on originating loans with the sole purpose of transferring those loans to third parties; and
- the prohibitions on AIFs lending to consumers.

New loans

For loans originated after 15 April 2024, the AIFM will have to comply with these requirements from the date of implementation of AIFMD 2 in the home member state of the AIFM, which will be no later than 16 April 2026.

Ireland’s vehicles for credit and direct lending funds

Ireland is a very well-established global domicile and hub for credit funds with many of the world’s leading asset managers having built extensive credit platforms in Ireland. Currently both regulated Irish funds (CBI- authorised funds) and unregulated Irish funds (funds not subject to authorisation by the CBI) can engage in loan origination.

The regulated Irish fund vehicles include the ICAV, the investment limited partnership or ILP, the common contractual fund and the variable capital public limited company or PLC, each of which fund vehicle benefits from Ireland’s favourable tax regime for regulated investment funds.

The unregulated fund structuring vehicles include limited partnerships established under Ireland’s Limited Partnerships Act, 1907 (**1907 LPs**) which is tax transparent and now also benefits from the VAT exemption for management services where an EU AIFM is appointed (similar to the ILP), and Irish special purposes debt issuance vehicles (**section 110 vehicles**) which can be structured to achieve effective tax neutrality.

The CBI was the first regulator within the EEA to adopt a regulated loan origination fund regime for “Qualifying Investor” AIFs, called the loan originating qualifying investor AIF (**LO-QIAIF**) regime.

LO-QIAIFs must comply with the applicable conditions set out in the CBI’s AIF Rulebook, are subject to a €100,000 minimum investment and are suitable only for “Qualifying Investors” (which includes professional investors). LO-QIAIFs can therefore avail of the CBI’s 24-hour fast-track approval process meaning regulatory authorisation can be obtained within 24 hours of submitting the finalised LO-QIAIF documentation to the CBI. LO-QIAIFs can also avail of the EEA marketing passport under AIFMD.

The CBI is currently in the process of updating its AIF Rulebook to align with AIFMD 2. While a number of features of the AIFMD 2 framework for funds that originate loans are already existing features of the CBI’s LO-QIAIF regime, certain more prescriptive LO-QIAIF requirements will be relaxed to align with AIFMD 2, which will be a welcome development for managers

of credit funds that originate loans. The CBI has also stated that loan-originating funds will be available to both retail and professional investors, and amendments to the LO-QIAIF rules will include the removal of restrictions requiring LO-QIAIFs to restrict investment strategies to originating and investing in loans, debt instruments, equity of borrowers and related strategies.

Unregulated Irish limited partnerships established under Ireland’s Limited Partnerships Act 1907 (**1907 LPs**) are increasingly being used in credit and loan origination fund structures due to their flexibility and increased tax efficiency following the extension of the VAT exemption for management services to the 1907 LP where an EU AIFM is appointed. 1907 LPs are not subject to authorisation or direct supervision by the CBI. Where a 1907 LP is structured as an AIF however, its AIFM will need to comply and ensure the 1907 LP complies with the loan origination rules introduced by AIFMD 2.

Many credit fund structures also employ Irish section 110 vehicles including to engage in the origination or acquisition of loans. Increasingly, ICAVs, ILPs and 1907 LPs structured as AIFs pursuing credit strategies are used in combination with section 110 vehicles. Section 110 vehicles as debt issuance vehicles are outside the scope of the AIFMD framework, therefore the new requirements of AIFMD 2 do not apply directly to section 110 vehicles. The new loan origination requirements of AIFMD 2 may apply indirectly to section 110 vehicles however where an ICAV, an ILP or a 1907 LP structured as an AIF indirectly originates loans through a Irish section 110 vehicle, as is commonplace.

Next steps

With an existing framework for loan-origination and extensive experience with credit funds, Ireland is well-positioned to capitalise on the potential for further growth in the use of Irish vehicles in credit and direct lending fund structures which may result from the harmonising changes introduced by AIFMD 2.

The CBI has acknowledged in a [speech](#) that it plans to align its domestic framework with AIFMD 2 without gold-plating and in consultation with industry in Q3 and Q4 of 2025. Consequently, AIFMs in Ireland will be required to comply with AIFMD 2 provisions

only upon its implementation in Ireland, without additional requirements or gold-plating being applied.

Accordingly, the CBI has published Consultation Paper 162 (CP162), proposing a comprehensive overhaul of its AIF Rulebook ahead of AIFMD 2 coming into force. Key proposals include full transposition of AIFMD 2, the removal of a number of prescriptive Irish requirements (including restrictions on loans and guarantees of third parties and the L-QIAIF regime), the introduction of mandatory LMTs, provisions better facilitating capital commitment and drawdown funds, and enhance flexibility for private asset strategies. You can read more [here](#).

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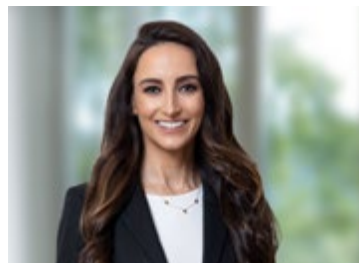
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