

For the attn. of:
Tax Treaties, Transfer Pricing and Financial
Transactions Division
OECD / Centre for Tax Policy and Administration
tfde@oecd.org

Luxembourg, 20 May 2022

**RE: Response to OECD Public Consultation Document – Pillar One – Amount A:
Regulated Financial Services Exclusion – 20 May 2022**

Dear Madam,
Dear Sir,

ALFI is the representative body of the Luxembourg investment fund community which includes investment funds, asset management firms and a large variety of service providers of the financial sector. The Luxembourg fund industry is also the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. ALFI supports the efforts undertaken by the OECD under Pillar One and welcomes this consultation on the exclusion of Regulated Financial Services from Amount A under Pillar One that considers asset management activities.

As mentioned in ALFI response to the OECD public consultation on Pillar One in 2019, **the investment fund and asset management industry is a highly regulated industry** subject to detailed and mandatory EU regulatory frameworks^{1 2} for investment funds and management companies pursuing their activities on a cross-border basis. Investment firms and service providers distributing financial products³, including those professional intermediaries that have a geographical proximity or another kind of relationship proximity to the investor are subject to strict regulatory requirements, in particular regarding their investors' protection obligations.

¹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS Directive)

² Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (AIFMD)

³ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID)

The asset management industry involves a complex web of B2B and B2C interactions and fund managers create value from offering fund products to retail investors (i.e. consumer-facing) and to institutional investors (i.e. business-facing), and in many cases to both, in a heavily synergistic way. Also, although some activities, including marketing activities, are already being performed through digital platforms, for the time being, these still represent a limited part of the activity. Such platforms are mainly designed for processes streamlining/efficiency and are more dedicated to and used by institutional and knowledgeable investors.

Considering the evolution of the thinking around Pillar One, the justification of the exclusion is now mainly based on an applicable regulatory framework and the fulfilment of adequate capital adequacy requirements. ALFI continues to support the exclusion of the asset management industry from the scope of Amount A of Pillar One in view of the practical difficulties raised in relation to disentangling the value created from working with institutional investors from the value created by activities with consumer-facing activities. ALFI considers that achieving a workable result in that context in terms of both the scope and the recognition of a new nexus, would be extremely complex and would entail significant efforts and costs.

In that context, ALFI welcomes the proposed definition of “Asset Managers” of paragraph 24 of the consultation paper⁴ for the purpose of its exclusion from Pillar One.

As indicated above, investment funds, management companies as well as other professionals providing services in administering, managing or distributing interests in financial assets are implemented and operate within the EU regulatory framework.

The UCITS Directive and the AIFM Directive provide for stringent regulatory requirements including, among others, capital requirements for investment funds and management companies that have to be licensed by the national regulator in the jurisdiction in which they are established and, as the case may be, also by the competent authority of the jurisdiction in which they operate.

Also Directive 2014/65/EU of 15 May 2014 on markets in financial instruments (MiFID) provides for capital adequacy requirements incorporating risk-based measures for investment firms, among others management companies, that are in the scope of MiFID. This requirement is introduced in particular by its Article 15 that deals with capital adequacy *“Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Regulation (EU) No 575/2013 having regard to the nature of the investment service or activity in question.”*

These elements of the EU regulatory framework are transposed at national level and, in Luxembourg, several circulars⁵ of the Luxembourg regulator provide for capital requirements incorporating risk-based measures for Luxembourg management companies and self-managed funds.

⁴ 24. “Asset Manager” means a Group Entity:

a. That is licensed to carry on the activities listed in paragraph (c) as a business under the law 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;

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: investing in, administering, managing or distributing interests in, an Investment Fund or Real Estate Investment Vehicle, Financial Assets, or money for or on behalf of other persons;

⁵ Chapter 3 of [CSSF Circular 18/698 of 23 August 2018](#) and [CSSF Circulars 21/789 and 21/790](#)

As to the third requirement of the definition related to income received from eligible activities, professionals providing those particular types of services have to be authorised and are supervised by the regulator, they are generally engaged in one single type of qualifying activity or in similar activities that are closely connected. Additional clarifications on that requirement would however be useful and those clarifications should go in the direction of ensuring that all asset management activities are adequately covered by the definition. This may be achieved through an amendment of the third requirement to include in the list of relevant activities the ones that aim at governing investment funds or financial assets as follows: *“[75] per cent of the Group Entity’s total gross income during the Period attributable to one or more of the following activities: investing in, administering, **governing**, managing or distributing interests in, an Investment Fund or Real Estate Investment Vehicle, Financial Assets, or money for or on behalf of other persons”*.

In conclusion, in consideration of the above, ALFI strongly supports an exclusion of asset management from Amount A under Pillar One. Such an exclusion represents a simplification measure in consideration of the complex implementation that the industry would otherwise face. This exclusion would also create a level playing field between asset management services and similar services rendered by the banking industry which already benefits from an exclusion from Pillar One.

ALFI is grateful for your attention to our response to this consultation. ALFI would be pleased to provide any additional information you may need, please do not hesitate to contact us in this respect.

Kind regards,

ALFI