# AIFMD (Alternative Investment funds managers)

Updated in August 2026

Directive 2011/61/EU of the European Parliament and the Council on alternative investment funds managers (the "Directive")
Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds (europa.eu)

## 1. AIFMD Overview

### a. Objectives

The AIFMD aims to create a harmonised regulation framework for alternative funds distributed in the EU.

The AIFMD has the objective of regulating the alternative investment fund managers and the distribution of AIFs in the European Union in order to ensure investor protection and avoid systemic risk.

### b. Scope

The AIFMD applies to:

- EU AIFMs managing AIFs, irrespective of their country of domiciliation (EU AIFs or non-EU AIF)
- non-EU AIFMs managing EU AIFs
- non-EU AIFMs which market their AIFs in the EU

### c. Key topics covered by the AIFM Directive (Level 1)

With an objective of harmonisation, the Directive covers key topics:

- authorisation
- capital requirements
- delegation of duties to third parties,

- use of leverage funds,
- valuation requirements by the investment manager itself or by an outside expert,
- conduct of business,
- remuneration policies
- reporting to National Competent Authorities,
- marketing provisions and rules in relation to third countries
- depositary provisions
- passport

## d. Depositary provisions

For each AIF it manages, an AIF must mandate a depositary who must be subject to a supervisory authority. The Directive includes requirements for firms acting as depositary of AIFs:

- eligible depositary: an EU credit institution, an EU Investment company or a UCITS depositary
- depositary liability regime: the Directive clearly establishes the principle of liability of the depositary with regard to the fund managed in the event of loss of the assets under management, thus obliging the custodian to return identical assets or the cash value of these assets to the fund managed, with the exception of an external event beyond reasonable control

## e. Passport

The Directive creates a passport for European fund managers effective as of the application date in 2013.

It should be noted the passport granted by the Directive only allows marketing within the EU for investors that are at least professionals (in reference to the terminology of the MiFID).

On 30 July 2015, ESMA published an opinion on the extension of the passport to non-EU fund managers recommending that the passport been extended to Guernsey, Jersey and Switzerland (subject to conditions for Switzerland). ESMA will extend the passport on a country-by-country basis.

The timing for the extension of the passport to non-EU AIFs and AIFMs is uncertain. The Commission has the power to adopt a delegated act which would extend the passport to non-EU AIFMs. If it does so, a delegated act will have to be adopted.

Until the passport is extended, EU AIFMs who manage non-EU AIFs and non-EU AIFMs who manage non-EU AIFS may continue to use national private placement regimes (“NRPPs”) as it is the sole regime available.

The Timing for termination of “NRPPs” is uncertain. The Commission has the power to adopt a delegated act that would specify the date on “NRPPs” are to terminate if it has received a positive opinion in this regard from ESMA.

### f. Key topics covered by Level 2 (RTS)

Calculation of assets under management, method used to calculate leverage, level of additional capital, operating requirements applicable to managers, delegation of financial management duties, risk management, liquidity management, depositaries' responsibilities and reporting requirements.

## 2. AIFMD Review

On 26 February 2024, the Council adopted the Directive, which amended the Alternative Investment Fund Managers Directive (AIFMD) and modernised the framework governing Undertakings for Collective Investment in Transferable Securities (UCITS) at European Union (EU) level.

Among the key elements, the amending directive modernises the framework for liquidity management tools, clarifies the EU framework for funds that provide loans to companies and introduces enhanced rules for delegation by portfolio managers to third parties. It confirms that a central securities depository (CSD) is considered to be a delegate of the depositary bank when acting as depositary, and it does not alter the requirement that the depositary must be located in the country in which the fund is domiciled, even though it grants exemptions to certain States.

The Directive has been published in the EU's Official Journal on 26 March 2024, and will enter into force in twenty days. Member States will have 24 months to transpose it.

Although this is an evolution rather than a revolution of the AIFMD, there are three notable changes:

- Modernising the framework for liquidity management tools
- Supervising funds that provide loans to companies
- Strengthening the governance of AIFMs, in particular with regard to the delegation of managers to third parties.

### 1. Two mandatory liquidity management tools for AIFs

Liquidity management practices have highlighted that some AIFs use tools that are not suited to the liquidity risk profile or investment strategy, or that, more simply, the fund's incorporation documents do not always provide for the use of such mechanisms. As a result, market practices have been disparate across jurisdictions, resulting in unequal results and differentiated treatment of investors.

In order to rectify these disparities, AIFMD II introduces a European framework aimed at enabling AIFMs to manage liquidity and market stress issues in a coherent system that guarantees investor protection. The new directive harmonises liquidity risk management and requires each fund to integrate and implement detailed liquidity management tools (LMTs).

AIFMD II sets out a list of LMTs:

1. Suspension of subscriptions, repurchases and redemptions
2. Redemption gate
3. Extension of notice periods
4. Redemption fee
5. Swing pricing
6. Dual pricing
7. Anti-dilution levy (ADL)
8. Redemption in kind
9. Side pockets

These tools are classified into two categories: quantitative management tools that affect quantities, and qualitative tools that affect prices. However, AIFMs is free to choose at least two liquidity management mechanisms in the AIF's constituent documents, with the exception of money market funds for which a single tool is required. Il should be noted that dual pricing is not available on French market pace. As suspension of subscriptions/redemptions and side pockets form are part of common law (Directive 2011-19), the two additional tools must be selected from the list of the following six tools: redemption fee, swing pricing, anti-dilution levy, redemption gate, redemption in kind or extension of notice period.

The manager's choice of tools must be consistent with the fund's investment strategy, liquidity profile and redemption policy. This involves formalising in detail the policies and procedures for activating and deactivating LMTs, with the usual administrative and operational provisions.

AIFMD II requires AIFMs to notify their competent authorities of the activation and deactivation of such LMTs. AIFMD II thus strengthens the supervisory powers of national authorities.

Managers must communicate to investors the conditions for activating LMTs. Enhanced information is also essential to ensure that LMTs can function properly.

## 2. The granting of loans by AIFs (Loan-originating AIFs)

Lending has become an essential alternative source of financing for the real economy, especially since traditional lending channels have become less accessible. However, disparities in national lending laws have led to unbalanced competition between jurisdictions that prohibit lending by the non-banking system and more flexible jurisdictions.

For this reason, AIFMD II establishes common rules on the granting of loans, which cover the management of conflicts of interest, the supervision of credit risk and the diversification of risks based on the type of fund (open or closed). It provides explicit authorisation to fund managers in the EU to grant loans.

New definitions are introduced into AIFMD II, including the definition of loan-originating AIF. A loan-originating AIF is defined as an AIF whose investment strategy is mainly to originate loans or if the originated loans represent at least 50% of its net asset value.

A leveraged AIF is a fund whose exposures are increased by the manager through borrowing of cash or securities, leverage embedded in derivative positions or any other means.

This new directive introduces limits on indebtedness.

- The leverage limit of open-ended loan-originating AIFs may not exceed 175% and the leverage limit of close-ended AIFs may not exceed 300%. This ratio is calculated based on the fund's exposure, divided by the net asset value, using the commitment methodology.
- It sets exposure and diversification limits at 20% where the counterparty is an AIF, a UCITS or a financial institution.
- Lastly, the funds are required to maintain at least 5% of the notional value of the loans issued. All income from loans must be returned to the fund. Investors must be informed of the loan administration costs.
- The management company must formally document loan authorisation policies and procedures. These must be drafted to properly assess and control credit risk and are subject to periodic review.

## 3. Governance and minimum substance of managers

The new directive strengthens the governance structure for managers, aligning with industry practices and post-Brexit regulatory changes. It reinforces "minimum substance" obligations applicable to assets managers.

The new rules specify that the management company's business must be carried on by at least two natural persons, either full-time employees or executive members or members of the management company's management body domiciled in the European Union.

Regarding delegation agreements, AIFMD II strengthens the current regulatory framework. The AIFM must be able to justify its entire delegation structure to the competent authorities before the provisions of the delegation take effect, and all appropriate human and technical resources used to monitor the delegate must therefore be described in detail. The management company must be able to give additional instructions to its delegates at any time and to withdraw the mandate with immediate effect where

the interests of investors and clients so require. This requires careful oversight and control to ensure effective governance and compliance.

Lastly, it should be noted that the prudential reporting obligations to the competent authorities will be strengthened, as will the declarations on delegations. To that end, ESMA will draw up draft RTSs (Regulatory Technical Standards) specifying the detail and standards for the information to be reported, thereby replacing the current AIFM declarations.

## 3. Chronology of events: key dates

- 21 July 2011: Directive entered into force
- 22 July 2013: Entry into application of the Directive (deadline for transposition), Level 2 applicable on the same date
- 22 July 2014: Deadline for (existing) AIFM to be compliant with AIFMD
- 8 October 2014: ESMA's guidelines on reporting obligations under AIFMD apply
- 30 October 2018: Amendments of Level 2 on safekeeping duties of depositories
- 1rst April 2020: Entry into application of the new safekeeping duties of depositaries: Delegated Regulation 2018/1618
- 25 November 2021: Proposal from the Commission of a review of AIFMD and UCITSD
- 26 March 2024: Publication of AIFMD review on the Official Journal of the EU
- 15 April 2025: ESMA publication of RTS & guidelines project on liquidity management tools
- 17 November 2025: Validation of the final RTS on liquidity management tools supplementing AIFMD and the UCITS Directive – validated, wich are slightly different from the draft RTS proposed by the ESMA in April 2025
- 27 February 2026: Publication on the Official Journal of EU of the delegated regulations adopting the final RTS on liquidity management tools.
- Avril 2026: entry into application of AIFMD II (deadline for national transpositions) except for new reporting obligations
- 13 May 2026: the AMF announced its intention to apply ESMA's guidelines on liquidity management tools for open-ended UCITS and AIFs once the work to transpose the AIFM II Directive is completed

**Next steps**

- French transposition of (UE) 2024/927 Directive still pending : Code monétaire et financier not yet amended
- RTS & guidelines project on open-ended loan originating funds (LOFs) (initially planned in Q4 2025 but **delayed by the European Commission after October 2027)**
  - The expected Level 2 measure is only intended to determine the conditions under which an LOF may be open-ended (Article 16 2 septies). ESMA is developing draft regulatory technical standards to determine the requirements that a lending AIF must meet in order to maintain an open-ended structure. These requirements include a robust liquidity management system, the availability of liquid assets and stress testing, as well as an appropriate redemption policy taking into account the liquidity profile of lending AIFs. These requirements also take due account of exposures to underlying loans, the average repayment period of loans, and the overall segmentation and composition of the portfolios of lending AIFs. No deadline has been set for the adoption of the Level 2 text (by ESMA) for this Level 2 measure.
  - Other measures relating to the regulation of LOFs (in particular leverage - see Article 4a) are not affected/postponed.

- 2027 ESMA should published RTS & guidelines project on reporting
- April 2027: entry into application of AIFMD II for new reporting obligations

## 4. Reference text(s)

- Directive (EU) 2019/1160
- Regulation (EU) 2019/1156
- Guidelines on Marketing Communications
- Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds
- RTS on LMT: https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=OJ:L_202600465
- French intention to apply ESMA'guidelines

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