

A low-angle, upward-looking photograph of several modern skyscrapers. The buildings are primarily in grayscale, with prominent red and black geometric shapes overlaid on the left and right sides, creating a dynamic, architectural composition. The sky is a pale, uniform gray.

**ITALY'S TRANSPOSITION OF **AIFMD II** AND THE  
NEW REGULATORY FRAMEWORK FOR **CREDIT AIFs****

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## 1. INTRODUCTION

By Legislative Decree No. 39 of March 13, 2026 (the “**Decree**”), Italy implemented Directive (EU) 2024/927 (“**AIFMD II**” or the “**Directive**”), making significant amendments to Legislative Decree No. 58 of February 24, 1998 (the “**TUF**”) and, *inter alia*, reshaping the regulatory framework applicable to alternative investment funds (“**AIFs**”) investing in loans. This transposition forms part of the broader process of aligning Italian law with the innovations introduced at EU level in the field of collective investment, with particular regard to the granting of loans by AIFs, liquidity risk management, delegation arrangements and the depositary regime.

National transposition of the Directive was expected to provide a first clarification of some of the most uncertain aspects of the new European framework.

This article therefore examines the key choices made by the Italian regulator in implementing the Directive, focusing in particular on the new framework for AIFs investing in loans and assessing the extent to which the new provisions of the TUF have addressed the main interpretative issues that arose in the immediate aftermath of the Directive’s adoption.

It should also be noted, however, that the regulatory framework remains, for the time being, only partially complete, as the Decree entrusts the Bank of Italy and Consob with the adoption of the relevant implementing measures by October 16, 2026.

## 2. THE NEW REGULATORY FRAMEWORK FOR AIFS INVESTING IN LOANS

### 2.1 Direct and indirect loan origination

A first issue, essentially definitional but with immediate practical implications, concerns the relationship between the concept of loan origination and the broader concept, under Italian law, of investment in loans. For the purposes of loan origination, AIFMD II treats as relevant both the direct disbursement of a loan and its indirect granting through third parties or SPVs, provided that the AIF or its manager participated *ex ante* in structuring the loan or defining its key features.

In this respect, the Decree introduces new paragraph 01 of Article 46-*bis* of the TUF, which defines investment in credit and the granting of loans as the activity of granting financing in any form, whether carried out directly by the AIF, by the AIFM on behalf of the AIF and against its assets, or indirectly. This confirms a broad interpretation of the concept relevant to the regulation of AIFs investing in credit, capable of encompassing situations in which the financing is formally provided by a third party or a special purpose vehicle, provided that the AIF or its manager participated, prior to assuming the economic exposure, in structuring the loan or defining its characteristics.

It is worth noting that the Italian legislator has expressly included the purchase of receivables within the concept of “investment in credit”, consistently with the definition of granting loans in any form already adopted under the secondary legislation implementing Legislative Decree No. 385 of September 1, 1993 (“**TUB**”). Therefore, under Italian law, the notion of loan origination effectively extends to loan participation as well.

### 2.2 Impact on securitization structures / fronting structures

In this context, securitization structures and, more generally, transactions in which the loan is formally disbursed or purchased by a vehicle and the AIF assumes the resulting economic exposure only at a later stage are particularly relevant. The Decree does not establish specific regime for such arrangements, but adopts a substantive test under which transactions qualify as indirect lending where the AIF or the AIFM was involved *ex ante* in structuring the financing and subsequently assumes the related economic risk.

Accordingly, exposures to ABS securities or to SPVs that have originated or purchased loans do not per se constitute indirect loan origination; rather, a case-by-case assessment is required as to whether the AIF was actually and substantively involved in structuring the transaction.

### **2.3 The new regulatory definitions: credit AIFs, AIFs that also invest in credit, and shareholder loan**

The new Article 46-*bis* of the TUF introduces a more detailed definitional framework than the previous regime, and the intensity of the applicable rules depends on the relevant classification. The first category is that of credit AIFs, namely AIFs whose investment strategy primarily consists in investing in credit, or AIFs whose portfolio includes loans with a notional value equal to at least 50 per cent of net asset value. The test is therefore alternative: qualification may derive either from the strategic configuration of the fund or from the fact that the credit assets held in the portfolio have a notional value equal to at least 50 per cent of the AIF's net asset value. That classification triggers the application of the full regime applicable to credit AIFs, including, *inter alia*, leverage limits, concentration limits, safeguards against conflicts of interest, the prohibition on originate-to-distribute strategies and the risk retention requirement.

The second category includes AIFs that also invest in credit. More specifically, these are AIFs, other than credit AIFs, which hold credit exposures, but for which investment in credit is not the primary activity and which do not exceed the 50 per cent NAV threshold. For these funds, the legislator has introduced an intermediate regime: the rules specific to credit AIFs do not apply in full, but the safeguards regarded as essential in order to contain conflicts of interest, ensure cost transparency, allocate credit proceeds to the fund and prohibit originate-to-distribute models continue to apply. The solution adopted by the regulator appears consistent with a proportionality-based approach, intended to distinguish funds in which credit is a central component of the investment strategy from those in which it plays only an ancillary or complementary role.

The definitional framework is completed by the concept of a shareholder loan. The TUF defines this as a loan granted to an undertaking in which the AIF holds at least 5 per cent of the share capital or voting rights, provided that the loan cannot be transferred separately from the equity interest. This definition is especially relevant for leverage purposes. The Directive provides that, where all loans granted by the AIF consist of shareholder loans, the notional value of those loans may not exceed 150 per cent of the AIF's capital. This is a special regime which applies, in *lieu* of the ordinary leverage limits applicable to credit AIFs, where the AIF grants only shareholder loans. That choice reflects the particular nature of financing arrangements closely linked to a qualifying equity holding in the financed undertaking.

### **2.4 Lending to consumers**

Another area of particular interest concerns the range of eligible borrowers. AIFMD II allows Member States to prohibit AIFs from granting loans to consumers. Italy has chosen not to exercise that option: the Decree removes the reference to "*persons other than consumers*" contained in the previous legislation, thereby allowing, at least in principle, AIFs to lend to consumer borrowers as well.

The actual scope of that opening nevertheless remains subject to the adoption of secondary legislation, which will need to ensure proportionality, contractual transparency and protection of retail clients in accordance with Title VI of the TUB.

The Decree also amends Article 46-*quater* of the TUF by extending the application of the transparency provisions set out in Title VI of the TUB — including the sections on consumer mortgage credit and consumer credit — to loans granted in Italy by Italian and EU AIFs, as well as the requirement to participate in out-of-court dispute resolution schemes.

## 2.5 The new leverage and concentration limits

Of particular operational significance are the new rules on leverage and concentration.

As regards leverage, the new framework introduced by the Directive provides that, for credit AIFs, maximum leverage is set at 300% of the fund's capital where the AIF is closed-ended and at 175% where the AIF is open-ended, in each case according to the commitment method. This represents a significant expansion compared with the previous Italian framework, which set a limit of 150% for reserved closed-ended AIFs and a limit of 30% of total net asset value for non-reserved closed-ended AIFs. It should, however, also be recalled that Recital 18 of the Directive makes clear that those thresholds do not exhaust the scope for national intervention, since Member States remain free to impose stricter limits. In the Italian context, Article 6 of the TUF continues to empower the Bank of Italy, in relation to Italian reserved AIFs, to impose maximum leverage limits, prudential rules and risk mitigation and diversification measures in order to safeguard the stability and integrity of the financial market.

As regards concentration, the Directive has introduced, for all AIFs granting loans, a limit under which aggregate exposure to a single borrower may not exceed 20% of the AIF's capital where the borrower is a financial undertaking, a UCITS or another AIF. In the Italian context, this provision is especially relevant for reserved AIFs and has prompted a number of critical comments in the market, given that the previous domestic framework no longer provided for a comparable concentration limit for reserved credit AIFs *vis-à-vis* the same counterparty.

## 2.6 The structure of credit AIFs: closed-ended and open-ended

Under the previous Italian framework, credit funds could be established only as closed-ended funds. The new regime no longer excludes, as a matter of principle, the establishment of open-ended credit AIFs, but makes this subject to strict conditions of consistency between the investment strategy, the liquidity profile of the assets and the redemption policy.

More specifically, this possibility is conditional upon consistency between the fund's liquidity profile, its investment strategy and its redemption policy. That approach is consistent with the typically illiquid nature of credit assets and with the need to avoid mismatches between the time required to realize investments and the redemption rights granted to investors.

Against that background, new Article 46-bis of the TUF grants the Bank of Italy the power to prohibit the establishment of open-ended credit AIFs where it considers that the conditions laid down by the applicable European and domestic rules are not satisfied.

## 2.7 The risk retention requirement and the prohibition on originate-to-distribute

The new Article 46-bis of the TUF expressly implements both the principle of risk retention and the prohibition on originate-to-distribute strategies. In particular, it provides that AIFs may not be established where their investment strategy consists, wholly or partly, in investing in loans for the sole purpose of selling or transferring them to third parties.

The same provision further states that, where loans originated by the AIF are subsequently sold or transferred to third parties, the AIF must retain 5 per cent of the relevant notional value on its portfolio. The Directive further clarifies that this obligation applies until maturity in the case of loans with a term not exceeding eight years and in the case of consumer loans, while for other loans it must be maintained for a minimum period of eight years.

The purpose of the rule is therefore to prevent credit investment activity from resulting in a model in which the initial assumption of exposure is immediately separated from the retention of the related economic risk. In this respect, the prohibition on originate-to-distribute and the risk retention requirement operate as complementary safeguards, designed to strengthen the alignment of interests between the manager, the fund and investors, and to ensure that AIFs investing in credit remain within a framework of effective credit risk assumption and management.

## **2.8 Conflicts of interest and credit governance**

Finally, safeguards relating to conflicts of interest and credit governance are of particular importance. The new Article 46-*bis* of the TUF prohibits the manager from arranging for the AIF to grant loans to the manager itself, its staff, delegated entities, the depositary or group entities. This is coupled with the principle that all proceeds arising from loans must accrue in full to the AIF, subject only to the deduction of administrative expenses, as well as the obligation to provide investors with comprehensive disclosure of the costs and expenses connected with the administration and management of loans.

From an organizational standpoint, and in line with the Directive, the manager is required to adopt effective arrangements for the assessment, management and monitoring of credit risk, which are expected to be further specified in secondary legislation and supervisory practice.

The transposition therefore moves towards a more explicit identification of the structural conflicts associated with lending activity and a strengthening of the organizational safeguards imposed on the manager. The resulting model shows that the regulation of credit is not limited to quantitative limits, but also rests on rules governing the decision-making process and the proper economic allocation of the related proceeds and costs.

## **3. THE NEW REGIME FOR ACCESS TO THE ITALIAN MARKET BY EU AIFS**

Under the previous regime, the carrying on in Italy by EU AIFs of lending activity was subject to compliance with the conditions set forth in Article 46-*ter* of the TUF, which constituted a genuine prior market access regime. In particular, the EU AIF had to possess characteristics comparable to those required of Italian AIFs investing in credit, including in terms of their operating model and of the safeguards for risk mitigation and diversification. In addition, the activity could not be carried on before the expiry of sixty days from the notification to the Bank of Italy, during which period the latter could prohibit the proposed operations

The new Article 46-*ter* of the TUF departs from that approach. Access to the Italian market by EU AIFs investing in credit or granting loans is now generally permitted and subject to a notification requirement to the Bank of Italy to be fulfilled upon the commencement of operations in Italy, without the previous sixty-day standstill mechanism.

As a result, the reform facilitates EU AIFs' access to the Italian credit market, while at the same time intensifying competitive pressure on domestic operators.

In that respect, it should nevertheless be noted that Article 46-*quater* of the TUF also extends to EU AIFs granting loans in Italy the application of the provisions of Title VI of the TUB on consumer mortgage credit and consumer credit, as well as the requirement to participate in out-of-court dispute resolution schemes.

## **4. THE TRANSITIONAL REGIME**

The transitional regime is governed directly by the Directive, which provides that AIFs established before April 15, 2024, and that do not raise new capital thereafter are deemed to comply with the new concentration and leverage limits and with the structural requirements laid down by the regulatory framework.

Conversely, AIFs established before April 15, 2024, that raise additional capital after that date benefit from a transitional regime lasting up to five years and therefore until April 16, 2029. Once that period has expired, they must be fully aligned with the new rules.

That transitional period does not, however, operate as an unrestricted moratorium. The Directive, in fact, establishes a twofold limit. On the one hand, where the AIF already has concentration or leverage levels exceeding those set by the new regime, the manager may not increase them further. On the other hand, even where the AIF remains below those thresholds, the manager may not increase lending or leverage beyond the limits allowed by the Directive.

The Directive also allows for voluntary early adoption of the new regime. An AIFM managing an AIF established before April 15, 2024, may opt for the early application of the rules introduced by AIFMD II, subject to notification to the competent authority of its home Member State.

Lastly, as regards loans originated before April 15, 2024, the new substantive provisions on loan origination do not apply, including those relating to credit granting policies, the prohibition on originate-to-distribute and the risk retention requirement.

From an operational perspective, the distinction between loans originated before and after April 15, 2024, is therefore particularly significant, as it determines which regime applies.

## **5. CONCLUDING REMARKS**

In summary, Legislative Decree No. 39/2026 introduces a broad and systemically significant revision of the Italian regulatory framework for AIFs investing in credit, thereby helping to reduce some of the competitive asymmetries that had characterized the Italian AIF lending market as compared with other EU Member States.

Moreover, the broader concept of “investment in credit” — now encompassing both direct and indirect loan origination and loan participation — is matched by simplified access to the Italian market for EU credit AIFs. In other words, the new rules are likely to foster the expansion of EU credit AIFs operating directly in Italy without the intermediation of securitization vehicles or other fronting structures.

Some critical issues nevertheless remain, such as the 20% concentration limit *vis-à-vis* a financial undertaking, a UCITS or another AIF (consider, for example, a credit AIF granting a loan to a real estate AIF), which may to some extent limit the practical reach of the reform.

The final consolidation of the new framework will, however, depend on the completion of the secondary legislation and on the interpretative and supervisory choices that will accompany its implementation.



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