

# AIFMD 2.0 – ESMA consults on open-ended loan originating AIFs

## Introduction

The publication of ESMA's Consultation Paper<sup>1</sup> and draft regulatory technical standards ("RTS") for open-ended loan originating AIFs ("LO AIFs") under AIFMD 2.0<sup>2</sup> gives us the first glimpse of:

- (a) a pan-European open-ended loan originating AIF regime; and
- (b) what AIFMs may be required to demonstrate to their home national competent authorities ("NCAs") in order to obtain a derogation to offer an open-ended loan originating AIF.

## Why is ESMA consulting on RTS for open-ended LO AIFs?

On 15 April 2024, AIFMD 2.0 entered into force and Member States have until 16 April 2026 to transpose it into national law.

Among other changes, AIFMD 2.0 introduces rules applicable to LO AIFs. This is a distinct category of AIF whose principal activity is either directly or indirectly originating loans or where the notional value of its originated loans represent at least 50% of the AIF's net asset value

The default position under AIFMD 2.0 is that a LO AIF must be closed-ended, unless its AIFM is able to demonstrate to its NCA that the AIF's liquidity risk management system is compatible

with its investment strategy and redemption policy.

AIFMD 2.0 mandates ESMA with developing RTS to set out the requirements an open-ended LO AIF must comply with to maintain an open-ended structure. These requirements include:

- (a) a sound liquidity management system;
- (b) the availability of liquid assets and stress testing; and
- (c) an appropriate redemption policy having regard to the liquidity profile of the LO AIF.

The RTS aim to provide a harmonised regulatory framework for AIFMs to take into account when demonstrating to NCAs that the LO AIFs they manage can maintain an open-ended structure.

On 12 December 2024, ESMA published its Consultation Paper and draft RTS and interested parties have until 12 March 2025 to contribute to the 22 questions posed.

## Liquidity Management

In drafting the RTS, ESMA considered the existing AIFMD Level 2 provisions on liquidity management applicable to all open-ended AIFs and whether there were any gaps for the specifics of open-ended LO AIFs. ESMA concluded there were no gaps.

<sup>1</sup> <https://www.esma.europa.eu/document/consultation-paper-draft-regulatory-technical-standards-open-ended-loan-originating-aifs>

<sup>2</sup> Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024

## Sound Liquidity Management

Where an AIFM intends to manage an open-ended LO AIF, it must be able to demonstrate to its NCA that the liquidity risk management system of the AIF is compatible with its investment strategy and redemption policy.

The RTS sets out a regulatory framework for sound liquidity management and requires the AIFM to:

- define an appropriate redemption policy;
- determine an appropriate portion of liquid assets to meet redemptions;
- carry out of liquidity stress testing; and
- undertake ongoing monitoring.

However, ESMA states that an AIF should not be automatically authorised to set-up an open-ended LO AIF only because it complies with the general criteria set in the RTS. The AIF sound liquidity management should be analysed by the NCA on a case-by-case basis taking into consideration the operating model and the assets under management of the AIF. The AIFM should be able to demonstrate that the liquidity risk management of the AIF is compatible with its investment strategy and its redemption policy.

## Appropriate Redemption Policy

AIFMs must define an appropriate redemption policy for an open-ended LO AIF and the 15 points listed in the RTS must be considered at a minimum. These are non-exhaustive and include: the frequency of redemptions; proportion of liquid assets; credit quality of the loans, portfolio diversification; any minimum holding period or notice periods and expected incoming cash flows.

## Appropriate Proportion of Liquid Assets

AIFMs must determine the appropriate proportion of liquid assets that the AIF targets to retain and the 16 points listed in the RTS must be considered at a minimum. These are non-exhaustive and include: the redemption policy of the AIF; what assets it considers liquid; portfolio diversification and liquidity profile of the assets; any notice, minimum holding period or redemption caps; loan repayment terms, maturing and credit quality; and expected incoming cash flow.

## Liquidity Stress Testing

AIFMs must conduct liquidity stress testing under conservative scenarios on at least a quarterly basis but stress testing on a higher or lower frequency may be permitted if justified by the characteristics of the open-ended LO AIF.

## Ongoing Monitoring

AIFMs must conduct ongoing liquidity monitoring of the nine points listed in the RTS at a minimum. These are non-exhaustive and include: the level of liquid assets; expected cash flows; shareholder behaviour, including amounts of subscriptions and redemptions; loan repayments and maturity levels of leverage (where appropriate).

## Next Steps

Interested parties have until 12 March 2025 to provide input on the Consultation Paper and the 22 questions posed therein.

ESMA expects to publish its final report and submit the draft RTS to the European Commission by Q3 /Q4 2025.

## Further Information

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