

Conformity Assessment of Directive 2009/110/EC PORTUGAL

Draft Final Report
Version 1.0 – 8/02/2013

www.tipik.eu

Tipik Communication Agency S.A.
Avenue de Tervueren 270 • B-1150 Brussels
Tel. +32.2.235.56.70 • Fax +32.2.235.56.99 • info@tipik.eu
TVA BE 435.539.007 • RCB 511.105 • Fortis 210-0635550-58
Tipik is a Sword Group Company



NATIONAL IMPLEMENTING MEASURES

List of the national implementing measures notified to the European Commission

General observations

Decreto-Lei n.º 242/2012. D.R. n.º 215, Série I de 07 de Novembro 2012

Decree Law No. 242/2012, Official Journal No. 215, Serie I of 07 November 2012

(hereinafter referred to as “DL 242/2012”)

After authorisation through Law No. 34/2012 of 23 of August of 2012, the Government transposed Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (hereinafter “the Directive”) into DL 242/2012. DL 242/2012 aims at regulating the access to the activities of electronic money institutions, the provision of electronic money issuance services and the respective prudential supervision.

Articles 8, 9 and 10 of DL 242/2012 amend Decree Law No. 317/2009 of 30 October, which included, *inter alia*, the legal framework governing the taking up of the business of payment institutions and the provision of payment services (*Regime jurídico que regula o acesso à actividade das instituições de pagamento e a prestação de serviços de pagamento*- RJAIPPSP).

Apart from amending RJAIPPSP, DL 242/2012 also amends several related applicable acts such as Decree Law No. 298/92 of 31 December 1992, approving the Legal framework on Credit Institutions and Finance Companies (Article 2 of DL 242/2012) and Law No. 25/2008, of 5 June 2008, laying down preventive and repressive measures against illicitly originated benefits from money laundering and terrorism financing, transposing Directive 2005/60/EC and 2006/70/EC (Article 3 of DL 242/2012). Other national acts were also amended through Articles 4, 5 6 and 7 of DL 242/2012 such as Decree Law No. 156/2005, Decree Law No. 95/2006, Law N. 5/2000 and Decree Law No. 3/94.

The main object of DL 242/2012 is, however, the amendment of the RJAIPPSP. Due to the amount of amendments carried out through DL 242/2012 to RJAIPPSP, the new legal regime was re-published (Article 13 of DL 242/2012) and re-named as “Payments and Electronic Money Legal Framework” (*Regime Jurídico dos Pagamentos e da Moeda Eletrónica* – RJPME). Therefore, RJPME is the main instrument of analysis in this assessment. This report will refer mainly to the *provisions of the RJPME* which are included in DL 242/2012. DL 242/2012 will therefore only be mentioned in the analysis when deemed necessary (see Article 2, point 1 of the Directive).

DL 242/2012 entered in force on 8 November 2012 and is available on the following website:

<http://dre.pt/pdf1sdip/2012/11/21500/0640206452.pdf>

NATIONAL IMPLEMENTING MEASURES

<p>Lei n.º 34/2012. D.R. n.º 163, Série I de 23 Agosto 2012</p> <p>Law No. 34/2012, Official Journal No. 163, Serie I of 23 August 2012</p> <p>(hereinafter referred to as “Law 34/2012”)</p>	<p>Law 34/2012 authorises the Government to regulate the access to the activities of electronic money institutions and of the provision of electronic money issuance services for the purpose of transposing the Directive.</p> <p>Since the purpose of Law 34/2012 is merely to authorise the Government to regulate, this act is therefore not deemed necessary for the analysis of the transposition of the Directive. Law 34/2012 is however mentioned as regards Article 1(1)(b) of the Directive as regards the meaning of <i>European Union</i> as a reference to the EEA.</p> <p>Law 34/2012 entered in force on 1 March 2012 and is available on the following website:</p> <p>http://dre.pt/pdf1sdip/2012/08/16300/0462404630.pdf</p>
<p style="text-align: center;">List of additional national implementing measures referred to in the conformity assessment</p>	<p style="text-align: center;">General observations</p>
<p>Regime Geral das Instituições de Crédito e Sociedades Financeiras (Aprovado pelo Decreto-Lei n.º 298/92, de 31 de Dezembro e alterado posteriormente)</p> <p>Legal framework on Credit Institutions and Finance Companies (Approved by Decree Law No 298/92, of 31 December and later amended)</p> <p>(hereinafter referred to as “RGICSF”)</p>	<p>The RGICSF regulates the procedures of the establishment and on the exercise of the business of the credit institutions and the finance companies. The RGICSF was amended by Article 2 of DL 242/2012 as a result of the application of the Directive into the Portuguese legislation. The RGICSF was also lately amended by Law No. 64/2012.</p> <p>The RGICSF is mentioned in several occasions throughout the report since it is regularly cross-referred to in the Annex to DL 242/2012. More particularly, the RGICSF is used in the analysis of general prudential rules (Article 3(3), third, fourth and fifth subparagraphs of the Directive), of own funds (Article 5(1) of the Directive), of relations with third countries (Article 8(2) of the Directive), and of prohibition from issuing electronic money (Article 10 of the Directive).</p> <p>The RGICSF is available on the following website:</p> <p>http://www.bportugal.pt/pt-PT/Legislacaoenormas/Documents/RegimeGeral.pdf</p>

SUMMARY

1. Executive summary

Overall, the Directive has been transposed into the national legislation in a conform manner, and in some occasions, with the use of literal transposition. Some cases of partial conformity were however identified throughout this assessment (see Article 3(3), second subparagraph, Article 5(2), third subparagraph, Article 5(4), Article 5(5), Article 5(6)(a), Article 5(6)(b), Article 6(1), first subparagraph, point (c), Article 6(1), second subparagraph and Article 16(1) of the Directive). Some cases of non-conformity were identified as regards Article 1(1)(c), Article 18(1) and (3) of the Directive

The transposition of the Directive presented no difficulties as regards Article 2, Article 4, Article 6, Article 7, Article 11 and Article 12 of the Directive. In fact, these provisions are reflected in RJPME in a clear manner, generally with the use of similar wording and structure, resulting in some occasions in a literal transposition.

As regards the transposition of Article 1, Article 3, Article 5, Article 8, Article 10 and Article 16(2) of the Directive, the conclusion on conformity was overall achieved through inference from requirements of RJPME or even from the general rules of the RGICSF. Due to their general scope, Article 13 and Article 3(1) of the Directive are reflected in a group of provisions of the national law.

The main instrument for this assessment is the RJPME, which is part of DL 242/2012. DL 242/2012 aims at regulating the access to the activities of electronic money institutions, the provision of electronic money issuance services and the respective prudential supervision. However, it was also necessary to refer in some occasions to a more general legal framework, such as that of the RGICSF.

The amendments carried out through DL 242/2012 are essentially focused in the introduction of proper adaptations in the former legal system that regulated the access to the activities of payment institutions and the provision of payment services, approved in the Annex to Decree Law No. 317/2009 of 30 October (the RJAIPPSP). It should be noted that Decree Law No. 317/2009 of 30 October was already the result of the transposition of the Payment Services Directive into the Portuguese legal system. Therefore, DL 242/2012 amended Decree Law No. 317/2009 mainly by adapting it to electronic money institutions. Consequently, the former RJAIPPSP that was exclusively applicable to payment services and payment institutions is now also applicable to electronic money issuance and electronic money institutions.

Due to the amount of amendments carried out by DL 242/2012 to RJAIPPSP, the new legal regime was republished and renamed (RJPME). The amendments to the former legal regime essentially relate to the specific procedures for the issuance, distribution and redemption of electronic money.

Although most of the legal system regulating payment services is similar to that for electronic money, some specific provisions were specially added in order to adapt the regime to the characteristics of electronic money. These amendments were introduced as a group of provisions included in the new Title IV of RJPME. The compliance of these provisions is submitted to the supervision of the Bank of Portugal in a similar manner as that of payment services, with the possibility to directly claim to the supervisory.

DL 242/2012 also lays down the legal system for corrective intervention, provisory administration, dissolution and liquidation of institutions and regulates the legal consequences of administrative offences as regards the activity of issuance of electronic money, including the level of the fines, the additional sanctions and the corresponding procedural rules.

The authority responsible for the surveillance of electronic money institutions is the Bank of Portugal. The Bank of Portugal is responsible for the prudential and market conduct supervision of credit institutions, financial companies, payment institutions and electronic money institutions. The purpose of the supervision is to ensure stability, efficiency and soundness of the financial system, as well as compliance with rules of conduct and transparency requirements towards bank customers, thereby ensuring the safety of deposits and depositors, and the protection of consumer interests. The powers and responsibilities of the Bank of Portugal as supervisory authority are stipulated in its Organic Law, in the RGICSF and in RJPME.

2. The implementation of Directive 2009/110/EC

2.1. Scope

RJPME applies to the activity of payment institutions having their registered office in Portugal and of their agents and branches. RJPME is also applicable to the activity of electronic money institutions with their registered office in Portugal and of their agents, branches and other representatives, as well as to the issuance, distribution and redemption of electronic money in Portugal by the entities which are legally qualified to engage in their activity in Portugal.

The main scope of RJPME, which is broader, comprises the scope of the Directive.

2.2. Terminology

It can be noted throughout this assessment that while the Directive refers to *Community* as a reference to the EEA, the national law merely refers to *European Union* (see Article 1 of the Directive). Moreover, the national law tends to refer to month while the Directive refers to calendar month (see Article 2, point 4 of the Directive). RJPME also prefers to refer to *professional* activities whilst the Directive refers to *business* activities (see Article 6(1) of the Directive). Finally, the national law refers to the *termination date set out for the contract* while the Directive refers to the *termination of the contract* itself (Article 11 of the Directive).

Overall, none of the above mentioned differences of terminology were considered as affecting the compliance of the national law with the Directive requirements.

2.3. Explanatory note on the assessment

Conformity applies to cases whereby the national provisions follow all requirements of the corresponding provision of Directive 2009/110/EC. Some requirements of the Directive provision may not be explicitly transposed. National provisions can however be considered as conform as far as the silence does not affect the proper implementation of all requirements and that the missing ones can be inferred.

Partial conformity applies to cases whereby the national provisions do not follow all the requirements of the Directive provision, or are silent about requirements, which are considered minor but necessary. In cases of partial conformity, the interpretation of the national provision does not hamper the proper implementation of the Directive provision as a whole, and, missing requirements cannot be inferred.

Non conformity applies to cases whereby the Directive provision is not transposed or the national provisions do not follow either, all requirements of the Directive provision, or, the main ones. In cases of non conformity, the interpretation of the national provisions hamper the proper implementation of the Directive provision as a whole, and missing requirements cannot be inferred either. Also considered are additional requirements and exemptions, which hamper the proper implementation of the Directive provision.

The cases where there are no headings relate to options laid down by the Directive provision that Member States has not chosen to apply, or, to obligations resting upon the European Commission.

2.4. Legal analysis

The Directive has been generally transposed into the national legislation in a conform manner. However, a few cases of partial conformity and non-conformity were identified throughout this report.

One should note that the cross-references mentioned in the Directive are, in general, properly reflected in the national law. It occurs that the national law does not cross-refer to the provisions mentioned in the Directive (ex: Article 5(4) of the Directive). These omissions were, nevertheless, not considered as hampering the compliance of the national law

2.4.1. Title I – Scope and definitions

Title I of the Directive has been transposed into the national legislation generally in a conform manner. One case of non-conformity was identified as regards Article 1(1)(c) of the Directive. Portugal did not adopt the options set out in Article 1(3) of the Directive.

2.4.1.1. Article 1 – Subject matter and scope

Overall, the Portuguese law transposes Article 1 of the Directive in a conform manner. The structure of the national law differs from that of Article 1(1) of the Directive, in particular as regards Article 1(1)(a), (b) and Article 1(4) and (5) of the Directive. The requirement set out in Article 1(2) of the Directive had to be inferred from a group of provisions included in RJPME regulating the taking up, the pursuit and the prudential supervision of the business of electronic money institutions.

According to RJPME, this act regulates the taking up of the business of payment institutions and the provision of payment services, as well as the taking up of the business of electronic money institutions and the provision of electronic money services. The main subject of RJPME therefore comprises that of the Directive.

RJPME sets out that electronic money can be issued by credit institutions and electronic money institutions with their head office *in* Portugal, whose business scope comprises that activity, and credit institutions and electronic money institutions with their head office *out* of Portugal which are legally qualified to engage in these activities in Portugal. RJPME states moreover that electronic money can be issued by branches of electronic money institutions with their head office out of the European Union, under the terms of RJPME.

Although most of the entities mentioned in Article 1(1) of the Directive are reflected in RJPME, this act merely refers to post office giro institutions as entities capable of providing *payment services*, but not issuing electronic money. As a consequence, the Portuguese law was considered not conform to Article 1(1)(c) of the Directive.

2.4.1.2. Article 2 - Definitions

Overall, the Portuguese law transposes Article 2 of the Directive in a conform and clear manner. The national law transposes in fact Article 2, points 2 and Article 4 of the Directive in a very similar manner. It occurs, however, that the national provision includes specifications that are not present in the Directive. These do not, nevertheless, hamper the compliance of the national law with the Directive requirements.

The national provision defines *electronic money issuer* as the entities listed in Article 7-A of RJPME, which corresponds merely to Article 1(1) of the Directive. This reflects the non-adoption by the Portuguese law of the waivers under Article 1(3) and Article 9 of the Directive.

2.4.2. Title II – Requirements for the taking up, pursuit and prudential supervision of the business of electronic money institutions

Title II of the Directive was transposed into the national legislation generally in a conform manner. Portugal has chosen not to adopt the options set out in Article 3(3), sixth subparagraph, Article 5(7) and Article 9 of the Directive. However, Portugal has adopted the options set out in Article 5(5), Article 7(1), Article 7(2), third subparagraph, Article 7(3)

and Article 7(4) of the Directive.

2.4.2.1. Article 3 – General prudential rules

Overall, the Portuguese law reflects Article 3 of the Directive in a conform manner. Although Articles 3(2), 3(3), first subparagraph, 3(4) and 3(5) of the Directive were transposed in a clear manner, Article 3(1), 3(3), third, fourth and fifth subparagraphs of the Directive could merely be inferred from general requirements of the national law. In some occasions, the main act (RJPME) was not sufficient, and reference to the general regime of RGICSF was deemed necessary (Article 3(3) third, fourth and fifth subparagraphs of the Directive). Although the structure of the national provisions differs from that of Article 3(3), Article 3(4) and 3(5) of the Directive, the requirements set out in the Directive are reflected in a proper manner in the national law. A case of partial conformity was identified as regards Article 3(3), second subparagraph of the Directive.

In particular, as regards Article 3(3), second subparagraph of the Directive, RJPME merely refers to the communication of the new size of the holding in the context of the disposal or reduction of the holding, not in the context of its acquisition or increase. As a consequence, the Portuguese law was considered partially conform to Article 3(3), second subparagraph of the Directive.

2.4.2.2. Article 4 – Initial capital

Article 4 of the Directive was transposed into the national law in a conform manner. RJPME requires that electronic money institutions with their head office in Portugal shall at all times hold capital of not less than EUR 350 000. Moreover, RJPME directly refers to the EU law requirements, as it states that the mentioned minimum capital includes the items set out in Article 57(a) and (b) of Directive 2006/48/EC.

2.4.2.3. Article 5 – Own funds

Overall, the Portuguese law transposed Article 5 of the Directive generally in a partial conform manner. Although the national law transposes some of these provisions in an almost literal manner, Article 5(2), third subparagraph, Article 5(4), Article 5(5), Article 5(6)(a) and Article 5(6)(b) of the Directive were considered as transposed in a partially conform manner. With the exception of these partially conform cases, and although Article 5(1), Article 5(2), first subparagraph and Article 5(4) of the Directive were transposed into the national law in a diffuse manner, all the Directive requirements are fulfilled by RJPME. Moreover, RJPME gathers both Article 5(2), second subparagraph and Article 5(3) of the Directive in one provision. Although with the use of a different structure, the requirements set out in Article 5(6) of the Directive are transposed into the national law in a proper manner.

It should be noted that the national provision transposing Article 5(2), third subparagraph of the Directive can lead to misinterpretation as it seems to refer not only to the requirements of Article 5(2), second subparagraphs of the Directive but also to those of Article 5(2), first subparagraph and Article 5(5) of the Directive. Therefore, RJPME was considered partially conform in this regard.

As regards Article 5(4) of the Directive, RJPME does not cross-refer to the national provisions corresponding to Article 6(1)(b) to (e) of the Directive. Therefore, since Article 4 of the national provision does not cover these activities, the Portuguese law was considered partially conform to the Directive.

Article 5(5) of the Directive was transposed into the national law with the use of very similar wording. One should note, however, that while the Directive cross-refers broadly to the relevant method in accordance with Article 5(2), including all the methods set out in that paragraph, the national provision merely cross-refers to Method D. Therefore, the national law was considered partially conform to the Directive in this regard.

One should note that while Article 5(6)(a) of the Directive refers to an *investment firm*, an *asset management company* or an *insurance or reinsurance undertaking*, the national provision refers to *financial company* or an *insurance undertaking*. Since *insurance undertakings* and *reinsurance undertakings* can not be equated, the Portuguese law was considered partially conform to Article 5(6)(a) of the Directive.

As regards Article 5(6)(b) of the Directive, RJPME also sets out a prohibition as regards electronic money institutions carrying out activities other than the provision of payment services mentioned in Article 6(1)(a) of the Directive. Therefore, the national law was considered partially conform in this regard.

2.4.2.4. Article 6 – Activities

Overall, the Portuguese law transposes Article 6 of the Directive generally in a conform manner. The transposition of the Directive requirements into the national law was carried out generally with the use of similar wording and structure, being in some occasions literal (Article 6(2) and (3) of the Directive). However, cases of partial conformity were identified as regards Article 6(1), first subparagraph, point (c) and Article 6(1), second subparagraph of the Directive.

As regards Article 6(1), first subparagraph, point (c) of the Directive, the national law refers to the *execution of payment transactions, foreign exchange services, and services for the safekeeping, storage and processing of data..* These services correspond to those set out in Article 16(1)(a) of Directive 2007/64/EC and not the services mentioned in Article 6(1), first subparagraph, point (a) of the Directive. Therefore, the national law was considered partially conform to the Directive in this regard.

Moreover, the national provision transposing Article 6(1), second subparagraph of the Directive merely refers to funds received in exchange for electronic money and not funds held in accordance with Article 7(1) of the Directive. Therefore, the national law was considered partially conform to the Directive in this regard.

2.4.2.5. Article 7 – Safeguarding requirements

Overall, the Portuguese law transposes Article 7 of the Directive in a conform manner. The transposition of the Directive requirements into the national law is clear and was carried out generally with the use of a structure similar to that of the Directive (excluding as regards Article 7(1) of the Directive). The national law transposed Article 7(2), second and third subparagraphs of the Directive in a literal manner.

In accordance with the cross-reference to Article 9(1) and (2) of Directive 2007/64/EC made in Article 7(1) of the Directive, the national law applies, *mutatis mutandis*, the legal regime for payment institutions to electronic money institutions.

The national provision states that RJPME shall apply to the activity of provision of payment services mentioned in Article 4 of this act (Article 6(1)(a) of the Directive) that are not linked to the activity of issuing electronic money. Therefore, RJPME adopted the option set out in Article 7(3) of the Directive.

2.4.2.6. Article 8 – Relations with third countries

Overall, the Portuguese law reflects Article 8 of the Directive in a conform manner. However, the Directive requirements could merely be inferred from general requirements of the national law. One should note that the main act (RJPME) was not always sufficient, and reference to the general regime of the RGICSF was therefore deemed necessary.

As regards Article 8(1) of the Directive, RJPME sets out that electronic money can solely be issued by, *inter alia*, branches of electronic money institutions with their head office out of the European Union, under the terms of RJPME. Moreover, RJPME provides that the Bank of Portugal shall exercise its powers of prudential supervision as regards payment institutions and electronic money institutions having their head office in Portugal, including their branches and agents established abroad, as well as regarding the branches in Portugal of electronic money institutions with head office out of the European Union. Therefore, the national law places the branches of electronic money institutions with their head office out of the European Union generally under the *same regime* and consequently, not under a more favourable regime, than that applicable to electronic money institution having its head office within the European Union. Secondly, the special requirements regarding branches set out in RGICSF shall apply to the establishment in Portugal of branches of electronic money institutions authorised in countries that are not members of the European Union. One could consider these special requirements as even less favourable for branches of electronic money institutions authorised in countries that are not members of the European Union as they require, *inter alia*, an authorisation to be granted, on a case-by-case basis, by the Portuguese Ministry of Finance.

In accordance with Article 8(2) of the Directive, the RGICSF sets out that the Bank of Portugal shall notify the European Commission and the European Banking Committee as regards the authorisations granted under the terms of Article 58(1) of the RGICSF. One should note that Article 58(1) of the RGICSF provides that the establishment of the branch is subject to

authorisation to be granted, on a case-by-case basis, by the Minister of Finance. This competence may be delegated on Bank of Portugal.

2.4.2.7. Article 9 – Optional exemptions

Portugal did not adopt the option set out in Article 9 of the Directive.

2.4.3. Title III – Issuance and redeemability of electronic money

Title III of the Directive was transposed into the national legislation in a conform manner.

2.4.3.1. Article 10 – Prohibition from issuing electronic money

The Portuguese law transposes Article 10 of the Directive in a conform manner. However, the Directive requirements could merely be inferred from general requirements of the national law.

2.4.3.2. Article 11 - Issuance and redeemability

Overall, the Portuguese law transposes Article 11 of the Directive in a conform manner. The transposition of the Directive requirements into the national law was, in general, literal. As regards Article 11(1), Article 11(4), first subparagraph, point (a), Article 11(4), second subparagraph, Article 11(5) and (7) of the Directive, the transposition was not literal, however, the Directive requirements were clearly reflected in the national law.

2.4.3.3. Article 12 – Prohibition of interest

The Portuguese law transposed Article 12 of the Directive in a conform manner. In accordance with the Directive, RJPME contains a provision clearly prohibiting the payment of interest or the granting of any other benefit related to the length of time during which the holder holds the electronic money.

2.4.3.4. Article 13 – Out-of-court complaint and redress procedures for the settlement of disputes

The Portuguese law transposed Article 13 of the Directive in a conform manner. Due to its general nature, Article 13 of the Directive could merely be inferred from the structure of RJPME.

Title V (Article 92 and 93) and Title VI of RJPME (Article 94 to 99) set out requirements which are generally applicable both to payment services and electronic money issuance. Both titles reflect Chapter 5 of Title IV of Directive 2007/64/EC. As an example, Article 92(1) of RJPME states that *payment service providers and electronic money issuers* shall provide their respective payment service users and electronic money holders with access to effective and adequate out-of-court complaint and redress procedures for disputes concerning rights and obligations laid down in Titles III and IV of RJPME, involving amounts equal to or less than that covered by the first instance courts.

2.4.4. Title IV – Final provisions and implementing measures

With the exception of Article 16(2) of the Directive, Title IV of the Directive was transposed into the national legislation in a partial and not conform manner. Portugal did not adopt the option set out in Article 18(2) of the Directive.

2.4.4.1. Article 16 – Full harmonisation

The Portuguese law transposed Article 16(1) of the Directive in a partially conform manner. Portugal did not adopt the options set out in Article 1(3), the sixth subparagraph of Article 3(3), Article 5(7), Article 9 and Article 18(2) of the Directive. However, Article 7(4) of the Directive was adopted by Portugal.

It occurs that RJPME explicitly cross-refers to the legal regime of payment services making it applicable to electronic money issuance. However, in some occasions, RJPME sets out additional rules in the context of provisions which are specifically addressed to electronic money. Some of those additional provisions are rather explanatory, which does not hamper the compliance of the national law with Article 16(1) of the Directive. Other additional provisions set out in RJPME bring, however, *more requirements* for electronic money institutions, which might hamper the full harmonization aim of the Directive.

The Portuguese law transposed Article 16(2) of the Directive in a conform manner. Although the national law does not include a provision reflecting explicitly the Directive requirement, the latter is complied with in RJPME. *Inter alia*, RJPME sets out that the Bank of Portugal shall be responsible for prudential and behavioural supervision under RJPME and in particular for *supervising compliance with the provisions of this legal regime*. The supervision of the compliance with RJPME therefore comprises the prevention of electronic money issuers' derogation from the provisions of national law implementing or corresponding to provisions of the Directive to the detriment of an electronic money holder.

2.4.4.2. Article 18 – Transitional provisions

Article 18(1) and (3) of the Directive was not transposed in the national law. Apart from Articles 100 and 101 of RJPME which refer to transitory provisions as regards payment services and direct debits, the national law does not include a provision that could foresee a transitional period for electronic money institutions in accordance with Article 18(1) or (3) of the Directive.

3. Conclusions on conformity

3.1. Cases of partial conformity

Article 3(3), second subparagraph of the Directive: the national law does not clearly refer to the communication of the size of the holding as regards acquisition or increase but merely as regards the disposal or reduction of the holding.

Article 5(2), third subparagraph of the Directive: the manner in which the national law is drafted can lead to misinterpretation as it seems to refer not only to the requirements of Article 5(2), second subparagraphs of the Directive but also to those of Article 5(2), first subparagraph and Article 5(5) of the Directive.

Article 5(4) of the Directive: RJPME does not cross-refer to the national provisions corresponding to Article 6(1)(b) to (e) of the Directive. Therefore, the national provision does not seem to cover these activities.

Article 5(5) of the Directive: while the Directive cross-refers broadly to the relevant method in accordance with Article 5(2), including all the methods set out in that paragraph, the national provision merely cross-refers to Method D.

Article 5(6)(a) of the Directive: the national law merely refers to *insurance undertaking* while the Directive refers to insurance or *reinsurance undertakings*. These two entities can not be equated.

Article 5(6)(b) of the Directive: the prohibition set out in the national provision also regards electronic money institutions carrying out activities other than the provision of payment services mentioned in Article 6(1)(a) of the Directive.

Article 6(1), first subparagraph, point (c) of the Directive: the national provision refers to the *execution of payment transactions, foreign exchange services, and services for the safekeeping, storage and processing of data*. These services correspond to those set out in Article 16(1)(a) of Directive 2007/64/EC and not the services mentioned in Article 6(1), first subparagraph, point (a) of the Directive.

Article 6(1), second subparagraph of the Directive: the national law merely refers to funds received in exchange for electronic money and not funds held in accordance with Article 7(1) of the Directive.

Article 16(1) of the Directive: Some of the provisions of RJPME that are additional to the requirements set out in the Directive might jeopardise the aim of full harmonisation.

3.2. Cases of non-conformity

Article 1(1)(c) of the Directive: RJPME merely refers to post office giro institutions as entities capable of providing payment services. However, no mention to post office giro institutions is made in the national law as regards electronic money. As a consequence, post office giro institutions established in other Member States may not issue electronic money in Portugal.

Article 18(1) of the Directive: The national law does not include a provision that could foresee a transitional period for electronic money institutions in accordance with the Directive provision.

Article 18(3) of the Directive: The national law does not include a provision that could foresee a transitional period for electronic money institutions in accordance with the Directive provision.

3.3. Option ('May' clause)

3.3.1.1. Portugal has chosen to transpose the following options into its national legislation

Article 5(5) of the Directive: the national law sets out that the Bank of Portugal may require or allow, respectively, the electronic money institution to hold an amount of own funds which is superior or inferior 20 % at most than the amount which would result from the application of Article 33-D(2) of RJPME, i.e., of the relevant method in accordance with Article 5(2) of the Directive.

Article 7(1) of the Directive: the national law provides for the calculation of safeguarding requirements when funds can be used for future payment transactions and for non payment services.

Article 7(2), third subparagraph of the Directive: the national law sets out that in exceptional circumstances and with adequate justification, the Bank of Portugal may, based on an evaluation of security, maturity, value or other risk element of the assets, determine which of those assets do not fulfil the safety and low-risk requirements.

Article 7(3) of the Directive: The national provision states that RJPME shall apply to the activity of provision of payment services mentioned in Article 4 of this act (Article 6(1)(a) of the Directive) that are not linked to the activity of issuing electronic money.

Article 7(4) of the Directive: The national law provides that the bank of Portugal may determine which of the procedures provided for in Article 32(1) of RJPME (Article 9(1) of Directive 2007/64/EC) shall be used by the electronic money institutions to ensure the protection of the received funds.

3.3.1.2. Portugal has not chosen to transpose the following options into its national legislation:

Article 1(3) of the Directive regarding the waiver for institutions under Article 2 of Directive 2006/46/EC.

Article 3(3), sixth subparagraph of the Directive regarding the waiver of acquisition obligations under Article 3(3) for hybrid electronic money institutions.

Article 5(7) of the Directive regarding the non-application of EMD on going capital requirements when an electronic money institution is included in the consolidated supervision of the parent credit institution.

Article 9 first subparagraph of the Directive regarding the waiver of authorisation/supervision requirements for small payment institutions.

Article 9(1), third subparagraph of the Directive regarding additional requirement of a maximum storage

Article 9(4) of the Directive regarding the limitation on the activities carried out by entities waived under Article 26.

Article 18(2) of the Directive regarding the transitional period.

4. List of acronyms

RJAIPPSP - the legal framework governing the taking up of the business of payment institutions and the provision of payment services (*Regime jurídico que regula o acesso à actividade das instituições de pagamento e a prestação de serviços de pagamento*)

RJPME - Payments and Electronic Money Legal Framework (*Regime Jurídico dos Pagamentos e da Moeda Eletrónica*)

RGICSF - Legal framework on Credit Institutions and Finance Companies (*Regime Geral das Instituições de Crédito e Sociedades Financeiras*).

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
Article No.	EN	PT	Act, Article No.	EN	PT	Observations
Art. 1(1) intr. wording	<p>CHAPTER I SCOPE AND DEFINITIONS</p> <p><i>Article 1</i> Subject matter and scope</p> <p>1. This Directive lays down the rules for the pursuit of the activity of issuing electronic money to which end the Member States shall recognise the following categories of electronic money issuer:</p>	<p>TÍTULO I ÂMBITO DE APLICAÇÃO E DEFINIÇÕES</p> <p><i>Artigo 1.º</i> Objecto e âmbito de aplicação</p> <p>1. A presente directiva estabelece as regras de exercício da actividade de emissão de moeda electrónica, para cujos fins os Estados-Membros reconhecem as seguintes categorias de emittentes de moeda electrónica:</p>	Art. 1 and 7-A(1), intro. wording of RJPME	<p>Article 1 Subject matter</p> <p>This legal regime regulates the taking up of the business of payment institutions and the provision of payment services, as well as the taking up of the business of electronic money institutions and the provision of electronic money issuance services.</p> <p>Article 7-A(1), introductory wording Issuers of electronic money</p> <p>1. Electronic money can solely be issued by the following entities:</p>	<p>Artigo 1.º Objeto</p> <p>O presente regime jurídico regula o acesso à atividade das instituições de pagamento e a prestação de serviços de pagamento, bem como o acesso à atividade das instituições de moeda eletrónica e a prestação de serviços de emissão de moeda eletrónica.</p> <p>Artigo 7.º -A, n.º 1, frase introdutória Emitentes de moeda eletrónica</p> <p>1. Só podem emitir moeda eletrónica as seguintes entidades:</p>	<p>CONFORM</p> <p>Article 1 and Article 7-A(1), introductory wording of RJPME transpose Article 1(1), introductory wording of the Directive.</p> <p>According to Article 1 of RJPME, this act regulates the taking up of the business of payment institutions and the provision of payment services, as well as the taking up of the business of electronic money institutions and the provision of electronic money issuance services. The main scope of RJPME comprises therefore the scope set out in the Directive.</p> <p>More particularly, Article 7-A(1) of RJPME lists the entities that can issue electronic money.</p> <p>Therefore, on the basis of the above findings, the Portuguese law is considered conform to Article 1(1), introductory wording of the Directive.</p>
Art. 1(1)(a)	(a) credit institutions as defined in point 1 of Article 4 of Directive	a) Instituições de crédito, definidas no ponto 1 do artigo 4.º da Directiva	Art. 7-A(1)(a), (c)	Article 7-A(1)(a), (c) and (e) Issuers of electronic	Artigo 7.º -A, n.º 1, alíneas a), c) e e) Emitentes de moeda	<p>CONFORM</p> <p>Article 7-A(1)(a) and (c) of RJPME</p>

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment
2006/48/EC including, in accordance with national law, a branch thereof within the meaning of point 3 of Article 4 of that Directive, where such a branch is located within the Community and its head office is located outside the Community, in accordance with Article 38 of that Directive;	2006/48/CE, incluindo, nos termos do direito interno, as sucursais, na acepção do ponto 3 do artigo 4.º daquela directiva, situadas na Comunidade das instituições de crédito com sede fora da Comunidade, nos termos do artigo 38.º da mesma directiva;	and (e) of RJPM E	<p>money</p> <p>a) Credit institutions with their head office in Portugal whose scope of business comprises that activity, in accordance with the applicable legal and regulatory requirements;</p> <p>c) Credit institutions with their head office out of Portugal which are legally qualified to carry out business in Portugal;</p>	<p>eletrónica</p> <p>a) As instituições de crédito com sede em Portugal cujo objeto compreenda o exercício dessa atividade, de acordo com as normas legais e regulamentares aplicáveis;</p> <p>c) As instituições de crédito com sede fora de Portugal legalmente habilitadas a exercer atividade em Portugal;</p>	<p>transposes Article 1(1)(a) of the Directive.</p> <p>Firstly, the Portuguese law sets out that electronic money can be issued by credit institutions with their head office in Portugal, whose scope of business comprises that activity, and credit institutions with their head office out of Portugal which are legally qualified to carry out business in Portugal (Article 7-A(1)(a) and (c) of RJPME).</p> <p>According to Article 2 of the RGICSF, credit institutions are the undertakings whose business is to receive deposits or other repayable funds from the public, in order to grant credits for its own account. Therefore, the Portuguese law reflects the definition set out in Article 4, point 1 of Directive 2006/48/EC.</p> <p>One should note that Article 7-A(1)(a) and (c) of RJPME refers more specifically to credit institutions with their head office <i>in</i> and <i>out</i> of Portugal.</p> <p>Secondly, the national act does not refer directly to branches of credit institutions but merely to branches of electronic money institutions with their head office out of the European Union (Article 7-A(1)(e) of RJPME). However, the issuance of electronic money by branches of credit institutions can be implied in Article 7-A(1)(c) of RJPME which refers to credit institutions with their head office out of Portugal which are legally qualified to carry out business in Portugal.</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						<p>According to the RGICSF, a branch is a place of business without legal status and which carries out directly all or some of the transactions inherent in the business of the undertaking to which it belongs. Moreover, Article 2(af) of RJPME defines "branch" as an establishment other than the head office which is a part of a payment institution or of an electronic money institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of those institutions; all the establishments set up in the country by an institution with a registered office in another Member State are to be regarded as a single branch. Therefore, the national law reflects the definition set out in Article 4, point 3 of Directive 2006/48/EC.</p> <p>While the Directive refers to <i>Community</i> as a reference to the EEA, the national law merely refers to <i>European Union</i>. Nevertheless, this difference is merely terminological and does not hamper the compliance of the national law.</p> <p>As will be mentioned in the analysis of Article 8(1) of the Directive, the national law complies with Article 38 of Directive 2006/48/EC.</p> <p>Therefore, on the basis of the above findings, the Portuguese law is considered conform to Article 1(1)(a) of the Directive.</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
Art. 1(1)(b)	(b) electronic money institutions as defined in point 1 of Article 2 of this Directive including, in accordance with Article 8 of this Directive and national law, a branch thereof, where such a branch is located within the Community and its head office is located outside the Community;	b) Instituições de moeda electrónica, definidas no ponto 1 do artigo 2.º da presente directiva, incluindo, nos termos do artigo 8.º e do direito interno, as sucursais situadas na Comunidade das instituições de moeda electrónica com sede fora da Comunidade;	Art. 7-A(1)(b), (d) and (e) of RJPM E	<p>Article 7-A(1)(b), (d) and (e)</p> <p>Issuers of electronic money</p> <p>b) Electronic money institutions with their head office in Portugal;</p> <p>d) Electronic money institutions with head office in another Member State of the European Union, under the terms of this legal regime;</p> <p>e) Branches of electronic money institutions with their head office out of the European Union, under the terms of this legal regime;</p>	<p>Artigo 7.º -A, n.º 1, alíneas b), d) e e)</p> <p>Emitentes de moeda eletrónica</p> <p>b) As instituições de moeda eletrónica com sede em Portugal;</p> <p>d) As instituições de moeda eletrónica com sede noutro Estado membro da União Europeia, nos termos do presente regime jurídico;</p> <p>e) As sucursais de instituições de moeda eletrónica com sede fora da União Europeia, nos termos do presente regime jurídico;</p>	<p>CONFORM</p> <p>Article 7-A(1)(b), (d) and (e) of RJPME transposes Article 1(1)(b) of the Directive.</p> <p>Firstly, the Portuguese law sets out that electronic money can be issued by electronic money institutions with their head office in Portugal and by electronic money institutions with their head office in another Member State of the European Union (Article 7-A(1)(b) and (d) of RJPME).</p> <p>Secondly, Article 7-A(1)(e) of RJPME states that electronic money can be issued by branches of electronic money institutions with their head office out of the European Union, under <i>the terms of the Portuguese legal regime</i>. These terms make reference to Article 27-A of RJPME which states that Articles 57 to 59 of RGICSF shall apply, with the necessary adaptations, to the establishment in Portugal of branches of electronic money institutions authorised in countries that are not members of the European Union. For a branch to be established in Portugal, the said provisions of RGICSF require, <i>inter alia</i>, that an authorisation be granted, on a case-by-case basis, by the Portuguese Ministry of Finance. Therefore, the said branches do not benefit from the EU-passport and as a consequence follow the Directive requirement.</p> <p>It should be noted that while the Directive refers to <i>Community</i> as a reference to the</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						<p>EEA, the national law merely refers to <i>European Union</i>. One should note that Article 2 of Law 34/2012 sets out that the Government can attribute the exercise of the activity of issuance of electronic money to, <i>inter alia</i>, branches of electronic money institutions with their head office out of the European Union, <i>under the terms set out by Directive 2009/110/EC</i>.</p> <p>As it will be mentioned in the analysis of Article 2, point 1 and Article 8 of the Directive, the national law complies with the requirements set out in such provisions.</p> <p>Therefore, on the basis of the above findings, the Portuguese law is considered conform to Article 1(1)(b) of the Directive.</p>
Art. 1(1)(c)	(c) post office giro institutions which are entitled under national law to issue electronic money;	c) Serviços de cheques postais autorizados ao abrigo do direito interno a emitir moeda electrónica;	N/A	N/A	N/A	<p>NOT CONFORM</p> <p>No provision corresponding to Article 1(1)(c) of the Directive could be identified in the Portuguese law.</p> <p>RJPME merely refers to post office giro institutions as entities capable of providing payment services. Article 7(1)(g) of RJPME sets out, in fact, that the payment services can be provided by, <i>inter alia</i>, the concessionaire of the universal postal service.</p> <p>However, no mention to post office giro institutions is made in Article 7-A(1) of RJPME. As a consequence, post office giro institutions established in other Member States may not issue electronic money in</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						Portugal. Therefore, the Portuguese law is considered not conform to Article 1(1)(c) of the Directive.
Art. 1(1)(d)	(d) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;	d) O Banco Central Europeu e os bancos centrais nacionais, quando não actuem na qualidade de autoridades monetárias, ou outras autoridades públicas;	Art. 7-A(1)(g) of RJPM E	Article 7 –A(1)(g) Electronic money issuers g) the European Central Bank, the Bank of Portugal and other national central banks, when not acting in their capacity as monetary authority or engaging in other public authority powers;	Artigo 7.º -A, n.º 1, alínea g) Emitentes de moeda eletrónica g) O Banco Central Europeu, o Banco de Portugal e os demais bancos centrais nacionais, quando não atuem na qualidade de autoridades monetárias ou no exercício de outros poderes públicos de autoridade.	CONFORM Article 7-A(1)(g) of RJPME transposes Article 1(1)(d) of the Directive. The national law states that electronic money can be issued by the European Central Bank, the Bank of Portugal and other national central banks, when not acting in their capacity as monetary authority or engaging in other public authority powers. Therefore, the national law is considered conform to Article 1(1)(d) of the Directive.
Art. 1(1)(e)	(e) Member States or their regional or local authorities when acting in their capacity as public authorities.	e) Os Estados-Membros e as respectivas autoridades regionais e locais, quando não actuem na qualidade de autoridades públicas.	Art. 7-A(1)(f) of RJPM E	Article 7 –A(1)(f) Electronic money issuers f) the State, the autonomous regions and the direct and indirect services and bodies of the State’s administration, when acting with public authority powers;	Artigo 7.º -A, n.º 1, alínea f) Emitentes de moeda eletrónica f) O Estado, as Regiões Autónomas e os serviços e organismos da administração direta e indireta do Estado, quando atuem no exercício de poderes públicos de autoridade;	CONFORM Article 7-A(1)(f) of RJPME transpose Article 1(1)(e) of the Directive. The national law states that electronic money can be issued by the State, the autonomous regions and the direct and indirect services and bodies of the State’s administration, when acting with public authority powers. One should note that the Portuguese version of the Directive contains a mistype as it reads “Member States or their regional or local authorities when <i>not</i> acting in their capacity as public authorities”. However, the Portuguese legislator has followed the

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						<p>English version of the Directive.</p> <p>Furthermore, since it merely refers to Portugal and the respective regions, the national law is ambiguous as it does not take explicitly into consideration the other Member States and their regional or local authorities. Nevertheless, the regime set out in RJPME implies that issuers from other Member States and their regional or local authorities are also entitled to issue electronic money in Portugal.</p> <p>On the basis of the above mentioned, the national law is considered conform to Article 1(1)(e) of the Directive.</p>
Art. 1(2)	2. Title II of this Directive lays down the rules for the taking up, the pursuit and the prudential supervision of the business of electronic money institutions.	2. O título II da presente Directiva estabelece igualmente as regras relativas ao acesso, ao exercício da actividade e à supervisão prudencial das instituições de moeda electrónica.	N/A	N/A	N/A	<p>CONFORM</p> <p>Articles 33-A to 33-I of Subsection II (“Electronic money institutions”) of Chapter IV (“Supervision of payment institutions and electronic money institutions”) of RJPME regulate the subject matter set out in Article 1(2) of the Directive.</p> <p>Therefore, the national law is considered conform to Article 1(2) of the Directive.</p>
Art. 1(3)	3. Member States may waive the application of all or part of the provisions of Title II of this Directive to the institutions referred to in Article 2 of Directive 2006/48/EC, with the	3. Os Estados-Membros podem dispensar da aplicação da totalidade ou de parte das disposições do título II da presente directiva as instituições referidas no artigo 2.º da Directiva 2006/48/CE,	N/A	N/A	N/A	<p>Portugal has not adopted the option set out in Article 1(3) of the Directive.</p>

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
	exception of those referred to in the first and second indents of that Article.	com excepção das referidas no primeiro e segundo travessões do mesmo artigo.				
Art. 1(4)	4. This Directive does not apply to monetary value stored on instruments exempted as specified in Article 3(k) of Directive 2007/64/EC.	4. A presente directiva não se aplica ao valor monetário armazenado em instrumentos isentos referidos na alínea k) do artigo 3.º da Directiva 2007/64/CE.	Art. 5(1)(k) and (2) of RJPM E	<p>Article 5(1)(k) and (2) Exceptions</p> <p>1. This legal regime shall not apply to the following transactions:</p> <p>k) services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;</p> <p>2. This regime shall also not apply to the monetary value stored on the instruments mentioned in point (k) of the previous paragraph, nor to the monetary value used to carry out the payment transactions mentioned in point (l) of that paragraph.</p>	<p>Artigo 5.º, n.º 1, alínea k) e n.º 2 Exclusões</p> <p>1. O presente regime jurídico não é aplicável às seguintes operações:</p> <p>k) Serviços baseados em instrumentos que possam ser utilizados para adquirir bens ou serviços apenas nas instalações utilizadas pelo emitente ou ao abrigo de um acordo comercial celebrado com o emitente no âmbito de uma rede restrita de prestadores de serviços ou em relação a uma gama restrita de bens e serviços;</p> <p>2. O presente regime também não é aplicável ao valor monetário armazenado nos instrumentos referidos na alínea k) do número anterior, nem ao valor monetário utilizado para efetuar as operações de pagamento referidas na</p>	<p>CONFORM</p> <p>Article 5(1)(k) and (2) of RJPME transposes Article 1(4) of the Directive.</p> <p>Article 5 of RJPME is a general provision applicable to all the types of payments and institutions provided for in that act.</p> <p>According to Article 5(2) of RJPME, this act does not apply to the monetary value stored on the instruments mentioned in Article 5(1)(k) of the same act.</p> <p>Article 5(1)(k) of RJPME lays down that this act does not apply to services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services. Article 5(1)(k) of RJPME therefore reflects Article 3(k) of Directive 2007/64/EC.</p> <p>On the basis of the above mentioned, the national law is considered conform to Article 1(4) of the Directive.</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
					alínea l) do mesmo número.	
Art. 1(5)	5. This Directive does not apply to monetary value that is used to make payment transactions exempted as specified in Article 3(l) of Directive 2007/64/EC.	5. A presente directiva não se aplica ao valor monetário utilizado para efectuar operações de pagamento isentas referidas na alínea l) do artigo 3.º da Directiva 2007/64/CE.	Art. 5(1)(l) and (2) of RJPM E	<p>Article 5(1)(l) and (2) Exceptions</p> <p>1. This legal regime shall not apply to the following transactions:</p> <p>l) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;</p> <p>2. This regime shall also not apply to the monetary value stored on the instruments mentioned in point (k) of the previous paragraph, nor to the monetary value used to make payment transactions mentioned in</p>	<p>Artigo 5.º, n.º 1, alínea l) e n.º 2 Exclusões</p> <p>1. O presente regime jurídico não é aplicável às seguintes operações:</p> <p>l) Operações de pagamento executadas através de quaisquer dispositivos de telecomunicações digitais ou informáticos, caso os bens ou serviços adquiridos sejam fornecidos a um dispositivo de telecomunicações, digital ou informático e se destinem a ser utilizados através desse dispositivo, desde que o operador do dispositivo de telecomunicações, digital ou informático, não aja exclusivamente na qualidade de intermediário entre o utilizador do serviço de pagamento e o fornecedor dos bens e serviços;</p> <p>2. O presente regime</p>	<p>CONFORM</p> <p>Article 5(1)(l) and (2) of RJPME transposes Article 1(5) of the Directive.</p> <p>According to Article 5(2) of RJPME, this act does not apply to the monetary value used to make payment transactions mentioned in Article 5(1)(l) of the same act.</p> <p>Article 5(1)(l) of RJPME lays down that this act does not apply to payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services. Article 5(1)(l) of RJPME therefore reflects Article 3(l) of Directive 2007/64/EC.</p> <p>On the basis of the above mentioned, the national law is considered conform to Article 1(5) of the Directive.</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
				point (l) of that paragraph	também não é aplicável ao valor monetário armazenado nos instrumentos referidos na alínea k) do número anterior, nem ao valor monetário utilizado para efetuar as operações de pagamento referidas na alínea l) do mesmo número.	
Art. 2 intr. wording	<p><i>Article 2 Definitions</i></p> <p>For the purposes of this Directive, the following definitions shall apply:</p>	<p><i>Artigo 2.º Definições</i></p> <p>Para efeitos da presente directiva, entende-se por:</p>	<p>Art. 2, intro. wording of RJPME</p>	<p>Article 2, introductory wording</p> <p>Definitions</p> <p>For the purposes of this legal regime, the following definitions shall apply:</p>	<p>Artigo 2.º, frase introdutória</p> <p>Definições</p> <p>Para efeitos do presente regime jurídico, entende-se por:</p>	<p>CONFORM</p> <p>Article 2, introductory wording of RJPME transposes Article 2, introductory wording of the Directive.</p> <p>In accordance with the Directive provision, Article 2 of RJPME also lays down a list of definitions.</p> <p>Therefore, the national law is considered conform to Article 2, introductory wording of the Directive.</p>
Art. 2 pt (1)	<p>1. "electronic money institution" means a legal person that has been granted authorisation under Title II to issue electronic money;</p>	<p>1. «Instituições de moeda electrónica», as pessoas colectivas autorizadas a emitir moeda electrónica ao abrigo do título II da presente directiva;</p>	<p>Art. 2(f) and Art. 8-A(1) of RJPME</p> <p>Art. 2 of DL 242/20</p>	<p>Article 2(f)</p> <p>Definitions</p> <p>f) "electronic money institutions" means legal persons that have been granted authorisation, under the terms of Article 10, to issue electronic money;</p>	<p>Artigo 2.º, alínea f)</p> <p>Definições</p> <p>f) «Instituições de moeda electrónica» as pessoas colectivas a quem tenha sido concedida autorização, nos termos do artigo 10.º, para emitir moeda electrónica;</p>	<p>CONFORM</p> <p>Article 2(f), Article 8-A(1) of RJPME and Article 2 of DL 242/2012 transpose Article 2, point 1 of the Directive.</p> <p>The national provision defines <i>electronic money institutions</i> as legal persons that have been granted authorisation, under the terms of Article 10 of RJPME to issue electronic money. This definition is an almost literal</p>

Directive 2009/110/EC		National Implementing Measures	Conformity Assessment
		<p>12</p> <p>Article 8-A(1) Electronic money institutions</p> <p>1. Electronic money institutions are legal persons that, under this legal regime, aim at issuing electronic money.</p> <p>DL 242/2012 Article 2 Amendment to the Legal framework on Credit Institutions and Finance Companies</p> <p>Articles 2, 3, 4, 8, 13, 116-D, 117-A, 167, 198, 199-I and 212 of the Legal framework on Credit Institutions and Finance Companies (RGICSF), [...] now reads as following:</p> <p>« Article 2</p> <p>[...]</p> <p>1 —</p> <p>.....</p>	<p>transposition of the Directive provision.</p> <p>One should note that Article 2 of DL 242/2012 revokes the former Article 2(2) of the RGICSF. The latter used to include companies that have as scope of business the issuance of payment means of payment in the form of electronic money in the definition of credit institutions. Article 2(2) of the RGICSF is an example of the amendments demonstrating that the RGICSF, which regulates credit institutions, no longer includes electronic money institutions in its scope of application.</p> <p>The national provision complies with Recital 25 of the Directive, as electronic money institutions are no longer defined as credit institutions.</p> <p>One should note that while the Directive cross-refers broadly to the legal regime set out in Title II, Article 2(f) of RJPME refers more specifically to Article 10 of this act, which merely regulates the authorisation and conditions to be followed by payment institutions and electronic money institutions.</p> <p>Moreover, Article 8-A(1) of RJPME reiterates, in a broader manner, the definition set out in Article 2(f) of that act as it states that electronic money institutions are legal persons that, under this legal regime, aim at issuing electronic money. Article 2(f) of RJPME is the provision transposing Article 2, point 1 of the Directive.</p> <p>On the basis of the above findings, the</p>

Directive 2009/110/EC			National Implementing Measures		Conformity Assessment	
				2 — (Revoked.)”	1 — 2 — (Revogado.)”	Portuguese law is considered conform to Article 2, point 1 of the Directive.
Art. 2 pt (2)	2. "electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer;	2. «Moeda electrónica», o valor monetário armazenado eletronicamente, inclusive de forma magnética, representado por um crédito sobre o emitente e emitido após recepção de fundos para fazer operações de pagamento na aceção do ponto 5 do artigo 4.º da Directiva 2007/64/CE e que seja aceite por uma pessoa singular ou colectiva diferente do emitente de moeda electrónica;	Art. 2(d) of RJPM E	Article 2(d) Definitions d) “electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of banknotes coins, and scriptural money, for the purpose of making payment transactions as defined in point (g), and which is accepted by a natural or legal person other than the electronic money issuer;	Artigo 2.º, alínea d) Definições d) «Moeda eletrónica», o valor monetário armazenado eletronicamente, inclusive de forma magnética, representado por um crédito sobre o emitente e emitido após recepção de notas de banco, moedas e moeda escritural, para efetuar operações de pagamento na aceção da alínea g) e que seja aceite por pessoa singular ou colectiva diferente do emitente de moeda eletrónica;	CONFORM Article 2(d) of RJPME transposes Article 2, point 2 of the Directive. One should note that while the Directive refers more generally to the receipt of <i>funds</i> , Article 2(d) of RJPME refers specifically to the receipt of <i>banknotes coins, and scriptural money</i> . Article 2(r) of DL 242/2012 defines, in fact, <i>funds</i> as banknotes and coins, scriptural money and electronic money as defined in Article 2(d) of this act. According to Article 2(g) of RJPME, a payment transaction means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee. Therefore, the cross-reference set out in the national provision to Article 2(g) of RJPME corresponds to the cross reference made in the Directive to Article 4, point 5 of Directive 2007/64/EC. The national law provides therefore for a clear definition of electronic money and technically neutral. The definition set out in Article 2(d) of DL 242/2012 covers all situations where the payment service provider

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						<p>issues a pre-paid stored value in exchange for funds, which can be used for payment purposes because it is accepted by third persons as a payment. The national definition of <i>electronic money</i> is, finally, wide enough to avoid hampering technological innovation and to cover not only all the electronic money products available today in the market but also those products which could be developed in the future. Therefore, the national law follows the requirements laid down in Recitals 7 and 8 of the Directive.</p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 2, point 2 of the Directive.</p>
Art. 2 pt (3)	3. "electronic money issuer" means entities referred to in Article 1(1), institutions benefiting from the waiver under Article 1(3) and legal persons benefiting from a waiver under Article 9;	3. «Emitentes de moeda electrónica», as entidades referidas no n.º 1 do artigo 1.º, as instituições que beneficiam da isenção prevista no n.º 3 do artigo 1.º e as pessoas colectivas que beneficiam da isenção prevista no artigo 9.º;	Art. 2(1) of RJPM E	<p>Article 2(1) Definitions</p> <p>1) "electronic money issuer" means entities listed in Article 7-A;</p>	<p>Artigo 2.º, alínea 1) Definições</p> <p>1) «Emitentes de moeda electrónica» as entidades enumeradas no artigo 7.º - A;</p>	<p>CONFORM</p> <p>Article 2(1) of RJPME transposes Article 2, point 3 of the Directive.</p> <p>The national provision defines <i>electronic money issuer</i> as the entities listed in Article 7-A. Therefore, Article 2(1) of RJPME merely refers to the equivalent of Article 1(1) of the Directive.</p> <p>The lack of reference, in RJPME, to more institutions is because Portugal did not adopt the options set out in Article 9 and Article 1(3) of the Directive.</p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 2, point 3 of the Directive.</p>

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
Art. 2 pt (4)	4. "average outstanding electronic money" means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.	4. «Valor médio da moeda electrónica em circulação», a média do total das responsabilidades financeiras associadas à moeda electrónica emitida no final de cada dia durante os últimos seis meses civis, calculada no primeiro dia de cada mês civil e aplicada a esse mês civil.	Art. 2(ai) of RJPME E	Article 2(ai) Definitions ai) "average outstanding electronic money" means the average total amount of financial liabilities related to electronic money in issue at the end of each day over the preceding six months, calculated on the first day of each month and applied for that month.	Artigo 2.º, alínea ai) Definições ai) «Valor médio da moeda eletrónica em circulação», a média do valor total das responsabilidades financeiras associadas à moeda eletrónica emitida no final de cada dia durante os últimos seis meses, calculada no 1.º dia de cada mês e aplicada a esse mês.	CONFORM Article 2(ai) of RJPME almost literally transposes Article 2, point 4 of the Directive. There are wording differences between the Directive provision and the national one. Whereas the Directive provision refers to <i>calendar</i> month, Article 2(ai) of RJPME is less specific as it merely refers to <i>month</i> . On the basis of the above findings, the Portuguese law is considered conform to Article 2, point 4 of the Directive.
Art. 3(1)	TITLE II REQUIREMENTS FOR THE TAKING UP, PURSUIT AND PRUDENTIAL SUPERVISION OF THE BUSINESS OF ELECTRONIC MONEY INSTITUTIONS <i>Article 3</i> General prudential rules 1. Without prejudice to this Directive, Articles 5 and 10 to 15, Article 17(7) and Articles 18 to 25 of Directive 2007/64/EC shall apply to electronic money institutions <i>mutatis mutandis</i> .	TÍTULO II CONDIÇÕES DE ACESSO À ACTIVIDADE DAS INSTITUIÇÕES DE MOEDA ELECTRÓNICA, DO SEU EXERCÍCIO E DA SUA SUPERVISÃO PRUDENCIAL Artigo 3.º Regras prudenciais gerais 1. Sem prejuízo da presente directiva, os artigos 5.º e 10.º a 15.º, o n.º 7 do artigo 17.º e os artigos 18.º a 25.º da Directiva 2007/64/CE	Titles I and II, Chapters I, II and III of Title II, Art. 33-F and Art. 33-D(3) of RJPME E	Article 33-F Accounting and statutory audit The rules on accounting and statutory audit provided for in Article 33 shall apply to electronic money institutions, with the necessary adaptations. Article 33-D(3) Own funds requirements 3. As regards the activity of providing payment services mentioned in Article 4 that are not linked to the issuance of	Artigo 33.º -F Contabilidade e revisão legal de contas As regras sobre contabilidade e revisão legal de contas previstas no artigo 33.º aplicam -se às instituições de moeda eletrónica, com as devidas adaptações. Artigo 33.º -D, n.º 3 Requisitos de fundos próprios 3. No que diz respeito à atividade de prestação de	CONFORM Titles I and II, Chapters I, II and III of Title II, Article 33-F and Article 33-D(3) of Law 242/2012 transpose Article 3(1) of the Directive. RJPME does not include a provision corresponding to Article 3(1) of the Directive. However, the Directive provision can be inferred from the structure of several national provisions. Article 5 of Directive 2007/64/EC is reflected in Articles 10 and 11 of RJPME. Article 10 to 15 of Directive 2007/64/EC is reflected in Article 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 26 and 33 of RJPME and general provisions from the RGICSF.

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	aplicam-se, com as necessárias adaptações, às instituições de moeda electrónica.	electronic money, the own funds requirements of electronic money institutions are those that result from the application of one of the three methods laid down in the annex to this law, which is an integral part thereof. Article 31(2) and (4) shall be applicable to this.	serviços de pagamento referidos no artigo 4.º não associados à emissão de moeda eletrónica, os requisitos de fundos próprios das instituições de moeda eletrónica são os que resultarem da aplicação de um dos três métodos descritos no anexo ao presente regime que dele faz parte integrante, aplicando -se o disposto nos n.os 2 e 4 do artigo 31.º	<p>Article 17(7) of Directive 2007/64/EC is reflected in Article 19 and Article 2 of RJPME.</p> <p>Articles 18 to 25 of Directive 2007/64/EC are reflected in Articles 6, 9, 13, 18, 19, 22, 23, 31, 34, 35, 36, 37 and 39 of RJPME.</p> <p>The above mentioned national provisions are included in the general requirements of RJPME (Title I), in Chapter II on the authorisation and registration of the payment institutions and electronic money institutions; in Chapter III on the right of establishment and freedom to provide services of payment institutions and electronic money institutions; in Chapter IV on the supervision of payment institutions and electronic money institutions.</p> <p>Some of the above-mentioned national provisions are solely addressed to payment institutions being, however, cross-referred in another provision which makes them applicable also to electronic money institutions (see Article 33-F and Article 33-D(3) of RJPME).</p> <p>However, the above mentioned provisions are addressed both to payment institutions and electronic money institutions.</p> <p>Overall, the prudential supervisory regime for electronic money institutions is coherent with the prudential supervisory regime applying to payment institutions under Directive 2007/64/EC. In accordance with Recital 9 of</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						<p>the Directive, the relevant provisions of Directive 2007/64/EC apply <i>mutatis mutandis</i> to electronic money institutions without prejudice to the provisions of the Directive.</p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 3(1) of the Directive.</p>
Art. 3(2)	2. Electronic money institutions shall inform the competent authorities in advance of any material change in measures taken for safeguarding of funds that have been received in exchange for electronic money issued.	2. As instituições de moeda electrónica informam previamente as autoridades competentes de qualquer mudança substantiva das medidas tomadas para garantir os fundos recebidos em troca da emissão de moeda electrónica.	Art. 33-E(8) of RJPM E	<p>Article 33-E(8) Fund protection requirements</p> <p>8. Electronic money institutions shall inform the Bank of Portugal in advance of any relevant change that they plan to adopt as regards the protection of the funds that have been received in exchange for electronic money.</p>	<p>Artigo 33.º -E, n.º 8 Requisitos de proteção dos fundos</p> <p>8. As instituições de moeda electrónica devem informar previamente o Banco de Portugal de qualquer alteração relevante que pretendam adotar relativamente à proteção dos fundos que tenham sido recebidos em troca de moeda electrónica.</p>	<p>CONFORM</p> <p>Article 33-E(8) of RJPM E transposes Article 3(2) of the Directive.</p> <p>The national law provides that electronic money institutions shall inform the Bank of Portugal in advance of any relevant change that they plan to adopt as regards the protection of the funds that have been received in exchange for electronic money.</p> <p>Consequently, the national law follows Recital 14 of the Directive as it applies to electronic money institutions provisions that are more stringent than those applying to credit institutions, notably as regards the safeguarding of the funds of an electronic money holder. Moreover, the <i>relevant change</i> mentioned in Article 33-E(8) of RJPM E reflects the concept of <i>material change</i> as it regards the safeguarding of the funds in general.</p> <p>Therefore, the Portuguese law is considered conform to Article 3(2) of the Directive.</p>

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
<p>Art. 3(3) 1st subpar a.</p>	<p>3. Any natural or legal person who has taken a decision to acquire or dispose of, directly or indirectly, a qualifying holding within the meaning of point 11 of Article 4 of Directive 2006/48/EC in an electronic money institution, or to further increase or reduce, directly or indirectly, such qualifying holding as a result of which the proportion of the capital or of the voting rights held would reach, exceed or fall below 20 %, 30 % or 50 %, or so that the electronic money institution would become or cease to be its subsidiary, shall inform the competent authorities of their intention in advance of such acquisition, disposal, increase or reduction.</p>	<p>3. As pessoas singulares ou colectivas que decidam adquirir ou alienar, directa ou indirectamente, uma participação qualificada na acepção do ponto 11 do artigo 4.º da Directiva 2006/48/CE numa instituição de moeda electrónica, ou aumentar ou reduzir, directa ou indirectamente, essa participação qualificada de tal modo que a percentagem de capital ou de direitos de voto detida atinja, exceda ou passe a ser inferior a 20 %, 30 % ou 50 %, ou de tal modo que a instituição de moeda electrónica se torne ou deixe de ser sua filial, devem informar previamente as autoridades competentes da sua intenção de proceder a tal aquisição, alienação, aumento ou redução.</p>	<p>Art. 33-I(1) and Art. 33-G(1), (2) and (5) of RJPM E</p>	<p>Article 33-G(1), (2) and (5) Communication regarding qualifying holdings, their increase and reduction</p> <p>1. Any natural or legal person who intends to hold directly or indirectly a qualifying holding within the meaning of Article 13(7) of the RGICSF in an electronic money institution shall communicate its intention advance to the Bank of Portugal.</p> <p>2. Acts involving increases in a qualifying holding must be communicated in advance to the Bank of Portugal, whenever from them may result, depending on the situations, in a proportion reaching or exceeding any of the thresholds limits of 20%, 30% or 50% of the capital or of the voting rights held in the undertaking, or when the latter becomes a subsidiary of the acquiring entity.</p>	<p>Artigo 33.º -G, n.ºs 1, 2 e 5 Comunicação das participações qualificadas, seu aumento e diminuição</p> <p>1. A pessoa singular ou colectiva que, directa ou indirectamente, pretenda deter uma participação qualificada na aceção do n.º 7.º do artigo 13.º do RGICSF numa instituição de moeda electrónica deve comunicar previamente ao Banco de Portugal o seu projeto.</p> <p>2. Devem ainda ser comunicados previamente ao Banco de Portugal os atos que envolvam aumento de uma participação qualificada, sempre que deles possa resultar, consoante os casos, uma percentagem que atinja ou ultrapasse qualquer dos limiares de 20 %, 30 % ou 50 % do capital ou dos direitos de voto na instituição participada, ou quando esta se transforme em filial da sociedade adquirente.</p>	<p>CONFORM</p> <p>Article 33-I(1) and Article 33-G(1), (2) and (5) of RJPME transpose Article 3(3), first subparagraph of the Directive.</p> <p>The structure of the national provisions differs from that of Article 3(3), first subparagraph of the Directive. However, the Directive requirements are fulfilled by RJPME.</p> <p>Article 33-G of RJPME regulates the requirements regarding the acquisition of a qualifying holding in its paragraph 1; the increase of the qualifying holding in its paragraph 2; and the disposal and the reduction of a qualifying holding in its paragraph 5.</p> <p>Firstly, Article 33-G(1) of RJPME sets out that any natural or legal person who intends to <i>hold directly or indirectly</i> a qualifying holding in an electronic money institution shall communicate its intention advance to the Bank of Portugal.</p> <p>Secondly, Article 33-G(2) of RJPME states that acts involving <i>increases</i> in a qualifying holding must be communicated in advance to the Bank of Portugal, whenever from them may result, depending on the situations, in a proportion reaching or exceeding any of the thresholds limits of 20%, 30% or 50% of the capital or of the voting rights held in the undertaking, or when <i>the latter becomes a</i></p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment	
			<p>5. Any natural or legal person, who intends to dispose of his qualifying holding, or to reduce it so that the proportion of the voting rights or of the capital held by him would fall below any of the threshold limits mentioned in paragraph (2), or so that the institution would cease to be his subsidiary, shall inform the Bank of Portugal in advance, communicating the new size of his holding.</p> <p style="text-align: center;">Article 33-I(1) Communication by the electronic money institutions</p> <p>1. The electronic money institutions communicate to the Bank of Portugal the changes mentioned in Article 33-G, as soon as they become aware of them.</p>	<p>5. A pessoa singular ou coletiva que pretenda deixar de deter uma participação qualificada, ou diminuí-la de tal modo que a percentagem dos direitos de voto ou do capital de que seja titular desça a nível inferior a qualquer dos limiares referidos no n.º 2, ou de tal modo que a instituição deixe de ser sua filial, deve informar previamente o Banco de Portugal e comunicar -lhe o novo montante da sua participação.</p> <p style="text-align: center;">Artigo 33.º -I, n.º 1 Comunicação pelas instituições de moeda eletrónica</p> <p>1. As instituições de moeda eletrónica comunicam ao Banco de Portugal, logo que delas tiverem conhecimento, as alterações a que se refere o artigo 33.º -G.</p>	<p><i>subsidiary of the acquiring entity.</i></p> <p>Thirdly, Article 33-G(5) of RJPME applies the same requirements set out in paragraph 2 to the disposal and the reduction of qualifying holdings. In fact, any natural or legal person, who intends to dispose of his qualifying holding, or to reduce it so that the proportion of the voting rights or of the capital held by him would fall below any of the threshold limits mentioned in Article 33-G(2), or so that the institution would cease to be his subsidiary, shall inform the Bank of Portugal in advance, communicating the new size of his holding.</p> <p>Finally, the obligation to inform the competent authorities of the intention in advance of such acquisition, disposal, increase or reduction is not only present in Article 33-G(1), (2) and (5) of RJPME but also in another broader provision. Article 33-I(1) of RJPME states that the electronic money institutions shall communicate to the Bank of Portugal the changes mentioned in Article 33-G, as soon as they become aware of them.</p> <p>In accordance with the Directive, the reference to the definition of <i>qualifying holding</i> is cross-referred to in Article 33-G(1) of RJPME. This national provision refers, in fact, to Article 13(7) of the RGICSF which defines <i>qualifying holding</i> as a direct or indirect holding in an undertaking, which represents not less than 10 % of the capital or of the voting rights of the participating entity</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment	
						<p>or which for any reason makes it possible to exercise a significant influence over the management of that undertaking. Therefore, the definition set out in Article 13(7) of the RGICSF corresponds to that of Article 4, point 11 of Directive 2006/48/EC.</p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 3(3), first subparagraph of the Directive.</p>	
Art. 3(3) 2nd subpar a.	The proposed acquirer shall supply to the competent authority information indicating the size of the intended holding and relevant information referred to in Article 19a(4) of Directive 2006/48/EC.	O adquirente potencial informa a autoridade competente do montante da participação considerada e presta-lhe as informações relevantes referidas no n.º 4 do artigo 19.º -A da Directiva 2006/48/CE.	Art. 33-G(5), (8) and (9) of RJPM E	<p>Article 33-G(5), (8) and (9)</p> <p>Communication regarding qualifying holdings, their increase and reduction</p> <p>5. Any natural or legal person, who intends to dispose of his qualifying holding, or to reduce it so that the proportion of the voting rights or of the capital held by him would fall below any of the threshold limits mentioned in paragraph (2), or so that the institution would cease to be his subsidiary, shall inform the Bank of Portugal in advance, communicating the new size of his holding.</p> <p>8. The Bank of Portugal</p>	Artigo 33.º -G, n.ºs 5, 8 e 9	<p>Comunicação das participações qualificadas, seu aumento e diminuição</p> <p>5. A pessoa singular ou coletiva que pretenda deixar de deter uma participação qualificada, ou diminuí-la de tal modo que a percentagem dos direitos de voto ou do capital de que seja titular desça a nível inferior a qualquer dos limiares referidos no n.º 2, ou de tal modo que a instituição deixe de ser sua filial, deve informar previamente o Banco de Portugal e comunicar -lhe o novo montante da sua participação.</p>	<p>PARTIALLY CONFORM</p> <p>Article 33-G(5), (8) and (9) of RJPME transpose Article 3(3), second subparagraph of the Directive.</p> <p>RJPME does not contain a provision corresponding explicitly to Article 3(3), second subparagraph of the Directive. However, it is possible to infer the Directive requirements from the spirit of some national provisions.</p> <p>According to Article 33-G(8) of RJPME, the Bank of Portugal sets out, by means of a notice, the elements and information that shall accompany the communication provided for in Article 33-G(1) and (2) of that act. Moreover, Article 33-G(9) of RJPME states that, if the communication carried out under the terms of Article 33-G is not duly handled, the Bank of Portugal informs the proposed acquirer, in writing, of the lacking elements and information.</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
				<p>sets out, by means of a notice, the elements and information that shall accompany the communication provided for in paragraphs (1) and (2).</p> <p>9. If the communication carried out under the terms of this article is not duly handled, the Bank of Portugal informs the proposed acquirer, in writing, of the lacking elements and information.</p>	<p>8. O Banco de Portugal estabelece, por aviso, os elementos e informações que devem acompanhar a comunicação prevista nos n.ºs 1 e 2.</p> <p>9. Se a comunicação efetuada nos termos do presente artigo não estiver devidamente instruída, o Banco de Portugal informa o proposto adquirente, por escrito, dos elementos ou informações em falta.</p>	<p>One should note that the information referred to in Article 19a(4) of Directive 2006/48/EC is mentioned in the notice of the Bank of Portugal No. 5/2010.</p> <p>RJPME merely refers to the communication of the new size of the holding in the context of the disposal or reduction of the holding (Article 33-G(5) of RJPME), not in the context of its acquisition or increase (Article 33-G(1) and (2) of RJPME).</p> <p>Since it does not clearly refer to the communication of the size of the holding as regards acquisition or increase, the Portuguese law is considered partially conform to Article 3(3), second subparagraph of the Directive.</p>
Art. 3(3) 3rd subpar a.	Where the influence exercised by the persons referred to in the second subparagraph is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall express their opposition or take other appropriate measures to bring that situation to an end. Such measures may include injunctions, sanctions against directors or managers, or the suspension of the exercise	Caso a influência exercida pelas pessoas referidas no segundo parágrafo seja susceptível de prejudicar uma gestão sã e prudente da instituição, as autoridades competentes manifestam a sua oposição ou tomam as medidas apropriadas para pôr termo a essa situação. Essas medidas podem incluir injunções, sanções aplicáveis aos directores ou administradores ou a suspensão do exercício dos direitos de voto	Art. 33-H(1), (3) and (6) and Art. 96(1)(c) of RJPME Art. 103(1), Art. 211(m) of the RGIC	RJPME Article 33-H(1), (3) and (6) Examination of the plan of acquisition or increase of qualifying holding 1. The Bank of Portugal can oppose to the plan of acquisition or increase of qualifying holding on the basis of Article 103(1) and (2) of the RGICSF, with the necessary adaptations. 3. The Bank of Portugal can request from the	RJPME Artigo 33.º -H, n.ºs 1, 3 e 6 Apreciação do projeto de aquisição ou de aumento de participação qualificada 1. O Banco de Portugal pode opor -se ao projeto de aquisição ou de aumento de participação qualificada com fundamento no disposto nos n.ºs 1 e 2 do artigo 103.º do RGICSF, devidamente adaptados.	CONFORM Article 33-H(1), (3) and (6) and Article 96(1)(c) of RJPME and Article 103(1) and Article 211(m) of the RGICSF transpose Article 3(3), third subparagraph of the Directive. RJPME does not contain a provision corresponding explicitly to Article 3(3), third subparagraph of the Directive. However, the Directive requirements are reflected in a diffuse manner through several national provisions of RJPME and the RGICSF. Firstly, according to Article 103(1) of the RGICSF, the Bank of Portugal can <i>oppose</i> to

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment
of the voting rights attached to the shares held by the shareholders or members in question.	correspondentes às acções detidas pelos accionistas ou sócios em questão.	SF	<p>proposed acquirer, at all time, complementary elements and information, as well as carry out the investigations that it considers necessary.</p> <p>6. Articles 105 and 106 of the RGICSF are applicable, with the necessary adaptations, to the prohibition of the voting rights in the participating electronic money institution or in the entity which directly or indirectly has voting rights in the participating electronic money institution and, also, to the prohibition of the voting rights carried out by the participating institution in other institutions which it directly or indirectly controls.</p> <p style="text-align: center;">RGICSF Article 103(1) Assessment</p> <p>1. The Bank of Portugal can oppose such a plan if it is not satisfied that the proposed acquirer meets</p>	<p>3. O Banco de Portugal pode solicitar ao proposto adquirente, a todo o tempo, elementos e informações complementares, bem como realizar as averiguações que considere necessárias</p> <p>6. Os artigos 105.º e 106.º do RGICSF são aplicáveis, com as necessárias adaptações, à inibição dos direitos de voto na instituição de moeda eletrónica participada ou em entidade que detenha, direta ou indiretamente, direitos de voto na instituição de moeda eletrónica participada e, ainda, à inibição dos direitos de voto exercidos pela instituição participada noutras instituições com as quais se encontre em relação de domínio, direto ou indireto.</p> <p style="text-align: center;">RGICSF Artigo 103.º, n.º 1 Apreciação</p>	<p>the plan of acquisition if it is not satisfied that the proposed acquirer meets the conditions to ensure <i>sound and prudent management</i> of the credit institution or if the information provided by the proposed acquirer is incomplete. Moreover, Article 103(2) of the RGICSF states that, within the examination of the conditions that ensure sound and prudent management of the credit institution, the Bank of Portugal takes into consideration the adequacy of the proposed acquirer, its probable influence in the credit institution and the financial soundness of the plan, based on several criteria listed in that provision.</p> <p>Article 33-H(1) of RJPME provides for the application of Article 103(1) and (2) of the RGICSF, <i>mutatis mutandis</i>, to the examination of the plan of acquisition or increase of qualifying holding in the context of electronic money institutions.</p> <p>Secondly, according to Article 105 of the RGICSF, without prejudice of other applicable sanctions, the Bank of Portugal can set out the <i>prohibition of the exercise of the voting rights</i> as regards a qualified holding, to the extent <i>necessary and adequate</i> to avoid the influence in the management that was obtained through the act which the acquisition or the increase of that holding have resulted from. Article 106 of the RGICSF regulates, moreover, the prohibition of those voting rights on account of facts that subsequently come to light.</p> <p>Article 33-H(6) of RJPME provides for the</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
		<p>the conditions to ensure sound and prudent management of the credit institution or if the information provided by the proposed acquirer is incomplete.</p> <p style="text-align: center;">RJPME Article 95(v) Offences</p> <p>The following offences are punishable by a fine of EUR 10 000 to EUR 5 000.000 and of EUR 4000 to EUR 2 000.000, depending on whether the fines are applied to a legal person or to a natural person:</p> <p>v) The conducts provided for and pursued in points (c), (e), (f), (g), (l), (m), (o), (p), (q), (r) and (t) of Article 211 of the RGICSF, when carried out within the activity of the payment institutions and electronic money institutions.</p>	<p>1. O Banco de Portugal pode opor-se ao projecto, se não considerar demonstrado que o proposto adquirente reúne condições que garantam uma gestão sã e prudente da instituição de crédito ou se as informações prestadas pelo proposto adquirente forem incompletas.</p> <p style="text-align: center;">RJPME Artigo 95.º, alínea v) Infrações especialmente graves</p> <p>São puníveis com coima de € 10 000 a € 5 000 000 ou de € 4000 a € 2 000 000, consoante seja aplicada a ente coletivo ou a pessoa singular, as infrações adiante referidas:</p> <p>v) As condutas previstas e punidas nas alíneas c), e), f), g), l), m), o), p), q), r) e t) do artigo 211.º do RGICSF, quando praticadas no âmbito da atividade das instituições de pagamento e das</p>	<p>application, <i>mutatis mutandis</i>, of Article 105 and Article 106 of the RGICSF to the <i>prohibition of the voting rights</i> in the participating electronic money institution or in the entity which directly or indirectly has voting rights in the participating electronic money institution and, also, to the prohibition of the voting rights carried out by the participating institution in other institutions which it directly or indirectly controls.</p> <p>Thirdly, the Bank of Portugal can request the proposed acquirer, at all time, complementary information, as well as carry out the investigations that it considers necessary (Article 33-H(3) of RJPME).</p> <p>Finally, the RGICSF includes general provisions laying down sanctions, such as, particularly serious offences for the practice by owners of qualifying holdings, of acts which <i>seriously hinder or obstruct the sound and prudent management of the entity in question</i> (Article 211(m) of the RGICSF).</p> <p>Article 95(v) of RJPME provides for the same fines as those set out above for the conducts mentioned in Article 211(m) of the RGICSF when they are carried out within the activity of the payment institutions and electronic money institutions shall be punishable.</p> <p>Moreover, Article 96(1)(c) of RJPME sets out additional penalties applicable to offenders. This provision sets out the prohibition from being member of the management or auditing</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment	
			<p>RGICSF Article 211(m) Particularly serious offences</p> <p>The following offences are punishable by a fine of EUR 10.000 to EUR 5 000.000 or of EUR 4000 to EUR 2 000.000, depending on whether the fines are applied to a legal person or to a natural person:</p> <p>m) Practice by owners of qualifying holdings, of acts which seriously hinder or obstruct the sound and prudent management of the entity in question;</p> <p>RJPME Article 96(1)(c) Additional penalties</p> <p>1. In addition to the fines, the following additional penalties may be applied to the person liable for any of the administrative offences provided for in Articles 94 and 95,</p>	<p>instituições de moeda eletrónica.</p> <p>RGICSF Artigo 211.º; alínea m) Infracções especialmente graves</p> <p>São puníveis com coima de € 10 000 a € 5 000 000 ou de € 4000 a € 2 000 000, consoante seja aplicada a ente colectivo ou a pessoa singular, as infracções adiante referidas:</p> <p>m) A prática, pelos detentores de participações qualificadas, de actos que impeçam ou dificultem, de forma grave, uma gestão sã e prudente da entidade em causa;</p> <p>RJPME Artigo 96.º, n.º 1, alínea d) Sanções acessórias</p> <p>1. Conjuntamente com as coimas, podem ser aplicadas ao responsável por qualquer das</p>	<p>boards as well as from holding corporate, managerial and supervisory posts in a specified credit institution, financial company, payment institution or electronic money institution, for a period from 6 months to 3 years, or from 1 year to 10 years, depending on the situation.</p> <p>In sum, in accordance with the Directive requirements, RJPME and the RGICSF provide that the competent authorities shall express their opposition or take other appropriate measures where the prudent and sound management of the institution is jeopardised. Moreover, these measures include injunctions, sanctions against directors or managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members in question.</p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 3(3), third subparagraph of the Directive.</p>

Directive 2009/110/EC			National Implementing Measures		Conformity Assessment	
				<p>according to the gravity of the offence and the guilt of the perpetrator:</p> <p>d) Prohibition from being member of the management or auditing boards as well as from holding corporate, managerial and supervisory posts in a specified credit institution, financial company, payment institution or electronic money institution, for a period from 6 months to 3 years, in the cases of offences provided for in Article 94, or from 1 year to 10 years, in the cases of offences provided for in Article 95;</p>	<p>contraordenações previstas nos artigos 94.º e 95.º as seguintes sanções acessórias, em função da gravidade da infração e da culpa do agente:</p> <p>d) Inibição do exercício de cargos sociais e de funções de administração, direção, gerência ou chefia em instituições de crédito, sociedades financeiras, instituições de pagamento e instituições de moeda eletrónica, por um período de seis meses a três anos, no caso de infrações previstas no artigo 94.º, ou de 1 a 10 anos, no caso de infrações previstas no artigo 95.º;</p>	
Art. 3(3) 4th subpara a.	Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information, as laid down in this paragraph.	São aplicadas medidas semelhantes às pessoas singulares ou colectivas que não cumpram a obrigação de fornecer previamente as informações referidas no presente número.	<p>Art. 94(1)(m) of RJPME</p> <p>Art. 210(i) and Art. 105(1)(a) of the RGIC</p>	<p>RJPME Article 94(1)(m) Offences</p> <p>1. The following offences are punishable by a fine of EUR 3000 to EUR 1 500.000 and of EUR 1000 to EUR 500.000, depending on whether the fines are applied to a legal person or to a natural person:</p>	<p>RJPME Artigo 94.º, n.º 1, alínea m) Infrações</p> <p>1. São puníveis com coima de € 3000 a € 1 500 000 ou de € 1000 a € 500 000, consoante seja aplicada a ente coletivo ou a pessoa singular, as seguintes infrações:</p> <p>m) As condutas previstas e</p>	<p>CONFORM</p> <p>Article 94(1)(m) of RJPME and Article 210(i) and Article 105(1)(a) of the RGICSF transpose Article 3(3), fourth subparagraph of the Directive.</p> <p>The Portuguese law does not contain a provision corresponding explicitly to Article 3(3), fourth subparagraph of the Directive. However, the Directive requirement can be inferred from Article 94(1)(m) of RJPME and from general provisions of the RGICSF.</p>

Directive 2009/110/EC		National Implementing Measures	Conformity Assessment	
		<p>SF</p> <p>m) The conducts provided for and pursued in points (a), (b), (d), (e), (f), (i) and (l) of Article 210 of the RGICSF, when carried out within the activity of the payment institutions and electronic money institutions.</p> <p style="text-align: center;">RGICSF Article 210(i) Fines</p> <p>The following offences are punishable by a fine of EUR 3000 to EUR 1 500.000 and of EUR 1000 to EUR 500.000, depending on whether the fines are applied to a legal person or to a natural person:</p> <p>i) Failure to provide the Bank of Portugal with the required information and communications within the established time limits, and the provision of incomplete information;</p>	<p>punidas nas alíneas a), b), d), e), f), i) e l) do artigo 210.º do RGICSF, quando praticadas no âmbito da atividade das instituições de pagamento e das instituições de moeda eletrónica;</p> <p style="text-align: center;">RGICSF Artigo 210.º, alínea i) Coimas</p> <p>São puníveis com coima de € 3000 a € 1 500 000 e de € 1000 a € 500 000, consoante seja aplicada a ente colectivo ou a pessoa singular, as infracções adiante referidas:</p> <p>i) A omissão de informações e comunicações devidas ao Banco de Portugal, nos prazos estabelecidos, e a prestação de informações incompletas;</p> <p style="text-align: center;">RGICSF Artigo 105.º, n.º 1, alínea a) Inibição dos direitos de</p>	<p>According to Article 210(i) of the RGICSF, <i>the failure to provide the Bank of Portugal with the required information and communications</i> within the established time limits, and the provision of incomplete information is punishable by a fine of EUR 3 000 to EUR 1 5 000 000 and of EUR 1 000 to EUR 500 000, depending on whether the fines are applied to a legal person or to a natural person.</p> <p>Article 94(1)(m) of RJPME cross-refers, <i>inter alia</i>, to Article 210(i) of the RGICSF setting out that this type of conducts are also punishable under the same terms when carried out within the activity of the payment institutions and electronic money institutions.</p> <p>Furthermore, according to Article 105(1)(a) of the RGICSF, if the interested party did not comply with the <i>obligation of communication</i> provided for in Article 102 (“any natural or legal person who proposes to hold directly or indirectly a qualifying holding in a credit institution shall first inform the Bank of Portugal of his intention” Article 102(1) of the RGICSF), the Bank of Portugal can set out <i>the prohibition to exercise the voting rights</i> corresponding to a qualified holding. This prohibition shall be carried out as deemed <i>necessary and appropriate</i> to prevent the exercising of influence over the management, obtained through the fact which resulted in an acquisition or an increase of the mentioned holding.</p>

Directive 2009/110/EC			National Implementing Measures		Conformity Assessment	
				<p>RGICSF Article 105(1)(a) Prohibition of voting rights</p> <p>1. Notwithstanding other applicable sanctions and unless otherwise provided in the following paragraph, the Bank of Portugal can set out the prohibition to exercise the voting rights corresponding to a qualified holding, as deemed necessary and appropriate to prevent the exercising of influence over the management, obtained through the fact which resulted in an acquisition or an increase of the mentioned holding, provided the following situations take place:</p> <p>a) The interested party did not comply with the obligation of communication provided for in Article 102.</p>	<p>voto</p> <p>1. Sem prejuízo de outras sanções aplicáveis e salvo o disposto no número seguinte, o Banco de Portugal pode determinar a inibição do exercício dos direitos de voto integrantes de uma participação qualificada, na medida necessária e adequada para impedir a influência na gestão que foi obtida através do acto de que tenha resultado a aquisição ou o aumento da referida participação, desde que se verifique alguma das seguintes situações:</p> <p>a) Não ter o interessado cumprido a obrigação de comunicação prevista no artigo 102.º;</p>	<p>As mentioned above, according to Article 33-H(6) of RJPME, Article 105(1)(a) of the RGICSF is also applicable to electronic money institutions, with the necessary adaptations.</p> <p>In sum, in accordance with the Directive requirements, RJPME and the RGICSF provide also for measures similar to those set out in Article 3(3), third subparagraph of the Directive which are applicable to natural or legal persons who fail to comply with the obligation to provide prior information.</p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 3(3), fourth subparagraph of the Directive.</p>
Art. 3(3) 5th subpar a.	If a holding is acquired despite the opposition of the competent authorities, those authorities shall,	Se a participação for adquirida apesar da oposição das autoridades competentes, estas,	Art. 105(1)(c), (6) and	<p>RGICSF Article 105(1)(c), (6) and (7) Prohibition of voting</p>	<p>RGICSF Artigo 105.º, n.º 1, alínea c), n.ºs 6 e 7 Inibição dos direitos de</p>	CONFORM Article 95(v) and Article 96(1)(c) of RJPME and Article 105(1)(c), (6) and (7) and Article

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment
regardless of any other sanction to be adopted, provide for the exercise of the voting rights of the acquirer to be suspended, the nullity of votes cast or the possibility of annulling those votes.	independentemente da aplicação de outras sanções, determinam a suspensão do exercício dos direitos de voto do adquirente ou a nulidade ou anulabilidade dos votos expressos.	(7), of the RGICSF	<p>rights</p> <p>1. Notwithstanding other applicable sanctions and unless otherwise provided in the following paragraph, the Bank of Portugal can set out the prohibition to exercise the voting rights corresponding to a qualified holding, as deemed necessary and appropriate to prevent the exercising of influence over the management, obtained through the fact which resulted in an acquisition or an increase of the mentioned holding, provided the following situations take place:</p> <p>c) the Bank of Portugal opposed to the plan of acquisition or increase of qualifying holding that was communicated.</p> <p>6. The chairman of the shareholders meeting, to whom the decisions referred to in the previous paragraph are communicated, must ensure, in the performance of his functions, that the</p>	<p>voto</p> <p>1. Sem prejuízo de outras sanções aplicáveis e salvo o disposto no número seguinte, o Banco de Portugal pode determinar a inibição do exercício dos direitos de voto integrantes de uma participação qualificada, na medida necessária e adequada para impedir a influência na gestão que foi obtida através do acto de que tenha resultado a aquisição ou o aumento da referida participação, desde que se verifique alguma das seguintes situações:</p> <p>c) Ter-se o Banco de Portugal oposto ao projecto de aquisição ou de aumento da participação comunicado.</p> <p>6. O presidente da assembleia geral a quem sejam comunicadas as decisões a que se refere o número anterior deve, no exercício das suas funções, assegurar que os direitos de voto inibidos não são, em qualquer circunstância,</p>	<p>211(o) of the RGICSF transpose Article 3(3) fifth subparagraph of the Directive.</p> <p>The Portuguese law does not contain a provision corresponding explicitly to Article 3(3), fifth subparagraph of the Directive. However, the Directive requirements are reflected in a diffuse manner through several national provisions of RJPME and the RGICSF.</p> <p>Firstly, if the Bank of Portugal opposed to the plan of acquisition or increase of qualifying holding that was communicated, it can set out the prohibition to exercise the voting rights as set out in Article 105(1)(c) of the RGICSF.</p> <p>Moreover, the chairman of the shareholders meeting, to whom the decisions as regards prohibition to exercise voting rights are communicated, must ensure that the prohibited voting rights are not exercised, under any circumstances, in the shareholders meeting (Article 105(6) of the RGICSF). If it is verified that the prohibited voting rights have been nevertheless exercised, the decision taken shall be annulled, unless there is evidence that it would have been taken and would have been similar even if the said rights had not been exercised (Article 105(7) of the RGICSF).</p> <p>In sum, in accordance with the Directive requirements, RJPME and the RGICSF set out that the authorities shall provide for the exercise of the voting rights of the acquirer to be suspended, the nullity of votes cast or the</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
				<p>prohibited voting rights are not exercised, under any circumstances, in the shareholders meeting.</p> <p>7. If, notwithstanding the previous paragraph, it is verified that the prohibited voting rights have been exercised, the decision taken shall be annulled, unless there is evidence that it would have been taken and would have been similar even if the said rights had not been exercised.</p>	<p>exercidos na assembleia de accionistas.</p> <p>7. Se, não obstante o disposto no número anterior, se verificar que foram exercidos direitos de voto sujeitos a inibição, a deliberação tomada é anulável, salvo se se provar que teria sido tomada e teria sido idêntica ainda que esses direitos não tivessem sido exercidos.</p>	<p>possibility of annulling those votes, if a holding is acquired despite the opposition of the competent authorities.</p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 3(3), fifth subparagraph of the Directive.</p>
Art. 3(3) 6th subpar a.	The Member States may waive or allow their competent authorities to waive the application of all or part of the obligations pursuant to this paragraph in respect of electronic money institutions that carry out one or more of the activities listed in Article 6(1)(e).	Os Estados-Membros podem dispensar as instituições de moeda electrónica que exercem uma ou várias das actividades enumeradas na alínea e) do n.º 1 do artigo 6.º da totalidade ou parte das obrigações decorrentes do presente número ou autorizar as respectivas autoridades competentes a dispensarem aquelas instituições dessas obrigações.	NA/	N/A	N/A	Portugal has not adopted the option set out in Article 3(3), sixth subparagraph of the Directive.
Art. 3(4)	4. Member States shall allow electronic money	4. Os Estados-Membros devem autorizar as	Art. 18-	Article 18-A(1), (2) and (4)	Artigo 18.º -A, n.ºs 1, 2 e 4 Distribuição e reembolso	CONFORM Article 18-A(1), (2) and (4) and Article 23-A

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment
institutions to distribute and redeem electronic money through natural or legal persons which act on their behalf. Where the electronic money institution wishes to distribute electronic money in another Member State by engaging such a natural or legal person, it shall follow the procedure set out in Article 25 of Directive 2007/64/EC.	instituições de moeda electrónica a distribuir e reembolsar moeda electrónica através de pessoas singulares ou colectivas que ajam em seu nome. Aplicam-se às instituições de moeda electrónica que pretendam distribuir moeda electrónica noutro Estado-Membro mediante recurso aos serviços das referidas pessoas singulares ou colectivas os procedimentos referidos no artigo 25.º da Directiva 2007/64/CE.	A(1), (2) and (4) and Art. 23-A of RJPME	<p>Distribution and redemption of electronic money by representatives of the electronic money institutions</p> <p>1. Electronic money institutions can distribute and redeem electronic money through natural or legal persons which act on their behalf and under their responsibility.</p> <p>2. The agents to which the electronic money institutions refer in order to provide payment services under the previous article can also distribute and redeem electronic money on their behalf and under their responsibility.</p> <p>4. Electronic money institutions shall communicate in advance to the Bank of Portugal the name and the address of the entities that are authorised to distribute and redeem electronic money on their behalf and shall transmit immediately any change as regards</p>	<p>de moeda electrónica por representantes de instituições de moeda electrónica</p> <p>1. As instituições de moeda electrónica podem distribuir e reembolsar moeda electrónica através de pessoas singulares ou colectivas que atuem em seu nome e sob a sua responsabilidade.</p> <p>2. Os agentes a quem as instituições de moeda electrónica recorram para prestar serviços de pagamento ao abrigo do artigo anterior podem igualmente distribuir e reembolsar moeda electrónica em nome e sob a responsabilidade delas.</p> <p>4. As instituições de moeda electrónica devem comunicar previamente ao Banco de Portugal o nome e o endereço das entidades autorizadas a distribuir e reembolsar moeda electrónica em seu nome e transmitir –lhe imediatamente qualquer alteração a esses</p>	<p>of RJPME transpose Article 3(4) of the Directive.</p> <p>The first sentence of the Directive provision is reflected in Article 18-A(1) of RJPME. This national provision states, in a more specific manner, that electronic money institutions can distribute and redeem electronic money through natural or legal persons which act on their behalf <i>and under their responsibility</i>.</p> <p>In addition, electronic money institutions shall communicate in advance to the Bank of Portugal the name and the address of the entities that are authorised to distribute and redeem electronic money on their behalf and shall transmit immediately any change as regards these information elements (Article 18-A(4) of RJPME).</p> <p>As regards the second sentence of Article 3(4) of the Directive, the national law sets out that in cases where an electronic money institution with its head office in Portugal wishes to distribute or redeem electronic money in another Member State through the persons mentioned in Article 18-A of RJPME, Article 23 of this act shall be applicable, <i>mutatis mutandis</i> (Article 23-A of RJPME).</p> <p>One should note that Article 23 of RJPME sets out that a payment institution having its head office in Portugal which wishes to provide payment services for the first time in another Member State, in particular by establishing a branch or by engaging an</p>

Directive 2009/110/EC			National Implementing Measures		Conformity Assessment	
			<p>these information elements.</p> <p style="text-align: center;">Article 23-A Distribution and redemption of electronic money in another Member State</p> <p>In cases where an electronic money institution with its head office in Portugal wishes to distribute or redeem electronic money in another Member State through the persons mentioned in Article 18-A, the previous article shall be applicable with the necessary adaptations.</p>	<p>elementos de informação.</p> <p style="text-align: center;">Artigo 23.º -A Distribuição e reembolso de moeda eletrónica noutro Estado membro</p> <p>No caso de uma instituição de moeda eletrónica com sede em Portugal pretender distribuir ou reembolsar moeda eletrónica noutro Estado membro através das pessoas referidas no artigo 18.º -A, será aplicável o disposto no artigo anterior, com as necessárias adaptações</p>	<p>agent, must provide the Bank of Portugal with prior notification of that fact, specifying certain information such as the name and address of the payment institution.</p> <p>The cross-reference to Article 23 in Article 23-A of RJPME reflects, therefore, the cross-reference to Article 25 of Directive 2007/64/EC made in Article 3(4) of the Directive.</p> <p>Consequently, the above mentioned national provisions follow Recital 10 of the Directive where it states that electronic money institutions distribute electronic money, through natural or legal persons on their behalf.</p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 3(4) of the Directive.</p>	
Art. 3(5)	5. Notwithstanding paragraph 4, electronic money institutions shall not issue electronic money through agents. Electronic money institutions shall be allowed to provide payment services referred to in Article 6(1)(a) through agents only if the conditions in Article 17 of Directive 2007/64/EC are	5. Não obstante o disposto no n.º 4, as instituições de moeda eletrónica não podem emitir moeda eletrónica através de agentes. As instituições de moeda eletrónica só são autorizadas a prestar os serviços de pagamento referidos na alínea a) do n.º 1 do artigo 6.º através de agentes nas condições estabelecidas no artigo	Art. 18(1), (2) and (3) and Art. 18-A(2) and (3) of RJPME	<p>Article 18(1) and (2) Agents</p> <p>1. Payment institutions and electronic money institutions may provide payment services through agents, assuming liability for all acts that they carry out.</p> <p>2. When they intend to provide payment services</p>	<p>Artigo 18.º, n.ºs 1 e 2 Agentes</p> <p>1. As instituições de pagamento e as instituições de moeda eletrónica podem prestar serviços de pagamento por intermédio de agentes, assumindo a responsabilidade pela totalidade dos atos</p>	<p>CONFORM</p> <p>Article 18(1), (2) and (3) and Article 18-A(2) and (3) of RJPME transpose Article 3(5) of the Directive.</p> <p>The first requirement of Article 3(5) of the Directive is reflected in Article 18-A(3) of RJPME as it prohibits agents (Article 18-A(2)) and natural or legal persons (Article 18-A(1)) acting on behalf and under the responsibility of electronic money institutions</p>

Directive 2009/110/EC		National Implementing Measures	Conformity Assessment	
met.	17.º da Directiva 2007/64/CE.	<p>through agents, payment institutions and electronic money institutions having their head office in Portugal shall first communicate the following information to the Bank of Portugal:[...]</p> <p>3. After having received the information listed in the previous paragraph, the Bank of Portugal registers the agent in the special register, under the terms set out in Article 20 and 21, unless it considers that that information is incorrect. In this case, it can take measures in order to verify the information.</p> <p>Article 18-A(2) and (3) Distribution and redemption of electronic money by representatives of the electronic money institutions</p> <p>2. The agents to which the electronic money institutions refer in order to provide payment services under the</p>	<p>praticados por eles.</p> <p>2. Caso pretendam prestar serviços de pagamento por intermédio de agentes, as instituições de pagamento e as instituições de moeda eletrónica com sede em Portugal devem comunicar previamente ao Banco de Portugal as seguintes informações:[...]</p> <p>3. Recebidas as informações enumeradas no número anterior, o Banco de Portugal procede à inscrição do agente no registo especial, nos termos dos artigos 20.º e 21.º, a menos que considere que as mesmas estão incorretas, caso em que pode tomar medidas tendentes a verificar as informações.</p> <p>Artigo 18.º -A, n.ºs 2 e 3 Distribuição e reembolso de moeda eletrónica por representantes de instituições de moeda eletrónica</p> <p>2. Os agentes a quem as</p>	<p>to issue electronic money.</p> <p>As regards the second sentence of Article 3(5) of the Directive, Article 18(1) of RJPME states that electronic money institutions may provide payment services through agents, assuming liability for all acts that they carry out. Article 18(2) of RJPME lists all the information that electronic money institutions having their head office in Portugal must communicate to the Bank of Portugal when they intend to provide payment services through agents. Article 18(2) of RJPME corresponds therefore to Article 17 of Directive 2007/64/EC.</p> <p>The payment services provided by electronic money institutions mentioned in Article 18 are those set out in Article 8-A of RJPME</p> <p>Furthermore, the national law requires that after having received the information listed in Article 18(2) of RJPME, the Bank of Portugal registers the agent in the special register.</p> <p>Moreover, RJPME sets out that the agents to which the electronic money institutions refer in order to provide payment services under Article 18 of this act can also distribute and redeem electronic money on their behalf and under their responsibility (Article 18-A(2) of RJPME).</p> <p>Article 18 of RJPME, on <i>agents</i>, states that electronic money institutions may provide services through agents, assuming liability for all acts performed by them. Article 18 of</p>

Directive 2009/110/EC			National Implementing Measures		Conformity Assessment	
				<p>previous article can also distribute and redeem electronic money on their behalf and under their responsibility.</p> <p>3. The representatives mentioned in paragraph 1 and in the previous paragraph shall be forbidden to issue electronic money.</p>	<p>instituições de moeda eletrónica recorram para prestar serviços de pagamento ao abrigo do artigo anterior podem igualmente distribuir e reembolsar moeda eletrónica em nome e sob a responsabilidade delas.</p> <p>3. É proibido aos representantes mencionados no n.º 1 e no número anterior emitir moeda eletrónica.</p>	<p>RJPME also lists all the information that electronic money institutions having their head office in Portugal must communicate to the Bank of Portugal when they intend to provide payment services through agents. Article 18 of RJPME corresponds therefore also to Article 17 of Directive 2007/64/EC.</p> <p>Consequently, Article 18-A(2) of RJPME follows Recital 10 of the Directive where it states that <i>while electronic money institutions should not be permitted to issue electronic money through agents, they should none the less be permitted to provide the payment services listed in the Annex to Directive 2007/64/EC through agents, where the conditions in Article 17 of that Directive are met.</i></p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 3(5) of the Directive.</p>
Art. 4	<p><i>Article 4</i> Initial capital</p> <p>Member States shall require electronic money institutions to hold, at the time of authorisation, initial capital, comprised of the items set out in Article 57(a) and (b) of Directive 2006/48/EC, of not less than EUR 350000.</p>	<p><i>Artigo 4.º</i> Capital inicial</p> <p>Os Estados-Membros devem exigir que as instituições de moeda eletrónica detenham, no momento da autorização, um capital inicial, constituído pelos elementos constantes das alíneas a) e b) do artigo 57.º da Directiva 2006/48/CE, de pelo</p>	Art. 33-B(1) and (2) of RJPME	<p>Article 33-B(1) and (2) Minimum capital</p> <p>1. Electronic money institutions with their head office in Portugal shall at all times hold capital of not less than EUR 350 000.</p> <p>2. The minimum capital mentioned in the previous paragraph is comprised of the items set out in Article</p>	<p>Artigo 33.º -B, n.ºs 1 e 2 Capital mínimo</p> <p>1. As instituições de moeda eletrónica com sede em Portugal devem, a todo o tempo, possuir capital não inferior a € 350 000.</p> <p>2. O capital mínimo a que se refere o número anterior é constituído pelos elementos definidos nas</p>	<p>CONFORM</p> <p>Article 33-B(1) and (2) of RJPME transposes Article 4 of the Directive.</p> <p>The national law requires that electronic money institutions with their head office in Portugal shall at all times hold capital of not less than EUR 350 000 (Article 33-B(1) of RJPME).</p> <p>Moreover, RJPME directly refers to the EU law requirements, as it states that the minimum capital mentioned in Article 33-</p>

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
		menos 350 000 EUR.		57(a) and (b) of Directive 2006/48/EC of the European Parliament and of the Council, of 14 June.	alíneas a) e b) do artigo 57.º da Diretiva n.º 2006/48/CE, do Parlamento Europeu e do Conselho, de 14 de junho.	<p>B(1) of RJPME includes the items set out in Article 57(a) and (b) of Directive 2006/48/EC.</p> <p>The national law is therefore in compliance with the terms set out in Recital 11 of the Directive, where it refers to the need to <i>ensure an appropriate level of consumer protection and the sound and prudent operation of electronic money institutions.</i></p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 4 of the Directive.</p>
Art. 5(1)	<p><i>Article 5</i> Own funds</p> <p>1. The electronic money institution's own funds, as set out in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC shall not fall below the amount required under paragraphs 2 to 5 of this Article or under Article 4 of this Directive, whichever the higher.</p>	<p><i>Artigo 5.º</i> Fundos próprios</p> <p>1. Os fundos próprios das instituições de moeda electrónica, definidos nos artigos 57.º a 61.º, 63.º, 64.º e 66.º da Directiva 2006/48/CE, não podem tornar-se inferiores ao montante referido nos n.ºs 2 a 5 do presente artigo ou no artigo 4.º da presente directiva, consoante o que for mais elevado.</p>	<p>Art. 33-C(1) and (2) of RJPME</p> <p>Art. 96(1) of the RGICSF</p>	<p>RJPME Article 33-C(1) and (2) Own funds</p> <p>1. The electronic money institution's own funds shall not fall below the amount of the minimum capital required under the terms of the previous article or the amount that would result from the application of the following article, whichever the higher.</p> <p>2. The rules on the composition of electronic money institutions' own funds shall be determined by a notice of the Bank of</p>	<p>RJPME Artigo 33.º -C, n.ºs 1 e 2 Fundos próprios</p> <p>1. Os fundos próprios da instituição de moeda electrónica não devem ser inferiores ao valor do capital mínimo exigido nos termos do artigo anterior ou ao montante que resultar da aplicação do artigo seguinte, consoante o que for mais elevado.</p> <p>2. As regras sobre a composição dos fundos próprios das instituições de moeda electrónica são as fixadas por aviso do</p>	<p>CONFORM</p> <p>Article 33-C(1) and (2) of RJPME and Article 96(1) of the RGICSF transpose Article 5(1) of the Directive.</p> <p>The national law provides that electronic money institution's own funds shall not fall below the amount of the minimum capital required under the terms of Article 33-B of RJPME or the amount that would result from the application of Article 33-D of this act, whichever the higher.</p> <p>One should note that Article 33-B and Article 33-D of RJPME, which are cross-referred to in Article 33-C(1) of this act, correspond to Article 4 and to Article 5(2) to (5) of the Directive, respectively.</p> <p>On the contrary to the Directive, the national provision does not cross-refer to the terms in</p>

Directive 2009/110/EC			National Implementing Measures		Conformity Assessment
			Portugal. RGICSF Article 96(1) Own funds 1. The Bank of Portugal shall set out, by notice, the elements that can be included in the own funds of the credit institutions and the branches mentioned in Article 57, defining the characteristics that they shall have.	Banco de Portugal. RGICSF Artigo 96.º, n.º 1 Fundos próprios 1. O Banco de Portugal, por aviso, fixará os elementos que podem integrar os fundos próprios das instituições de crédito e das sucursais referidas no artigo 57.º, definindo as características que devem ter.	<p>which the electronic money institution's own funds are defined.</p> <p>However, Article 33-C(2) of RJPME sets out that the rules on the composition of electronic money institutions' own funds shall be determined by a notice of the Bank of Portugal. In addition, Article 96(1) of the RGICSF lays down a general provision stating that the Bank of Portugal sets out, by notice, the elements that can be included in the own funds of the credit institutions and the branches by defining also the characteristics that they shall have.</p> <p>It should also be noted that the national provision does not make explicit reference to the calculation methods as set out in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC. Nonetheless, the national provisions mentioned in the following paragraphs do take proper account of the principles and methods contained in the above mentioned articles of Directive 2006/48/EC.</p> <p>The national law follows Recital 11 of the Directive as it takes into account the specificity of electronic money, i.e., an additional method for calculating ongoing capital is provided. In addition, provision is made for electronic money institutions to be required to keep the funds of electronic money holders separate from the funds of the electronic money institution for other business activities.</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						On the basis of the above findings, the Portuguese law is considered conform to Article 5(1) of the Directive.
Art. 5(2) 1st subpar a.	2. In regard to the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with one of the three methods (A, B or C) set out in Article 8(1) and (2) of Directive 2007/64/EC. The appropriate method shall be determined by the competent authorities in accordance with national legislation.	2. Para as actividades referidas na alínea a) do n.º 1 do artigo 6.º não associadas à emissão de moeda electrónica, os requisitos de fundos próprios das instituições de moeda electrónica são calculados segundo um dos três métodos (A, B ou C) previstos nos n.ºs 1 e 2 do artigo 8.º da Directiva 2007/64/CE. O método adequado é determinado pelas autoridades competentes de acordo com a legislação nacional.	Art. 33-D(3) and (5) and Art. 31(1), (2) and (4) of RJPM E	<p>Article 33-D(3) and (5) Own funds requirements</p> <p>3. As regards the activity of providing payment services mentioned in Article 4 that are not linked to the issuance of electronic money, the own funds requirements of electronic money institutions are those that result from the application of one of the three methods laid down in the annex to this law, which is an integral part thereof. Article 31(2) and (4) shall be applicable to this.</p> <p>5. Notwithstanding the preceding paragraphs and Articles 33-B and 33-C, the Bank of Portugal may adopt the procedures provided for in Article 6 in order to ensure that electronic money institutions allocate to the operation of their activity of issuing electronic money and of provision of</p>	<p>Artigo 33.º -D, n.ºs 3 e 5 Requisitos de fundos próprios</p> <p>3. No que diz respeito à atividade de prestação de serviços de pagamento referidos no artigo 4.º não associados à emissão de moeda electrónica, os requisitos de fundos próprios das instituições de moeda electrónica são os que resultarem da aplicação de um dos três métodos descritos no anexo ao presente regime que dele faz parte integrante, aplicando -se o disposto nos n.ºs 2 e 4 do artigo 31.º.</p> <p>5. Não obstante o disposto nos números anteriores e nos artigos 33.º -B e 33.º -C, o Banco de Portugal pode adotar os procedimentos previstos no artigo 6.º, a fim de assegurar que as instituições de moeda electrónica afetam à</p>	<p>CONFORM</p> <p>Article 33-D(3) and (5) and Article 31(1), (2) and (4) of RJPM E transpose Article 5(2), first subparagraph of the Directive.</p> <p>The national law reflects the Directive requirement in a clear manner.</p> <p>Article 33-D(3) of RJPM E states that, as regards the activity of providing payment services mentioned in Article 4 of this act that are not linked to the issuance of electronic money, the own funds requirements of electronic money institutions are those that result from the application of one of the three methods laid down in the annex to RJPM E.</p> <p>One should note that, as in Annex to Directive 2007/64/EC, Article 4 of RJPM E lists the activities that can be considered as payment services. Therefore, the cross-reference to Article 4 of RJPM E corresponds to that made to Article 6(1)(a) of the Directive.</p> <p>Moreover, the reference to the three methods laid down in the annex to RJPM E (more specifically, Points I and II) corresponds to the cross-reference made in the Directive, to the three methods (A, B or C) set out in Article 8(1) and (2) of Directive 2007/64/EC.</p>

Directive 2009/110/EC		National Implementing Measures	Conformity Assessment
		<p>payment services a sufficient level of own funds, in particular where the activities referred to in Article 8-A(2) prejudice or may prejudice the financial soundness of the payment institution.</p> <p>Article 31(1), (2) and (4) Own funds requirements</p> <p>1. The payment institution's own funds shall, at all times, be at least the amount resulting from the application of one of the three methods described in Annex II to the Decree Law approving this Law.</p> <p>2. For the purposes of the preceding paragraph, it is for the Bank of Portugal to define the method to be applied for each payment institution.</p> <p>4. Notwithstanding the preceding paragraphs and Articles 29 and 30, the Bank of Portugal may adopt the procedures provided for in Article 6 in</p>	<p>exploração da sua atividade de emissão de moeda eletrónica e de prestação de serviços de pagamento um nível suficiente de fundos próprios, designadamente quando as atividades referidas no n.º 2 do artigo 8.º -A prejudiquem ou possam prejudicar a solidez financeira das instituições.</p> <p>Artigo 31.º, n.ºs 1, 2 e 4 Requisitos de fundos próprios</p> <p>1. Os fundos próprios das instituições de pagamento devem, em permanência, ser iguais ou superiores ao montante que resultar da aplicação de um dos três métodos descritos no anexo ao presente regime, e que dele faz parte integrante.</p> <p>2. Para efeitos do disposto no número anterior, compete ao Banco de Portugal definir o método a aplicar por cada</p> <p>In addition, the national law applies the legal regime set out for payment institutions in Article 31(2) and (4) of RJPME to Article 33-D(3) of this act.</p> <p>Therefore, by analogy, it is for the Bank of Portugal to define the method to be applied for each electronic money institution (Article 31(2)). The requirement set out in the last sentence of Article 5(2), first subparagraph of the Directive is consequently followed by RJPME.</p> <p>The cross-reference made in Article 33-D of RJPME to Article 31(4) of this act results in a reiteration. In fact, the requirement set out in Article 31(4) of RJPME is repeated in Article 33-D(5) of this act, the first provision being addressed to payment institutions and the latter to electronic money institutions.</p> <p>Therefore, Although Article 33-D(3) of RJPME cross-refers to Article 31(4) of this act, it is more appropriate to refer directly to Article 33-D(5) of RJPME.</p> <p>According to Article 33-D(5) of RJPME, the Bank of Portugal may adopt the procedures provided for in Article 6, which regulates the powers of the competent authority, in order to ensure that electronic money institutions allocate to the operation of their activity of issuing electronic money and providing for payment services a sufficient level of own funds, in particular where the activities referred to in Article 8-A(2) of RJPME</p>

Directive 2009/110/EC			National Implementing Measures		Conformity Assessment	
				<p>order to ensure that payment institutions allocate to the operation of their activity of providing payment services a sufficient level of own funds, in particular where the activities referred to in Article 8(2) prejudice or may prejudice the financial soundness of the payment institution.</p>	<p>instituição de pagamento.</p> <p>4. Não obstante o disposto nos números anteriores e nos artigos 29.º e 30.º, o Banco de Portugal pode adotar os procedimentos previstos no artigo 6.º, a fim de assegurar que as instituições de pagamento afetam à exploração da sua atividade de prestação de serviços de pagamento um nível suficiente de fundos próprios, designadamente quando as atividades referidas no n.º 2 do artigo 8.º prejudiquem ou possam prejudicar a solidez financeira da instituição de pagamento.</p>	<p>prejudice or may prejudice the financial soundness of the payment institution.</p> <p>One should note that Article 8-A(2) of RJPME corresponds to Article 6(1) of the Directive, i.e., to the list of activities that electronic money institutions shall be entitled to engage in.</p> <p>The above mentioned national provisions follow, therefore, Recital 11 of the Directive.</p> <p>On the basis of the above findings, the Portuguese law is considered conform to Article 5(2), first subparagraph of the Directive.</p>
Art. 5(2) 2nd subpar a.	In regard to the activity of issuing electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with Method D as set out in paragraph 3.	Para a actividade de emissão de moeda electrónica, os requisitos de fundos próprios das instituições de moeda electrónica são calculados segundo o método D estabelecido no n.º 3.	Art. 33-D(2) of RJPM E	<p>Article 33-D(2)</p> <p>Own funds requirements</p> <p>2. In regard to the activity of issuing electronic money, the own funds requirements of electronic money institutions shall amount to at least 2 % of the average outstanding electronic money.</p>	<p>Artigo 33.º -D, n.º 2</p> <p>Requisitos de fundos próprios</p> <p>2. No que diz respeito à atividade de emissão de moeda eletrónica, os requisitos de fundos próprios das instituições de moeda eletrónica devem corresponder a pelo menos 2 % do valor médio da moeda eletrónica em circulação.</p>	<p>CONFORM</p> <p>Article 33-D(2) of RJPME transposes Article 5(2), second subparagraph of the Directive.</p> <p>The national law sets out that, in regard to the activity of issuing electronic money, the own funds requirements of electronic money institutions shall amount to at least 2 % of the average outstanding electronic money.</p> <p>Article 33-D(2) of RJPME corresponds therefore to the cross-reference to Method D, defined in Article 5(3) of the Directive.</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						Therefore, the Portuguese law is considered conform to Article 5(2), second subparagraph of the Directive
Art. 5(2) 3rd subpar a.	Electronic money institutions shall at all times hold own funds that are at least equal to the sum of the requirements referred to in the first and second subparagraphs.	As instituições de moeda electrónica devem deter a todo o momento fundos próprios superiores ou iguais à soma dos requisitos referidos nos primeiro e segundo parágrafos.	Art. 33-D(1) of RJPM E	<p>Article 33-D(1) Own funds requirements</p> <p>1. The own funds of electronic money institutions shall at all times be equal or superior to the sum of the requirements mentioned in the following paragraphs.</p>	<p>Artigo 33.º -D, n.º 1 Requisitos de fundos próprios</p> <p>1. Os fundos próprios das instituições de moeda electrónica devem, em permanência, ser iguais ou superiores ao montante que resultar da soma dos requisitos enunciados nos números seguintes.</p>	<p>PARTIALLY CONFORM</p> <p>Article 33-D(1) of RJPM E transposes Article 5(2), third subparagraph of the Directive.</p> <p>In accordance with the Directive, Article 33-D(1) of RJPM E provides that the own funds of electronic money institutions shall at all times be equal or superior to the sum of the requirements mentioned in the following paragraphs.</p> <p>One should note that the national provision refers to <i>the following paragraphs</i>. This can lead to misinterpretation as it includes not only Article 33-D(2) of RJPM E (Article 5(2), second subparagraph of the Directive) but also Article 33-D(3), (4) and (5) of RJPM E which transpose Article 5(2), first subparagraph and Article 5(5) of the Directive.</p> <p>Therefore, the Portuguese law is considered partially conform to Article 5(2), third subparagraph of the Directive.</p>
Art. 5(3)	3. Method D: The own funds of an electronic money institution for the activity of issuing electronic money shall amount to at least 2 % of	3. Método D: os fundos próprios das instituições de moeda electrónica necessários para a actividade da emissão de moeda electrónica devem	Art. 33-D(2) of RJPM E	<p>Article 33-D(2) Own funds requirements</p> <p>2. In regard to the activity of issuing electronic money, the own funds</p>	<p>Artigo 33.º -D, n.º 2 Requisitos de fundos próprios</p> <p>2. No que diz respeito à actividade de emissão de</p>	<p>CONFORM</p> <p>Article 33-D(2) of RJPM E transposes Article 5(3) of the Directive.</p> <p>The national law sets out that, in regard to the</p>

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
	the average outstanding electronic money.	corresponder pelo menos a 2 % do valor médio da moeda electrónica em circulação.		requirements of electronic money institutions shall amount to at least 2 % of the average outstanding electronic money.	moeda eletrónica, os requisitos de fundos próprios das instituições de moeda eletrónica devem corresponder a pelo menos 2 % do valor médio da moeda eletrónica em circulação.	<p>activity of issuing electronic money, the own funds requirements of electronic money institutions shall amount to at least 2 % of the average outstanding electronic money.</p> <p>Article 33-D(2) of RJPME therefore corresponds to both Article 5(2), second subparagraph and Article 5(3) of the Directive.</p> <p>As mentioned above, the national law complies with Recital 11 of the Directive.</p> <p>Therefore, the Portuguese law is considered conform to Article 5(3) of the Directive.</p>
Art. 5(4)	4. Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to calculate its own funds requirements on the basis of a representative portion assumed to be used for the issuance of electronic money, provided such a	4. Caso uma instituição de moeda electrónica exerça uma das actividades referidas na alínea a) do n.º 1 do artigo 6.º não associadas à emissão de moeda electrónica ou uma das actividades referidas nas alíneas b) a e) do n.º 1 do artigo 6.º e o montante da moeda electrónica em circulação não seja previamente conhecido, as autoridades competentes autorizam a instituição de moeda electrónica em causa a calcular os seus requisitos de fundos próprios com base numa parte representativa que se presume ser a utilizada	Art. 33-E(2) and Art. 32(4) and (5) of RJPME	<p>Article 33-E(2) Fund protection requirements</p> <p>2. Article 32 shall be applicable to the activity of providing payment services mentioned in Article 4 that are not linked to the issuance of electronic money.</p> <p>Article 32(4) and (5) Fund protection requirements</p> <p>4. Where the portion referred to in the preceding paragraph is</p>	<p>Artigo 33.º -E, n.º 2 Requisitos de proteção dos fundos</p> <p>2. À atividade de prestação de serviços de pagamento referidos no artigo 4.º não associados à emissão de moeda eletrónica aplica -se o disposto no artigo 32.º.</p> <p>Artigo 32.º, n.ºs 4 e 5 Requisitos de proteção dos fundos</p> <p>4. Caso a fração prevista no número anterior seja variável, ou não possa ser</p>	PARTIALLY CONFORM
						<p>Article 33-E(2) and Article 32(4) and (5) of RJPME transposes Article 5(4) of the Directive.</p> <p>Article 32(4) of RJPME states that where the portion referred to in Article 32(3) of this act is variable, or unknown in advance, the payment institution must ensure compliance with the fund protection requirements on the basis of a representative portion which the payment institution assumes to be used for payment services provided such a representative portion can be reasonably estimated on the basis of historical data. As Article 32(4) of RJPME is applied to electronic money institutions through cross-reference (see Article 33-E(2)), it can be concluded that the national law follows the requirements set out in the first sentence of</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where an electronic money institution has not completed a sufficient period of business, its own funds requirements shall be calculated on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.	para a emissão de moeda electrónica, desde que essa parte representativa possa razoavelmente ser estimada com base em dados históricos e a contento das autoridades competentes. Caso uma instituição de moeda electrónica não tenha exercido um período de actividade suficiente, o cálculo dos seus requisitos de fundos próprios é feito com base na estimativa da moeda electrónica em circulação que resultar do seu plano de actividades, sob reserva de eventuais ajustamentos a esse plano exigidos pelas autoridades competentes.	variable, or unknown in advance, the payment institution must ensure compliance with the fund protection requirements on the basis of a representative portion which the payment institution assumes to be used for payment services provided such a representative portion can be reasonably estimated on the basis of historical data. 5. The Bank of Portugal shall ensure the suitability of the estimates made and procedures implemented by the payment institution in compliance with this article, and may set out any alterations or adjustments which it considers necessary.	determinada com antecedência, a instituição de pagamento deve assegurar o cumprimento dos requisitos de proteção dos fundos com base numa fração representativa que a instituição de pagamento presume venha a ser utilizada para serviços de pagamento, desde que essa fração representativa possa ser estimada razoavelmente com base em dados históricos. 5. O Banco de Portugal avalia a adequação das estimativas realizadas e dos procedimentos implementados pela instituição de pagamento em cumprimento do disposto no presente artigo, podendo determinar as alterações ou ajustamentos que considerar necessários.	Article 5(4) of the Directive. One should mention that Article 32(3), which is cross-referred to in Article 32(4) of RJPME, states that where a payment institution receives funds a portion of which is to be used in future payment transactions with the remaining amount to be used for non-payment services, that portion of the funds to be used in future payment transactions shall also be subject to the requirements that ensure protection of the funds. Article 32(5) of RJPME sets out that the Bank of Portugal shall ensure the suitability of the estimates made and procedures implemented by the payment institution, and may set out any alterations or adjustments which it considers necessary. Therefore, the Directive requirement as regards the satisfaction of the competent authorities is fulfilled. Moreover, Article 32(5) of RJPME does not directly require that the own funds requirements shall be calculated on the basis of projected outstanding electronic money evidenced where the electronic money institutions have not completed a sufficient period of business. However, the reference to the <i>suitability of the estimates made and procedures implemented by the payment institution</i> can be considered as covering the cases provided for in the last sentence of

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						<p>Article 5(4) of the Directive.</p> <p>In sum, the application of Article 32(5) of RJPME to electronic money institutions through cross-reference (see Article 33-E(2)) ensures that the national law follows the requirements set out in the last sentence of Article 5(4) of the Directive.</p> <p>One should note that the national law applies the legal regime set out for payment institutions (Article 32 of RJPME) to electronic money institutions. Article 33-E(2) of RJPME states that Article 32 of this act shall be applicable to the activity of providing payment services mentioned in Article 4 that are not linked to the issuance of electronic money</p> <p>As mentioned above, Article 4 of RJPME lists the activities that can be considered as payment services. Therefore, the cross-reference to Article 4 of RJPME corresponds to that made to Article 6(1)(a) of the Directive.</p> <p>One should note, however, that Article 33-E(2) of RJPME does not cross-refer to the national provisions corresponding to Article 6(1)(b) to (e) of the Directive (Article 8-A(2)(b) to (e) of RJPME). Therefore, since Article 4 of the national provision does not cover these activities, the Portuguese law is considered partially conform to Article 5(4) of the Directive.</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
Art. 5(5)	5. On the basis of an evaluation of the risk-management processes, of the risk loss databases and internal control mechanisms of the electronic money institution, the competent authorities may require the electronic money institution to hold an amount of own funds which is up to 20 % higher than the amount which would result from the application of the relevant method in accordance with paragraph 2, or permit the electronic money institution to hold an amount of own funds which is up to 20 % lower than the amount which would result from the application of the relevant method in accordance with paragraph 2.	5. Com base numa avaliação dos processos de gestão de riscos, das bases de dados sobre riscos de perdas e dos mecanismos de controlo interno da instituição de moeda electrónica, as autoridades competentes podem exigir que a instituição de moeda electrónica detenha um montante de fundos próprios até 20 % superior ao montante resultante da aplicação do método relevante nos termos do n.º 2 ou autorizar um montante de fundos próprios inferior em 20 %, no máximo, a este último valor.	Art. 33-D(4) of RJPM E	Article 33-D(4) Own funds requirements 4. On the basis of an evaluation of the risk-management processes, of the risk loss data and internal control mechanisms, the Bank of Portugal may require or allow, respectively, the electronic money institution to hold an amount of own funds which is at the most 20 % higher or lower than the amount which would result from the application of paragraph (2).	Artigo 33.º -D, n.º 4 Requisitos de fundos próprios 4. Com base numa avaliação dos procedimentos de gestão dos riscos, dos dados relativos aos riscos de perdas e dos mecanismos de controlo interno, o Banco de Portugal pode exigir ou permitir, respetivamente, que a instituição de moeda electrónica detenha um montante de fundos próprios superior ou inferior em 20 %, no máximo, ao montante que resultaria da aplicação do n.º 2.	PARTIALLY CONFORM Article 33-D(4) of RJPM E transposes Article 5(5) of the Directive. In accordance with the Directive provision, the national law sets out that, on the basis of an evaluation of the risk-management processes, of the risk loss data and internal control mechanisms, the Bank of Portugal may require or allow, respectively, the electronic money institution to hold an amount of own funds which is at the most 20 % higher or lower than the amount which would result from the application of Article 33-D(2) of RJPM E. Therefore, Portugal adopted the option set out in Article 5(5) of the Directive. One should note that while the Directive cross-refers broadly to the relevant method in accordance with Article 5(2), including all the methods set out in that paragraph, the national provision cross-refers to Article 33-D(2) of RJPM E which merely concerns Method D. On the basis of the above findings, the Portuguese law is considered partially conform to Article 5(5) of the Directive.
Art. 5(6) intr. wording	6. Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds:	6. Os Estados-Membros tomam as medidas necessárias para impedir a utilização múltipla de elementos elegíveis para o	N/A	N/A	N/A	CONFORM The structure of the national law differs from that of the Directive.

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
		cálculo dos fundos próprios:				However, the requirements set out in Article 5(6)(a) and (b) of the Directive are transposed into the national law in a proper manner. Therefore, the Portuguese law is considered conform to Article 5(6), introductory wording of the Directive.
Art. 5(6)(a)	(a) where the electronic money institution belongs to the same group as another electronic money institution, a credit institution, a payment institution, an investment firm, an asset management company or an insurance or reinsurance undertaking;	a) No caso de instituições de moeda electrónica pertencentes ao mesmo grupo que outra instituição de moeda electrónica, uma instituição de crédito, uma instituição de pagamento, uma empresa de investimentos, uma sociedade de gestão de activos ou uma empresa de seguros ou resseguros;	Art. 33-C(4) of RJPM E	Article 33-C(4) Own funds 4. Where the electronic money institution belongs to the same group as another electronic money institution, a credit institution, a payment institution, a financial company or an insurance undertaking, the multiple use of elements eligible for own funds is not allowed.	Artigo 33.º -C, n.º 4 Fundos próprios 4. Caso a instituição de moeda electrónica pertença ao mesmo grupo de outra instituição de moeda electrónica, instituição de crédito, instituição de pagamento, sociedade financeira ou empresa de seguros, não é permitida a utilização múltipla de elementos elegíveis para os fundos próprios.	PARTIALLY CONFORM Article 33-C(4) of RJPM E transposes Article 5(6)(a) of the Directive. The national law sets out that, where the electronic money institution belongs to the same group as another electronic money institution, a credit institution, a payment institution, a financial company or an insurance undertaking, the multiple use of elements eligible for own funds is not allowed. One should note that while Article 5(6)(a) of the Directive refers to an <i>investment firm</i> , an <i>asset management company</i> or an <i>insurance or reinsurance undertaking</i> , the national provision refers to <i>financial company</i> or an <i>insurance undertaking</i> . Financial companies can be defined as companies that are not credit institutions and whose main activity is to carry out one of the activities mentioned in Article 4(1)(b) to (i) of the RGICSF, such as payment services, advice or portfolio management of securities or other business activities etc. Money-market mediating companies or bureaux de change

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						<p>are some examples of financial companies.</p> <p>Therefore, the reference to financial companies made in the national law covers the term <i>asset management company</i> set out in the Directive provision.</p> <p>Moreover, the mere reference to <i>financial company</i> in Article 33-C(4) of RJPME can be considered as also covering <i>investment firms</i>. According to Article 6(1)(d) of the RGICSF, the companies managing investment funds can be considered as financial companies.</p> <p>Finally, the national law merely refers to <i>insurance undertaking</i> while the Directive refers to <i>insurance or reinsurance undertakings</i>. Since these two entities can not be equated, the Portuguese law is considered partially conform to Article 5(6)(a) of the Directive.</p>
Art. 5(6)(b)	(b) where an electronic money institution carries out activities other than the issuance of electronic money.	b) Às instituições de moeda electrónica que exerçam actividades diferentes da emissão de moeda electrónica.	Art. 33-C(5) of RJPME	<p>Article 33-C(5) Own funds</p> <p>5. The multiple use of elements eligible for own funds is also not allowed as regards electronic money institutions carrying out activities other than the issuance of electronic money or than the provision of payment services mentioned in Article 4.</p>	<p>Artigo 33.º -C, n.º 5 Fundos próprios</p> <p>5. A utilização múltipla dos elementos elegíveis para os fundos próprios também não é permitida em relação às instituições de moeda electrónica que exerçam outras actividades distintas da emissão de moeda electrónica ou da prestação dos serviços de pagamento indicados no</p>	<p>PARTIALLY CONFORM</p> <p>Article 33-C(5) of RJPME transposes Article 5(6)(b) of the Directive.</p> <p>In accordance with the Directive, the national provision prohibits the multiple use of elements eligible for own funds as regards electronic money institutions carrying out activities other than the issuance of electronic money (Article 33-C(5) of RJPME).</p> <p>It should be noted that this prohibition also regards electronic money institutions carrying out activities other than the provision of</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
					artigo 4.º.	payment services mentioned in Article 4 of RJPME, i.e. Article 6(1)(a) of the Directive. Therefore, the Portuguese law is considered partially conform to Article 5(6)(b) of the Directive.
Art. 5(7)	7. Where the conditions laid down in Article 69 of Directive 2006/48/EC are met, Member States or their competent authorities may choose not to apply paragraphs 2 and 3 of this Article to electronic money institutions which are included in the consolidated supervision of the parent credit institutions pursuant to Directive 2006/48/EC.	7. Se estiverem preenchidas as condições estabelecidas no artigo 69.º da Directiva 2006/48/CE, os Estados-Membros ou as respectivas autoridades competentes podem optar por não aplicar os n.ºs 2 e 3 do presente artigo às instituições de moeda electrónica incluídas na supervisão numa base consolidada da instituição de crédito que seja a sua empresa-mãe nos termos da Directiva 2006/48/CE.	NA/	N/A	N/A	Portugal has not adopted the option set out in Article 5(7) of the Directive.
Art. 6(1) 1st subpara a.	<i>Article 6 Activities</i> 1. In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:	<i>Artigo 6.º Actividades</i> 1. Para além da emissão de moeda electrónica, as instituições de moeda electrónica são autorizadas a exercer as seguintes actividades:	Art. 8-A(2), intr. wording of RJPME	Article 8-A(2), introductory wording Electronic money institutions 2. Electronic money institutions can also engage in any of the following activities:	Artigo 8.º -A, n.º 2, frase introdutória Instituições de moeda electrónica 2. As instituições de moeda electrónica podem ainda exercer as seguintes actividades:	CONFORM Article 8-A(2), introductory wording of RJPME transposes Article 6(1), first subparagraph, introductory wording of the Directive. In accordance with the Directive, the national provision presents a list of the activities that electronic money institutions can engage in, in addition to the issuance of electronic money.

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						Therefore, the Portuguese law is considered conform to Article 6(1), first subparagraph, introductory wording of the Directive.
Art. 6(1) 1st subpar a. (a)	(a) the provision of payment services listed in the Annex to Directive 2007/64/EC;	a) Prestação dos serviços de pagamento enumerados no anexo da Directiva 2007/64/CE;	Art. 8-A(2)(a) of RJPM E	Article 8-A(2)(a) Electronic money institutions a) the provision of payment services mentioned in Article 4;	Artigo 8.º -A, n.º 2, alínea a) Instituições de moeda eletrónica a) Prestação dos serviços de pagamento referidos no artigo 4.º;	CONFORM Article 8-A(2)(a) of RJPME transposes Article 6(1), first subparagraph, point (a) of the Directive. The national provision sets out that electronic money institutions can provide the payment services mentioned in Article 4 of RJPME. One should note that Article 4 of RJPME transposes the list of business activities laid down in the Annex to Directive 2007/64/EC. Therefore, the Portuguese law is considered conform to Article 6(1), first subparagraph, point (a) of the Directive.
Art. 6(1) 1st subpar a. (b)	(b) the granting of credit related to payment services referred to in points 4, 5 or 7 of the Annex to Directive 2007/64/EC, where the conditions laid down in Article 16(3) and (5) of that Directive are met;	b) Concessão de créditos relacionados com os serviços de pagamento referidos nos pontos 4, 5 e 7 do anexo da Directiva 2007/64/CE, nas condições estabelecidas nos n.ºs 3 e 5 do artigo 16.º da mesma directiva;	Art. 8-A(2)(b) of RJPM E	Article 8-A(2)(b) Electronic money institutions b) the granting of credit related to payment services referred to in points d), e) and g) of Article 4, in accordance with the conditions laid down in the following article;	Artigo 8.º -A, n.º 2, alínea b) Instituições de moeda eletrónica b) Concessão de créditos relacionados com os serviços de pagamento referidos nas alíneas d), e) e g) do artigo 4.º, de acordo com as condições estabelecidas no artigo seguinte;	CONFORM Article 8-A(2)(b) of RJPME transposes Article 6(1), first subparagraph, point (b) of the Directive. The national provision sets out that electronic money institutions can grant credit related to payment services referred to in points d), e) and g) of Article 4 of RJPME, in accordance with the conditions laid down in Article 9 of this act. On should note that points d), e) and g) of

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						<p>Article 4 of RJPME correspond literally to points 4, 5 or 7 of the Annex to Directive 2007/64/EC.</p> <p>Moreover, Article 9 of RJPME, on the granting of credit corresponds to Article 16(3) and (5) of Directive 2007/64/EC.</p> <p>Therefore, the Portuguese law is considered conform to Article 6(1), first subparagraph, point (b) of the Directive.</p>
Art. 6(1) 1st subpar a. (c)	(c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in point (a);	c) Prestação de serviços operacionais e auxiliares estreitamente relacionados com a emissão de moeda electrónica ou com a prestação dos serviços de pagamento referidos na alínea a);	Art. 8-A(2)(c) of RJPME	<p>Article 8-A(2)(c) Electronic money institutions</p> <p>c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or of payment services, in particular ensuring the execution of payment transactions, foreign exchange services, and services for the safekeeping, storage and processing of data;</p>	<p>Artigo 8.º -A, n.º 2, alínea c) Instituições de moeda electrónica</p> <p>c) Prestação de serviços operacionais e auxiliares estreitamente conexos com a emissão de moeda electrónica ou com serviços de pagamento, designadamente a prestação de garantias de execução de operações de pagamento, serviços cambiais e serviços de guarda, armazenamento e tratamento de dados;</p>	<p>PARTIALLY CONFORM</p> <p>Article 8-A(2)(c) of RJPME transposes Article 6(1), first subparagraph, point (c) of the Directive.</p> <p>The national provision sets out that electronic money institutions can provide operational services and closely related ancillary services in respect of the issuing of electronic money or of payment services.</p> <p>One should note that Article 8-A(2)(c) of RJPME refers to the <i>execution of payment transactions, foreign exchange services, and services for the safekeeping, storage and processing of data</i>. These are the services mentioned in Article 8(2)(a) of RJPME, which corresponds to Article 16(1)(a) of Directive 2007/64/EC and not the services mentioned in Article 8-A(2) of RJPME (Article 6(1), first subparagraph, point (a) of the Directive).</p> <p>Therefore, the Portuguese law is considered</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						partially conform to Article 6(1), first subparagraph, point (c) of the Directive.
Art. 6(1) 1st subpara. (d)	(d) the operation of payment systems as defined in point 6 of Article 4 of Directive 2007/64/EC and without prejudice to Article 28 of that Directive;	d) Gestão dos sistemas de pagamento definidos no ponto 6 do artigo 4.º da Directiva 2007/64/CE, sem prejuízo do artigo 28.º da mesma directiva ;	Art. 8-A(2)(d) of RJPM E	Article 8-A(2)(d) Electronic money institutions d) the operation of payment systems, without prejudice to Article 39; and	Artigo 8.º -A, n.º 2, alínea d) Instituições de moeda eletrónica d) Exploração de sistemas de pagamentos, sem prejuízo do disposto no artigo 39.º; e	CONFORM Article 8-A(2)(d) of RJPME transposes Article 6(1), first subparagraph, point (d) of the Directive. The national provision sets out that electronic money institutions can operate payment systems, without prejudice to Article 39 of RJPME. Article 8-A(2)(d) of RJPME does not refer explicitly to Article 2(h) of this act (point 6 of Article 4 of Directive 2007/64/EC). However, the definition of <i>payment systems</i> in the national law follows that set out in Directive 2007/64/EC. Furthermore, Article 39 of RJPME, regulating the access to payment systems, transposes Article 28 of Directive 2007/64/EC. Therefore, the Portuguese law is considered conform to Article 6(1), first subparagraph, point (d) of the Directive.
Art. 6(1) 1st subpara. (e)	(e) business activities other than issuance of electronic money, having regard to the applicable Community and national law.	e) Actividades económicas diferentes da emissão de moeda electrónica, tendo em conta o direito comunitário e nacional aplicável.	Art. 8-A(2)(e) of RJPM E	Article 8-A(2)(e) Electronic money institutions e) professional activities other than issuance of electronic money, in	Artigo 8.º -A, n.º 2, alínea e) Instituições de moeda eletrónica e) Actividades profissionais diversas da emissão de	CONFORM Article 8-A(2)(e) of RJPME transposes Article 6(1), first subparagraph, point (e) of the Directive. The national provision sets out that electronic

Directive 2009/110/EC			National Implementing Measures		Conformity Assessment	
				<p>accordance with the legal provisions applicable to these activities.</p> <p>moeda eletrónica, em conformidade com as disposições legais aplicáveis a essas atividades.</p>	<p>money institutions can engage in professional activities other than issuance of electronic money, in accordance with the legal provisions applicable to these activities.</p> <p>While the Directive refers to <i>business</i> activities, the national provision refers to <i>professional</i> activities. However, this difference of terminology does not harm the compliance of the national law.</p> <p>Moreover, the reference to <i>legal provisions applicable</i> to the above mentioned activities, as mentioned in Article 8-A(2)(e) of RJPME, can be considered as comprising <i>the applicable Community and national law</i>.</p> <p>Therefore, the Portuguese law is considered conform to Article 6(1), first subparagraph, point (e) of the Directive.</p>	
Art. 6(1) 2nd subpar a.	Credit referred to in point (b) of the first subparagraph shall not be granted from the funds received in exchange of electronic money and held in accordance with Article 7(1).	Os créditos a que se refere a alínea b) do primeiro parágrafo não podem ser concedidos a partir dos fundos recebidos em troca de moeda eletrónica e detidos nos termos do n.º 1 do artigo 7.º.	Art. 9(1)(c) of RJPME	<p>Article 9(1)(c) Granting of credit</p> <p>1. Payment institutions and electronic money institutions may grant credit solely where it is related to the payment services listed in points (d), (e) and (g) of Article 4 and provided that the following conditions are satisfied:</p> <p>c) such credit may not be granted from the funds received or held for the</p>	<p>Artigo 9.º, n.º 1, alínea c) Concessão de crédito</p> <p>1. As instituições de pagamento e as instituições de moeda eletrónica só podem conceder crédito no caso de este estar relacionado com os serviços de pagamento referidos nas alíneas d), e) e g) do artigo 4.º e desde que se encontrem preenchidas as seguintes condições:</p> <p>c) O crédito não pode ser</p>	<p>PARTIALLY CONFORM</p> <p>Article 9(1)(c) of RJPME transposes Article 6(1), second subparagraph of the Directive.</p> <p>Firstly, the national provision sets out that payment institutions and electronic money institutions may grant credit solely where it is related to the payment services listed in points (d), (e) and (g) of Article 4 of RJPME. The latter provisions correspond to points 4, 5 or 7 of the Annex to Directive 2007/64/EC, i.e., to the credits referred to in Article 6(1), first subparagraph, point (b) of the Directive.</p> <p>Secondly, Article 9(1)(c) of RJPME provides that the above mentioned credit may not be</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
				purpose of executing a payment transaction or received in exchange of electronic money;	concedido a partir dos fundos recebidos ou detidos para execução de uma operação de pagamento ou recebidos em troca da emissão de moeda eletrónica;	<p>granted from the funds received or held for the purpose of executing a payment transaction or received in exchange of electronic money.</p> <p>Finally, Article 9(1)(c) of RJPME refers to the funds <i>held for the purpose of executing a payment transaction</i>. It seems therefore that the national provision merely refers to funds received in exchange for electronic money and not funds held in accordance with Article 7(1) of the Directive. This would contradict the terms set out in Recital 13 of the Directive.</p> <p>Therefore, the Portuguese law is considered partially conform to Article 6(1), second subparagraph of the Directive.</p>
Art. 6(2)	2. Electronic money institutions shall not take deposits or other repayable funds from the public within the meaning of Article 5 of Directive 2006/48/EC.	2. As instituições de moeda electrónica não podem receber do público depósitos ou outros fundos reembolsáveis na acepção do artigo 5.º da Directiva 2006/48/CE.	Art. 8-A(3) of RJPME	<p>Article 8-A(3) Electronic money institutions</p> <p>3. Electronic money institutions shall not take deposits or other repayable funds from the public within the meaning of Article 2(1) of the RGICSF.</p>	<p>Artigo 8.º -A, n.º 3 Instituições de moeda eletrónica</p> <p>3. As instituições de moeda eletrónica não podem receber do público depósitos ou outros fundos reembolsáveis na acepção do n.º 1 do artigo 2.º do RGICSF.</p>	<p>CONFORM</p> <p>Article 8-A(3) of RJPME literally transposes Article 6(2) of the Directive.</p> <p>One should note that Article 2(1) of the RGICSF corresponds to Article 5 of Directive 2006/48/E as that national provision sets out that a credit institution is an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account. Therefore, the national law implies a prohibition for persons or undertakings that are not credit institutions to carry on the business of taking deposits or other repayable funds from the public.</p> <p>In accordance with Recital 13 of the</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						Directive, in the national law the issuance of electronic money does not constitute a deposit-taking activity.
Art. 6(3)	3. Any funds received by electronic money institutions from the electronic money holder shall be exchanged for electronic money without delay. Such funds shall not constitute either a deposit or other repayable funds received from the public within the meaning of Article 5 of Directive 2006/48/EC.	3. Os fundos recebidos pelas instituições de moeda electrónica dos detentores de moeda electrónica devem ser trocados sem demora por moeda electrónica. Esses fundos não constituem depósitos ou outros fundos reembolsáveis recebidos do público, na acepção do artigo 5.º da Directiva 2006/48/CE.	Art. 8-A(4) of RJPM E	<p>Article 8-A(4) Electronic money institutions</p> <p>4. Any funds received by electronic money institutions and from the electronic money holder shall be exchanged for electronic money without delay. Such funds shall not constitute either reception deposit or other repayable funds within the meaning of Article 2(1) of the RGICSF.</p>	<p>Artigo 8.º -A, n.º 4 Instituições de moeda electrónica</p> <p>4. Os fundos recebidos pelas instituições de moeda electrónica e provenientes dos detentores de moeda electrónica devem ser trocados sem demora por moeda electrónica, não constituindo receção de depósitos ou outros fundos reembolsáveis na acepção do n.º 1 do artigo 2.º do RGICSF.</p>	<p>CONFORM</p> <p>Article 8-A(4) of RJPME literally transposes Article 6(3) of the Directive.</p> <p>As mentioned above, Article 2(1) of the RGICSF corresponds to Article 5 of Directive 2006/48/EC.</p>
Art. 6(4)	4. Article 16(2) and (4) of Directive 2007/64/EC shall apply to funds received for the activities referred to in paragraph 1(a) of this Article that are not linked to the activity of issuing electronic money.	4. Os n.ºs 2 e 4 do artigo 16.º da Directiva 2007/64/CE aplicam-se aos fundos recebidos para efeitos das actividades referidas na alínea a) do n.º 1 do presente artigo não associadas à emissão de moeda electrónica.	Art. 8-A(5) of RJPM E	<p>Article 8-A(5) Electronic money institutions</p> <p>5. Paragraphs (3) and (4) of the previous article are applicable to funds received by the electronic money institutions for the provision of the payment services mentioned in Article 4 that are not linked to the activity of issuing electronic money.</p>	<p>Artigo 8.º -A, n.º 5 Instituições de moeda electrónica</p> <p>5. Os n.ºs 3 e 4 do artigo anterior são aplicáveis aos fundos recebidos pelas instituições de moeda electrónica com vista à prestação de serviços de pagamento referidos no artigo 4.º que não estejam associadas à emissão de moeda electrónica.</p>	<p>CONFORM</p> <p>Article 8-A(5) of RJPME transposes Article 6(4) of the Directive.</p> <p>The national provision reflects Article 6(4) of the Directive with the use of similar wording.</p> <p>One should note that Article 8(3) and (4) of RJPME correspond to Article 16(2) and (4) of Directive 2007/64/EC.</p> <p>Moreover, the reference to payment services mentioned in Article 4 of RJPME reflects the cross-reference to Article 6(1)(a) of the</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						Directive. Therefore, the Portuguese law is considered conform to Article 6(4) of the Directive.
Art. 7(1)	Article 7 Safeguarding requirements 1. Member States shall require an electronic money institution to safeguard funds that have been received in exchange for electronic money that has been issued, in accordance with Article 9(1) and (2) of Directive 2007/64/EC. Funds received in the form of payment by payment instrument need not be safeguarded until they are credited to the electronic money institution's payment account or are otherwise made available to the electronic money institution in accordance with the execution time requirements laid down in the Directive 2007/64/EC, where applicable. In any event, such funds shall be safeguarded by no later than five business days, as defined in point 27 of	Artigo 7.º Requisitos de garantia 1. Os Estados-Membros devem exigir que as instituições de moeda eletrónica garantam os fundos recebidos em troca da emissão de moeda eletrónica nos termos dos n.ºs 1 e 2 do artigo 9.º da Directiva 2007/64/CE. Os fundos recebidos sob a forma de pagamento por um instrumento de pagamento não têm de ser garantidos até serem creditados na conta de pagamentos da instituição de moeda eletrónica ou por outro meio postos à disposição da mesma instituição, de acordo, se for caso disso, com as disposições relativas ao prazo de execução estabelecidas na Directiva 2007/64/CE. Em todo o caso, esses fundos devem ser garantidos no prazo de cinco dias úteis, na aceção do ponto 27 do	Art. 33-E(1) and (3) of RJPME	Article 33-E(1) and (3) Fund protection requirements 1. Electronic money institutions must ensure protection of the funds which have been received in exchange of electronic money. Without prejudice to the specificities of paragraphs 3 to 7, Article 32 shall apply with the necessary adaptations. 3. Funds received in the form of payment by payment instrument need not be protected until they are credited to the electronic money institution's payment account or are otherwise made available to the electronic money institution in accordance with the execution time requirements laid down in this legal regime. In any event, the institutions shall ensure the protection of such funds by no later than	Artigo 33.º -E, n.ºs 1 e 3 Requisitos de proteção dos fundos 1. As instituições de moeda eletrónica devem assegurar a proteção dos fundos que tenham sido recebidos em troca de moeda eletrónica, aplicando -se com as devidas adaptações, o disposto no artigo 32.º, sem prejuízo das especialidades constantes dos n.ºs 3 a 7. 3. Os fundos recebidos sob a forma de pagamento por um instrumento de pagamento não têm de ser protegidos até serem creditados na conta de pagamentos da instituição de moeda eletrónica ou por outro meio postos à disposição da mesma instituição, de acordo com as disposições relativas ao prazo de execução estabelecidas no presente regime jurídico, devendo,	CONFORM Article 33-E(1) and (3) of RJPME transposes Article 7(1) of the Directive. Portugal has adopted the option set out in Article 7(1) of the Directive. Firstly, in accordance with the first sentence of the Directive provision, Article 33-E(1) of RJPME sets out that electronic money institutions must ensure protection of the funds which have been received in exchange of electronic money. The legal regime applies, <i>mutatis mutandis</i> , to payment institutions to electronic money institutions: Article 32 of RJPME corresponds to Article 9(1) and (2) of Directive 2007/64/EC. Secondly, Article 33-E(3) of RJPME reflects the second sentence of Article 7(1) of the Directive with the use of very similar wording. One should note that the execution time requirements laid down in RJPME correspond to those laid down in the Directive 2007/64/EC. Thirdly, Article 33-E(3) of RJPME states that

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
	Article 4 of that Directive, after the issuance of electronic money.	artigo 4.º da referida directiva, a contar da emissão da moeda electrónica.		five business days after the issuance of electronic money.	em todo o caso, as instituições assegurar a proteção desses fundos no prazo de cinco dias úteis, a contar da data de emissão da moeda eletrónica.	<p>the institutions shall ensure the protection of such funds by no later than five business days after the issuance of electronic money.</p> <p>On the contrary to the Directive, the national provision does not refer explicitly to Article 2(ad) of this act (point 27 of Article 4 of Directive 2007/64/EC). However, the definition of <i>business day</i> in the national law follows that set out in Directive 2007/64/EC. The omission of a cross-reference to Article 2(ad) of RJPM does not jeopardise the conformity of the national law.</p> <p>On the basis of the above mentioned, the Portuguese law is considered conform to Article 7(1) of the Directive.</p>
Art. 7(2) 1st subpara. a.	2. For the purposes of paragraph 1, secure, low-risk assets are asset items falling into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions for which the specific risk capital charge is no higher than 1,6 %, but excluding other qualifying items as defined in point 15 of that	2. Para efeitos do n.º 1, os activos seguros de baixo risco são activos que pertencem a uma das categorias enumeradas no quadro 1 do ponto 14 do anexo I da Directiva 2006/49/CE do Parlamento Europeu e do Conselho, de 14 de Junho de 2006, relativa à adequação dos fundos próprios das empresas de investimento e das instituições de crédito, em relação às quais o requisito de fundos próprios para o risco específico não ultrapassa	Art. 33-E(4) of RJPM E	<p>Article 33-E(4) Fund protection requirements</p> <p>4. For the purposes of the application of the procedures provided for in Article 32(1)(a)(ii), as regards the funds received in exchange of electronic money, secure, low-risk assets shall be understood as asset items falling into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June,</p>	<p>Artigo 33.º -E, n.º 4 Requisitos de proteção dos fundos</p> <p>4. Para efeitos da aplicação dos procedimentos previstos na subalínea ii) da alínea a) do n.º 1 do artigo 32.º no que diz respeito aos fundos que tenham sido recebidos em troca de moeda eletrónica, consideram -se como activos seguros e de baixo risco os ativos que pertençam a uma das categorias enumeradas no quadro 1 do ponto 14</p>	<p>CONFORM</p> <p>Article 33-E(4) of RJPM transposes Article 7(2), first subparagraph of the Directive.</p> <p>The national provision refers directly to Table 1 of point 14 of Annex I to Directive 2006/49/EC, where secure, low-risk assets are defined.</p> <p>One should note that while Article 7(2), first subparagraph cross refers to Article 7(1) of the Directive, the national provision cross-refers more specifically to <i>the application of the procedures provided for in Article 32(1)(a)(ii), as regards the funds received in exchange of electronic money.</i></p> <p>On the basis of the above mentioned, the</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
	Annex.	1,6 %, mas com exclusão de outros elementos elegíveis referidos no ponto 15 do mesmo anexo.		on the capital adequacy of investment firms and credit institutions for which the specific risk capital charge is no higher than 1,6 %, but excluding other qualifying items as defined in point 15 of that Annex.	do anexo I da Diretiva n.º 2006/49/CE, do Parlamento Europeu e do Conselho, de 14 de junho, relativa à adequação dos fundos próprios das empresas de investimento e das instituições de crédito, em relação às quais o requisito de fundos próprios para risco específico não ultrapasse 1,6 %, mas com exclusão de outros elementos elegíveis referidos no ponto 15 do mesmo anexo.	Portuguese law is considered conform to Article 7(2), first subparagraph of the Directive.
Art. 7(2) 2nd subpar a.	For the purposes of paragraph 1, secure, low-risk assets are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first subparagraph.	Para efeitos do n.º 1, os activos seguros de baixo risco são também unidades de participação no capital de organismos de investimento colectivo em valores mobiliários (OICVM) que apenas invistam nos activos referidos no primeiro parágrafo.	Art. 33-E(5) of RJPM E	Article 33-E(5) Fund protection requirements 5. Secure, low-risk assets shall also be understood as units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the previous paragraph.	Artigo 33.º -E, n.º 5 Requisitos de proteção dos fundos 5. Consideram -se, ainda, ativos seguros e de baixo risco as unidades de participação no capital de organismos de investimento coletivo em valores mobiliários (OICVM) que apenas invistam nos ativos referidos no número anterior.	CONFORM Article 33-E(5) of RJPM E literally transposes Article 7(2), second subparagraph of the Directive. The cross-references set out in the national provision correspond to those set out in the Directive. Therefore, the Portuguese law is considered conform to Article 7(2), second subparagraph of the Directive.
Art. 7(2) 3rd	In exceptional circumstances and with adequate justification, the	Em circunstâncias excepcionais e devidamente justificadas,	Art. 33-E(6) of	Article 33-E(6) Fund protection requirements	Artigo 33.º -E, n.º 6 Requisitos de proteção dos fundos	CONFORM Article 33-E(6) of RJPM E transposes Article

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
subpar a.	competent authorities may, based on an evaluation of security, maturity, value or other risk element of the assets as specified in the first and second subparagraphs, determine which of those assets do not constitute secure, low-risk assets for the purposes of paragraph 1.	as autoridades competentes podem, com base numa avaliação da segurança, do prazo de maturidade, do valor e de outros factores de risco dos activos referidos nos primeiro e segundo parágrafos, determinar quais destes activos não representam activos seguros de baixo risco para os efeitos do n.º 1.	RJPM E	6. In exceptional circumstances and with adequate justification, the Bank of Portugal may, based on an evaluation of security, maturity, value or other risk element of the assets as specified in paragraph 4 and in the previous paragraph, determine which of those assets do not fulfil the safety and low-risk requirements.	6. Em circunstâncias excepcionais e devidamente justificadas, o Banco de Portugal pode, com base numa avaliação da segurança, do prazo de maturidade, do valor e de outros factores de risco dos activos referidos no n.º 4 e no número anterior, determinar quais destes activos não preenchem os requisitos de segurança e baixo risco.	7(2), third subparagraph of the Directive. Portugal adopted the option set out in Article 7(2), third subparagraph of the Directive in a literal manner. The cross-references set out in the national provision correspond to those set out in the Directive. Therefore, the Portuguese law is considered conform to Article 7(2), third subparagraph of the Directive.
Art. 7(3)	3. Article 9 of Directive 2007/64/EC shall apply to electronic money institutions for the activities referred to in Article 6(1)(a) of this Directive that are not linked to the activity of issuing electronic money.	3. O artigo 9.º da Directiva 2007/64/CE aplica-se às actividades das instituições de moeda electrónica referidas na alínea a) do n.º 1 do artigo 6.º da presente directiva não associadas à emissão de moeda electrónica.	Art. 33-E(2) of RJPM E	Article 33-E(2) Fund protection requirements 2. Article 32 shall apply to the activity of provision of payment services mentioned in Article 4 that are not linked to the activity of issuing electronic money.	Artigo 33.º -E, n.º 2 Requisitos de proteção dos fundos 2. À atividade de prestação de serviços de pagamento referidos no artigo 4.º não associados à emissão de moeda electrónica aplica -se o disposto no artigo 32.º.	CONFORM Article 33-E(2) of RJPME transposes Article 7(3) of the Directive. Portugal has adopted the option set out in Article 7(3) of the Directive. The national provision states that Article 32 of RJPME shall apply to the activity of provision of payment services mentioned in Article 4 of this act that are not linked to the activity of issuing electronic money. One should note that Article 32 of RJPME corresponds to Article 9 of Directive 2007/64/EC. Moreover, the payment services mentioned in Article 4 of RJPME correspond to those mentioned in Article 6(1)(a) of the Directive.

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						On the basis of the above mentioned, the Portuguese law is considered conform to Article 7(3) of the Directive.
Art. 7(4)	4. For the purposes of paragraphs 1 and 3, Member States or their competent authorities may determine, in accordance with national legislation, which method shall be used by the electronic money institutions to safeguard funds.	4. Para efeitos dos n.ºs 1 e 3, os Estados-Membros ou as respectivas autoridades competentes podem determinar, nos termos da legislação nacional, que método deve ser utilizado pelas instituições de moeda electrónica para garantir fundos.	Art. 33-E(7) of RJPM E	Article 33-E(7) Fund protection requirements 7. For the purposes of paragraphs 1 and 2, the Bank of Portugal may determine which of the procedures provided for in Article 32(1) shall be used by the electronic money institutions to ensure the protection of the received funds.	Artigo 33.º -E, n.º 7 Requisitos de proteção dos fundos 7. Para efeitos dos n.ºs 1 e 2, o Banco de Portugal pode determinar qual dos procedimentos previstos no n.º 1 do artigo 32.º deve ser utilizado pelas instituições de moeda electrónica para assegurar a proteção dos fundos recebidos.	CONFORM Article 33-E(7) of RJPME transposes Article 7(4) of the Directive. Portugal has adopted the option set out in Article 7(4) of the Directive. In accordance with the Directive requirement, the national provision sets out that, for the purposes of Article 33-E(1) and (2) of RJPME, the bank of Portugal may determine which of the procedures provided for in Article 32(1) of this act shall be used by the electronic money institutions to ensure the protection of the received funds. One should note that the national provision refers merely to Article 33-E(1) and (2) of RJPME when Article 7(1) and (3) of the Directive are in fact transposed by Article 33-E(1), (2) and (3) of RJPME. However, this omission does not result in a significant difference of content. Furthermore, Article 33-E(7) of RJPME specifically refers to the procedures provided for in Article 32(1) of this act, which corresponds to the procedures laid down in Article 9(1) of Directive 2007/64/EC. On the basis of the above mentioned, the

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
					Portuguese law is considered conform to Article 7(4) of the Directive.	
Art. 8(1)	<p><i>Article 8</i> Relations with third countries</p> <p>1. Member States shall not apply to a branch of an electronic money institution having its head office outside the Community, when taking up or pursuing its business, provisions which result in more favourable treatment than that accorded to an electronic money institution having its head office within the Community.</p>	<p><i>Artigo 8.º</i> Relações com países terceiros</p> <p>1. Os Estados-Membros não podem aplicar às sucursais das instituições de moeda electrónica com sede fora da Comunidade, para o acesso à sua actividade ou para o seu exercício, disposições que conduzam a um tratamento mais favorável do que o tratamento dado às instituições de moeda electrónica com sede na Comunidade.</p>	<p>Art. 7-A(1)(e), Art. 6(3) and Art. 27-A of RJPME</p> <p>Art. 58(1) of the RGICSF</p>	<p>RJPME Article 7-A(1)(e) Issuers of electronic money</p> <p>1. Electronic money can solely be issued by the following entities:</p> <p>e) Branches of electronic money institutions with their head office out of the European Union, under the terms of this legal regime;</p> <p>RJPME Article 27-A Third countries branches</p> <p>Articles 57 to 59 of RGICSF shall apply, with the necessary adaptations, to the establishment in Portugal of branches of electronic money institutions authorised in countries that are not members of the European Union.</p>	<p>RJPME Artigo 7.º -A, n.º 1, alínea e) Emitentes de moeda electrónica</p> <p>1. Só podem emitir moeda electrónica as seguintes entidades:</p> <p>e) As sucursais de instituições de moeda electrónica com sede fora da União Europeia, nos termos do presente regime jurídico;</p> <p>RJPME Artigo 27.º -A Sucursais de países terceiros</p> <p>Ao estabelecimento em Portugal de sucursais de instituições de moeda electrónica autorizadas em países que não sejam membros da União Europeia é aplicável o disposto nos artigos 57.º a 59.º do RGICSF, com as</p>	<p>CONFORM</p> <p>Article 7-A(1)(e), Article 27-A and Article 6(3) of RJPME and Article 58(1) of the RGICSF transpose Article 8(1) of the Directive.</p> <p>The national law does not contain a provision reflecting explicitly Article 8(1) of the Directive. However, it is possible to infer the Directive requirement from the spirit of several provisions included in RJPME and the RGICSF.</p> <p>Firstly, Article 7-A(1)(e) of RJPME sets out that electronic money can solely be issued by, <i>inter alia</i>, branches of electronic money institutions with their head office out of the European Union, under the terms of RJPME.</p> <p>Moreover, Article 6(3) of RJPME provides that the Bank of Portugal shall exercise its powers of prudential supervision as regards payment institutions and electronic money institutions having their head office in Portugal, including their branches and agents established abroad, as well as regarding the branches in Portugal of electronic money institutions with head office out of the European Union.</p> <p>Therefore, the national law places the branches of electronic money institutions with their head office out of the European Union generally under the <i>same regime</i> and</p>

Directive 2009/110/EC			National Implementing Measures		Conformity Assessment
			<p>RGICSF Article 58(1) Authorisation</p> <p>1. The establishment of a branch depends on an authorisation to be granted, on a case-by-case basis, by the Portuguese Ministry of Finance. This competence can be delegated to the Bank of Portugal.</p> <p>RJPME Article 6(3) Competent authority</p> <p>3. Without prejudice to the competences that are granted to it by Decree Law No. 298/92 of 31 December, which approves the Legal framework on Credit Institutions and Financial Companies, the Bank of Portugal shall exercise its powers of prudential supervision as regards payment institutions and electronic money institutions having their head office in Portugal,</p>	<p>necessárias adaptações.</p> <p>RGICSF Artigo 58.º, n.º 1 Autorização</p> <p>1. O estabelecimento da sucursal fica dependente de autorização a ser concedida, caso a caso, pelo Ministro das Finanças, podendo esta competência ser delegada no Banco de Portugal.</p> <p>RJPME Article 6(3) Autoridade competente</p> <p>3. Sem prejuízo das competências que lhe são conferidas pelo Decreto - Lei n.º 298/92, de 31 de dezembro, que aprova o Regime Geral das Instituições de Crédito e Sociedades Financeiras (RGICSF), o Banco de Portugal exerce as suas competências de supervisão prudencial em relação às instituições de pagamento e às</p>	<p>consequently, not under a more favourable regime, than that applicable to electronic money institution having its head office within the European Union.</p> <p>Secondly, the special requirements regarding branches set out in RGICSF (Articles 57 to 59) shall apply to the establishment in Portugal of branches of electronic money institutions authorised in countries that are not members of the European Union (Article 27-A of RJPME). One could consider these special requirements as even less favourable for branches of electronic money institutions authorised in countries that are not members of the European Union as they require, <i>inter alia</i>, an authorisation to be granted, on a case-by-case basis, by the Portuguese Ministry of Finance.</p> <p>Moreover, Article 59(1) of the RGICSF sets out that the capital earmarked for operations to be carried out by the branch shall be sufficient to cover those operations and <i>no less than the minimum amount required by the Portuguese law</i> for credit institutions of the same type having their head office in Portugal.</p> <p>Finally, one should note that while the Directive refers to <i>Community</i> as a reference to the EEA, the national law merely refers to <i>European Union</i>. Nevertheless, this difference is merely terminological and does not hamper the compliance of the national law.</p>

Directive 2009/110/EC			National Implementing Measures		Conformity Assessment	
				including their branches and agents established abroad, as well as regarding the branches in Portugal of electronic money institutions with head office out of the European Union.	instituições de moeda eletrónica com sede em Portugal, incluindo os respetivos agentes e sucursais estabelecidos no estrangeiro, bem como em relação às sucursais em Portugal de instituições de moeda eletrónica com sede fora da União Europeia.	The national law follows overall Recital 15 of the Directive, i.e., the branches of electronic money institutions which have their head office outside the European Union benefit neither from the freedom of establishment under Article 43 of the Treaty nor the freedom to provide services under the second paragraph of Article 49 of the Treaty. On the basis of the above mentioned, the Portuguese law is considered conform to Article 8(1) of the Directive.
Art. 8(2)	2. The competent authorities shall notify the Commission of all authorisations for branches of electronic money institutions having their head office outside the Community.	2. As autoridades competentes notificam a Comissão das autorizações concedidas a sucursais de instituições de moeda electrónica com sede fora da Comunidade.	Art. 27-A of RJPM E Art. 58(4) of the RGICSF	RJPME Article 27-A Branches of third countries Articles 57 to 59 of the RGICSF are applicable, with the necessary adaptations, to the establishment in Portugal of branches of electronic money institutions authorised in countries that do not belong to the European Union. RGICSF Article 58(4) Authorisation 4. The Bank of Portugal shall notify the European	RJPME Artigo 27.º -A Sucursais de países terceiros Ao estabelecimento em Portugal de sucursais de instituições de moeda eletrónica autorizadas em países que não sejam membros da União Europeia é aplicável o disposto nos artigos 57.º a 59.º do RGICSF, com as necessárias adaptações RGICSF Artigo 58.º, n.º 4 Autorização 4. O Banco de Portugal notifica a Comissão	CONFORM Article 27-A of RJPME and Article 58(4) of the RGICSF transpose Article 8(2) of the Directive. The national law does not contain a provision reflecting explicitly Article 8(2) of the Directive. However, it is possible to infer the Directive requirement from several provisions included in RJPME and the RGICSF. As mentioned above, the national law applies the specific requirements set out in Articles 57 to 59 of the RGICSF to the establishment in Portugal of branches of electronic money institutions authorised in countries that are not members of the European Union (Article 27-A of RJPME). In accordance with the Directive, Article 58(4) of the RGICSF sets out that the Bank of Portugal shall notify the European Commission and the European Banking

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
				Commission and the European Banking Committee as regards the authorisations granted under the terms of paragraph (1) of this article.	Europeia e o Comité Bancário Europeu das autorizações concedidas ao abrigo do disposto no n° 1 deste artigo.	<p>Committee as regards the authorisations granted under the terms of Article 58(1) of the RGICSF.</p> <p>One should note that Article 58(1) of the RGICSF provides that the establishment of the branch is subject to authorisation to be granted, on a case-by-case basis, by the Minister of Finance. This competence may be delegated to the Bank of Portugal.</p> <p>On the basis of the above mentioned, the Portuguese law is considered conform to Article 8(2) of the Directive.</p>
Art. 8(3)	3. Without prejudice to paragraph 1, the Community may, through agreements concluded with one or more third countries, agree to apply provisions that ensure that branches of an electronic money institution having its head office outside the Community are treated identically throughout the Community.	3. Sem prejuízo do disposto no n.º 1, a Comunidade pode, mediante acordos celebrados com um ou mais países terceiros, aplicar disposições que assegurem às sucursais de instituições de moeda electrónica com sede fora da Comunidade o mesmo tratamento em toda a Comunidade.	N/A	N/A	N/A	<p>CONFORM</p> <p>It should be noted that no positive obligation for the Member States is foreseen in Article 8(3) of the Directive. Therefore, the Directive provision does not require transposition in Portugal.</p>
Art. 9(1) 1st subparagraph. intr. wording	<p><i>Article 9</i></p> <p>Optional Exemptions</p> <p>1. Member States may waive or allow their competent authorities to waive the application of all or part of the</p>	<p><i>Artigo 9.º</i></p> <p>Isenções facultativas</p> <p>1. Os Estados-Membros podem não aplicar ou autorizar as respectivas autoridades competentes a não aplicarem a totalidade</p>	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
	procedures and conditions set out in Articles 3, 4, 5 and 7 of this Directive, with the exception of Articles 20, 22, 23 and 24 of Directive 2007/64/EC, and allow legal persons to be entered in the register for electronic money institutions if both of the following requirements are complied with:	ou parte dos procedimentos e condições constantes dos artigos 3.º, 4.º, 5.º e 7.º da presente directiva, com excepção dos artigos 20.º, 22.º, 23.º e 24.º da Directiva 2007/64/CE, e autorizar a inclusão de pessoas colectivas no registo das instituições de moeda electrónica se estiverem preenchidos os dois requisitos seguintes:				
Art. 9(1) 1st subparagraph (a)	(a) the total business activities generate an average outstanding electronic money that does not exceed a limit set by the Member State but that, in any event, amounts to no more than EUR 5000000; and	a) A totalidade das actividades gerar um valor médio de moeda electrónica em circulação que não exceda um limite fixado pelo Estado-Membro mas que, de qualquer forma, não seja superior a 5 milhões de EUR; e	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art. 9(1) 1st subparagraph a. (b)	(b) none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.	b) Nenhuma das pessoas singulares responsáveis pela gestão ou funcionamento da empresa ter sido condenada por infracções relacionadas com branqueamento de capitais, financiamento do terrorismo ou outros crimes financeiros.	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
Art. 9(1) 2nd subparagraph a,	Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to apply point (a) of the first subparagraph on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where an electronic money institution has not completed a sufficiently long period of business, that requirement shall be assessed on the basis of projected outstanding electronic money evidenced by its business	Caso a instituição de moeda electrónica exerça uma das actividades referidas na alínea a) do n.º 1 do artigo 6.º não associadas à emissão de moeda electrónica ou uma das actividades referidas nas alíneas b) a e) do n.º 1 do artigo 6.º e o montante da moeda electrónica em circulação não seja previamente conhecido, as autoridades competentes autorizam a instituição de moeda electrónica em causa a aplicar a alínea a) do n.º 1 com base numa parte representativa que se presume ser a utilizada para a emissão de moeda electrónica, desde que essa parte representativa possa ser razoavelmente estimada com base em dados históricos e a contento das autoridades competentes. Caso a instituição de moeda electrónica não tenha exercido um período de actividade suficiente, o referido requisito é avaliado com base na estimativa da moeda electrónica em circulação	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
	plan subject to any adjustment to that plan having been required by the competent authorities.	que resultar do seu plano de actividades, sob reserva de eventuais ajustamentos a esse plano exigidos pelas autoridades competentes.				
Art. 9(1) 3rd subpar a.	Member States may also provide for the granting of the optional exemptions under this Article to be subject to an additional requirement of a maximum storage amount on the payment instrument or payment account of the consumer where the electronic money is stored.	Os Estados-Membros podem igualmente prever que a concessão de isenções opcionais ao abrigo do presente artigo fique sujeita ao requisito adicional de um montante máximo de armazenamento vinculado ao instrumento de pagamento ou à conta de pagamentos do consumidor em que está depositada moeda electrónica.	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art. 9(1) 4th subpar a.	A legal person registered in accordance with this paragraph may provide payment services not related to electronic money issued in accordance with this Article only if conditions set out in Article 26 of Directive 2007/64/EC are met.	As pessoas colectivas registadas nos termos do presente número só podem prestar serviços de pagamento não relacionados com a emissão de moeda electrónica nos termos do presente artigo nas condições estabelecidas no artigo 26.º da Directiva 2007/64/CE.	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art.	2. A legal person	2. As pessoas colectivas	N/A	N/A	N/A	Portugal did not adopt the option set out in

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
9(2)	registered in accordance with paragraph 1 shall be required to have its head office in the Member State in which it actually pursues its business.	registadas nos termos do n.º 1 devem ter a sua sede no Estado-Membro no qual exercem efectivamente as suas actividades.				Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art. 9(3)	3. A legal person registered in accordance with paragraph 1 shall be treated as an electronic money institution. However, Article 10(9) and Article 25 of Directive 2007/64/EC shall not apply to it.	3. As pessoas colectivas registadas nos termos do n.º 1 devem ser tratadas como instituições de moeda electrónica. Contudo, não se lhes aplicam o n.º 9 do artigo 10.º e o artigo 25.º da Directiva 2007/64/CE.	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art. 9(4)	4. Member States may provide for a legal person registered in accordance with paragraph 1 to engage only in some of the activities listed in Article 6(1).	4. Os Estados-Membros podem estabelecer que as pessoas colectivas registadas nos termos do n.º 1 só possam exercer algumas das actividades enumeradas no n.º 1 do artigo 6.º.	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art. 9(5) intr. wording	5. A legal person referred to in paragraph 1 shall:	5. As pessoas colectivas referidas no n.º 1 devem:	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art. 9(5)(a)	(a) notify the competent authorities of any change in its situation which is relevant to the conditions	a) Notificar as autoridades competentes de qualquer alteração da sua situação que seja relevante para as	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
	specified in paragraph 1; and	condições estabelecidas no n.º 1; e				
Art. 9(5)(b)	(b) at least annually, on date specified by the competent authorities, report on the average outstanding electronic money.	b) Pelo menos anualmente, em data fixada pelas autoridades competentes, apresentar um relatório sobre o valor médio da moeda electrónica em circulação.	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art. 9(6)	6. Member States shall take the necessary steps to ensure that where the conditions set out in paragraphs 1, 2 and 4 are no longer met, the legal person concerned shall seek authorisation within 30 calendar days in accordance with Article 3. Any such person that has not sought authorisation within that period shall be prohibited, in accordance with Article 10, from issuing electronic money.	6. Os Estados-Membros tomam as medidas necessárias para assegurar que, caso as condições estabelecidas nos n.ºs 1, 2 e 4 deixem de estar preenchidas, os interessados requeiram, no prazo de 30 dias, uma autorização ao abrigo do artigo 3.º. Os interessados que não requeiram a referida autorização nesse prazo ficam proibidos, nos termos do artigo 10.º, de emitir moeda electrónica.	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art. 9(7)	7. Member States shall ensure that their competent authorities are sufficiently empowered to verify continued compliance with the requirements laid down in this Article.	7. Os Estados-Membros asseguram que as autoridades competentes disponham de poderes suficientes para verificar o cumprimento permanente dos requisitos estabelecidos no presente	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
		artigo.				
Art. 9(8)	8. This Article shall not apply in respect of the provisions of Directive 2005/60/EC or national anti-money-laundering provisions.	8. O presente artigo não se aplica no que diz respeito ao disposto na Directiva 2005/60/CE e às disposições nacionais de combate ao branqueamento de capitais.	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art. 9(9)	9. Where a Member State avails itself of the waiver provided for in paragraph 1, it shall notify the Commission accordingly by 30 April 2011. The Member State shall notify the Commission forthwith of any subsequent change. In addition, the Member State shall inform the Commission of the number of legal persons concerned and, on an annual basis, of the total amount of outstanding electronic money issued at 31 December of each calendar year, as referred to in paragraph 1.	9. Caso um Estado-Membro exerça a faculdade prevista no n.º 1, deve notificar do facto a Comissão até 30 de Abril de 2011. O Estado-Membro deve notificar imediatamente a Comissão de qualquer alteração subsequente. Além disso, o Estado-Membro deve informar a Comissão do número de pessoas colectivas em causa e, anualmente, do montante total da moeda electrónica em circulação emitida por referência a 31 de Dezembro de cada ano civil nos termos do n.º 1.	N/A	N/A	N/A	Portugal did not adopt the option set out in Article 9(1) of the Directive. Therefore, Article 9 of the Directive is not transposed in the national law.
Art. 10	TITLE III ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY	TÍTULO III EMISSÃO E CARÁCTER REEMBOLSÁVEL DA	Art. 7-A(1) and (4) of	RJPME Article 7-A(1) and (4) Issuers of electronic	RJPME Artigo 7.º -A, n.ºs 1 e 4 Emitentes de moeda	CONFORM Article 7-A(1) and (4) of RJPME and Article 126 of the RGICSF transpose Article 10 of

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
	<p><i>Article 10</i> Prohibition from issuing electronic money</p> <p>Without prejudice to Article 18, Member States shall prohibit natural or legal persons who are not electronic money issuers from issuing electronic money.</p>	<p>MOEDA ELECTRÓNICA <i>Artigo 10.º</i> Proibição de emitir moeda electrónica</p> <p>Sem prejuízo do disposto no artigo 18.º, os Estados-Membros proíbem a emissão de moeda electrónica às pessoas singulares ou colectivas que não sejam emitentes de moeda electrónica.</p>	<p>RJPM E</p>	<p>money</p> <p>1. Electronic money can solely be issued by the following entities: [...]</p> <p>4. Article 126 of the RGICSF shall be applicable, <i>mutatis mutandis</i>, in cases of reasonable suspicion of issuance of electronic money by an unauthorised entity.</p>	<p>electrónica</p> <p>1. Só podem emitir moeda electrónica as seguintes entidades:[...]</p> <p>4. O disposto no artigo 126.º do RGICSF é aplicável, com as necessárias adaptações, em caso de suspeita fundada de emissão de moeda electrónica por entidade não habilitada.</p>	<p>the Directive.</p> <p>The national law does not contain a provision reflecting explicitly Article 10 of the Directive. However, it is possible to infer the Directive requirement from the national legislation.</p> <p>Firstly, Article 7-A(1) of RJPM sets out that electronic money can <i>solely</i> be issued by certain entities, which are listed in that provision.</p> <p>Moreover, the Bank of Portugal may sue for the winding-up and liquidation of any company or other collective body which, without being authorised, carries out activities for which credit institutions are authorised.</p> <p>Finally, although the national law does not refer explicitly to natural persons, but merely to legal persons, the term <i>unauthorised entities</i> can be considered as comprising both natural and legal persons.</p> <p>In sum, the national law prohibits natural or legal persons who are not electronic money issuers from issuing electronic money.</p> <p>On the basis of the above mentioned, the Portuguese law is considered conform to Article 10 of the Directive.</p>
Art. 11(1)	<p><i>Article 11</i> Issuance and redeemability</p>	<p><i>Artigo 11.º</i> Emissão e carácter reembolsável</p>	<p>Art. 91-A of RJPM</p>	<p>Article 91-A Issuance</p> <p>Electronic money shall be</p>	<p>Artigo 91.º -A Emissão</p> <p>A moeda electrónica deve</p>	<p>CONFORM</p> <p>Article 91-A of RJPM transposes Article</p>

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
	1. Member States shall ensure that electronic money issuers issue electronic money at par value on the receipt of funds.	1. Os Estados-Membros asseguram que os emitentes de moeda electrónica emitam moeda electrónica pelo valor nominal aquando da recepção dos fundos.	E	issued at par value on the receipt of funds.	ser emitida pelo valor nominal aquando da recepção dos fundos.	11(1) of the Directive. The national provision requires that electronic money is issued at par value on the receipt of funds. The national law follows Recital 18 of the Directive, in particular where it states that redemption should be possible at any time, at par value without any possibility to agree a minimum threshold for redemption. Therefore, the Portuguese law is considered conform to Article 11(1) of the Directive.
Art. 11(2)	2. Member States shall ensure that, upon request by the electronic money holder, electronic money issuers redeem, at any moment and at par value, the monetary value of the electronic money held.	2. Os Estados-Membros asseguram que, a pedido do portador, os emitentes de moeda electrónica reembolsem, em qualquer momento e pelo valor nominal, o valor monetário detido em moeda electrónica.	Art. 91-B(1) of RJPM E	Article 91-B(1) Redeemability 1. Upon request by the electronic money holder, the electronic money issuer shall redeem, at any moment and at par value, the monetary value of the electronic money held.	Artigo 91.º -B, n.º 1 Carácter reembolsável 1. A pedido do portador, o emitente de moeda electrónica deve reembolsar, em qualquer momento e pelo valor nominal, o valor monetário da moeda electrónica detida.	CONFORM Article 91-B(1) of RJPM E literally transposes Article 11(2) of the Directive.
Art. 11(3)	3. The contract between the electronic money issuer and the electronic money holder shall clearly and prominently state the conditions of redemption, including any fees relating thereto, and the electronic money holder shall be informed of those	3. O contrato entre o emitente de moeda electrónica e o respectivo portador deve indicar de forma clara e destacada as condições de reembolso, incluindo quaisquer taxas relacionadas com o mesmo, devendo o portador ser informado	Art. 91-B(2) of RJPM E	Article 91-B(2) Redeemability 2. The contract between the electronic money issuer and the electronic money holder shall clearly and prominently state the conditions of redemption, including any fees relating	Artigo 91.º -B, n.º 2 Carácter reembolsável 2. O contrato entre o emitente de moeda electrónica e o respectivo portador deve indicar de forma clara e destacada as condições de reembolso, incluindo quaisquer	CONFORM Article 91-B(2) of RJPM E literally transposes Article 11(3) of the Directive.

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
	conditions before being bound by any contract or offer.	dessas condições antes de se vincular a qualquer contrato ou oferta.		thereto, and the electronic money holder shall be informed of those conditions before being bound by any contract or offer.	comissões relacionadas com o mesmo, devendo o portador ser informado dessas condições antes de se vincular a qualquer contrato ou oferta.	
Art. 11(4) 1st subpara. a. intr. wording	4. Redemption may be subject to a fee only if stated in the contract in accordance with paragraph 3 and only in any of the following cases:	4. O reembolso apenas pode ser sujeito a uma taxa se tal for declarado no contrato, nos termos do n.º 3, e num dos seguintes casos:	Art. 91-B(3), intr. wording of RJPM E	Article 91-B(3), introductory wording Redeemability 3. Redemption may be subject to a fee only if stated in the contract in accordance with paragraph 2 and in any of the following cases:	Artigo 91.º -B, n.º 3, frase introdutória Carácter reembolsável 3. O reembolso apenas pode ser sujeito a uma comissão se tal for declarado no contrato, nos termos do n.º 2, e num dos seguintes casos:	CONFORM Article 91-B(3), introductory wording of RJPME literally transposes Article 11(4), first subparagraph, introductory wording of the Directive. The cross-reference made in the national provision to Article 91-B(2) of RJPME corresponds to the cross-reference made to Article 11(4), first subparagraph, introductory wording of the Directive.
Art.11 (4) 1st subpara. a. (a)	(a) where redemption is requested before the termination of the contract;	a) O reembolso ser pedido antes da expiração do contrato;	Art. 91-B(3)(a) of RJPM E	Article 91-B(3)(a) Redeemability a) where redemption is requested before the termination date set out for the contract;	Artigo 91.º -B, n.º 3, alínea a) Carácter reembolsável a) O reembolso ser pedido antes do termo fixado para o contrato;	CONFORM Article 91-B(3)(a) of RJPME transposes Article 11(4), first subparagraph, point (a) of the Directive. Article 91-B(3)(a) of RJPME reflects the Directive provision with the use of similar wording. One should note that the national provision refers to the <i>termination date set out for the contract</i> while Article 11(4), first subparagraph, point (a) of the Directive refers to the <i>termination of the contract</i> itself. However, this difference does not affect the compliance of Article 91-B(3)(a) of RJPME

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						with the Directive requirement as it is merely a difference of terminology and not of content. Therefore, the Portuguese law is considered conform to Article 11(4), first subparagraph, point (a) of the Directive.
Art. 11(4) 1st subpar a. (b)	(b) where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or	b) O contrato fixar uma data de expiração e o portador denunciar o contrato antes dessa data; ou	Art. 91-B(3)(b) of RJPM E	Article 91-B(3)(b) Redeemability b) where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or	Artigo 91.º -B, n.º 3, alínea b) Carácter reembolsável b) O contrato fixar um termo e o portador denunciar o contrato antes dessa data; ou	CONFORM Article 91-B(3)(b) of RJPM E literally transposes Article 11(4), first subparagraph, point (b) of the Directive.
Art. 11(4) 1st subpar a. (c)	(c) where redemption is requested more than one year after the date of termination of the contract.	c) O reembolso ser pedido mais de um ano após a data de expiração do contrato.	Art. 91-B(3)(c) of RJPM E	Article 91-B(3)(c) Redeemability c) where redemption is requested more than one year after the date of termination of the contract.	Artigo 91.º -B, n.º 3, alínea c) Carácter reembolsável c) O reembolso ser pedido mais de um ano após o termo fixado para o contrato.	CONFORM Article 91-B(3)(c) of RJPM E literally transposes Article 11(4), first subparagraph, point (c) of the Directive.
Art. 11(4) 2nd subpar a.	Any such fee shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer.	A referida taxa deve ser proporcional e baseada nos custos efectivamente suportados pelo emitente de moeda electrónica.	Art. 91-B(4) of RJPM E	Article 91-B(4) Redeemability The fee mentioned in the previous paragraph shall be proportionate and commensurate with the actual costs incurred by the electronic money	Artigo 91.º -B, n.º 4 Carácter reembolsável 4. A comissão referida no número anterior deve ser proporcional e baseada nos custos efetivamente suportados pelo emitente de moeda eletrónica.	CONFORM Article 91-B(4) of RJPM E transposes Article 11(4), second subparagraph of the Directive. The national provision requires that the fee mentioned in Article 91-B(3) of RJPM E (Article 11(4), first subparagraph of the Directive) shall be proportionate and

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
				issuer.		<p>commensurate with the actual costs incurred by the electronic money issuer.</p> <p>Therefore, the Portuguese law is considered conform to Article 11(4), second subparagraph of the Directive.</p>
Art. 11(5)	5. Where redemption is requested before the termination of the contract, the electronic money holder may request redemption of the electronic money in whole or in part.	5. Caso o faça antes da data de expiração do contrato, o portador de moeda electrónica pode pedir o reembolso de uma parte ou da totalidade do valor monetário da moeda electrónica.	Art. 91-B(5) of RJPM E	<p>Article 91-B(5) Redeemability</p> <p>5. Where the electronic money holder requests the redemption before the termination date set out for the contract, he may request redemption of the monetary value of the electronic money held, in whole or in part.</p>	<p>Artigo 91.º -B, n.º 5 Carácter reembolsável</p> <p>5. Caso solicite o reembolso antes do termo fixado para o contrato, o portador de moeda electrónica pode pedir que lhe seja reembolsada uma parte ou a totalidade do valor monetário correspondente à moeda electrónica detida.</p>	<p>CONFORM</p> <p>Article 91-B(5) of RJPME transposes Article 11(5) of the Directive.</p> <p>The national provision sets out that, where the electronic money holder requests the redemption before the termination date set out for the contract, he may request redemption of the monetary value of the electronic money held, in whole or in part.</p> <p>One should note that the national provision refers to the <i>termination date set out for the contract</i> while Article 11(5) of the Directive refers to the <i>termination of the contract</i> itself. However, this difference does not affect the compliance of Article 91-B(3)(a) of RJPME with the Directive requirement as it is merely a difference of terminology and not of content.</p> <p>Therefore, the Portuguese law is considered conform to Article 11(5) of the Directive.</p>
Art. 11(6) intr. wordi	6. Where redemption is requested by the electronic money holder on or up to one year after the date of the termination of the	6. Caso o reembolso seja pedido pelo portador de moeda electrónica na data de expiração do contrato ou no prazo de um ano	Art. 91-B(6), intr. wordin	<p>Article 91-B(6), introductory wording Redeemability</p> <p>6. Where redemption is</p>	<p>Artigo 91.º -B, n.º 6, frase introdutória Carácter reembolsável</p> <p>6. Caso o reembolso seja</p>	<p>CONFORM</p> <p>Article 91-B(6), introductory wording of RJPME literally transposes Article 11(6), introductory wording of the Directive.</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
ng	contract:	após essa data:	g of RJPM E	requested by the electronic money holder on or up to one year after the date of the termination of the contract:	pedido pelo portador de moeda eletrónica na data do termo do contrato ou no prazo de um ano após essa data:	
Art. 11(6)(a)	a) the total monetary value of the electronic money held shall be redeemed; or	a) É reembolsada a totalidade do valor monetário detido em moeda electrónica; ou	Art. 91-B(6)(a) of RJPM E	Article 91-B(6)(a) Redeemability a) the total monetary value of the electronic money held shall be redeemed; or	Artigo 91.º -B, n.º 6, alínea a) Carácter reembolsável a) É reembolsada a totalidade do valor monetário da moeda eletrónica detida; ou	CONFORM Article 91-B(6)(a) of RJPME literally transposes Article 11(6)(a) of the Directive..
Art. 11(6)(b)	(b) where the electronic money institution carries out one or more of the activities listed in Article 6(1)(e) and it is unknown in advance what proportion of funds is to be used as electronic money, all funds requested by the electronic money holder shall be redeemed.	b) Se a instituição de moeda electrónica exercer uma ou mais das actividades referidas na alínea e) do n.º 1 do artigo 6.º e não for conhecida com antecedência a parte dos fundos a utilizar como moeda electrónica, deve ser reembolsada a totalidade dos fundos pedidos pelo portador.	Art. 91-B(6)(b) of RJPM E	Article 91-B(6)(b) Redeemability b) where the electronic money institution carries out one or more of the activities listed in Article 8-A(2)(e) and it is unknown in advance what proportion of funds is to be used as electronic money, all funds requested by the electronic money holder shall be redeemed.	Artigo 91.º -B, n.º 6, alínea b) Carácter reembolsável b) Se a instituição de moeda eletrónica exercer uma ou mais das actividades referidas na alínea e) do n.º 2 do artigo 8.º -A e não for conhecida com antecedência a parte dos fundos a utilizar como moeda eletrónica, deve ser reembolsada a totalidade dos fundos pedidos pelo portador.	CONFORM Article 91-B(6)(b) of RJPME literally transposes Article 11(6)(b) of the Directive. It should be noted that Article 8-A(2)(e), which is cross-referred to in Article 91-B(6)(b) of RJPME, corresponds to Article 6(1)(e) of the Directive.
Art. 11(7)	7. Notwithstanding paragraphs 4, 5 and 6, redemption rights of a	7. Não obstante o disposto nos n.ºs 4, 5 e 6, os direitos de reembolso das	Art. 91-B(7) of	Article 91-B(7) Redeemability	Artigo 91.º -B, n.º 7) Carácter reembolsável	CONFORM Article 91-B(7) of RJPME transposes Article

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment	
	person, other than a consumer, who accepts electronic money shall be subject to the contractual agreement between the electronic money issuer and that person.	peçoas que não sejam consumidores que aceitem moeda electrónica ficam sujeitos ao contrato celebrado entre os emitentes de moeda electrónica e as peçoas em causa.	RJPM E	7. Notwithstanding paragraphs 3 to 6, redemption right of the persons other than consumers who accept electronic money in payments shall be subject to the contractual agreement between the electronic money issuers and those persons.	7. Não obstante o disposto nos n.ºs 3 a 6, o direito ao reembolso por parte das peçoas que, não sendo consumidores, aceitem moeda electrónica em pagamentos fica sujeito à disciplina do contrato celebrado entre os emitentes de moeda electrónica e as peçoas em causa.	11(7) of the Directive. The national provision sets out that redemption right of the persons other than consumers who accept electronic money in payments shall be subject to the contractual agreement between the electronic money issuers and those persons. This requirement should be taken into consideration notwithstanding Article 91-B(3) to (6) of RJPM, which corresponds to Article 11(4), (5) and (6) of the Directive. Therefore, the Portuguese law is considered conform to Article 11(7) of the Directive.
Art. 12	<i>Article 12</i> Prohibition of interest Member States shall prohibit the granting of interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money.	<i>Artigo 12.º</i> Proibição de juros Os Estados-Membros proíbem a concessão de juros ou de qualquer outro benefício relacionado com o período de tempo durante o qual o portador de moeda electrónica detém moeda electrónica.	Art. 91-C of RJPM E	<i>Article 91-C</i> Prohibition of interest The payment of interest or the granting of any other benefit related to the length of time during which the holder holds the electronic money shall be prohibited.	<i>Artigo 91.º -C</i> Proibição de juros É proibido o pagamento de juros ou a atribuição de qualquer outro benefício relacionado com o período de tempo durante o qual o portador detém moeda electrónica.	CONFORM Article 91-C of RJPM transposes Article 12 of the Directive. The national provision prohibits the payment of interest or the granting of any other benefit related to the length of time during which the holder holds the electronic money. In accordance with Recital 13 of the Directive, in the national law, electronic money issuers are not allowed to grant interest or any other benefit unless those benefits are not related to the length of time during which the electronic money holder holds electronic money. Therefore, the Portuguese law is considered

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						conform to Article 12 of the Directive.
Art. 13	<p><i>Article 13</i> Out-of-court complaint and redress procedures for the settlement of disputes</p> <p>Without prejudice to this Directive, Chapter 5 of Title IV of Directive 2007/64/EC shall apply mutatis mutandis to electronic money issuers in respect of their duties arising from this Title.</p>	<p><i>Artigo 13.º</i> Procedimentos de reclamação e reparação extrajudicial para resolução de litígios</p> <p>Sem prejuízo da presente directiva, o capítulo 5 do título IV da Directiva 2007/64/CE é aplicável, com as necessárias adaptações, aos emitentes de moeda electrónica no que diz respeito às suas obrigações decorrentes do presente título.</p>	<p>Titles V and VI of RJPM E</p> <p>Title V Out-of court dispute settlements and complaint procedures</p> <p>Article 92 Availability of out-of court dispute resolution procedures</p> <p>1. Without prejudice to the right of access of payment service users and of electronic money holders, to appropriate legal proceedings, payment service providers and electronic money issuers shall provide their respective payment service users and electronic money holders with access to effective and adequate out-of-court complaint and redress procedures for disputes concerning rights and obligations laid down in Titles III and IV of this legal regime, involving amounts equal to or less than that covered by the first instance courts.</p>	<p>Título V Resolução extrajudicial de litígios e procedimento de reclamação</p> <p>Artigo 92.º Disponibilização de meios de resolução extrajudicial de litígios</p> <p>1. Sem prejuízo do acesso, pelos utilizadores de serviços de pagamento e pelos portadores de moeda electrónica, aos meios judiciais competentes, os prestadores de serviços de pagamento e os emitentes de moeda electrónica devem oferecer aos respetivos utilizadores de serviços de pagamentos e portadores de moeda electrónica o acesso a meios extrajudiciais eficazes e adequados de reclamação e de reparação de litígios de valor igual ou inferior à alçada dos tribunais de 1.ª instância, respeitantes aos direitos e obrigações estabelecidos nos títulos III e IV do</p>	<p>CONFORM</p> <p>Titles V and VI of RJPME transpose Article 13 of the Directive.</p> <p>The national law does not include a provision reflecting explicitly Article 13 of the Directive.</p> <p>Nevertheless, Title V (Article 92 and 93) and Title VI of RJPME (Article 94 to 99) set out requirements which are generally applicable both to payment services and electronic money issuance. Both titles reflect Chapter 5 of Title IV of Directive 2007/64/EC.</p> <p>As an example, Article 92(1) of RJPME states that <i>payment service providers and electronic money issuers</i> shall provide their respective payment service users and electronic money holders with access to effective and adequate out-of-court complaint and redress procedures for disputes concerning rights and obligations laid down in Titles III and IV of RJPME, involving amounts equal to or less than that covered by the first instance courts.</p> <p>It should be noted that one of the amendments brought by DL 242/2012 was the inclusion of electronic money issuance and electronic money institutions in the scope of Titles V and VI.</p>	

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
				[...] Title VI Administrative offences legal framework [...]	presente regime jurídico. [...] Título VI Regime contraordenacional [...]	The national law follows therefore Recital 19 of the Directive. On the basis of the above mentioned, the Portuguese law is considered conform to Article 13 of the Directive.
Art. 16(1)	TITLE IV FINAL PROVISIONS AND IMPLEMENTING MEASURES <i>Article 16</i> Full harmonization 1. Without prejudice to Article 1(3), the sixth subparagraph of Article 3(3), Article 5(7), Article 7(4), Article 9 and Article 18(2) and in so far as this Directive provides for harmonisation, Member States shall not maintain or introduce provisions other than those laid down in this Directive.	TÍTULO IV DISPOSIÇÕES FINAIS E MEDIDAS DE EXECUÇÃO <i>Artigo 16.º</i> Harmonização total 1. Sem prejuízo do disposto no n.º 3 do artigo 1.º, no sexto parágrafo do n.º 3 do artigo 3.º, no n.º 7 do artigo 5.º, no n.º 4 do artigo 7.º, no artigo 9.º e no n.º 2 do artigo 18.º, na medida em que a presente directiva contenha disposições harmonizadas, os Estados-Membros não mantêm nem introduzem disposições diferentes das estabelecidas na presente directiva.	N/A	N/A	N/A	PARTIALLY CONFORM It occurs that RJPME sets out additional rules in the context of provisions which are specifically addressed to electronic money. Some of those additional provisions are rather explanatory, which does not hamper the compliance of the national law with Article 16(1) of the Directive: Some of the additional provisions set out in RJPME bring, however, more requirements for electronic money institutions, which might hamper the full harmonisation aim of the Directive. In the case of Article 5(2), third subparagraph of the Directive, the manner in which the national law is drafted can lead to misinterpretation as it seems to refer not only to the requirements of Article 5(2), second subparagraphs of the Directive but also to those of Article 5(2), first subparagraph and Article 5(5) of the Directive. Moreover, as regards Article 5(6)(b) of the

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						<p>Directive, the prohibition set out in the national provision also regards electronic money institutions carrying out activities other than the provision of payment services mentioned in Article 6(1)(a) of the Directive.</p> <p>Furthermore, as regards Article 6(1), first subparagraph, point (c) of the Directive, the national provision refers to the <i>execution of payment transactions, foreign exchange services, and services for the safekeeping, storage and processing of data</i>. These services correspond to those set out in Article 16(1)(a) of Directive 2007/64/EC and not the services mentioned in Article 6(1), first subparagraph, point (a) of the Directive.</p> <p>In other cases, the national law does not refer to all the requirements set out in the Directive, being therefore more restrictive than the latter.</p> <p>This is the case as regards the transposition of Article 3(3), second subparagraph of the Directive. The national law does not, in fact, clearly refer to the communication of the size of the holding as regards acquisition or increase but merely as regards the disposal or reduction of the holding.</p> <p>As for Article 5(4) of the Directive, RJPME does not cross-refer to the national provisions corresponding to Article 6(1)(b) to (e) of the Directive. Therefore, the national provision does not seem to cover these activities.</p> <p>Moreover, while Article 5(5) of the Directive</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						<p>cross-refers broadly to the relevant method in accordance with Article 5(2), including all the methods set out in that paragraph, the national provision merely cross-refers to Method D.</p> <p>Furthermore, the national law merely refers to <i>insurance undertaking</i> while Article 5(6)(a) of the Directive refers to insurance or <i>reinsurance undertakings</i>. These two entities can not be equated.</p> <p>As regards Article 6(1), second subparagraph of the Directive, the national law merely refers to funds received in exchange for electronic money and not funds held in accordance with Article 7(1) of the Directive.</p> <p>Finally, the national law does not include a provision that could foresee a transitional period for electronic money institutions in accordance with Article 18(1) and (3) of the Directive.</p> <p>One case of non-conformity was identified as regards Article 1(1)(c) of the Directive. RJPME merely refers to post office giro institutions as entities capable of providing payment services. However, no mention to post office giro institutions is made in the national law as regards electronic money. As a consequence, post office giro institutions established in other Member States may not issue electronic money in Portugal.</p> <p>Therefore, on the basis of the above mentioned, the Portuguese law is considered partially conform to Article 16(1) of the</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
						Directive.
Art. 16(2)	2. Member States shall ensure that an electronic money issuer does not derogate, to the detriment of an electronic money holder, from the provisions of national law implementing or corresponding to provisions of this Directive except where explicitly provided for therein.	2. Os Estados-Membros asseguram que os emitentes de moeda electrónica não procedam, em detrimento dos portadores de moeda electrónica, à derrogação das disposições de direito interno que aplicam as disposições da presente directiva ou que a elas correspondem, salvo se tal estiver nela expressamente previsto.	Art. 6(1)(b) of RJPME	<p>Article 6(1)(b) Competent authority</p> <p>1. The Bank of Portugal shall be responsible for prudential and behavioural supervision under this Law and in particular for:</p> <p>b) supervising compliance with the provisions of this legal regime;</p>	<p>Artigo 6.º, n.º 1, alínea b) Autoridade competente</p> <p>1. Compete ao Banco de Portugal exercer a supervisão prudencial e comportamental no âmbito do presente regime jurídico, cabendo -lhe, designadamente:</p> <p>b) Fiscalizar o cumprimento do disposto no presente regime jurídico;</p>	<p>CONFORM</p> <p>Article 6 of RJPME reflects Article 16(2) of the Directive.</p> <p>The national law does not include a provision reflecting explicitly the Directive requirement.</p> <p>Nevertheless, Article 6 of RJPME lays down the competences of the competent authority (the Bank of Portugal).</p> <p>More particularly, Article 6(1)(b) of RJPME sets out that the Bank of Portugal shall be responsible for prudential and behavioural supervision under RJPME and in particular for <i>supervising compliance with the provisions of this legal regime</i>.</p> <p>The supervision of the compliance with RJPME therefore comprises the prevention of electronic money issuers' derogation from the provisions of national law, implementing or corresponding to provisions of the Directive, to the detriment of an electronic money holder.</p> <p>On the basis of the above mentioned, the Portuguese law is considered conform to Article 16(2) of the Directive.</p>
Art. 18(1)	<i>Article 18</i>	<i>Artigo 18.º</i>	N/A	N/A	N/A	NOT CONFORM

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
1st subpar a.	<p>Transitional provisions</p> <p>1. Member States shall allow electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Directive 2000/46/EC in the Member State in which their head office is located, to continue those activities in that Member State or in another Member State in accordance with the mutual recognition arrangements provided for in Directive 2000/46/EC without being required to seek authorisation in accordance with Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive.</p>	<p>Disposições transitórias</p> <p>1. Os Estados-Membros autorizam as instituições de moeda electrónica que tenham iniciado as suas actividades de acordo com a legislação nacional de transposição da Directiva 2000/46/CE no Estado-Membro em que estão sedeadas antes de 30 de Abril de 2011 a continuarem a exercer essas actividades nesse Estado-Membro ou noutro Estado-Membro nos termos das disposições relativas ao reconhecimento mútuo previstas na Directiva 2000/46/CE, sem estarem obrigadas a requerer autorização nos termos do artigo 3.º da presente directiva e a cumprir as restantes disposições incluídas ou referidas no título II.</p>				<p>The national law does not contain a provision corresponding to Article 18(1) of the Directive.</p> <p>Apart from Articles 100 and 101 of RJPME which refer to transitory provisions as regards payment services and direct debits, the national law does not include a provision that could foresee a transitional period for electronic money institutions in accordance with Article 18(1) of the Directive.</p> <p>It is therefore not clear that the national law follows Recital 23 of the Directive as there are no transitional arrangements set out in the Portuguese law to ensure that electronic money institutions which have taken up their activities in accordance with the national laws transposing Directive 2000/46/EC are able to continue those activities for a specified period.</p> <p>Therefore, the Portuguese law is considered not conform to Article 18(1), first subparagraph of the Directive.</p>
Art. 18(1) 2nd subpar a.	<p>Member States shall require such electronic money institutions to submit all relevant information to the competent authorities in order to allow the latter to</p>	<p>Os Estados-Membros devem exigir que essas instituições de moeda electrónica apresentem todas as informações relevantes às autoridades competentes, para que</p>	N/A	N/A	N/A	<p>NOT CONFORM</p> <p>The national law does not contain a provision corresponding to Article 18(1) of the Directive.</p> <p>Therefore, the Portuguese law is considered</p>

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
	<p>assess, by 30 October 2011, whether the electronic money institutions comply with the requirements laid down in this Directive and, if not, which measures need to be taken in order to ensure compliance or whether a withdrawal of authorisation is appropriate.</p>	<p>estas possam apreciar, até 30 de Outubro de 2011, se essas instituições de moeda electrónica satisfazem os requisitos da presente directiva e, se não for esse o caso, que medidas devem ser tomadas para assegurar o seu cumprimento ou se a autorização deve ser revogada.</p>				<p>not conform to Article 18(1), second subparagraph of the Directive.</p>
<p>Art. 18(1) 3rd subpar a.</p>	<p>Compliant electronic money institutions shall be granted authorisation, shall be entered in the register, and shall be required to comply with the requirements in Title II. Where electronic money institutions do not comply with the requirements laid down in this Directive by 30 October 2011, they shall be prohibited from issuing electronic money.</p>	<p>As instituições de moeda electrónica consideradas conformes recebem uma autorização e são incluídas no registo, sendo-lhes exigido o cumprimento dos requisitos constantes do título II. Se a referida conformidade não for garantida até 30 de Outubro de 2011, as instituições de moeda electrónica em causa ficam proibidas de emitir moeda electrónica.</p>	N/A	N/A	N/A	<p>NOT CONFORM</p> <p>The national law does not contain a provision corresponding to Article 18(1) of the Directive.</p> <p>Therefore, the Portuguese law is considered not conform to Article 18(1), third subparagraph of the Directive.</p>
<p>Art. 18(2)</p>	<p>2. Member States may provide for an electronic money institution to be automatically granted authorisation and entered in the register provided for</p>	<p>2. Os Estados-Membros podem estabelecer que uma instituição de moeda electrónica seja automaticamente autorizada e inscrita no</p>	N/A	N/A	N/A	<p>Portugal did not adopt the option set out in Article 18(2) of the Directive.</p>

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment
	in Article 3 if the competent authorities already have evidence that the electronic money institution concerned complies with the requirements laid down in Articles 3, 4 and 5. The competent authorities shall inform the electronic money institutions concerned before the authorisation is granted.	registo previsto no artigo 3.º se as autoridades competentes já dispuserem de elementos comprovativos de que estão preenchidos os requisitos estabelecidos nos artigos 3.º, 4.º e 5.º. As autoridades competentes informam as instituições de moeda electrónica em causa antes da concessão da autorização.			
Art. 18(3)	3. Member States shall allow electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Article 8 of Directive 2000/46/EC, to continue those activities within the Member State concerned in accordance with Directive 2000/46/EC until 30 April 2012, without being required to seek authorisation under Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive. Electronic money institutions which, during that period, have	3. Os Estados-Membros autorizam as instituições de moeda electrónica que tenham iniciado as suas actividades de acordo com a legislação nacional de transposição do artigo 8.º da Directiva 2000/46/CE antes de 30 de Abril de 2011 a prosseguirem essas actividades no Estado-Membro em causa nos termos do disposto na Directiva 2000/46/CE até 30 de Abril de 2012, sem estarem obrigadas a requerer autorização nos termos do artigo 3.º da presente directiva e a cumprir as restantes disposições incluídas ou referidas no título II da	N/A	N/A	N/A
					<p>NOT CONFORM</p> <p>The national law does not contain a provision corresponding to Article 18(3) of the Directive.</p> <p>Apart from Articles 100 and 101 of RJPME which refer to transitory provisions as regards payment services and direct debits, the national law does not include a provision that could foresee a transitional period for electronic money institutions in accordance with Article 18(3) of the Directive.</p> <p>Therefore, the Portuguese law is considered not conform to Article 18(3) of the Directive.</p>

Directive 2009/110/EC		National Implementing Measures			Conformity Assessment
	been neither authorised nor waived within the meaning of Article 9 of this Directive, shall be prohibited from issuing electronic money.	presente directiva. As instituições de moeda electrónica que, durante esse período, não forem autorizadas nem passem a beneficiar da isenção prevista no artigo 9.º da presente directiva ficam proibidas de emitir moeda electrónica.			