



Background

On 9 April 2025, the Dutch Ministry of Finance launched a public consultation on the proposed Dutch AIFMD2 Implementation Act (*Implementatiewet gewijzigde AIFM-richtlijn en icbe-richtlijn, “Implementation Act”*). The Implementation Act seeks to implement the revised Alternative Investment Fund Managers Directive (“**AIFMD2**”) into Dutch law after the AIFMD2 entered into force on 15 April 2024. Under the AIFMD2, the Member States are required to transpose the AIFMD2 into local legislation by 16 April 2026. This newsflash sets out some of the key aspects of the Implementation Act.

Liquidity Management

Under the Implementation Act, AIFMs managing open-end AIFs must select at least two (2) liquidity management tools (“**LMTs**”) from those listed in Annex V, points 2 to 8 of the AIFMD or Annex II bis, points 2 to 8 of the UCITS Directive, such as a redemption gate, an extension of notice periods or dual pricing (see the list to the right). The selected LMTs must align with the investment strategy, liquidity profile, and policy of the AIF or UCITS. A money market fund manager only needs to select one LMT. The AIFM or UCITS manager must inform the Dutch Authority for the Financial Markets (“**AFM**”) of the selected LMTs. The AIFM or UCITS manager is required to have policies and procedures for activating and deactivating the chosen LMT. The use of LMTs is set out in more detail in ESMA Guidelines and (draft) Regulatory Technical Standards.

Liquidity Management Tools

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
8. Redemption in kind
9. Side pockets

Loan Origination and Loan-Origination Investment Funds

The Implementation Act sets rules for loan origination and for loan-originating funds. The notional value of loans granted by a fund to any single borrower may not exceed 20% of the fund’s capital when the borrower is a bank, investment firm, AIF, UCITS, or insurer. This 20% investment limit does however not apply in certain cases, e.g., when the manager sells the fund’s assets to repay investors’ participatory rights in the context of the fund’s liquidation. Furthermore, the manager must ensure that the fund retains 5% of the notional value of each loan. In certain situations (e.g., when a manager sells assets as part of the fund’s liquidation), deviations are allowed. For loan-originating funds, different leverage limits apply to open-end and closed-end funds.

Depositaries

The Dutch legislature notes that there may be situations where there are no relevant depositaries in the Netherlands in view of the investment strategy of an investment fund. In such cases, a Dutch manager of a Dutch investment fund will be allowed to request the AFM to approve the appointment of a depositary based in another Member State. The AFM may grant approval if certain conditions are met. For example, the depositary must be licensed to conduct banking activities. Moreover, no more than EUR 50 billion in assets under management by the Dutch licensed or registered funds may be entrusted to the depositary. The AFM can only approve the appointment of a foreign depositary if it has established that no relevant depositary services are available in the Netherlands in view of the investment strategy of the investment fund.

Day-to-day policymakers

The Implementation Act requires the board of a Dutch AIFM or UCITS manager to consist of at least two (2) board members who are employed full-time by the manager or at least two (2) board members who are committed full-time to the manager’s activities. These directors must reside in the EU.

Member State Options

The AIFMD2 allows Member States to consider the following Member State options:

- a) Member States may allow licensed AIFMs and UCITS managers to perform certain ancillary activities or services. In principle, managers are prohibited from providing such services, except for certain so-called MiFID “top-up” services. However, the Implementation Act allows for the provision of additional activities, i.e.:
 - i. Tasks or activities carried out by the manager for an AIF or UCITS under its management, whereby those tasks or activities are related to the services provided (e.g., IT services for portfolio and risk management), provided that potential conflicts of interest arising from performing these tasks for third parties are adequately managed;
 - ii. Managing benchmarks; and
 - iii. Performing credit servicing activities.These activities are often performed by AIFMs and UCITS managers and are closely linked to managing such funds. The option will be exercised to allow managers greater flexibility to conduct related activities for third parties.
- b) Member States may prohibit AIFMs from providing loans to consumers within their territory. The Netherlands does not intend to exercise this option, as a manager wishing to grant loans to consumers must already comply with the Consumer Credit Directive, ensuring that consumers are protected in the same way as when a bank offers consumer credit.
- c) Member States may allow the competent authority to approve, upon request from an AIFM, the appointment of a depositary located in a Member State other than the fund's home Member State. This Member State option will be exercised (reference is made to the paragraph covering this topic above).

Expected implementation timeline & next steps

The consultation of the Implementation Act closes on **8 May 2025**, with AIFMD2 having to be implemented ultimately by **16 April 2026**. This puts a relatively strict time constraint on the implementation of the Implementation Act, requiring it to pass into law within a year after the consultation’s ending.



Jan Jans
Partner

Jan Jans is a Dutch qualified lawyer specialized in financial regulatory law. He has a strong focus on the regulatory framework covering investment firms, banks, insurance companies, payment service providers, crypto-asset service providers and investment funds. Prior to joining Regulatory Counsel | Financial Services as Partner in 2022, Jan worked as a financial regulatory lawyer at Linklaters and other (international) law firms in the Netherlands. He successfully defended his PhD thesis on the level playing field between banks and non-banks in the European market for electronic payments in 2023.

Tel: +31 6 83 50 49 27
E-mail: jan.jans@recofise.eu



Jan-Jouke van der Meer
Managing Associate

Jan-Jouke van der Meer is a Dutch qualified lawyer specialized in financial regulatory law. He advises clients on the full range of Dutch and EU financial regulatory laws, licensing issues, corporate governance (including integrity and suitability assessments), compliance and integrity-related issues (including AML and sanctions) and dealing with financial regulators. Prior to joining Regulatory Counsel | Financial Services, Jan-Jouke worked as a financial regulatory lawyer at Linklaters.

Tel: +31 6 13 50 73 91
E-mail: janjouke.vandermeer@recofise.eu



Maarten Mol-Huging
Junior Associate

Maarten Mol-Huging is a Dutch qualified lawyer specialized in financial regulatory law. He advises on financial regulatory issues with regards to banks, investment firms, insurers, payment service providers and FinTech (e.g., digital asset services providers), with a particular focus on prudential aspects. Maarten graduated with distinction from the prudential regulation-oriented EBI Master in Banking Regulation in 2024. Before, he graduated cum laude at the VU Amsterdam in International Business Law in 2022.

Tel: +31 6 29 90 96 29
E-mail: maarten.mol-huging@recofise.eu