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Melissa Dejong
Senior Advisor
International Cooperation and Administration Division
Centre for Tax Policy and Administration
OECD

By email taxpublicconsultation@oecd.org

24 May 2022

Dear Melissa

Re: Consultation concerning Pillar One – Amount A: Regulated Financial Services Exclusion

We welcome the opportunity to provide input to the OECD consultation paper (“Consultation”) on Pillar One – Amount A: Regulated Financial Services Exclusion. The EMA represents regulated Payments, FinTech, and crypto asset firms engaging in the provision of innovative digital payment services.

The EMA has been active for over 20 years and has a wealth of experience regarding the regulatory framework for payments and FinTech services. A list of current EMA members is provided in Annex I to this document.

Our members include leading payments and e-commerce businesses providing online payments, card-based products, open banking, payment platforms and technology, and increasingly cryptocurrency exchanges and other cryptocurrency related products and services. Many of our members are EEA and UK subsidiaries of globally active groups and the proposed Regulated Financial Services Exclusion is of significant relevance for them.

We would be grateful for your consideration of our comments, which are set out below.

Yours sincerely

A handwritten signature in black ink that reads 'Thaer Sabri'. The signature is written in a cursive style with a long horizontal stroke at the end.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA Response to Consultation:

We welcome the OECD's initiative to introduce a new two-pillar plan to reform international taxation rules and ensure that multinational enterprises (MNEs) pay a proportionate level of tax wherever they operate. The proposed exclusion of regulated Financial Services is a key element of the reform initiative and its exact scope needs thorough consideration in order not to undermine the ultimate objective.

The earlier drafts of the proposed regulation gave the impression that it was the OECD's intention to also exclude providers of e-money and payment services alongside other Regulated Financial Services Providers. We supported this approach, as it would ensure a level-playing field between different types of institutions that conduct the same type of activity. We would encourage the OECD to continue to pursue this approach, and believe the case for an exclusion of firms engaging in regulated payment services and e-money is as compelling as for deposit-takers.

Unfortunately, the reworked text submitted for consultation does not address the broad range of payment services subject to financial sector regulation in the EEA and the UK and elsewhere. In order to avoid any ambiguity and ensure the clarity needed in particular regarding a regulatory text that will apply across a large number of jurisdictions we would urge the OECD to introduce as additional category of "Regulated Financial Institution" a "Payment Service Institution".

Drawing on the way the different categories of "Regulated Financial Institution(s)" are defined in the draft text, we would propose inserting the following definition:

““Payment Services Institution” means a Group Entity:

- a. That is licensed to carry on the activities listed in paragraph (c) as a business under the laws or regulations of the jurisdiction in which the Group Entity does that business or, in the case of a Group Entity that does such business in an EEA Member State, is licensed by a competent authority to carry on such business in an EEA Member State; and
- b. That is subject to capital adequacy requirements incorporating a risk-based measure;¹ and
- c. For which the total gross income attributable to one or more of the following activities equals or exceeds [75] per cent of the Group Entity's total gross income during the Period:

¹ The Commentary would explain that this requires that the determination of the amount of capital to be held takes into account an entity's risks. The risks that could be considered in this assessment include size, liabilities, execution volumes, credit risk, market risk, or operational risk. This requirement would therefore not be met in Jurisdictions that impose a fixed minimum amount of capital for all firms, without any variation according to the facts and circumstances of individual entities.

- i. Issuing payment instruments or products to customers whether or not involving the offering of credit to such customers (such as credit cards, charge cards, debit cards, prepaid cards, electronic money, other forms of stored value including crypto-assets), and / or
- ii. Transferring funds, and / or
- iii. Providing ancillary services supporting a payment system, scheme or similar arrangement (including payment initiation, wallet, custodian, exchange and other related services) and / or
- iv. Acquiring merchants to accept payment instruments or products.”

We believe an explicit and clear exclusion of Payment Services Institutions as defined above is needed in order to ensure a level playing field between these institutions and other explicitly excluded entities that provide essentially the same or similar services (e.g. deposit-taking institutions). Otherwise, the difference in taxation treatment would lead to a distortion in the competitive landscape, at the expense of choice and quality of services provided to customers world-wide.

As you will have noted, the proposed definition of Payment Services Institutions also includes a reference to crypto-assets where they represent another form of a stored value product.

More generally, we note that crypto-assets are not addressed at all in the draft text submitted for consultation. Given the dynamics of crypto-asset markets, and the related legislative initiatives in a number of jurisdictions, including the EU, we would urge the OECD to adopt a sufficiently agile and future-proof regulatory approach and see to introducing language allowing to respond to challenges related to crypto-assets and the dynamics of crypto-asset markets going forward. To that end we would encourage the OECD to introduce “crypto-assets of a financial nature” as an additional sub-category of “Financial Assets”.

In this regard, but also more generally, we believe it would be highly advisable to include a clause requesting a review and, as appropriate, update of the regulation within two years.



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[Account Technologies](#)

[Airbnb Inc](#)

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