



Loan Origination Under AIFMD2: A Guide

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Introduction

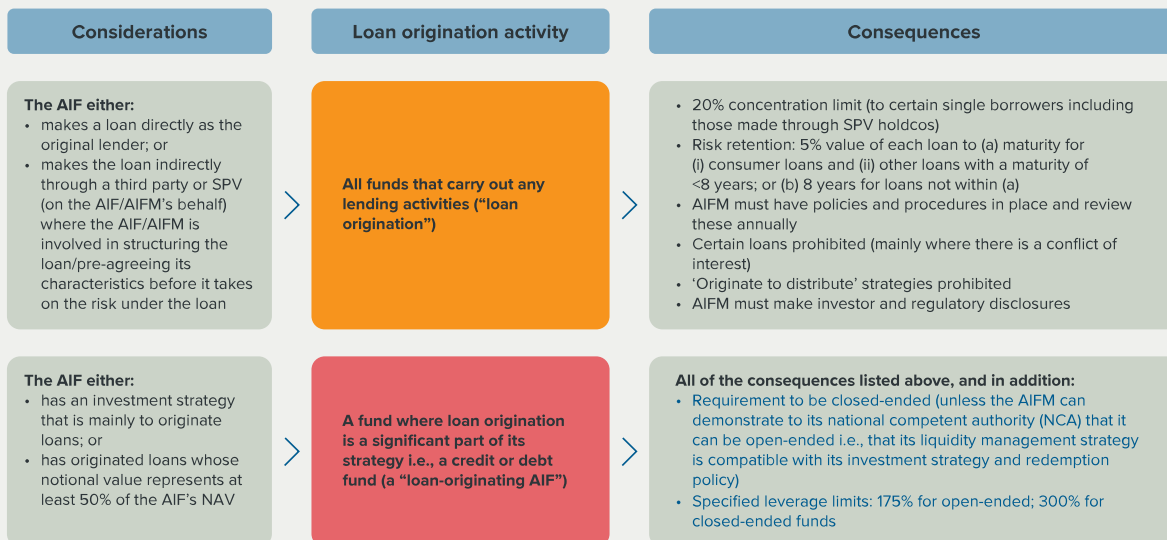
The revised Alternative Investment Fund Managers Directive (AIFMD2) introduces new requirements for funds managed by EU-based alternative investment fund managers (AIFMs) that originate loans.

Most of the requirements apply to AIFMs that manage any fund that originates loans, even on an occasional basis. Additional and more stringent requirements apply to AIFMs who manage funds that originate loans ("loan-originating AIFs") as their principal activity or investment strategy, i.e., a credit or debt fund.

The table below identifies the differences between the two types of funds. AIFMs will need to assess a fund's categorisation and whether the fund is closed or open-ended (which may not be obvious in some cases, for instance semi-open-ended funds) on a case-by-case basis.

The new requirements are designed to ensure stability and integrity of the financial system and to introduce proportionate safeguards.

Loan Origination: Key Concepts



Timing

Member states have to implement AIFMD2 by 16 April 2026, and the Annex IV reporting template will take effect a year later, on 16 April 2027. Transitional provisions apply in some cases.

Impact of a Loan Origination Framework

The AIFMD2 changes will allow an AIFM to act for a fund established in one member state to lend to borrowers in another member state. The AIF is the originating entity, while the AIFM acts on its behalf in arranging the loans for which the AIF becomes the lender.

Although the AIFMD2 loan origination provisions are described as a harmonising measure, they do not, in our view, create a lending passport for AIFs; the AIFMD passporting rights apply to AIFMs and not to the AIFs, which are the usual lenders. Moreover, member states are free to introduce requirements that are more restrictive, which include prohibiting AIFs from granting loans to and servicing credit for individual consumers. Therefore, national frameworks for product lending may continue to apply. Notably, a member state will still be free to impose loan origination requirements on non-EU AIFMs and AIFs marketed in that member state.

These provisions apply whether or not the AIF is marketed to professional and retail investors or only to professional investors. For an EU AIF that is a European Long-Term Investment Fund (ELTIF), European Venture Capital Fund (EuVECA), or European Social Entrepreneurship Fund (EuSEF), the other applicable regulatory restrictions and conditions will apply in addition to those

under AIFMD2.

Requirements and Restrictions

The table below sets out the key requirements: for any AIF that carries on lending activities, only the requirements shaded green apply; for those AIFMs of AIFs that are 'loan-originating' AIFs, the rules shaded yellow apply in addition to those shaded green.

Regulatory requirement	Obligations
<p>Restrictions on open-ended funds</p>	<p>A loan-originating AIF can be open-ended only if the AIFM can demonstrate to its national competent authority (NCA) that the AIF's liquidity risk management system is compatible with its investment strategy and redemption policy (without prejudice to the thresholds, restrictions, and conditions in EuVECA, EuSEF, and ELTIF regulations).</p> <p>Open-ended loan-originating AIFs will also be subject to the new liquidity management provisions under AIFMD2 (which we do not expect to have significant impact in practice).</p>
<p>Specified leverage limits</p>	<p>Limits are 175% for open-ended funds and 300% for closed-ended funds (calculated according to the commitment method and expressed as the ratio between the fund's exposure relative to the fund's net asset value and to exclude borrowing fully covered by contractual commitments).</p> <p>There are rectification provisions should caps be breached unintentionally.</p> <p>There is a carve-out for shareholder loans (see below).</p>
<p>Policies and procedures</p>	<p>AIFMs must have effective and proportionate policies, procedures, and processes in place (and review them at least annually) for the granting of loans as well as for assessing credit risk and administering and monitoring their credit portfolios.</p> <p>There is a carve-out for shareholder loans (see below).</p> <p>We would expect many EU managers to already have procedures in place, which may simply need to be confirmed and formalised and with annual reviews set up.</p> <p>This is designed to mitigate risks to financial stability and support professional management of AIFs.</p>
<p>Concentration limit</p>	<p>This is a 20% limit on loans to a single borrower if that borrower is a financial undertaking, MiFID investment firm, AIF, or UCITS fund. The 20% relates to the fund's capital, which is an aggregate of capital contributions and uncalled capital committed to an AIF after all fees, charges, and expenses directly or indirectly borne by investors are deducted. Note the "capital" definition is based on a closed-ended fund (as is the case in the ELTIF Regulation), and we would expect some guidance or clarification as to how this definition and related provisions such as this are to be applied to open-ended AIFs.</p>

Regulatory requirement	Obligations
	<p>The limit includes loans made through a special purpose vehicle (SPV).</p> <p>The limit applies after a ramp-up period of up to 24 months from initial subscription as set out in the AIF's constitutional documents and which may be extended by a year by the AIFM's NCA in exceptional circumstances on the AIFM submitting a justified investment plan. In addition, the limit ceases to apply once the AIF starts to sell assets either to redeem or as part of the AIF's liquidation; there is also flexibility for AIFs raising or reducing capital.</p> <p>This diversification requirement is designed to contain the risk of interconnectedness between AIFs and other financial market participants.</p>
Risk retention	<p>An AIF has to retain at least 5% of the notional value of loans it has originated and subsequently transferred to a third party.</p> <p>For originated loans whose maturity is up to eight years (and any loans granted to consumers), that amount must be held until maturity. For other loans, that amount must be held for at least eight years.</p> <p>Various carve-outs apply (but there is no exemption for transfers to affiliates), including where the AIFM is selling assets to redeem units as part of the AIF's liquidation; where the loan sale is necessary for the AIFM to implement the AIF's investment strategy in the investors' best interests or due to a deterioration in the risk of the loan detected by the AIFM's risk management and due diligence and that the buyer has been informed of; and where there would be a breach of product investment or diversification limits or regulatory requirements.</p> <p>This is to avert moral hazard and maintain the general credit quality of loans originated by an AIF.</p>
No originate-to-distribute strategy	<p>Member states shall prohibit AIFs that follow an originate-to-distribute investment strategy, that is an investment strategy under which loans are originated with the sole purpose of selling them.</p> <p>As for risk retention, this is designed with the same moral hazard/credit quality objective.</p>
Prohibited loans	<p>An AIF cannot lend to its AIFM or its staff, any AIFM delegates, the depositary and its delegates, or group entities of the AIFM (except for third-party finance, i.e., the affiliate exclusively finances other borrowers).</p> <p>This is to limit conflicts of interest. The position of AIFM associates will need to be considered.</p>
Proceeds of loans	<p>The proceeds of loans (minus any administrative fees) must be attributed to the AIF in full. This will need to be considered in the commercial terms.</p>

Regulatory requirement	Obligations
Disclosures and reporting	Pre-contractual investor disclosures: the costs and expenses of loan administration. Periodic investor disclosures: portfolio composition of originated loans. Regulatory reporting: total amount of leverage used by the AIF.

Loan Origination: Threshold Issues

The table below identifies structuring considerations that may affect the impact of the new requirements.

<p>Shareholder loan carve-outs: where loans can be so structured at the underlying level (effectively with the loan stapled to the equity), there are two helpful carve outs.</p>	<p>Definition of ‘loan’: where an AIF is not involved in the origination of loans, it should not be subject to the loan origination requirements (and, where relevant, including as a loan-originating AIF).</p>
<p>Shareholder loans are exempt from two requirements:</p> <ul style="list-style-type: none"> • Having policies and procedures on loan origination • Adhering to leverage limits for loan-originating AIFs <p>The other requirements set out in the table above will still apply.</p> <p>Shareholder loans are granted by an AIF to an undertaking in which the AIF holds directly or indirectly at least 5% of the capital or voting rights (and where the loan cannot be sold independently to third parties) that do not exceed 150% of the AIF’s capital.</p>	<p>There is no definition of “loan,” and the likely interpretation is that an AIF that holds preference shares/preferred stock in its portfolio companies or SPVs and/or lends to them by way of transferable securities will not be making loans for AIFMD2 purposes.</p>

Level 2 Measures to Follow

ESMA is to determine the requirements with which a loan-originating AIF must comply in order to maintain an open-ended structure (regarding a sound liquidity management system, the availability of liquid assets and stress testing, and an appropriate redemption policy having regard to the AIF’s liquidity profile). This is to be done by 16 April 2025. Following the recently-published consultations on AIFMD2 liquidity management provisions, we expect these level 2 measures to be consulted on shortly.

Transitional Provisions and Opt-in

The transitional provisions are detailed, and some apply on a limited basis, as set out in the table below. They will need to be considered on a case-by-case basis and depending on the activity of the relevant fund.

5-year transitional period (until April 2029) for AIFMs managing AIFs that originate loans before 16 April 2024		
<p>For AIFMs managing AIFs that originate loans before 16 April 2024, there is deemed compliance for certain provisions:</p> <ul style="list-style-type: none"> • 20% single-borrower limit • Leverage limits • Requirement to be closed-ended 	<p>The deemed compliance applies indefinitely for pre-existing AIFs that do not raise additional capital after that.</p>	<p>From 16 April 2029, these AIFMs have to comply only with the 20% single-borrower limit, leverage limits, and the requirement to be closed-ended for loan-originating AIFs. These AIFMs can also continue to manage such AIFs without having to comply with provisions on policies and procedures, restrictions on entities to lend to and originate-to-distribute strategies, disclosures on loan proceeds, and the 5% risk retention.</p>
<p>There are provisions to allow ongoing management of loans originated by preexisting AIFs that exceed the 20% limit to any single borrower or the leverage limits for open- and closed-ended AIFs (provided that the AIFM does not increase those values or limits during the transitional period, i.e., up to 16 April 2029).</p>		
<p>AIFMs can choose to be subject to the new requirements (20% single-borrower limit, leverage limits, and the requirement to be closed-ended for loan-originating AIFs) before 16 April 2029, by notifying their NCA.</p>		

Case Studies

We have looked at four case studies in terms of the impact the new rules are likely to have.

Case Study 1

Private equity fund granting loans that launched after 16 April 2024: an AIF that grants traditional loans to its portfolio companies or SPVs (itself or via a third party of SPV) where the notional value of originated loans is less than 50% of the AIF's NAV	
AIFMD2 analysis	<p>This AIF will be subject to the requirements shaded green in the table above.</p> <p>It is not a loan-originating AIF and is therefore not subject to the restrictions shaded in yellow above (i.e., leverage limits and the default requirement to be closed-ended).</p> <p>No grandfathering applies.</p>

Private equity fund granting loans that launched after 16 April 2024: an AIF that grants traditional loans to its portfolio companies or SPVs (itself or via a third party of SPV) where the notional value of originated loans is less than 50% of the AIF's NAV

Main Impact

- 20% concentration limit:** possible issue for an AIF with a bridge loan from the AIF to a portfolio company/SPV that breaches the 20% limit (and is not able to fall within the carve outs)
- 5% risk retention** (but consider if any exemptions)
- Policies and procedures in place and reviewed annually (note shareholder loan exemption)
- Prohibited loans (mainly conflict situations)
- Prohibition on “originate to distribute” strategies
- Proceeds of loans
- Investor and regulatory disclosures

Case Study 2

An open-ended debt fund that grants loans as its principal activity that launched before 16 April 2024, and is still raising capital	
AIFMD2 analysis	<p>This AIF will be subject to the requirements shaded yellow and green in the table above (it is a loan-originating AIF). As an open-ended fund, it will also be subject to the new liquidity management provisions in AIFMD2 from April 2026.</p> <p>Some of the grandfathering rules apply.</p>
Main Impact	<p>From 16 April 2026 to 15 April 2029:</p> <ul style="list-style-type: none"> • Deemed compliance with the requirement to be closed-ended; 20% concentration limit and 175% leverage limit • Unable to increase those values or limits (but otherwise deemed compliant) if specified leverage or concentration limits are breached during this period • Investor and regulatory disclosures <p>From 16 April 2029, the fund has to comply with the following:</p> <ul style="list-style-type: none"> • To be open-ended: demonstrate to the AIFM's NCA that the AIF's liquidity risk management strategy is compatible with its investment strategy and redemption policy (subject to level 2 measures, to follow) • Specified leverage limits: 175% for open-ended (or 300% if required to be closed-ended)

An open-ended debt fund that grants loans as its principal activity that launched before 16 April 2024, and is still raising capital

- 20% concentration limit

Case Study 3

An open-ended debt fund that grants loans as its principal activity that launched before 16 April 2024, and is no longer raising capital

AIFMD2 analysis

As for Case Study 2, this AIF will be subject to the green- and yellow-shaded requirements in the table above (it is a loan-originating AIF). As an open-ended fund, it will also be subject to the new liquidity management provisions in AIFMD2 from April 2026.

However, as it is no longer raising capital, all of the grandfathering rules apply.

Main Impact

No compliance with new requirements (deemed compliant, which applies indefinitely for preexisting AIFs that do not raise capital after 16 April 2024)

Case Study 4

A closed-end debt fund that grants shareholder loans only (which launched before 16 April 2024, and is still raising capital)

AIFMD2 analysis

This AIF will be subject to the requirements shaded yellow and green in the table above. Some grandfathering provisions apply.

But because it grants only shareholder loans, it will benefit from two exemptions (specified leverage limits and policies and procedures in place), subject to member states imposing stricter rules.

Main Impact

From April 2026: Investor and regulatory reporting

From 16 April 2029: 20% concentration limit

Please do not hesitate to speak to one of the authors of this guide or your usual Goodwin contact if you have any questions or

want to discuss how AIFMD2 loan origination may impact your fund structures and investments.

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