

The Transposition of AIFMD2 in Italy: An Overview of The Main Changes

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On April 16, 2026, Italian Legislative Decree No. 39 of March 13, 2026 (the Decree) came into force, introducing significant changes to the Italian Consolidated Law on Finance (Legislative Decree No. 58 of February 24, 1998) in order to transpose AIFMD2 (i.e., Directive (EU) 2024/927, amending the AIFMD and UCITS Directives).

The key update concerns the new regime governing the granting of loans in Italy by Italian and EU alternative investment funds (AIFs). Prior to AIFMD2, the possibility for AIFs to grant loans was governed by individual national legislation, resulting in significant differences between Member States in terms of authorization requirements and operational limits. AIFMD2 introduces, for the first time, a harmonized regulatory framework for the provision of credit by AIFs, aimed at ensuring a level playing field among market operators and promoting the development of the private credit market. Furthermore, the Decree removes the prohibition on the granting of loans to consumers, allows for the establishment of open-ended loan-originating AIFs, extends the range of ancillary services that may be provided by asset management companies (the Italian SGRs), clarifies the rules on the delegation of marketing functions, and introduces provisions to allow Italian depositaries to offer their services to EU AIFs.

The new framework will become fully applicable following the adoption of the Level 2 implementing measures by the Bank of Italy and the Italian Financial Markets Authority (CONSOB), which are due by the deadline of October 16, 2026. On May 27, 2026, the Bank of Italy launched a public consultation on proposed amendments to its Level 2 regulations, primarily aimed at implementing the AIFMD2 transposition provisions laid down in the Decree.

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I. “Loan-originating AIFs”

A. Introduction

The Decree primarily addresses the granting of loans by AIFs, redefining the existing framework in line with AIFMD2.

The possibility for AIFs (both Italian and EU) to grant loans in Italy was already provided for in Articles 46-*bis* and 46-*ter* of the Consolidated Law on Finance, which allowed AIFs to “invest in loans, through the use of their own assets”, in accordance with the provisions of the Consolidated Law on Finance and its implementing rules.

However, this regime was purely national. A harmonized EU regulatory framework for private credit was introduced by AIFMD2, with a view to ensuring a level playing field among operators from different Member States in a context marked by the increasing development of private credit and the coexistence of non-uniform national regimes.¹

In line with AIFMD2, the Decree introduces in the Consolidated Law on Finance a comprehensive set of definitions relating to the granting of loans by AIFs, starting with the definition of “loan-originating AIF” (*FIA di credito*) or “AIF granting loans” (*FIA concedente prestiti*), which covers AIFs that meet one of the following criteria:

- the investment strategy is mainly to invest in loans; or
- they hold in their portfolio loans having a notional value that represents at least 50% of the fund’s NAV.²

¹ This had emerged clearly from a survey conducted by ESMA in 2016, which had found that harmonised European rules on loan origination by funds were provided for only under Regulation (EU) No. 345/2013 on European venture capital funds (EuVECA), Regulation (EU) 2015/760 on European Long-Term Investment Funds (ELTIF) and Regulation (EU) No. 346/2013 on European Social Entrepreneurship Funds (EUSEF) (see ESMA, *Opinion on Key principles for a European framework on loan origination by funds*, dated April 11, 2016, available [here](#)).

² Article 46-*bis*, paragraph 01(b), of the Consolidated Law on Finance, as amended by Article 1, paragraph 1(c), no. 1 of the Decree.

In turn, “investment in credit” (or “investing in credit”, “granting a loan” or “granting loans”) is defined as the activity of granting loans in any form (including the purchase of loans)³ which may be carried out: (i) either directly by an AIF, or by an AIFM on behalf of the AIF it manages and using the AIF’s assets; or (ii) indirectly, through a third party or a special purpose vehicle that grants a loan for an AIF/AIFM or on behalf of an AIF/AIFM, where the AIF or AIFM is involved in structuring the loan, or defining or pre-agreeing its characteristics, prior to gaining exposure to the loan.⁴ Consequently, the new rules also cover cases where loans are actually granted by a special purpose vehicle (SPV).

The Decree also introduces the concept of an “AIF that also invests in credit”, defined as an AIF, other than a loan-originating AIF, that invests in at least one loan⁵ and is subject only to a subset of the rules applicable to loan-originating AIFs.

B. Granting of Loans to Consumers

A key change from the previous regime is the introduction of the possibility for AIFs to grant loans also to consumers, in compliance with consumer credit rules. Article 46-*bis*, paragraph 1 of the Consolidated Law on Finance previously allowed the granting of loans only “to parties other than consumers.” The Decree has removed this limitation, choosing not to exercise – in line with the delegation⁶ – the discretion granted by AIFMD2 to Member States to prohibit the granting of loans to consumers. This option is intended to increase liquidity, stimulate competition in the consumer credit market and reduce the concentration of credit risk within the banking system, while acknowledging the potential risks (in particular of mis-selling)

³ This is in line with the provisions of Ministerial Decree No. 53 of April 2, 2015, implementing Article 106 of the Consolidated Banking Law (Legislative Decree No. 385 of September 1, 1993), which sets out the scope of the reserved activity consisting in the granting of loans to the public.

⁴ Article 46-*bis*, paragraph 01(a), of the Consolidated Law on Finance, as amended by Article 1, paragraph 1(c), no. 1, of the Decree.

⁵ Article 46-*bis*, paragraph 01(f), of the Consolidated Law on Finance, as amended by Article 1, paragraph 1(c), no. 1, of the Decree.

⁶ See Article 13, paragraph 12, of the 2024 European Delegation Law (Law No. 91 of June 13, 2025).

associated with such a broadening of the scope, which will need to be adequately addressed within the implementing measures to be adopted by the Bank of Italy and the CONSOB.⁷

C. Structure of Loan-originating AIFs

In terms of structure, as a general rule, loan-originating AIFs must continue to be established as closed-ended funds. However, the Decree has introduced, in line with AIFMD2, the possibility of establishing an open-ended loan-originating AIF, provided that the asset manager demonstrates to the Bank of Italy that its liquidity risk management system is compatible with the fund's investment strategy and redemption policy. The Decree grants the Bank of Italy, after consulting the CONSOB, the power to prohibit the establishment of an open-ended loan-originating AIF where it considers that these conditions are not met.⁸

D. Specific Regime Applicable to AIFs Investing in Credit

The classification of an AIF as an Italian AIF investing in credit gives rise to the application of a detailed regime comprising provisions aimed at investor protection and the prevention of moral hazard.

Specifically:

- in order to mitigate potential conflicts of interest, the Decree introduces a prohibition on Italian loan-originating AIFs (and AIFs that also invest in credit) to invest in loans granted to (i) the AIFM and its staff, (ii) an entity to which the AIFM has delegated functions and its staff, (iii) the AIF's depositary or the entities to which the depositary has delegated functions in respect of the AIF, and (iv) entities within the AIFM's group (except where those entities are financial

undertakings that do not finance borrowers that belong to the above categories). This requirement is not entirely new to the Italian framework, as the Bank of Italy's Regulation on Asset Management⁹ (the AM Regulation) already contains limits on the granting of loans aimed at preventing conflicts of interest.¹⁰ The Decree now redefines those limits directly in Level 1 legislation;

- with regard to the proceeds and costs of the loans, the Decree provides that the proceeds of the loans in which loan-originating AIFs (or AIFs that also invest in credit) invest must be attributed in full to those AIFs, minus any allowable fees for their administration, and that managers of loan-originating AIFs (and of AIFs that also invest in credit) must disclose to investors all costs and expenses linked to the administration and management of the loans in which the AIFs invest;
- the Decree prohibits the establishment of AIFs where the investment strategy of those AIFs is, in whole or in part, to invest in loans with the sole purpose of selling or transferring them to third parties (the so-called "originate-to-distribute" strategy);
- the Decree introduces a risk retention requirement for loan-originating AIFs (and AIFs that also invest in credit) in the event of a subsequent transfer of loans to third parties, which is similar to the one applicable under the securitization framework. Specifically, the AIF must retain in its portfolio at least 5% of the notional value of each loan sold or transferred.¹¹

⁷ See the Regulatory Impact Assessment (*Analisi di impatto della regolamentazione*) relating to the Decree, contained in the parliamentary dossier submitted to the Italian Senate, page 2, available [here](#).

⁸ Article 46-*bis*, paragraph 1-*quinquies* of the Consolidated Law on Finance, as amended by Article 1, paragraph 1(c), no. 3 of the Decree.

⁹ Bank of Italy's Resolution of January 19, 2015, as amended.

¹⁰ Footnote 47 of Paragraph 2, Title V, Chapter 3, Section V of the AM Regulation clarifies that, with respect to funds investing

in loans, the investment prohibition also includes a prohibition on granting loans to a shareholder holding a qualifying holding, a director, a general manager or a statutory auditor of the asset management company or of the fixed-capital investment company (SICAF), or of a company within the group of the asset management company or the SICAF.

¹¹ Article 46-*bis*, paragraphs 1-*bis*, 1-*ter* and 1-*quater*, of the Consolidated Law on Finance, as amended by Article 1, paragraph 1(c), no. 3, of the Decree.

E. Leverage and Exposure Limits and Liquidity Management

The Decree broadens the scope of regulatory supervision by redefining the allocation of matters which, pursuant to Article 6 of the Consolidated Law on Finance, are delegated to the Level 2 legislation to be adopted by the Bank of Italy, after consulting the CONSOB. These matters include the rules applicable to Italian collective investment undertakings (CIUs) concerning, among other things, borrowers, liquidity management, the management of risks arising from loan-origination activities, as well as micro and macro-prudential measures for risk containment and diversification. On this last point, the Decree empowers the Bank of Italy to provide for the application of maximum leverage limits to Italian CIUs.

The exercise of the delegated power must take into account the provisions of AIFMD2 regarding leverage, liquidity management and limits on exposures to financial counterparties. More specifically:

- with regard to leverage, AIFMD2 introduces differentiated limits (depending on the structure of the AIF) that are higher than the leverage limits for loan-originating AIFs set by the previous national regime,¹² thereby allowing for greater recourse to borrowing. In particular, the AIFM must ensure that the leverage of an AIF granting loans managed by it does not exceed 175% in the case of open-ended AIFs and 300% in the case of closed-ended AIFs;
- with regard to liquidity management, Article 16, paragraph 2b AIFMD, as introduced by AIFMD2, requires AIFMs that manage open-ended AIFs to select at least two liquidity management tools (LMTs) from those listed in Annex V to the AIFMD (*e.g.*, redemption gates, swing pricing, dual pricing, anti-dilution levies);

¹² The text of the AM Regulation currently in force provides, with respect to Italian loan-originating AIFs, a leverage limit of 150% for closed-ended reserved AIFs investing in debt, and that retail AIFs are permitted to use derivatives only for hedging purposes and are subject to a borrowing limit equal to 30% of their NAV.

- with regard to exposures to financial counterparties, in order to mitigate the risk of systemic interconnectedness, AIFMD2 imposes a limit of 20% of the loan-originating AIF and AIF that also invest in credit's capital in relation to each borrower.¹³

F. Further applicable provisions

The Decree maintains the obligation for Italian AIFs investing in loans to participate in the Bank of Italy's Central Credit Register (*Centrale dei rischi*).¹⁴

Moreover, with respect to loans granted by Italian AIFs, the Decree – in addition to confirming the application of the provisions on the transparency of contractual terms and conditions and customer relations under Chapters I and III of Title VI of the Consolidated Banking Law and the provisions on administrative sanctions under Chapters V and VI of Title VIII of the Consolidated Banking Law – extends the application of the rules governing consumer credit and mortgage credit to consumers (Chapters I and I-*bis* of Title VI of the Consolidated Banking Law), as well as the obligation to adhere to an alternative dispute resolution scheme (Article 128-*bis* of the Consolidated Banking Law, the application of which was excluded under the previous regime).

G. Managers of EU loan-originating AIFs

One of the most significant changes introduced by the Decree concerns the simplification of the regime applicable to EU loan-originating AIFs that intend to grant loans in Italy, through an amendment of Article 46-*ter* of the Consolidated Law on Finance.

Under the previous regime, EU AIFs wishing to carry out direct lending activities in Italy were subject to a prior notification procedure to the Bank of Italy, which, in substance, amounted to a fully-fledged authorization process, entailing significant requirements, documentation burdens and lengthy timeframes.

¹³ Article 15 AIFMD, as amended by Article 1, paragraph 7(b) AIFMD2.

¹⁴ Article 8, paragraph 1-*bis* of the Consolidated Law on Finance.

In particular, the previous version of Article 46-ter of the Consolidated Law on Finance required compliance with specific requirements, including the condition that the EU AIF had to present an operating framework similar to that of an Italian loan-originating AIF and that the rules of the EU AIF's home Member State (or those under the AIF's by-laws or fund rules) regarding risk mitigation and diversification, including leverage limits, were equivalent to the rules applicable to Italian AIFs. The Bank of Italy had the power, exercisable within 60 days of receiving a complete notification, to prohibit AIFs from granting loans if these conditions were not met. The Decree has removed both such requirements and the Bank of Italy's power to prohibit the granting of loans in Italy. Article 46-ter now only requires managers of EU AIFs to inform the Bank of Italy upon commencing operations in Italy.

Similarly to the provisions for Italian loan-originating AIFs (*see* above), the Decree has also removed the prohibition under the previous version of Article 46-ter of the Consolidated Law on Finance on EU loan-originating AIFs operating in Italy from granting loans to consumers, thereby extending to these funds the possibility of providing consumer credit in compliance with the relevant regulations.

The Decree also confirms (i) the possibility for the Bank of Italy and the CONSOB, within the scope of their respective competences, to require that managers of EU AIFs granting loans, including their staff, provide data and information and submit records and documents, (ii) the possibility for the Bank of Italy to require EU AIFs granting loans to participate in the Central Credit Register, (iii) that the provisions applicable to EU AIFs regarding the marketing of shares or units remain unaffected, and (iv) the applicability of banking transparency rules as applicable to Italian loan-originating AIFs, as well as

the requirement to adhere to an alternative dispute resolution scheme.

II. Further Changes Introduced by the Decree

A. Extension of Ancillary Services for Italian SGRs

In line with AIFMD2, the Decree significantly broadens the scope of activities that authorized Italian SGRs¹⁵ may carry out, by amending Article 33, paragraph 2 of the Consolidated Law on Finance with the inclusion of new subparagraphs (*g-bis* to *g-sexies*). In particular, Italian SGRs may now:

- administer benchmarks, provided that these are not indices used by CIUs managed by them;
- carry out credit management activities in relation to the AIFs managed by them, including non-performing loan (NPL) servicing;
- provide services to securitization vehicles (SPVs)¹⁶ in relation to the AIFs managed by them; and
- provide to third parties the functions or activities that they already carry out for the CIUs managed by them or in relation to the ancillary services they provide,¹⁷ subject to adequate management of conflicts of interest.

In addition, among the ancillary services that may be provided by Italian SGRs, the Decree reiterates the possibility of “*granting loans on behalf of the AIFs managed by them, pursuant to Articles 46-bis, 46-ter and 46-quater.*”

Finally, unlike under the previous regime, any authorized Italian SGR – and no longer only those specifically authorized to manage AIFs – may provide the service of reception and transmission of orders.¹⁸

¹⁵ Authorized Italian SGRs are now distinguished from the new category of registered sub-threshold managers, introduced by Legislative Decree No. 47 of March 27, 2026, implementing the delegation referred to in the so-called Capital Markets Bill (Law No. 21 of March 5, 2024).

¹⁶ These are the SPVs referred to in Article 2, paragraph 2 of the Securitisation Regulation (Regulation (EU) 2017/2402) and in Article 3 of the Italian Securitisation Law (Law No. 130/1999).

¹⁷ Such services include, for example – as clarified in Recital 6 of AIFMD2 – corporate services such as human resources and IT infrastructure management, as well as IT services for portfolio and risk management.

¹⁸ Article 18, paragraph 2 of the Consolidated Law on Finance, as amended by Article 1, paragraphs 1(g) and 1(h) of the Decree.

B. Clarifications Regarding the Delegation of the Marketing Function

As part of the implementation of AIFMD2, the Decree – through the introduction of the new paragraph 4-*bis* of Article 33 of the Consolidated Law on Finance – clarifies an interpretative uncertainty that had emerged in practice regarding the scope of the concept of delegation of functions by a manager.

The issue had given rise to significant practical concerns. Treating distribution activities as a “delegation of functions” within the meaning of the AIFMD/UCITS frameworks entailed the application of the regime set out in Delegated Regulation (EU) No. 231/2013, which imposes a number of particularly burdensome requirements on both the delegating manager and the delegate, including stringent due diligence in the selection of the delegate, ongoing monitoring of the delegated activity, the establishment of appropriate organizational controls, periodic reporting obligations, and the manager’s right to terminate the delegation at any time. In light of such obligations, banks and other distributors were, in market practice, reluctant to accept their characterization as delegates of the manager. In addition, this interpretative issue was resolved differently across Member States.

The new provision addresses this issue by clarifying that the marketing of units or shares of CIUs by distributors does not constitute a “delegation” for the purposes of the AIFMD/UCITS regimes where it is carried out (i) in accordance with the rules transposing MiFID 2¹⁹ (and therefore by entities authorized to provide investment services) or (ii) in the context of the distribution of insurance-based investment products pursuant to the rules transposing IDD²⁰ (and therefore by entities authorized as insurance intermediaries), regardless of the existence of distribution agreements between the manager and the distributor. Consequently, the rules applicable in the event of delegation of functions do not apply to distribution activities carried out in these circumstances.

¹⁹ Directive 2014/65/EU on markets in financial instruments.

²⁰ Directive (EU) 2016/97 on insurance distribution.

C. White-label Managers

By amending Article 6, paragraph 2(b-*bis*) no. 6, of the Consolidated Law on Finance, the Decree grants the CONSOB, after having consulted the Bank of Italy, a legislative mandate to set out rules governing the obligations relating to the management of conflicts of interest in the provision of asset management services arising from so-called “white-label” arrangements, *i.e.*, cases in which a manager manages or intends to manage a CIU at the initiative of a third party, with a view to preventing the circumvention of conflicts of interest rules through the use of third-party managers.

D. Depositary

Among the discretions granted to Member States by AIFMD2 is the possibility of allowing their supervisory authorities to permit the appointment of a depositary established in another Member State. This option is intended to address the shortage of depositary services in certain Member States and the consequent increase in associated costs.

Italy has not exercised the discretion in question, as it did not consider necessary to do so. Consequently, Italian AIFs must continue to appoint a depositary established in Italy, authorized in accordance with Article 47 of the Consolidated Law on Finance.

However, the Decree amends Article 47 of the Consolidated Law on Finance, which governs the reverse situation, namely the use of an Italian depositary by an EU AIF established in a Member State that has exercised the above discretion. In this context, the Decree introduces coordination and information-sharing arrangements between the Bank of Italy and the CONSOB, on the one hand, and the competent authorities of the EU AIF, on the other hand.

III. Bank of Italy’s Consultation on the Implementing Measures of AIFMD2

On May 27, 2026, the Bank of Italy launched a public consultation²¹ on the proposed amendments to

²¹ The consultation is addressed to entities operating in the asset management industry, banks operating as depositary, trade associations, and anyone who may have an interest

its Level 2 regulations, with the primary objective²² of implementing the AIFMD2 transposition provisions contained in the Decree. The consultation proposes a number of amendments to the AM Regulation, in addition to extending to managers of Italian and EU AIFs that originate loans in Italy the scope of the *Provisions on Transparency of Banking and Financial Transactions and Services*²³ and of the *Provisions on Alternative Dispute Resolution Systems relating to Banking and Financial Transactions and Services*.²⁴ The consultation also provides for limited changes to the *Regulation implementing Articles 4-undecies and 6, paragraph 1(b) and 1(c-bis) of the Consolidated Law on Finance*,²⁵ to implement the provisions on the delegation of functions and the requirement that asset managers employ at least two persons resident in the EU on a full-time basis to carry out their activities.

A. Key Changes to the AM Regulation

The proposed amendments to the AM Regulation submitted for consultation concern, among other things:

- the organizational requirements, leverage and exposure limits, and risk containment and diversification measures applicable to the managers of loan-originating AIFs and of AIFs that also invest in loans. The draft under consultation provides that the 20% exposure limit on the capital of AIFs introduced by AIFMD2 with respect to exposures to a single financial counterparty shall also apply to reserved funds. It also reiterates the existing exposure limit of 10% of the fund's total assets

for investments in exposures to a single non-financial counterparty by non-reserved AIFs;

- the conditions and criteria under which loan-originating AIFs, whether reserved or non-reserved, may be established in an open-ended structure;
- the terms and content of the notification for the commencement of operations by EU AIFs intending to invest in loans in Italy. Under the draft under consultation, such notification should be submitted by managers of EU AIFs at least 15 days prior to the commencement of operations in Italy and should include a fairly substantial set of minimum information, including not only a description of the characteristics of the EU AIF, the type of loans it intends to grant in Italy, and evidence of the manager's authorization to manage AIFs investing in loans in the home country, but also documents confirming, with regard to the loans granted, the adoption of adequate policies, rules, and procedures aimed at complying with the Bank of Italy's transparency framework;
- amendments to the provisions on risk management, containment, and diversification for CIUs, as well as those concerning CIUs' fund rules, in order to incorporate the new liquidity management tools (LMTs) applicable to open-ended CIUs and the relevant obligations under AIFMD2 on their selection, calibration, and use;
- the content of the notification that the Italian depositaries must submit to the Bank of Italy in

in proving feedback to the consultation, which must be submitted by July 11, 2026, i.e. within 45 days of the publication (May 27). The procedures for submitting observations to the consultation – which may be delivered by certified e-mail (PEC) or by ordinary post, along with a simultaneous e-mail submission – are set out in the consultation document, available [here](#).

²² The consultation also aims (i) to implement certain provisions of Legislative Decree No. 47 of March 27, 2026, adopted under the delegation set forth in Article 19 of the Capital Markets Bill; (ii) to align the regulations subject to amendment with Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (DORA); and (iii) to transpose the amendments to

Directive 2009/65/EC (UCITSD) introduced by Directive (EU) 2024/2994 (EMID) with regard to the treatment of concentration risk arising from exposures to central counterparties and counterparty risk for centrally cleared derivative transactions.

²³ Bank of Italy's Resolution of July 29, 2009, as amended.

²⁴ Bank of Italy's Resolution of June 18, 2009, as amended.

²⁵ Bank of Italy's Resolution of December 5, 2019, as amended.

order to operate in other Member States, and the relevant reporting obligations;

- the rules governing the carrying out of benchmark administration activities, the NPL servicing activities *vis-à-vis* purchasers of NPLs, and the provision to third parties of activities already performed for the benefit of the managed CIUs; and
- the introduction of a framework for registered sub-threshold asset managers, implementing the decree enacted under the Capital Markets Bill.

B. Transitional Regime

The Bank of Italy will analyze the observations received during the consultation in order to prepare the final text of the provisions in respect of which it has proposed amendments.

With regard to the rules addressed to managers of AIFs investing in loans, the Bank of Italy has clarified that the application of the new provisions will be subject to the transitional regime set out in Article 61, paragraph 6, of the AIFMD, as introduced by AIFMD2.

In particular:

- (i) where such AIFs were established before April 15, 2024, the relevant AIFM is deemed compliant, until April 16, 2029, with the requirements on exposure limit in relation to a single borrower and on leverage limits, provided that:
 - (a) in the event the exposure and leverage limits are exceeded, the AIFM does not further increase the leverage of the AIF or the notional value of loans granted to a single borrower; and
 - (b) where the loan exposure or the leverage is lower than such limits, the AIFM does not exceed the applicable levels or limits;
- (ii) where such AIFs were established before April 15, 2024 and did not raise additional capital after April 15, 2024, the grandfathering in respect of the above requirements shall apply without any time limitation; and
- (iii) in any event, the AIFMs in question may continue to manage loans granted by the AIFs before April 15, 2024 without being required to comply with the requirements on policies,

procedures and processes for loan origination, the prohibition on granting loans to related parties, the rules on the full attribution of the loan proceeds to the AIF, the prohibition on originate-to-distribute strategies, and the 5% risk retention obligation.

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