

# Conformity Assessment of Directive 2009/110/EC POLAND

***Draft Assessment Report***  
Version 1.0 – 29/03/2013

[www.tipik.eu](http://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](mailto: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   |
|---|--|
| <p><b>Ustawa z dnia 12 września 2002 r. o elektronicznych instrumentach płatniczych (Dz.U. 2002 nr 169 poz. 1385)</b></p> <p>Act of 12 September 2002 on electronic payment instruments</p> <p>(Hereinafter referred to as 'EPI')</p> | <p>The EPI is a specific piece of legislation designed exclusively to lay down the principles of issuing and using electronic payment instruments, including electronic money as well as the rights and obligations of parties arising out of contracts for the electronic payment instrument.</p> <p>The EPI moreover contains provisions with respect to establishment, internal organisation, pursuit of activity, supervision and liquidation of electronic money institutions.</p> <p>The transposition of the Directive has been partially accomplished through the amendment of the EPI. The amendment concerned the existing Polish legislation concerning electronic money which was adopted in 2002 with a view of transposing Directive 2000/46/EC. The changes foreseen by the said amendment entered into force on 24 October 2011.</p> <p>The EPI was adopted on 12 September 2001 and entered into force on 12 October 2003.</p> <p>The text of the EPI can be found in Polish at:</p> <p><a href="http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021691385">http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021691385</a></p> |
| List of additional national implementing measures referred to in the conformity assessment  | General observations   |
| <p><b>Ustawa z dnia 19 sierpnia 2011 r. o usługach płatniczych (Dz.U. 2011 nr 199 poz. 1175)</b></p> <p>Act of 19 August 2011 on payment services</p>   | <p>The Act of 2011 is the main act that was adopted in order to transpose the provisions of Directive 2007/64/EC. The scope of this act is similar to that of the Directive and it covers the majority of the Directive provisions. The law is divided into the following Parts:</p> <ul style="list-style-type: none"> <li>- Part I: General provisions</li> <li>- Part II: Informational Obligations Regarding the Provision of Payment Services</li> </ul>  |

## NATIONAL IMPLEMENTING MEASURES

|   |  |
|---|--|
| <p>(Hereinafter referred to as ‘APS’)</p>   | <ul style="list-style-type: none"> <li>- Part III: Rights and Responsibilities Regarding the Provision of Payment Services and Making Use of Them</li> <li>- Part IV: Domestic Payment Institutions</li> <li>- Part V: The Taking Up and Conduct of Business in the Territory of a Host Country by a Payment Institution</li> <li>- Part VI: Supervision of Domestic Payment Institutions and of Branches of EU Payment Institutions</li> <li>- Part VII: Payment Services Offices and Savings and Credit Unions</li> <li>- Part VIII: The Register of Domestic Payment Institutions and Other Providers</li> <li>- Part IX: Civil and Criminal Liability</li> <li>- Part X: Amendments to Legislation Currently in Force</li> <li>- Part XI: Transitional and Final Provisions</li> </ul> <p>With the exception of two articles, which do not have any influence on the transposition of the Directive, this Act entered into force 30 days after the date of its publication.</p> <p>Two secondary legislative acts, namely Regulation on method of calculation of 2011 and Regulation on guarantees of 2011 have further been issued on the basis of the APS. Regulation on method of calculation of 2011 has been taken into account in the report at hand.</p> <p>The APS was adopted on 19 August 2011 and entered into force on 24 October 2011.</p> <p>The text of the APS can be found in Polish at:</p> <p><a href="http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111991175">http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111991175</a></p> |
| <p><b>Ustawa z dnia 21 lipca 2006 r. o nadzorze nad rynkiem finansowym</b></p> <p>Act of 21 July 2006 on Financial Market Supervision</p> <p>(Hereinafter referred to as ‘FMS’)</p> | <p>The FMS defines the organisation, scope and purpose of supervision over the financial market.</p> <p>The reference to the FMS has been made for the purpose of assessing Article 13 of the Directive. Its applicability has been also indicated in the correspondence table provided by the national authorities.</p> <p>The FMS was adopted on 21 July 2006 and entered into force on 19 September 2006.</p> <p>The FMS is available in Polish from the internet system of legal acts of the Republic of Poland, through the following link:</p> <p><a href="http://isap.sejm.gov.pl/DetailsServlet?id=WDU20041461546">http://isap.sejm.gov.pl/DetailsServlet?id=WDU20041461546</a> <a href="http://isap.sejm.gov.pl/DetailsServlet?id=WDU20061571119">http://isap.sejm.gov.pl/DetailsServlet?id=WDU20061571119</a></p>  |

## NATIONAL IMPLEMENTING MEASURES

|   |  |
|---|--|
| <p><b>Rozporządzenie Ministra Finansów z dnia 22 listopada 2011 r. w sprawie metody obliczania kwoty, o której mowa w art. 76 ust. 4 pkt 2 ustawy o usługach płatniczych (Dz.U. 2011 nr 261 poz. 1557)</b></p> <p>Regulation of the Minister of Finance of 22 November 2011 on the method of calculating the amount referred to in Article 76. 4 point 2 of the Act on payment services</p> <p>(Hereinafter referred to as —Regulation on method of calculation of 2011)</p>  | <p>Regulation on method of calculation of 2011 is a secondary legislative act that was issued on the basis of the APS and deals with calculation method of own funds of a payment institution. On the basis of a cross-reference between the APS and the EPI, it has been used for the transposition of rules governing own funds of electronic money institutions.</p> <p>This Regulation entered into force 14 days after the day of its adoption.</p> <p>The Regulation was adopted on 22 November 2011 and entered into force on 17 December 2011.</p> <p>The text of the Regulation can be found in Polish at:</p> <p><a href="http://isap.sejm.gov.pl/DetailsServlet?id=WDU20112611557">http://isap.sejm.gov.pl/DetailsServlet?id=WDU20112611557</a></p> |
| <p><b>Rozporządzenie Ministra Finansów z dnia 24 września 2003 r. w sprawie określenia zasad ostrożnościowych, określających dopuszczalne ryzyko w działalności instytucji pieniądza elektronicznego, oraz zakresu ich stosowania, rodzajów instrumentów finansowych i zasad inwestowania w nie środków z tytułu zobowiązań podjętych w wyniku wydawania pieniądza elektronicznego oraz innych zasad ograniczania ryzyka (Dz.U. 2003 nr 175 poz. 1701)</b></p> <p>Regulation of the Minister of Finance of 24 September 2003 on the safeguarding measures setting out risk criteria to be fulfilled by the electronic money institutions as well as the scope of possibility to use financial instruments, types of financial instruments and rules of investing therein funds taken for the purpose of issuing electronic money instruments.</p> <p>(hereinafter referred to as – Regulation on the safeguarding measures)</p> | <p>Regulation on the safeguarding measures is a secondary legislative act that was issued on the basis of Article 48 of the EPI and sets out risk criteria to be fulfilled by the electronic money institutions as well as the scope of possibility to use financial instruments, types of financial instruments and rules of investing therein funds taken for the purpose of issuing electronic money instruments.</p> <p>The Regulation was adopted on 24 September 2009 and entered into force on 1 May 2005.</p> <p>The text of the Regulation can be found in Polish at:</p> <p><a href="http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031751701">http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031751701</a></p>                                      |

## NATIONAL IMPLEMENTING MEASURES

**Ustawa z dnia 16 listopada 2000 r. o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu**

Act on Countering Money Laundering and the Financing of Terrorism of 16 November 2000

(hereinafter referred to as AML)

The AML sets out rules and procedures for combating money laundering, terrorist financing, the use of specific restrictive measures against groups and entities as well as it sets out responsibilities of the entities participating in the financial turnover with respect to the collection and transmission of information.

The AML applies towards all kinds of financial institutions carrying out activities in Poland, including electronic money institutions

The reference to the AML has been made for the purpose of assessing Article 9 of the Directive.

The text of the AML can be found in Polish at:

<http://isap.sejm.gov.pl/DetailsServlet?id=WDU20001161216>

## SUMMARY

### 1. Executive summary

Overall, the transposition of Directive 2009/110/EC (hereinafter referred to as ‘the Directive’) into the Polish legislation is partially conform. Subsequent to the analysis of the Directive provisions, numerous cases of partial and non-conformity have been detected. In addition, it is observed that the transposition is often implied through a rather dubious reference to the Act on payment services (the Polish Act transposing the PSD). Moreover, plenty of nuances and discrepancies have been detected. Those however have been considered to be of linguistic or structural nature and therefore assessed as not affecting conformity.

The Directive was principally transposed into the Polish legislation through the amendment of the Act of 12 September 2002 on electronic payment instruments (hereinafter referred to as ‘EPI’). Nevertheless, reference to other acts has been necessary, in particular to the Act of 19 August 2011 on payment services (hereinafter referred to as ‘APS’).

The transposition of the Directive has been partially accomplished through the amendment of the EPI. The amendment modified the existing Polish legislation on electronic money, which was adopted in 2002 with a view of transposing Directive 2000/46/EC. The amendments entered into force on 24 October 2011.

The EPI is a specific piece of legislation designed exclusively to lay down the principles of issuing and using electronic payment instruments, including electronic money as well as the rights and obligations of parties arising from contracts for the electronic payment instrument. The EPI moreover contains provisions with respect to the establishment, internal organisation, pursuit of activity, supervision and liquidation of electronic money institutions.

Throughout the Report, there was also a need to refer to additional national implementing measures, mainly to the APS. This Act stipulates the performance of payment services in Poland as well as amends many already existing legal acts. It has been adopted with a view of implementing the PSD. There is a close interrelation between the APS and the EPI. In the light of the assessment performed, it can be concluded that while the EPI stands for *lex specialis*, the APS can be considered as *lex generalis* with regard to the regulation of electronic money business in Poland.

First, the reference to the APS results from an explicit cross-reference available in the EPI. Article 39 provides for a direct application of the provisions of Chapter I, Part IV of the APS towards electronic money institutions. Second, the APS also contains a general cross-reference according to which the APS shall be applicable to the issue and use of the electronic payment instruments referred to in the EPI. For clarity purposes, this Article has been used in all those cases where the EPI was silent. It should be stressed however that its wording is not as explicit and straightforward as it would be advisable. It refers solely to the issue and to the use of electronic money, and thus creates a fair confusion as to which exactly aspects of electronic money business the APS shall be applicable. Regardless of this problematic interpretation, for the purpose of this assessment, it has been considered that whenever the EPI remains silent, the provisions of the APS clearly corresponding to the matter regulated by the Directive are invoked. Though, *de lege lata* the unlimited application of the APS towards electronic money institutions in all the situations regulated by the Directive is not certain, such solution in any event is in line with what *de lege ferenda* is foreseen to be achieved at a further stage of completing the transposition of the Directive.

For completeness sake, it should be noted that the Polish government while facing a partial transposition of the Directive, has already started legislative works aimed at amending the legal *status quo* with respect to payment services and to electronic money business. According to the governmental documents publicly available, the amendment of the APS and the repeal of the EPI are foreseen. The legislator intends to regulate in a more comprehensive manner payment services and electronic money distribution. This fact should be borne in mind

when studying the following assessment which focuses solely on those pieces of Polish legislation which are in force at the time. Therefore, observations drawn in the light of the legislation assessed should be treated as only temporal. The Polish legislator is aware of the existence of a number of gaps and loops in the Polish legislation as well as of dubious references between the EPI and the ASP. This situation is about to change when electronic money business will be entirely covered by the APS and doubts as regards applying various provisions of the APS towards electronic money will rise no longer.

The Polish Financial Supervisory Authority (hereinafter referred as ‘PFSA’) supervises the financial services industry in Poland. This includes credit institutions, insurance firms, investment companies, exchanges, pension scheme as well as payment institutions and credit unions. The aim of financial market supervision is to ensure regular operation of this market, its stability, security and transparency, confidence in the financial market, as well as to ensure that the interests of market actors are protected. PFSA activity shall be supervised by the President of the Council of Ministers.

## **2. The implementation of Directive 2009/110/EC**

### **2.1. Scope**

The scope of application of the electronic money regulations in Poland is narrower compared to the one foreseen by the Directive. Poland does not explicitly recognise post office giro institutions, the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities nor Member States or their regional or local authorities when acting in their capacity as public authorities as entitled to issue and redeem e- money. In consequence, transposition of Articles 1(1)(c), (d), (e) of the Directive has been considered as not conforming. In addition, the Polish legislation does not explicitly exclude monetary value that is used to make payment transactions exempted as specified in Article 3(1) of Directive 2007/64/EC from the scope of the Polish electronic money regulation. This discrepancy has been assessed as not conforming to the Directive requirement foresees in Article 1(5).

### **2.2. Terminology**

In general, Poland applies equal terms as the ones employed in the Directive. Those terms have acquired the same meaning as in the Directive.

Nevertheless, it should be noted that the term ‘electronic money issuer’ of the Directive has been given a narrower scope in the Polish corresponding legislation.

### **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**

### *2.4.1. Title I – Scope and definitions*

The transposition of Title I in Polish legislation can be in general considered as partially conform to the Directive. A large number of cases of partial and non-conformity have been concluded regarding the scope of the Directive, whereas the part relevant to definitions has much fewer discrepancies. The wording used by the national legislator is different from the one of the Directive.

#### *2.4.3.1. Article 1*

Overall, Article 1 has not been properly transposed into the Polish law.

Partial conformity has been concluded with respect to Article 1(1) introductory wording and 1(2), while non-conformity has been concluded towards Article 1(1)(c), (d), (e) and 1(5) of the Directive.

First, Poland did not recognise post office giro institutions, the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities nor Member States or their regional or local authorities when acting in their capacity as public authorities as entitled to issue and redeem e- money. Second, not every requirements enclosed in Chapter II of the Directive have been transposed.

On the other hand Poland recognised banks and other credit institutions next to electronic money institutions as legal entities allowed to issue and redeem electronic money in Poland. What is more in line with the Directive, Poland excluded payment instruments that can be only used and accepted by the issuer thereof under a commercial agreement between the holder and the issuer from the scope of application of most of the electronic money regulations.

#### *2.4.3.1. Article 2*

Article 2 taken as a whole has been considered as partially transposed in the Polish law.

This is due to the fact that the definition of ‘electronic money issuer’ is not properly reflected by the Polish legislation. Despite the fact that the definition is not literally present in the EPI, the scope of the term of ‘electronic money issuer’ in the meaning of the Polish law does not encompass the persons specified in Article 1(1)(c), (d) and (e) of the Directive.

The definitions of ‘electronic money institutions’, ‘electronic money’ as well as the term ‘average outstanding electronic money’ have been properly reflected by the Polish law.

### *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 is transposed solely in its general lines, by provisions of the EPI and cross-referred provisions of the APS. The technique that has been followed by the Polish legislator with regard to the transposition of this Title is to build it around substantial references to the provisions set for payment institutions. Therefore, where the Directive refers to Directive 2007/64/EC, the conformity of the appropriate dispositions applicable to electronic money institutions has been assessed, without detecting, in general, major discrepancies.

Taken as a whole, the transposition of Title II is rather partial. Though the basic principles inspiring the Directive are reflected in the Polish law, there are plenty of specific dispositions



missing in the Polish legislation. In particular, the large volume of cases of partial and non-conformity has been encountered regarding the general prudential rules and the optional exemptions. In terms of the wording employed, the vocabulary adopted by the national legislator is quite different.

#### 2.4.3.1. Article 3 – General prudential rules

The Polish legislation regarding electronic money institutions contains a reference to the dispositions applicable to payment services institutions and transposing some of the listed Articles of Directive 2007/64/EC. According to Article 39 of the EPI, as far as the taking up and the pursuit of the business of electronic money institutions is not regulated by this Act, provisions of Part IV, of Chapter I of the Act of 19 August 2011 on payment services ('APS') shall apply accordingly. Concerning other provisions of the APS located outside Chapter I of Part IV thereof, the cross-reference present in Article 5(4) of the APS has been used. It should be stressed that this reference is not as straightforward and leaves fair confusion with regard to which aspects of electronic money business provisions of the APS shall apply. However, for the purpose of this assessment the said cross-reference has been interpreted as if it was referring to all those aspects which have not been regulated under the EPI and consequently corresponding provisions of the APS has been quoted in order to imply the transposition.

Article 3(1) has been assessed as partially conform in order to emphasise the fact that even though the reference to the APS can be implied, there are plenty of relevant discrepancies and missing requirements in the Polish law compared to the Directive.

Article 3(2) concerning the information obligations in case of material changes in measures taken for safeguarding funds has been transposed in a conform manner into the Polish legislation.

Article 3(3) concerning the mandatory authorisation for the acquisition of qualifying holding is partially transposed into the Polish law. Although some parts of the Directive requirements can be implied from cross-referred provisions of the APS, the specific dispositions of the Directive are not reflected in the Polish law, thus resulting in partial conformity.

Article 3(4) and 3(5) concerning the exercise of the activities of the electronic money institutions through other authorised entities are considered to have been correctly transposed by a cross-referred application of the corresponding provision of the APS. It is noteworthy that in order to ensure clarity of legislation the foreseen amendment provides for explicit regulation of branches and intermediaries of electronic money institutions.

#### 2.4.3.1. Article 4 – Initial capital

Article 4 is transposed in a conform manner by the EPI. In addition, the transposition is literal.

#### 2.4.3.1. Article 5 – Own funds

In general, the provisions concerning the own funds to be held by electronic money institutions are contained in the EPI. Following a cross-referred application of the APS towards electronic money institutions, specific dispositions of the APS aimed at regulation of own funds of payment institutions have been used in order to imply a complete transposition. Only one case of partial conformity has been detected with respect to Article 5 of the Directive, which is Article 5(4) of the Directive. The Polish law does not stipulate that the authorities may allow the 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 representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities.

#### 2.4.3.1. Article 6 – Activities

Article 6 of the Directive has been assessed as transposed in a conform manner in general. No reference to the APS was needed. No major interpretation issues have been encountered. The provision reflecting the content of Article 6 of the Directive has been ensured in the EPI. Nevertheless, the transposition of Article 6(3) of the Directive was considered as partially conform as the Polish provision does not explicitly state that any funds received by electronic money institutions from the electronic money holder shall be exchanged for electronic

money without delay.

#### 2.4.3.1. Article 7 – Safeguarding requirements

Overall, Article 7 has been considered as only partially transposed into the Polish legislation. The Regulation on the safeguarding measures 2003 adopted on the basis of the EPI does not reflect all requirements rising in the light of the Directive 2006/49/EC referred to in Article 7 of the Directive.

In particular, the transposition of Article 7(1) of the Directive concluded in partial conformity as the national provision was too general to cover all the specific requirements on safeguarding of funds. A conclusion on partial conformity was also drawn with regard to the transposition of Article 7(2) first subparagraph of the Directive, as the Polish legislation allows electronic money institutions to invest their assets in mortgages and bank accounts in national banks and credit institutions, whereas the Directive refers solely to debt securities issued or guaranteed by public institutions, central banks and governments or institutions qualifying certain level of risk. In addition, concerning Article 7(2) second subparagraph of the Directive, a case of non-conformity arises due to the fact that the Polish law does not refer to units in an undertaking for collective investment in transferable securities (UCITS) to be treated as secure, low-risk assets in which electronic money institutions may invest.

#### 2.4.3.1. Article 8 – Relations with third countries

Article 8(1) of the Directive has been considered as transposed in a conform manner thanks to a cross-reference to the provisions of the Polish Banking Law.

Article 8(2) concerning the obligation for Member States to notify the Commission of all authorisations for branches of electronic money institutions having their head office outside the Community and 8(3) concerning agreements with third countries are not transposed.

The fact that those provisions were not specifically transposed gives rise to an issue of partial conformity as regards Article 8(2), as the lack of legislative specification does not automatically entail the non-compliance with the communication obligation. As regards Article 8(3), the non transposition does not raise any issue of conformity, as it does not contain any positive obligation for the Member States.

#### 2.4.3.1. Article 9 – Optional exemptions

Article 9 is transposed by Article 45 of the EPI. However, the transposition is not complete. Non-conformity has been concluded as regards the following provisions: Article 9(1) fourth subparagraph, 9(3), 9(6) and 9(9) of the Directive, whereas partial conformity has been concluded with respect to Article 9(1) second subparagraph, 9(2), 9(5) introductory wording, 9(5)(b) of the Directive.

It is important to remark that Article 9 of the Directive waives the application of the provisions of Chapter 5 of the EPI as far as supervision is concerned. It should be noted that Chapter 5 contains various types of provisions related to the activity held by electronic money issuers. It has been remarked that the waiver should be more straightforward in order to avoid unnecessary confusions. Despite this unclear exclusion of provisions of Chapter 5 of the EPI, the electronic money institutions benefitting from the waiver continue to be subject to the general provisions as regards establishment requirements, and therefore they do not constitute a special category of electronic money institutions at this regard.

#### 2.4.3. Title III – Issuance and redeemability of electronic money

In principle, Title III of the Directive has been transposed in a partially conform manner. There have been a large number of non-conformity cases the majority of which were located in the transposition of Article 11 on issuance and reedemability. In terms of the wording employed, the vocabulary opted by the national legislator is different in this part as well.

#### 2.4.3.1. Article 10 – Prohibition from issuing electronic money

The transposition of Article 10 of the Directive has been implied from the fact that solely specifically authorised institutions are entitled to issue electronic money in Poland.

#### 2.4.3.1. Article 11 - Issuance and redeemability

Article 11 of the Directive has been only partially transposed into the Polish law. In general terms, Poland ensured redeemability of electronic money by its holder at any time. Accompanying and additional fees can be stipulated only in the straightforward and clear contract concluded between the parties. On the other hand, Polish legislator did not provide for any specific requirements concerning stipulation of additional fees as set by the Directive. In consequence, Article 11(4) of the Directive which lays down those conditions has been assessed as not transposed. In addition, provisions corresponding to Article 11(5), (6) and (7) of the Directive have not been detected resulting in conclusion of non-conformity.

#### 2.4.3.1. Article 12 – Prohibition of interest

Article 12 is not transposed in the Polish legislation. Therefore, a conclusion of non-conformity has been reached.

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

Conformity with Article 13 of the Directive has been concluded following the general application of Article 18 of the FMS.

### 2.4.4. Title IV – Final provisions and implementing measures

The transposition of the final provisions and measures of the Directive in national legislation presents some difficulties. On the one hand, due to the fact that the full harmonisation required by Article 16 was not ensured; and on the other hand, the transitional provisions have either not been transposed or have undergone an erroneous transposition.

#### 2.4.3.1. Article 16 – Full harmonization

With regard to Article 16(1) of the Directive, non-conformity is concluded due to a number of discrepancies between the Polish legislation and the requirements laid down by the Directive. As revealed by the assessment, a full harmonisation has not been ensured.

On the other hand, conformity has been concluded with respect to Article 16(2) guaranteeing that electronic money issuers comply with the provisions of the national law implementing the Directive.

#### 2.4.3.1. Article 18 – Transitional provisions

Non-conformity has been concluded with regard to Article 18 due to the lack of transposition into the Polish legislation. As such, the transitional periods laid down by the Directive with regard to electronic money institutions that have taken up their activities prior to the implementation of the Directive have not been respected by the Polish legislator.

## 3. Conclusions on conformity

### 3.1. Cases of partial conformity

**Article 1(1) introductory wording of the Directive**, partial conformity has been concluded as the EPI does not refer to all elements of Article 1 of the Directive.

**Article 1(2) of the Directive**, partial conformity has been concluded in order to stress the fact that not all the Directive requirements have been properly transposed.

**Article 2, introductory wording of the Directive**, partial conformity is concluded due to the fact that not all Directive definitions are reflected by the Polish law.

**Article 2 point (3) of the Directive**, despite the fact that there is no literal definition of electronic money issuer present in the Polish law, partial conformity has been concluded as the Polish law does not recognise the persons referred to in Article 1(1) (c), (d) and (e) of the Directive, therefore the scope of the term in question is narrower in the Polish legislation.

**Article 3(1) of the Directive**, despite the fact that, overall, the PSD has been properly transposed into the Polish law and most of the quoted provisions may apply accordingly towards electronic money institutions thanks to a cross-reference available in the EPI (Article 39), in light of the detailed observations presented below, the transposition of Article 3 of the Directive taken as a whole is partial.

**Article 3(3) first subparagraph of the Directive**, partial conformity has been concluded due to the fact that the notification required by the Polish law refers to the situation after making changes in shareholding (*post factum*), whereas the Directive refers to the situation before the shareholder takes any steps relating to his shareholding. The role of the Polish provisions in terms of ensuring safeguarding is therefore smaller compared to the Directive.

**Article 3(3) second subparagraph of the Directive**, partial conformity has been concluded as the discrepancy between the Polish law and the Directive lies in the fact that the obligation of notification does not refer to the shareholder who is about to acquire or sell his shares, but solely to the size of holding held by certain persons.

**Article 3(3) third subparagraph of the Directive**, due to the fact that the Polish law does not mention 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. Though the Polish law ensures some mechanisms against the detriment of the prudent and sound management of the institution (such as withdrawal of authorisation) partial conformity was suggested.

**Article 5(4) of the Directive**, partial conformity has been concluded as the Polish law does not refer to the first part of the Directive provision stipulating that the authorities may allow the 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 representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities.

**Article 6(1) first subparagraph (e) of the Directive**, due to the lack of explicit reference to the national and Community law which may somehow hamper legal certainty as literally required by the Directive.

**Article 6(3) of the Directive**, the Polish provision does not explicitly state that any funds received by electronic money institutions from the electronic money holder shall be exchanged for electronic money without delay.

**Article 7(1) of the Directive**, partial conformity has been concluded as the national provision was too general to cover all the specific requirements on safeguarding of funds.

**Art. 7(2) first subparagraph of the Directive**, the Polish legislation allows electronic money institutions to invest their assets in mortgages and bank accounts in national banks and credit institutions, whereas the Directive refers solely to debt securities issued or guaranteed by public institutions, central banks and governments or institutions qualifying certain level of risk.

**Article 8(2) of the Directive**, partial conformity has been concluded as there is no specific disposition in the Polish law which would reflect the Directive provision in question.

**Article 9(1) second subparagraph of the Directive**, partial conformity has been concluded as the Polish law does not refer to the first part of the Directive provision stipulating that the authorities may allow the 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 representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities.

**Article 9(2) of the Directive**, Poland only partially ensures that the institution benefitting from the waiver will be established in the Member State in which it actually pursues its

business

**Article 9(5) introductory wording of the Directive**, partial conformity has been concluded due to the fact that in the light of the current legislation it is quite difficult to foresee whether the provision according to which an electronic money institution is obliged to report annually to the competent authority continues to apply to institutions benefiting from the waiver.

**Article 9(5)(b) of the Directive**, partial conformity has been concluded due to the fact that in the light of the current legislation it is quite difficult to foresee whether the provision according to which an electronic money institution is obliged to report annually to the competent authority continues to apply to institutions benefiting from the waiver.

### **3.2. Cases of non-conformity**

**Article 1(1)(c) of the Directive**, no corresponding provision has been detected in the Polish legal system with regard to the recognition of post office giro institutions as institutions entitled to issue electronic money.

**Article 1(1)(d) of the Directive**, no corresponding provision has been detected in the Polish legal system with regard to the recognition of the European Central Bank and national central banks as institutions entitled to issue electronic money.

**Article 1(1)(e) of the Directive**, no corresponding provision has been detected in the Polish legal system with regard to the recognition of Member States or their regional or local authorities as institutions entitled to issue electronic money.

**Article 1(5) of the Directive**, (concerning the exclusion of application of the Directive towards monetary value that is used to make payments transactions as specified in Article 3k of Directive 2007/64/EC) no corresponding provision has been detected in the Polish legal system.

**Article 3(3) fourth subparagraph of the Directive**, (concerning measures applicable to natural or legal persons who fail to comply with the obligation to provide prior information) no corresponding provision has been detected in the Polish legal system.

**Article 3(3) fifth subparagraph of the Directive**, (concerning the obligation of authorities to 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), no corresponding provision has been detected in the Polish legal system.

**Article 7(2) second subparagraph of the Directive**, because the Polish law does not refer to units in an undertaking for collective investment in transferable securities (UCITS) to be treated as secure, low-risk assets in which electronic money institution may invest.

**Article 9(1) fourth subparagraph of the Directive**, (concerning the possibility of a legal person benefiting from the waiver to 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) no corresponding provision has been detected in the Polish legal system.

**Article 9(3) of the Directive**, no corresponding provision has been detected in the Polish legal system.

**Article 9(6) of the Directive**, no corresponding provision has been detected in the Polish legal system.

**Article 9(9) of the Directive**, no corresponding provision has been detected in the Polish legal system.

**Article 11(4) first subparagraph (a), (b) and (c) of the Directive**, no requirements concerning additional fees accompanying redemption of electronic money have been explicitly laid

down in the Polish legislation.

**Article 11(4) second subparagraph of the Directive**, no corresponding provision has been detected in the Polish legal system.

**Article 11(5), of the Directive**, (concerning the possibility of the electronic money holder to request redemption of the electronic money in whole or in part where redemption is requested before the termination of the contract) no corresponding provision has been detected in the Polish legal system.

**Article 11(6) introductory wording of the Directive**, no corresponding provision has been detected in the Polish legal system.

**Article 11(6) (a) of the Directive**, no corresponding provision has been detected in the Polish legal system.

**Article 11(6)(b) of the Directive**, (concerning the requirement that all funds requested by the electronic money holder shall be redeemed 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)no corresponding provision has been detected in the Polish legal system.

**Article 12 of the Directive**, (concerning the prohibition of interest) no corresponding provision has been detected in the Polish legal system.

**Article 16(1) of the Directive**, full harmonisation has not been ensured due to a number of deficiencies in the Polish transposition.

**Article 18(1) first subparagraph of the Directive**, no corresponding provision has been detected in the Polish legal system.

**Article 18(1) second subparagraph of the Directive**, no corresponding provision has been detected in the Polish legal system.

**Article 18(1) third subparagraph of the Directive**, no corresponding provision has been detected in the Polish legal system.

**Article 18(3) of the Directive**, no corresponding provision has been detected in the Polish legal system.

### **3.3. Option ('May' clause)**

#### *3.3.1. Options that Poland has chosen to apply*

**Article 5(5) of the Directive**, concerning the possibility for the competent authorities to require the electronic money institution to increase their own funds.

**Article 7(1) of the Directive (as regards the option contained in Article 9(2) of Directive 2007/64/EC)**: on the safeguarding requirements, exceptions and time-limits relating to the funds received by electronic money institutions in exchange for electronic money.

**Article 9(1) first subparagraph of the Directive**, concerning the application of the waiver towards those electronic money institutions which fulfil certain conditions.

**Article 9(1) third subparagraph of the Directive**, concerning the application of the waiver towards those electronic money institutions which fulfil certain conditions.

### 3.3.2. *Options that Poland has not chosen to apply*

**Article 3(3) 6th subparagraph of the Directive**, with regard to the possibility of waiving the application of a part or of the totality of the requirements of Article 3 of the Directive in respect of electronic money institutions that carry out the activities referred to in Article 6(1)(e) of the Directive.

**Article 5(7) of the Directive**: with regard to the possibility of the competent authority of exempting electronic money institutions, which are included in the consolidated supervision of the parent credit institutions referred to in Directive 2006/48/EC, from the application of paragraphs 2 and 3 of Article 7 of the Directive.

**Article 7(2) third subparagraph of the Directive (as regards the options contained in Articles 9(1)(c) and 9(4) of Directive 2007/64/EC)**, on the exceptional competency of the competent authority to determine which of the secure low-risk assets already specified in Article 7(2) of the Directive are no longer considered as such.

**Article 7(3) of the Directive (as regards the option contained in Article 9(2) and 9(3) of Directive 2007/64/EC)**, with regard to the application of Article 9 of Directive 2007/64/EC where electronic money institutions engage in activities other than the issuing of electronic money referred to in Article 6(1)(a) of the Directive.

**Article 7(4) of the Directive**, with regard to the competency of the competent authority to determine the appropriate method to be applied in safeguarding funds.

**Article 9(4) of the Directive**, on limiting the activities available to legal persons that are registered as electronic money institutions under the beneficiary regime of Article 9(1) of the Directive.

**Article 18(2) of the Directive**, with regard to the possibility of automatically granting authorisation to electronic money institutions that comply with the necessary requirements pursuant to evidence known to the competent authorities.

## 4. List of acronyms

Art. - Article

APS – Act on payment services

EPI – Act on Electronic Payment instruments

NIMs – National Implementing Measures

The Directive – Directive 2009/110/EC

The Regulation - Regulation of the Minister of Finance of 22 November 2011 on the method of calculating the amount referred to in Article 76. 4 point 2 of the Act on payment services

| Directive 2009/110/EC   |   |   | National Implementing Measures |  |  | Conformity Assessment  |
|-------------------------|---|---|--------------------------------|--|--|--|
| Article No.             | EN  | MS  | Act, Article No.               | EN   | MS   | Observations   |
| Art. 1(1) intr. wording | <p><b>TITLE I<br/>SCOPE AND DEFINITIONS</b></p> <p><i>Article 1</i></p> <p><b>Subject matter and scope</b></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><b>TYTUŁ I<br/>ZAKRES<br/>ZASTOSOWANIA I<br/>DEFINICJE</b></p> <p>Artykuł 1<br/><b>Przedmiot i zakres</b></p> <p>1. Niniejsza dyrektywa ustanawia zasady dotyczące prowadzenia działalności polegającej na emisji pieniądza elektronicznego, w którym to celu państwa członkowskie uznają następujące kategorie emitentów pieniądza elektronicznego:</p> | EPI, Art. 1(1)                 | <p><b>EPI, Art. 1(1)</b></p> <p>The Act, to the extent exceeding the scope of Act of 19 August 2011 on payment services, sets out the principles of issuing and using electronic payment instruments, including electronic money as well as the rights and obligations of parties arising out of contracts for the electronic payment instrument.</p> <p>1a. The Act sets out also rules of establishing, internal organisation, pursuit of activity, supervision and liquidation of electronic money institutions.</p> <p>2. Provisions of this Act shall not be applicable to banks processing payments in inter-banking</p> | <p><b>EPI, Art. 1(1)</b></p> <p>Ustawa określa zasady wydawania i używania elektronicznych instrumentów płatniczych, w tym instrumentów pieniądza elektronicznego, oraz prawa i obowiązki stron umów o elektroniczny instrument płatniczy w zakresie nieuregulowanym w ustawie z dnia 19 sierpnia 2011 r. o usługach płatniczych (Dz. U. Nr 199, poz. 1175 i Nr 291, poz. 1707 oraz z 2012 r. poz. 1166).</p> <p>1a. Ustawa określa również zasady tworzenia, organizacji, działalności oraz nadzoru, a także likwidacji instytucji pieniądza elektronicznego.</p> <p>2. Przepisów ustawy nie stosuje się do</p> | <p><b>PARTIALLY CONFORM</b></p> <p>Article 1(1) of the EPI partially transposes Article 1(1) introductory wording of the Directive.</p> <p>According to the quoted provision, the EPI, amongst regulating various aspects related to electronic money, sets out the rules of establishing, internal organisation, pursuit of activity, supervision and liquidation of electronic money institutions. With this regard, the Polish provision corresponds to the Directive introductory provision in question.</p> <p>However, as it will be analysed, the Polish act does not refer to all elements of Article 1 of the Directive. To emphasize this discrepancy partial conformity is suggested.</p> <p>Therefore, partial conformity is observed.</p> |



| Directive 2009/110/EC |  |   | National Implementing Measures                                    |  |   | Conformity Assessment  |
|-----------------------|--|---|---|--|---|--|
|                       |  |   |   | accountancy systems.   | elektronicznych instrumentów płatniczych używanych przez banki w celu realizowania wzajemnych płatności w międzybankowych systemach rozliczeniowych.  |  |
| <b>Art. 1(1)(a)</b>   | (a) credit institutions as defined in point 1 of Article 4 of Directive 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; | a) instytucje kredytowe określone w art. 4 pkt 1 dyrektywy 2006/48/WE, w tym, zgodnie z prawem krajowym, ich oddział w rozumieniu art. 4 pkt 3 tej dyrektywy, jeżeli oddział ten znajduje się na terytorium Wspólnoty, a jego siedziba główna znajduje się poza Wspólnotą, zgodnie z art. 38 tej dyrektywy; | <b>BL, Art. 2,</b><br><b>BL, Art. 4(3),</b><br><b>BL, Art. 5,</b> | <b>BL, Art. 5</b><br>1. Banking operations shall comprise:<br><br>1) acceptance of deposits payable on demand or at a specified maturity, and the operation of such deposit accounts,<br><br>[...]<br><br>6a) issuing of electronic money,<br><br>[...]<br><br>3. Issuing electronic money instruments and making payments using such instrument shall be subject to separate regulations.<br><br><b>BL, Art. 2</b><br><br>A bank shall constitute a | <b>BL, Art. 5</b><br>1. Czynnościami bankowymi są:<br><br>1) przyjmowanie wkładów pieniężnych płatnych na żądanie lub z nadejściem oznaczonego terminu oraz prowadzenie rachunków tych wkładów;<br><br>[...]<br><br>6a) wydawanie instrumentu pieniądza elektronicznego,<br><br>[...]<br><br>3. Wydawanie instrumentu pieniądza elektronicznego oraz dokonywanie płatności z jego użyciem określają odrębne przepisy. | <b>CONFORM</b><br><br>Article 5 of the BL transposes Article 1(1)(a) of the Directive in a conform manner.<br><br>Poland, through Article 5(1) point (6a) of the BL, explicitly recognised banks (that is Polish credit institutions) as electronic money issuers.<br><br>It should be noted that the definition of banks referred to in the BL corresponds to the definition set out in Article 4 point (1) of Directive 2006/48/EC. In line with the Polish law, banks are legal persons established to perform banking operations such as acceptance of deposits payable on demand or at a specified maturity, and the operation of such deposit accounts.<br><br>Article 5 of the BL sets out various operations which may be performed by banks. Amongst others it points out the issuing of electronic money.<br><br>Corresponding to the Directive, the Polish law recognises also branches of banks as potential electronic money issuers (definitions |

| Directive 2009/110/EC |  | National Implementing Measures |   | Conformity Assessment   |   |
|-----------------------|--|--------------------------------|---|---|---|
|                       |  |                                | <p>legal person, established pursuant to the provisions of statute, operating on the basis of authorisations to perform banking operations that expose to risk funds which have been entrusted to the bank and which are in any way repayable.</p> <p><b>BL, Art. 4(1) and (3)</b></p> <p>1. [...]</p> <p>17) credit institution — an undertaking having its registered office outside the Republic of Poland, in one of the Member States of the European Union, hereinafter referred to as “Member States”, which, acting on its own behalf and for its own account, on the basis of authorisation by the competent supervisory authorities, carries out the business of receiving deposits or other funds entrusted to it, which are in any way repayable, and of extending loans, or of issuing electronic money,</p> <p>18) branch of a credit</p> | <p><b>BL, Art. 2</b></p> <p>Bank jest osobą prawną utworzoną zgodnie z przepisami ustaw, działającą na podstawie zezwoleń uprawniających do wykonywania <b>czynności bankowych</b> obciążających ryzykiem środki powierzone pod jakimkolwiek tytułem zwrotnym.</p> <p><b>BL, Art. 4(1) and (3)</b></p> <p>1. [...]</p> <p>17) instytucja kredytowa – podmiot mający swoją siedzibę za granicą Rzeczypospolitej Polskiej na terytorium jednego z państw członkowskich Unii Europejskiej, zwanych dalej „państwami członkowskimi”, prowadzący we własnym imieniu i na własny rachunek, na podstawie zezwolenia właściwych władz nadzorczych, działalność polegającą na przyjmowaniu depozytów lub innych środków powierzonych pod</p> | <p>of bank branches referred to in Articles 4(1) point (18) and (20) of the BL).</p> <p>It should be observed that in line with the European Union law, Poland treats differently branches of banks of credit institutions having their head office outside the Community and branches of banks located within the Community. According to Article 48j of the BL, branches of EU banks will benefit from the EU passport and therefore can be established on the basis of authorization issued by the competent authority in a respective Member State. On the other hand, branches of third country banks in order to be established have to comply with additional requirements set out by the Polish law, namely Article 40 of the BL and the following.</p> <p>Finally, it should be noted that the Polish law, in Article 4(3) of the BL explicitly states that where the Law refers to the Member State it implicitly refers also to the EEA. This is in line with Article 38 of Directive 2006/48/EC.</p> <p>Therefore, conformity is concluded.</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures  |   | Conformity Assessment |
|-----------------------|--|--|---|---|-----------------------|
|                       |  |  | <p>institution — an organisational unit of a credit institution, which performs on its behalf and for its benefit all or some of the operations deriving from the authorisation granted to that credit institution, with all the organisational units of a given credit institution set up in the Republic of Poland and corresponding to the above characteristics being regarded as a single branch,</p> <p>[...]</p> <p>20) branch of a foreign bank — an organisational unit of a foreign bank, which performs on its behalf and for its benefit all or some of the operations deriving from the authorisation granted to that bank, with all organisational units of the given foreign bank set up in the Republic of Poland and corresponding to the above characteristics being regarded as a single branch;</p> <p>3. The provisions of the</p> | <p>jakimkolwiek tytułem zwrotnym i udzieleniu kredytów lub na wydawaniu pieniądza elektronicznego;</p> <p>18) oddział instytucji kredytowej – jednostkę organizacyjną instytucji kredytowej wykonującą w jej imieniu i na jej rzecz wszystkie lub niektóre czynności wynikające z zezwolenia udzielonego tej instytucji kredytowej, przy czym wszystkie jednostki organizacyjne danej instytucji kredytowej odpowiadające powyższym cechom, utworzone na terytorium Rzeczypospolitej Polskiej, uważa się za jeden oddział;</p> <p>[...]</p> <p>20) oddział banku zagranicznego – jednostkę organizacyjną banku zagranicznego wykonującą w jego imieniu i na jego rzecz wszystkie lub niektóre czynności wynikające z zezwolenia udzielonego temu bankowi, przy czym</p> |                       |

| Directive 2009/110/EC |  | National Implementing Measures   |  |  | Conformity Assessment  |  |
|-----------------------|--|--|--|--|--|--|
|                       |  |  |  | <p>present Act referring to Member States shall also apply to the states which are not Member States but are part of the European Economic Area.</p> <p>wszystkie jednostki organizacyjne danego banku zagranicznego odpowiadające powyższym cechom, utworzone na terytorium Rzeczypospolitej Polskiej, uważa się za jeden oddział;</p> <p>3. Przepisy ustawy dotyczące państw członkowskich stosuje się również do państw niebędących państwami członkowskimi, ale należących do Europejskiego Obszaru Gospodarczego.</p> |  |  |
| <b>Art. 1(1)(b)</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) instytucje pieniądza elektronicznego określone w art. 2 pkt 1 niniejszej dyrektywy, w tym, zgodnie art. 8 niniejszej dyrektywy i z prawem krajowym, ich oddział, w przypadku gdy taki oddział znajduje się na terytorium Wspólnoty, a jego siedziba główna znajduje się poza Wspólnotą; | <b>EPI, Art. 2 pt(5)</b><br><b>EPS, Art. 41</b><br><b>BL, Art. 4(1) pt(2) and (17) and (3)</b> | <b>EPI, Art. 2 pt(5)</b><br><br>5) electronic money institution – other than bank legal person, established and pursuing its activity on the basis of authorisation from competent authorities, which on its own behalf issues and redeems electronic money as well as processes transactions with a use of electronic money instruments;  | <b>EPI, Art. 2 pt(5)</b><br><br>5) instytucja pieniądza elektronicznego - inną niż bank osobę prawną, utworzoną i działającą na podstawie zezwolenia właściwych władz lub przepisów prawa, której przedmiotem działania jest prowadzenie we własnym imieniu i na własny rachunek działalności polegającej na wydawaniu do dyspozycji i wykupie pieniądza elektronicznego oraz rozliczanie transakcji | <b>CONFORM</b><br><br>Article 2 point (5) of the EPI transposes Article 1(1)(b) of the Directive.<br><br>At the time of introducing electronic money in Poland, the Polish legislator had already foreseen the existence of electronic money institutions.<br><br>According to Article 2 point (5) of the EPS, an electronic money institution is a legal person which on the basis of authorisation from competent authorities issues and redeems electronic money as well as processes transactions by use of electronic |

| Directive 2009/110/EC |  | National Implementing Measures                        |   | Conformity Assessment   |   |
|-----------------------|--|---|---|---|---|
|                       |  | <p><b>BL, Art. 48i</b></p> <p><b>BL, Art. 48j</b></p> | <p><b>EPS, Art. 41</b></p> <p>The taking up and pursuit of the business in the territory of the Republic of Poland by electronic money institutions established in the territory of other Member States of the European Union or Member States of the European Free Trade Association (EFTA) - parties to the Agreement on the European Economic Area and the supervision of these institutions as well as the taking up and pursuit of the business by national electronic money institutions in countries that are Members of the European Union or the European Free Trade Association (EFTA) - parties to the agreement on the European Economic Area, shall be governed by the provisions of the Banking Law relating to credit institutions.</p> <p><b>BL, Art. 4(1) and (3)</b></p> <p>1. The terms employed in the present Act shall be</p> | <p>dokonywanych przy użyciu instrumentów pieniądza elektronicznego;</p> <p><b>EPS, Art. 41</b></p> <p>Do podejmowania i prowadzenia działalności na terytorium Rzeczypospolitej Pol-skiej przez instytucje pieniądza elektronicznego mające siedzibę na terytorium państw członkowskich Unii Europejskiej lub państw członkowskich Europejskiego Porozumienia o Wolnym Handlu (EFTA) – stron umowy o Europejskim Obszarze Gospodarczym, wykonywania nad tymi instytucjami nadzoru oraz podejmowania i prowadzenia działalności przez krajowe instytucje pieniądza elektronicznego w krajach będących członkami Unii Europejskiej lub Europejskiego Porozumienia o Wol-nym Handlu (EFTA) – stronami umowy o Europejskim Obszarze Gospodarczym stosuje się odpowiednio przepisy</p> | <p>money instruments.</p> <p>The Polish law contains a specific provision concerning the treatment of branches of foreign electronic money institutions. According to Article 41 of the EPS, electronic money institutions located within the EU which are planning to start up a branch in Poland shall be treated in the same way as EU credit institutions are treated under the BL, therefore they shall benefit from the EU passport.</p> <p>However, the EPS does not explicitly refer to the situation in which electronic money institutions established in third countries are interested in setting up a branch in Poland. It can be implied on the basis of analogy, that those institutions in order to set up a branch in Poland would have to fulfil additional requirements and therefore they would never benefit from the single licence.</p> <p>Therefore, conformity is concluded.</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures   |  | Conformity Assessment |
|-----------------------|--|--|--|--|-----------------------|
|                       |  |  | <p>construed as follows:</p> <p>2) foreign bank — a bank having its registered office outside the Republic of Poland, in a country that is not a member of the European Union,</p> <p>17) credit institution — an undertaking having its registered office outside the Republic of Poland, in one of the Member States of the European Union, hereinafter referred to as “Member States”, which, acting on its own behalf and for its own account, on the basis of authorisation by the competent supervisory authorities, carries out the business of receiving deposits or other funds entrusted to it, which are in any way repayable, and of extending loans, or of issuing electronic money,</p> <p>3. The provisions of the present Act referring to Member States shall also apply to the states which are not Member States but are part of the European</p> | <p>Prawa bankowego odnoszące się do instytucji kredytowych.</p> <p><b>BL, Art. 4(1) and (3)</b></p> <p>1. Użyte w ustawie określenia oznaczają:</p> <p>2) bank zagraniczny – bank mający siedzibę za granicą Rzeczypospolitej Polskiej, na terytorium państwa niebędącego członkiem Unii Europejskiej;</p> <p>17) instytucja kredytowa – podmiot mający swoją siedzibę za granicą Rzeczypospolitej Polskiej na terytorium jednego z państw członkowskich Unii Europejskiej, zwanych dalej „państwami członkowskimi”, prowadzący we własnym imieniu i na własny rachunek, na podstawie zezwolenia właściwych władz nadzorczych, działalność polegającą na przyjmowaniu depozytów lub innych środków powierzonych pod jakimkolwiek tytułem zwrotnym i udzieleniu</p> |                       |

| Directive 2009/110/EC |  |  | National Implementing Measures  |   | Conformity Assessment |
|-----------------------|--|--|---|---|-----------------------|
|                       |  |  | <p>Economic Area.</p> <p><b>BL, Art. 48i</b></p> <p>A credit institution may pursue business in the Republic of Poland via a branch or within the framework of its cross-border activity.</p> <p><b>BL, Art. 48j</b></p> <p>A credit institution may perform in the Republic of Poland the operations specified in Art. 5, paras. 1 and 2, and Art. 6, para. 1 subparas. 1-4 and 6-8, in the scope that derives from the authorisation granted to it by the competent supervisory authorities of the home Member State.</p> | <p>kredytów lub na wydawaniu pieniądza elektronicznego;</p> <p>3. Przepisy ustawy dotyczące państw członkowskich stosuje się również do państw niebędących państwami członkowskimi, ale należących do Europejskiego Obszaru.</p> <p><b>BL, Art. 48i</b></p> <p>Instytucja kredytowa może prowadzić działalność na terytorium Rzeczypospolitej Polskiej poprzez oddział lub w ramach działalności transgranicznej.</p> <p><b>BL, Art. 48j</b></p> <p>Instytucja kredytowa może wykonywać na terytorium Rzeczypospolitej Polskiej czynności określone w art. 5 ust. 1 i 2 oraz art. 6 ust. 1 pkt 1-4 i 6-8 w zakresie wynikającym z zezwolenia udzielonego przez właściwe władze nadzorcze państwa macierzystego.</p> |                       |

| Directive 2009/110/EC |   |   | National Implementing Measures                 |   |  | Conformity Assessment   |
|-----------------------|---|---|--|---|--|---|
| <b>Art. 1(1)(c)</b>   | (c) post office giro institutions which are entitled under national law to issue electronic money;  | c) instytucje świadczące żyro pocztowe, które są uprawnione do emisji pieniądza elektronicznego zgodnie z prawem krajowym;  | N/A  | N/A   | N/A  | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 1(1)(c) of the Directive. The corresponding national provision(s) could not be located either.<br><br>It is noteworthy that in the light of recently published governmental documents, the foreseen amendment of the APS and the EPI provides for an explicit recognition of post offices as entities entitled to issue electronic money. |
| <b>Art. 1(1)(d)</b>   | (d) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;                     | d) Europejski Bank Centralny i krajowe banki centralne, jeżeli nie działają one w charakterze władz monetarnych lub innych organów publicznych;                             | N/A  | N/A   | N/A  | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 1(1)(d) of the Directive. The corresponding national provision(s) could not be located either.  |
| <b>Art. 1(1)(e)</b>   | (e) Member States or their regional or local authorities when acting in their capacity as public authorities.   | e) państwa członkowskie albo ich organy regionalne lub lokalne, jeżeli nie działają one w charakterze organów publicznych.  | N/A  | N/A   | N/A  | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 1(1)(e) of the Directive. The corresponding national provision(s) could not be located either.  |
| <b>Art. 1(2)</b>      | 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. W tytule II niniejszej dyrektywy określono zasady odnoszące się do podejmowania i prowadzenia działalności oraz do nadzoru ostrożnościowego nad działalnością instytucji | <b>EPI, Art. 1a</b><br><br><b>EPI, Art. 39</b> | <b>EPI, Art. 1a</b><br><br>1a. The Act sets out also rules of establishing, internal organisation, pursuit of activity, supervision and liquidation of electronic money | <b>EPI, Art. 1a</b><br><br>1a. Ustawa określa również zasady tworzenia, organizacji, działalności oraz nadzoru, a także likwidacji instytucji pieniądza elektronicznego. | <b>PARTIALLY CONFORM</b><br><br>The EPI transposes Article 1(2) of the Directive.<br><br>Poland has transposed the Directive foremost through the EPS. The taking up, the pursuit and the prudential supervision of electronic money institutions have been regulated in  |



| Directive 2009/110/EC |                            | National Implementing Measures  |  | Conformity Assessment  |
|-----------------------|----------------------------|---|--|--|
|                       | pieniądza elektronicznego. | <p>institutions.</p> <p><b>EPI, Art. 39</b></p> <p>As far as the taking up and the pursuit of the business of electronic money institutions is not regulated by this Act, provisions of Part IV, of Chapter I of the Act of 19 August 2011 on payment services (the APS) shall apply accordingly.</p> <p><b>EPS, Art. 41</b></p> <p>The taking up and pursuit of the business in the territory of the Republic of Poland by electronic money institutions established in the territory of other Member States of the European Union or Member States of the European Free Trade Association (EFTA) - parties to the Agreement on the European Economic Area and the supervision of these institutions as well as the taking up and pursuit of the business by national electronic money institutions in countries that are Members of the</p> | <p><b>EPI, Art. 39</b></p> <p>W zakresie nieuregulowanym w niniejszej ustawie do podejmowania i prowadzenia działalności przez instytucję pieniądza elektronicznego stosuje się odpowiednio przepisy działu IV rozdziału 1 ustawy z dnia 19 sierpnia 2011 r. o usługach płatniczych.</p> <p><b>EPS, Art. 41</b></p> <p>Do podejmowania i prowadzenia działalności na terytorium Rzeczypospolitej Polskiej przez instytucje pieniądza elektronicznego mające siedzibę na terytorium państw członkowskich Unii Europejskiej lub państw członkowskich Europejskiego Porozumienia o Wolnym Handlu (EFTA) – stron umowy o Europejskim Obszarze Gospodarczym, wykonywania nad tymi instytucjami nadzoru oraz podejmowania i prowadzenia działalności</p> | <p>Chapter 5 of the EPS (Article 36 – 54 of the EPS).</p> <p>The cross-reference set out in Article 39 of the EPS foresees however application of specific provisions of the APS to some aspects of the taking up and the pursuit of the business of electronic money institutions which have not been completely covered by the EPS.</p> <p>As it will be analysed below, provisions of the APS would be also used for the transposition of some Directive provisions relating to the own funds, safeguarding requirements, relations with third countries and out-of-court complaint and redress procedures for the settlement of disputes.</p> <p>On the other hand, Article 41 of the EPS contains a cross-reference to provisions of the Banking Law (BL) as far as the taking up, the pursuit and the prudential supervision of electronic money business in Poland by electronic money institutions established in another Member State are concerned.</p> <p>However, as it will be revealed by the analysis below, the Polish legislation taken as a whole does not lay down all of the rules for the taking up, the pursuit and the prudential supervision of the business of electronic money institutions.</p> <p>In order to emphasise those deficiencies, partial conformity should be suggested also with respect to the Directive provision in</p> |

| Directive 2009/110/EC |  |   | National Implementing Measures |  |  | Conformity Assessment  |
|-----------------------|--|---|--------------------------------|--|--|--|
|                       |  |   |                                | European Union or the European Free Trade Association (EFTA) - parties to the agreement on the European Economic Area, shall be governed by the provisions of the Banking Law relating to credit institutions. | przez krajowe instytucje pieniądza elektronicznego w krajach będących członkami Unii Europejskiej lub Europejskiego Porozumienia o Wolnym Handlu (EFTA) – stronami umowy o Europejskim Obszarze Gospodarczym stosuje się odpowiednio przepisy Prawa bankowego odnoszące się do instytucji kredytowych. | question.<br>Therefore, partial conformity is concluded.   |
| <b>Art. 1(3)</b>      | 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 exception of those referred to in the first and second indents of that Article. | 3. Państwa członkowskie mogą odstąpić od stosowania wszystkich lub niektórych przepisów tytułu II niniejszej dyrektywy wobec instytucji, o których mowa w art. 2 dyrektywy 2006/48/WE, z wyjątkiem instytucji, o których mowa w tiret pierwszym i drugim tego artykułu. | N/A                            | N/A  | N/A  | Article 1(3) of the Directive sets out an option. Owing to this option, Poland has not chosen to apply. In this regard, no corresponding provision(s) could be located in the legislation of Poland either.              |
| <b>Art. 1(4)</b>      | 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. Niniejsza dyrektywa nie ma zastosowania do wartości pieniężnej przechowywanej przy użyciu instrumentów objętych wyłączeniem, określonych w art. 3 lit. k)  | <b>EPI, Art. 1(3)</b>          | <b>EPI, Art. 1(3)</b><br>3. If the issuer of payment cards is at the same time their acceptant and the contract does not foresee a possibility of acceptance   | <b>EPI, Art. 1(3)</b><br>3. Jeśli wydawca kart płatniczych jest jednocześnie ich akceptantem i umowa nie przewiduje możliwości   | <b>CONFORM</b><br>Article 1(3) of the EPI transposes Article 1(4) of the Directive.<br>The quoted provision excludes payment cards that can be only used and accepted by the issuer of those payment instruments under a |

| Directive 2009/110/EC       |   | National Implementing Measures   |                    |   | Conformity Assessment   |   |
|-----------------------------|---|--|--------------------|---|---|---|
|                             |   | dyrektywy 2007/64/WE.  |                    | of those cards outside a limited network of the issuer, provisions of this Act shall apply only with respect to protection of the card holder and information obligations towards the National Polish Bank, hereinafter referred to as 'NBP'. | akceptacji tych kart poza własną siecią wydawcy, przepisy ustawy stosuje się tylko w zakresie ochrony posiadacza i wykonywania obowiązków informacyjnych wobec Narodowego Banku Polskiego, zwanego dalej "NBP". | commercial agreement between the holder and the issuer from the application of most of the electronic money regulations. According to Article 1(3), the EPI applies to those instruments only as far as the protection of the holder rights and the information obligation towards the NBP are concerned. This does not jeopardise the conformity, since those aspects in any event fall outside the scope of the Directive.<br><br>This corresponds to the exclusion foreseen in the Directive provision in question.<br><br>Therefore, conformity could be concluded. |
| <b>Art. 1(5)</b>            | 5. This Directive does not apply to monetary value that is used to make payment transactions exempted as specified in Article 3(1) of Directive 2007/64/EC. | 5. Niniejsza dyrektywa nie ma zastosowania do wartości pieniężnej wykorzystywanej do dokonywania transakcji płatniczych objętych wyłączeniem, określonych w art. 3 lit. 1) dyrektywy 2007/64/WE. | <b>N/A</b>         | N/A   | N/A   | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 1(5) of the Directive. The corresponding national provision(s) could not be located either.   |
| <b>Art. 2 intr. wording</b> | <i>Article 2 Definitions</i><br><br>For the purposes of this Directive, the following definitions shall apply:  | Artykuł 2 Definicje<br><br>Na użytek niniejszej dyrektywy stosuje się następujące definicje:   | <b>EPI, Art. 2</b> | <b>EPI, Art. 2</b><br><br>For the purposes of this Act, the following definitions shall apply:  | <b>EPI, Art. 2</b><br><br>Użyte w ustawie określenia oznaczają  | <b>PARTIALLY CONFORM</b><br><br>Article 2 of the EPI transposes Article 2, introductory wording of the Directive.<br><br>The EPI contains a list of definitions corresponding almost completely to the list of definitions provided for by in Article 2 of the Directive.<br><br>However, it should be observed that the  |

| Directive 2009/110/EC |  |   | National Implementing Measures |   |   | Conformity Assessment   |
|-----------------------|--|---|--------------------------------|---|---|---|
|                       |  |   |                                |   |   | <p>Polish law does not provide for an explicit definition of the 'electronic money issuer'. This discrepancy is further developed under the location of the relevant Directive provision.</p> <p>Partial conformity is concluded due to the fact that not all Directive definitions are reflected by the Polish law.</p>  |
| <b>Art. 2 pt (1)</b>  | 1. "electronic money institution" means a legal person that has been granted authorisation under Title II to issue electronic money; | 1) "instytucja pieniądza elektronicznego" oznacza osobę prawną, której udzielono zezwolenia na emisję pieniądza elektronicznego na podstawie tytułu II; | <b>EPI, Art. 2 pt(5)</b>       | <b>EPI, Art. 2 pt(5)</b><br>5) electronic money institution – means other than a bank, a legal person established and pursuing its activity on the basis of authorisation granted by the competent authorities, which on its own behalf issues and redeems electronic money as well as processes transactions with a use of electronic money instruments; | <b>EPI, Art. 2 pt(5)</b><br>5) instytucja pieniądza elektronicznego - inną niż bank osobę prawną, utworzoną i działającą na podstawie zezwolenia właściwych władz lub przepisów prawa, której przedmiotem działania jest prowadzenie we własnym imieniu i na własny rachunek działalności polegającej na wydawaniu do dyspozycji i wykupie pieniądza elektronicznego oraz rozliczanie transakcji dokonywanych przy użyciu instrumentów pieniądza elektronicznego; | <p><b>CONFORM</b></p> <p>Article 2 point (5) of the EPI transposes Article 2 point (1) of the Directive.</p> <p>According to Article 2 point (5) of the EPI, electronic money institution means a legal person established and pursuing its activity on the basis of authorisation granted by the competent authorities, which on its own behalf issues and redeems electronic money as well as processes transactions by use of electronic money instruments.</p> <p>Corresponding to Directive 2006/48/EC, electronic money institutions in Poland are not considered to be banks (credit institutions), and as explicitly stated by the Polish law (Article 46 of the EPI) they can neither receive deposits from the public nor grant credit from funds received from the public.</p> <p>However, in line with the EU regime, specifically in line with recital 25 of the Directive, banks in Poland should continue to be allowed to issue electronic money and to</p> |

| Directive 2009/110/EC |  |   | National Implementing Measures   |  |  | Conformity Assessment   |
|-----------------------|--|---|--|--|--|---|
|                       |  |   |  |  |  | <p>carry on such activity.</p> <p>Overall, the Polish law is complying with the Directive provision in question.</p>  |
| <b>Art. 2 pt (2)</b>  | <p>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;</p> | <p>2) "pieniądz elektroniczny" oznacza wartość pieniężną przechowywaną elektronicznie, w tym magnetycznie, stanowiącą prawo do roszczenia wobec emitenta, która jest emitowana w zamian za środki pieniężne w celu dokonywania transakcji płatniczych określonych w art. 4 pkt 5 dyrektywy 2007/64/WE i akceptowana przez osoby fizyczne lub prawne inne niż emitent pieniądza elektronicznego;</p> | <p><b>EPI, Art. 2 pt(10)</b></p> <p>10) electronic money – means monetary value representing an equivalent of money which fulfils the following conditions:</p> <p>a) is electronically, including magnetically stored,</p> <p>b) is issued for disposal on the basis of a contract in exchange for money of nominal value not smaller than the value of electronic money,</p> <p>c) is accepted as a payment instruments by entrepreneurs others than issuers,</p> <p>d) is measured in monetary units;</p> | <p><b>EPI, Art. 2 pt(10)</b></p> <p>10) pieniądz elektroniczny - wartość pieniężną stanowiącą elektroniczny odpowiednik znaków pieniężnych, która spełnia łącznie następujące przesłanki:</p> <p>a) jest przechowywana elektronicznie, w tym magnetycznie,</p> <p>b) jest wydawana do dyspozycji na podstawie umowy w zamian za środki pieniężne o nominalnej wartości nie mniejszej niż ta wartość,</p> <p>c) jest przyjmowana jako środek płatniczy przez przedsiębiorców innych niż wydający ją do dyspozycji,</p> <p>d) jest wyrażona w jednostkach pieniężnych;</p> | <p><b>EPI, Art. 2 pt(10)</b></p> <p>10) pieniądz elektroniczny - wartość pieniężną stanowiącą elektroniczny odpowiednik znaków pieniężnych, która spełnia łącznie następujące przesłanki:</p> <p>a) jest przechowywana elektronicznie, w tym magnetycznie,</p> <p>b) jest wydawana do dyspozycji na podstawie umowy w zamian za środki pieniężne o nominalnej wartości nie mniejszej niż ta wartość,</p> <p>c) jest przyjmowana jako środek płatniczy przez przedsiębiorców innych niż wydający ją do dyspozycji,</p> <p>d) jest wyrażona w jednostkach pieniężnych;</p> | <p><b>CONFORM</b></p> <p>Article 2 point (10) of the EPI transposes Article 2 point (2) of the Directive.</p> <p>In line with recital 7 of the Directive, Poland introduced a clear definition of electronic money in order to make it technically neutral.</p> <p>According to Article 2 point (1), electronic money means monetary value representing an equivalent of money which fulfills the following conditions:</p> <ul style="list-style-type: none"> <li>• is electronically, and magnetically stored,</li> <li>• is issued for disposal on the basis of a contract in exchange for money of nominal value not smaller than the value of electronic money,</li> <li>• is accepted as a payment instruments by entrepreneurs others than issuers;</li> <li>• is measured in monetary units;</li> </ul> <p>The Polish definition covers all situations where the payment service provider 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</p> |

| Directive 2009/110/EC |   |   | National Implementing Measures |     |     | Conformity Assessment  |
|-----------------------|---|---|--------------------------------|-----|-----|--|
|                       |   |   |                                |     |     | <p>payment. Additionally, the meaning of a payment transaction in the national provision falls within the one of Article 4 of Directive 2007/64/EC.</p> <p>In line with recital 8 of the Directive, it can be implied from the Polish definition of electronic money that it is electronic money whether it is held on a payment device in the electronic money holder's possession or stored remotely at a server and managed by the electronic money holder through a specific account for electronic money. It seems that the Polish definition is 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.</p> <p>Therefore, conformity could be concluded.</p> |
| <b>Art. 2 pt (3)</b>  | 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) "emitent pieniądza elektronicznego" oznacza podmioty, o których mowa w art. 1 ust. 1, instytucje korzystające ze zwolnienia zgodnie z art. 1 ust. 3 oraz osoby prawne korzystające ze zwolnienia zgodnie z art. 9; | N/A                            | N/A | N/A | <p><b>PARTIALLY CONFORM</b></p> <p>There is no provision in the Polish legal system which would specifically transpose Article 2 point (3) of the Directive.</p> <p>The definition of the Directive by means of cross-reference refers to all the categories of electronic money issuers. It refers to institutions set out in Articles 1(1), 1(3) and 9 of the Directive.</p> <p>According to the Polish law, only two categories referred to in Article 1(1) have been defined explicitly as electronic money</p>  |

| Directive 2009/110/EC |   |   | National Implementing Measures |  |  | Conformity Assessment   |
|-----------------------|---|---|--------------------------------|--|--|---|
|                       |   |   |                                |  |  | <p>issuers. The Polish law considers also as electronic money issuers those entities which after fulfilling certain conditions may benefit from the waiver corresponding to Article 9 of the Directive.</p> <p>There have been found no provisions in the Polish legal system which would grant such status to the institutions referred to in Article 1(1)(c), (d) and (e) of the Directive. Those provisions have been assessed as not conform. Consequently, This discrepancy makes the transposition of the term incomplete.</p> <p>Moreover, the Polish institutions listed by Article 2 of Directive 2006/48/EC, which can benefit from Article 1(3) of the Directive have not been recognised as electronic money issuers. As such, they do not fall under the scope of the Directive definition in question.</p> <p>Overall, the scope of the term ‘electronic money issuer’ in the light of the Polish law is narrower compared to the one developed in the Directive.</p> <p>Due to the discrepancies detected, partial conformity should be concluded.</p> |
| <b>Art. 2 pt (4)</b>  | 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 | 4) "średnia wartość pieniądza elektronicznego pozostającego w obiegu" oznacza średnią wartość całkowitej kwoty zobowiązań finansowych związanych z pieniądzem | <b>EPI, Art. 47(3)</b>         | <b>EPI, Art. 47(3)</b><br>3. The value of electronic money in issue is calculated as the greater of the values of: | <b>EPI, Art. 47(3)</b><br>3. Wartość pieniądza elektronicznego w obiegu oblicza się jako większą z wartości: | <b>CONFORM</b><br><br>Article 47(3) of the EPI transposes Article 2 point (4) of the Directive in a conform manner.<br><br>It should be noted that the quoted Polish  |

| Directive 2009/110/EC   |  | National Implementing Measures  |  | Conformity Assessment  |
|---|--|---|--|--|
| the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month. | elektronicznym emitowanym na koniec każdego dnia kalendarzowego w ciągu poprzednich sześciu miesięcy kalendarzowych, obliczaną na pierwszy dzień kalendarzowy każdego miesiąca kalendarzowego i stosowaną do tego miesiąca kalendarzowego. | <p>1) total amount of financial liabilities related to electronic money in issue at the end of the reporting period;</p> <p>2) the average total amount of financial liabilities related to electronic money in issue at the end of the preceding six calendar months or in case of the electronic money institution which is running its activity shorter than 6 months – the average total amount of foreseen liabilities related to electronic money at the end of 6 months of activity, included in the business plan which should be adjusted at the request of PFSA (Polish Financial Supervision Authority).</p> | <p>1) zobowiązań finansowych ogółem z tytułu pieniądza elektronicznego pozostającego w obiegu na koniec okresu sprawozdawczego;</p> <p>2) średniej wartości zobowiązań z tytułu pieniądza elektronicznego na koniec ostatnich 6 miesięcy lub w przypadku instytucji pieniądza elektronicznego prowadzącej działalność krócej niż 6 miesięcy - średniej wartości przewidywanych zobowiązań z tego tytułu na koniec pierwszych 6 miesięcy działalności, ujętych w planie działalności, który winien zostać skorygowany na żądanie KNF.</p> | <p>provision does not refer solely to the ‘average outstanding electronic money’. Article 47(3) of the EPI defines the value of electronic money in issue at the certain time without limiting this value to the average value as it is done by the Directive. The Polish provision defines the average value in point b of Article 47(3) of the EPI.</p> <p>In line with the Polish law, the value of electronic money in issue should be understood as one of the two values, depending on which of the two is higher at certain time:</p> <ul style="list-style-type: none"> <li>total amount of financial liabilities related to electronic money in issue at the end of the reporting period;</li> <li>the average total amount of financial liabilities related to electronic money in issue at the end of the preceding six calendar months or in case of the electronic money institution which is running its activity shorter than 6 months – the average total amount of foreseen liabilities related to electronic money at the end of 6 months of activity, included in the business plan which should be adjusted at the request of PFSA (Polish Financial Supervision Authority).</li> </ul> <p>The definition of the average total amount of financial liabilities related to electronic</p> |



| Directive 2009/110/EC |  |  | National Implementing Measures   |   |  | Conformity Assessment   |
|-----------------------|--|--|--|---|--|---|
|                       |  |  |  |   |  | money in issue corresponds to the Directive definition in question.<br><br>Therefore, conformity could be concluded.  |
| Art. 3(1)             | <p><b>TITLE II<br/>REQUIREMENTS FOR<br/>THE TAKING UP,<br/>PURSUIT AND<br/>PRUDENTIAL<br/>SUPERVISION OF THE<br/>BUSINESS OF<br/>ELECTRONIC MONEY<br/>INSTITUTIONS</b></p> <p><i>Article 3</i><br/><b>General prudential rules</b></p> <p>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>.</p> | <p><b>Tytuł II<br/>WYMOGI<br/>DOTYCZĄCE<br/>PODEJMOWANIA I<br/>PROWADZENIA<br/>DZIAŁALNOŚCI<br/>PRZEZ INSTYTUCJE<br/>PIENIĄDZA<br/>ELEKTRONICZNEGO<br/>ORAZ NADZORU<br/>OSTROŻNOŚCIOWEG<br/>O NAD TĄ<br/>DZIAŁALNOŚCIĄ</b></p> <p><i>Artykuł 3</i><br/><b>Ogólne zasady<br/>ostrożnościowe</b></p> <p>1. Bez uszczerbku dla niniejszej dyrektywy, art. 5 i art. 10–15, art. 17 ust. 7 i art. 18–25 dyrektywy 2007/64/WE stosują się odpowiednio do instytucji pieniądza elektronicznego.</p> | <p>APS,<br/>Art. 2,<br/>4, 12,<br/>14, 16,<br/>60, 61,<br/>62, 64,<br/>65, 67,<br/>68, 69,<br/>71, 81,<br/>82, 83,<br/>85, 86,<br/>87, 88,<br/>91, 92,<br/>96,<br/>97(1),<br/>98, 99,<br/>102,<br/>103,<br/>104,<br/>105,<br/>106,<br/>108,<br/>110,<br/>111,<br/>133,<br/>134,<br/>and<br/>154</p> <p>FMS,<br/>Art. 2</p> | <p>APS, Art. 2, 4, 12, 14, 16, 60, 61, 62, 64, 65, 67, 68, 69, 71, 81, 82, 83, 85, 86, 87, 88, 91, 92, 96, 97(1), 98, 99, 102, 103, 104, 105, 106, 108, 110, 111, 133, 134, and 154</p> <p>Act of 21 July 2006 on financial market supervision, (Hereinafter referred to as ‘FMS’), Art. 2</p> <p>Code of Administrative Procedure (Hereinafter referred to as ‘CAP’)</p> <p>EPI, Art. 3</p> <p>EPI, Art. 39</p> <p>As far as the taking up and the pursuit of the business of electronic money institutions is not regulated by this Act, provisions of Part IV, of Chapter I of the Act of 19 August 2011 on payment services (the APS) shall apply</p> | <p>APS, Art. 2, 4, 12, 14, 16, 60, 61, 62, 64, 65, 67, 68, 69, 71, 81, 82, 83, 85, 86, 87, 88, 91, 92, 96, 97(1), 98, 99, 102, 103, 104, 105, 106, 108, 110, 111, 133, 134, and 154</p> <p>Act of 21 July 2006 on financial market supervision, (Hereinafter referred to as ‘FMS’), Art. 2</p> <p>Code of Administrative Procedure (Hereinafter referred to as ‘CAP’)</p> <p>EPI, Art. 3</p> <p>EPI, Art. 39</p> <p>W zakresie nieuregulowanym w niniejszej ustawie do podejmowania i prowadzenia działalności przez instytucję pieniądza elektronicznego stosuje się odpowiednio przepisy działu IV rozdziału 1 ustawy z dnia 19 sierpnia</p> | <p><b>PARTIALLY CONFORM</b></p> <p>No disposition of Polish legislation has been found which would explicitly transpose Article 3(1) of the Directive as such.</p> <p>It should be noted however that the Polish legislation contains a reference to the dispositions applicable to payment services institutions and transposing some of the listed Articles of Directive 2007/64/EC. According to Article 39 of the EPI, as far as the taking up and the pursuit of the business of electronic money institutions is not regulated by this Act, provisions of Part IV, of Chapter I of the Act of 19 August 2011 on payment services (the APS) shall apply accordingly.</p> <p>On the other hand, the said reference explicitly makes possible only the application of Chapter IV of Part IV of the APS towards electronic money institutions.</p> <p>When it comes to other provisions of the APS located outside Chapter I of Part IV thereof, the cross-reference present in Article 5(4) of the APS has been used. It should be stressed that this reference is not as straightforward and leaves fair confusion with regard to which aspects of electronic money business provisions of the APS shall indeed apply. In particular, this creates confusion as regards</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures   |   | Conformity Assessment  |  |
|-----------------------|--|--|--|---|--|--|
|                       |  |  | <p><b>CAP</b></p> <p><b>EPI, Art. 3</b></p> <p><b>EPI, Art. 39</b></p> <p><b>APS, Article 5(4)</b></p> | <p>accordingly.</p> <p><b>APS, Article 5(4)</b></p> <p>4. The regulations of the Act apply to the issue and use of the electronic payment instruments referred to in the Act on Electronic Payment Instruments, in each currency.</p> | <p>2011 r. o usługach płatniczych.</p> <p><b>APS, Article 5(4)</b></p> <p>4. Przepisy ustawy stosuje się do wydawania i używania elektronicznych instrumentów płatniczych, o których mowa w ustawie o elektronicznych instrumentach płatniczych, w każdej walucie.</p> | <p>the <i>mutatis mutandis</i> application of the relevant provisions of Directive 2007/64/EC to electronic money institutions, as assumed in recital 9 of the Directive.</p> <p>Despite those doubts, for the purpose of this assessment the said cross-reference has been interpreted as if it was referring to all those aspects which have not been regulated under the EPI and consequently corresponding provisions of the APS have been quoted in order to infer the transposition.</p> <p>It should be observed that the fact that the interrelation between the EPI and APS is not clear enough has been also noticed by the Polish legislator and therefore amendment of two acts is on schedule. So far, in the light of the recent minister level documents it can be implied that the amendment of the APS is foreseen and the repeal of the EPI is desired. The new law foresees that all the provisions related to electronic money will be included in the APS.</p> <p>At this time, the APS is transposing the majority of the measures of Directive 2007/64 (PSD Directive). The assessment of the transposition of the PSD into the Polish system revealed the following with respect to the provisions specified in Article 3(1) of the Directive.</p> <p>Article 5 of Directive 2007/64/EC has been transposed by Articles 60(1), 61(1), 64(1), 81, 83, 96, 97(1) and 154 of the APS in a</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures |  |  | Conformity Assessment  |
|-----------------------|--|--|--------------------------------|--|--|--|
|                       |  |  |                                |  |  | <p>conform manner.</p> <p>Article 10 of Directive 2007/64/EC has been transposed by Articles 60, 2, 64, 65, 68, 91 and 98 of the APS in a conform manner.</p> <p>Article 11 of Directive 2007/64/EC has been transposed by Article 62 of the APS in a conform manner.</p> <p>Article 12 of Directive 2007/64/EC has been transposed by Articles 67, 69 and 71 of the APS in a conform manner.</p> <p>Article 13 of Directive 2007/64/EC has been transposed by Articles 4, 133 and 134 of the APS in a conform manner.</p> <p>Article 14 of Directive 2007/64/EC has been transposed by Article 61 of the APS in a conform manner.</p> <p>Article 15 of Directive 2007/64/EC has been transposed by Articles 81, 82, 83 and 154 of the APS in a conform manner. It should be noted however that no corresponding Polish provisions have been found as regards Article 15(2) and (3) of the said Directive. Further clarifications form national authorities have been suggested to the Commission.</p> <p>Article 17(7) of Directive 2007/64/EC has been transposed by Articles 85 and 86 of the APS in a conform manner. It should be noted however that no corresponding Polish provisions have been found as regards Article 17(7) third subparagraph points (c) and (d) of</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures |  |  | Conformity Assessment  |
|-----------------------|--|--|--------------------------------|--|--|--|
|                       |  |  |                                |  |  | <p>the said Directive. Further clarifications from national authorities have been suggested to the Commission.</p> <p>Article 18 of Directive 2007/64/EC has been transposed by Articles 87 and 88 of the APS in a conform manner.</p> <p>Article 19 of Directive 2007/64/EC has been transposed by Article 86 of the APS in a conform manner.</p> <p>Article 20 of Directive 2007/64/EC has been transposed by Articles 14 and 99 of the APS in a conform manner.</p> <p>Article 21 of Directive 2007/64/EC has been transposed by Article 2 of the FMS and Articles 102, 103, 105 and 106 of the APS in a conform manner. It should be noted however that no corresponding Polish provisions have been found as regards Article 21(3) of the said Directive. Further clarifications from national authorities have been suggested to the Commission.</p> <p>Article 22 of Directive 2007/64/EC has been transposed by Articles 12, 16 and 111 of the APS in a conform manner.</p> <p>Article 23 of Directive 2007/64/EC has been transposed by a generally applicable provision of the Code of Administrative Procedure in a conform manner.</p> <p>Article 24 of Directive 2007/64/EC has been transposed by Articles 108, 110 and 111 of</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures                       |   |   | Conformity Assessment  |
|-----------------------|--|--|--|---|---|--|
|                       |  |  |  |   |   | <p>the APS in a conform manner.</p> <p>Article 25 of Directive 2007/64/EC has been transposed by Articles 92, 104, 108, 110 of the APS in a conform manner.</p> <p>Despite the fact that overall, the PSD has been well transposed into the Polish law, and most of the quoted provisions thanks to a cross-reference available in the EPI (Article 39) may apply accordingly towards electronic money institutions, in light of the detailed observations presented below, the transposition of Article 3 of the Directive is rather partial.</p> <p>Therefore, partial conformity should be observed.</p>  |
| <b>Art. 3(2)</b>      | 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. Instytucje pieniądza elektronicznego z wyprzedzeniem informują właściwe organy o wszelkich istotnych zmianach odnoszących się do środków przyjmowanych w celu ochrony środków pieniężnych otrzymywanych w zamian za wyemitowany pieniądz elektroniczny. | <b>APS, Art. 61(2)</b><br><br><b>APS, Art. 61(1)</b> | <b>APS, Art. 61(2)</b><br><br>2. The applicant and the payment institution, after obtaining authorisation, shall inform the PFSA promptly of each change that affects the up-to-datedness of the information and documents appended to the application in accordance with paragraph 1.<br><br><b>APS, Art. 61</b><br><br>1. An applicant for the authorisation referred to in | <b>APS, Art. 61(2)</b><br><br>2. Wnioskodawca oraz instytucja płatnicza, po uzyskaniu zezwolenia, niezwłocznie powiadamia KNF o każdej zmianie mającej wpływ na aktualność informacji i dokumentów dołączonych do wniosku zgodnie z ust. 1.<br><br><b>APS, Art. 61</b><br><br>1. Do wniosku o wydanie zezwolenia, o którym mowa w art. 60 ust. 1, | <b>CONFORM</b><br><br>Article 61(2) of the APS transposes Article 3(2) of the Directive.<br><br>According to Article 61(2) of the APS which is accordingly applicable to the electronic money institutions on the basis of a general cross-reference present in the EPI (Article 39 of the EPI), the electronic money institution shall inform the PFSA promptly of each change that affects the information and documents appended to the application in accordance with paragraph 1.<br><br>Amongst others, paragraph 1 refers to the obligation of providing authorities with any change with respect to: |

| Directive 2009/110/EC |  | National Implementing Measures   | Conformity Assessment  |
|-----------------------|--|--|--|
|                       |  | <p>Article 60 paragraph 1 shall append to its application:</p> <p>1) up-to-date information about the number of its entry in the National Court Register;</p> <p>2) its statutes or memorandum and Articles of incorporation;</p> <p>3) a schedule of the payment services that it intends to operate;</p> <p>4) a programme of operations and a financial plan for a period of at least three years;</p> <p>5) documents that confirm the possession of funds allocated to own funds;</p> <p>6) a description of solutions for governance and internal control mechanisms concerning duties related to the prevention of money laundering and the financing of terrorism, in accordance with the Act on Countering Money Laundering and the</p> | <p>wnioskodawca dołącza:</p> <p>1) aktualną informację o numerze wpisu do Krajowego Rejestru Sądowego;</p> <p>2) statut, akt założycielski albo umowę spółki;</p> <p>3) wykaz usług płatniczych, które zamierza świadczyć;</p> <p>4) program działalności i plan finansowy na okres co najmniej trzyletni;</p> <p>5) dokumenty potwierdzające posiadanie środków finansowych przeznaczonych na fundusze własne;</p> <p>6) opis rozwiązań w zakresie zarządzania i mechanizmów kontroli wewnętrznej dotyczących obowiązków związanych z przeciwdziałaniem praniu pieniędzy i finansowaniu terroryzmu, zgodnie z ustawą z dnia 16 listopada 2000 r. o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu (Dz. U. z 2010 r. Nr 46,</p> <ul style="list-style-type: none"> <li>a description of solutions for governance and internal control mechanisms concerning duties related to the prevention of money laundering and the financing of terrorism, in accordance with the Act on Countering Money Laundering and the Financing of Terrorism of 16 November 2000 (Journal of Laws 2010 No. 46 item 276 and No. 182 item 1228 and 2011 No. 134 item. 779), referred to hereinafter as the "Act on Countering Money Laundering",</li> <li>information that makes it possible to establish the identity of persons who directly or indirectly have a significant shareholding in the company or cooperative that intends to perform payment services, indicating the size of their holdings, and documents that confirm that these persons ensure sound and prudent management of the payment institution;</li> <li>information that allows the identification of managers and documents that make it possible to assess whether these people ensure sound and prudent management of the payment institution, including whether they have the education and professional experience necessary for the management of operations in</li> </ul> |

| Directive 2009/110/EC |  | National Implementing Measures  | Conformity Assessment  |  |
|-----------------------|--|---|--|--|
|                       |  | <p>Financing of Terrorism of 16 November 2000 (Journal of Laws 2010 No. 46 item 276 and No. 182 item 1228 and 2011 No. 134 item. 779), referred to hereinafter as the "Act on Countering Money Laundering";</p> <p>7) a description of the organisational arrangements referred to in Article 64 paragraph 1 points 3 and 4;</p> <p>8) information that makes it possible to establish the identity of persons who directly or indirectly have a significant shareholding in the company or cooperative that intends to perform payment services, indicating the size of their holdings, and documents that confirm that these persons ensure sound and prudent management of the payment institution;</p> <p>9) information that allows the identification of managers and documents that make it possible to assess whether these people ensure sound and</p> | <p>poz. 276 i Nr 182, poz. 1228 oraz z 2011 r. Nr 134, poz. 779), zwaną dalej „ustawą o przeciwdziałaniu praniu pieniędzy”;</p> <p>7) opis rozwiązań organizacyjnych, o których mowa w art. 64 ust. 1 pkt 3 i 4;</p> <p>8) dane pozwalające na ustalenie tożsamości osób, które bezpośrednio lub pośrednio posiadają znaczny pakiet akcji lub udziałów w spółce lub spółdzielni zamierzającej wykonywać usługi płatnicze, ze wskazaniem wielkości należącego do nich pakietu akcji lub udziałów, oraz dokumenty potwierdzające, iż osoby te dają rękojmię ostrożnego i stabilnego zarządzania instytucją płatniczą;</p> <p>9) dane pozwalające na ustalenie tożsamości osób zarządzających oraz dokumenty pozwalające na ocenę, czy osoby te dają rękojmię ostrożnego i stabilnego zarządzania</p> | <p>the area of the provision of payment services;</p> <p>Those aspects, as far as electronic money business is concerned, form part of measures taken for safeguarding of funds that have been received in exchange for electronic money issued.</p> <p>It should be noted that compared to the Directive, the Polish law does not refer to the term ‘material change’, but it actually refers to any change which has an impact on whether the provided information are up-to-date.</p> <p>This discrepancy however does not raise issues of conformity, mainly because the Polish law by a more general statement ensures either way that a material change will be notified. Moreover, it can be concluded that the Polish quoted provision law reflects the ratio set out in recital 14 of the Directive that of crucial importance of safeguarding by providing authorities with certain information. Therefore, conformity could be concluded.</p> |

| Directive 2009/110/EC                     |   | National Implementing Measures   |   |  | Conformity Assessment   |   |
|---|---|--|---|--|---|---|
|   |   |  |   | <p>prudent management of the payment institution, including whether they have the education and professional experience necessary for the management of operations in the area of the provision of payment services;</p> <p>10) information that allows the identification of auditors and others authorised to audit accounts.</p>  | <p>instytucją płatniczą, w tym posiadają wykształcenie i doświadczenie zawodowe niezbędne do zarządzania działalnością w zakresie świadczenia usług płatniczych;</p> <p>10) dane pozwalające na ustalenie tożsamości biegłych rewidentów i innych podmiotów uprawnionych do badania sprawozdań finansowych.</p>   |   |
| <b>Art. 3(3) 1<sup>st</sup> subpar a.</b> | <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</p> | <p>3. Każda osoba fizyczna lub prawna, która podjęła decyzję o nabyciu lub zbyciu, bezpośrednio lub pośrednio, znacznego pakietu akcji, w rozumieniu art. 4 pkt 11 dyrektywy 2006/48/WE, instytucji pieniądza elektronicznego lub też o dalszym zwiększeniu lub zmniejszeniu, bezpośrednio lub pośrednio, takiego znacznego pakietu akcji, wskutek czego proporcja kapitału lub praw głosu osiągnęłyby, przekroczyła lub spadła poniżej 20 %, 30 % lub 50 % lub wskutek czego dana</p> | <p><b>APS, Art. 61(2)</b></p> <p><b>APS, Art. 61(1) pt(8)</b></p> | <p><b>APS, Art. 61(2)</b></p> <p>2. The applicant and the payment institution, after obtaining authorisation, shall inform the PFSA promptly of each change that affects the up-to-datedness of the information and documents appended to the application in accordance with paragraph 1.</p> <p><b>APS, Art. 61(1) pt(8)</b></p> <p>1. An applicant for the authorisation referred to in Article 60 paragraph 1 shall append to its</p> | <p><b>APS, Art. 61(2)</b></p> <p>2. Wnioskodawca oraz instytucja płatnicza, po uzyskaniu zezwolenia, niezwłocznie powiadamia KNF o każdej zmianie mającej wpływ na aktualność informacji i dokumentów dołączonych do wniosku zgodnie z ust. 1.</p> <p><b>APS, Art. 61(1) pt(8)</b></p> <p>1. Do wniosku o wydanie zezwolenia, o którym mowa w art. 60 ust. 1, wnioskodawca dołącza:</p> <p>8) dane pozwalające na</p> | <p><b>PARTIALLY CONFORM</b></p> <p>Articles 61(1) point (8) and 61(2) of the APS transpose Article 3(3) first subparagraph of the Directive.</p> <p>According to the cross-reference made in Article 39 of the EPI, with respect to those aspects of the taking up or the pursuit of electronic money business which are not regulated by the EPI, Chapter I of Part IV of the APS shall apply.</p> <p>In line with the APS quoted provisions, the institution shall inform the PFSA on every change affecting information provided in the initial application for authorization. Amongst those information, Article 61(1) point (8) of the APS lists information that makes it possible to establish the identity of persons who directly or indirectly have a significant</p> |



| Directive 2009/110/EC                           |  | National Implementing Measures   |                                   |   | Conformity Assessment  |  |
|---|--|--|-----------------------------------|---|--|--|
|   | 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. | instytucja pieniądza elektronicznego stałaby się lub przestałaby być podmiotem zależnym danej osoby fizycznej lub prawnej, informuje właściwe organy o swoim zamiarze przed takim nabyciem, zbyciem, zwiększeniem lub zmniejszeniem. |                                   | application:<br><br>8) information that makes it possible to establish the identity of persons who directly or indirectly have a significant shareholding in the company or cooperative that intends to perform payment services, indicating the size of their shares and holdings, and documents that confirm that these persons ensure sound and prudent management of the payment institution; | ustalenie tożsamości osób, które bezpośrednio lub pośrednio posiadają znaczny pakiet akcji lub udziałów w spółce lub spółdzielni zamierzającej wykonywać usługi płatnicze, ze wskazaniem wielkości należącego do nich pakietu akcji lub udziałów, oraz dokumenty potwierdzające, iż osoby te dają rękojmię ostrożnego i stabilnego zarządzania instytucją płatniczą; | shareholding in the company or cooperative that intends to perform payment services as well as indicates the size of their shares and holdings, and documents that confirm that these persons ensure sound and prudent management of the payment institution.<br><br>That would mean that every time the proportion of the capital or of the voting rights held would reach, exceed or fall below 20 %, 30 % or 50 % it will have to be notified to the competent authorities.<br><br>The discrepancy between the Polish law and the Directive lies in the fact that the obligation of notification does not refer to the shareholder who is about to acquire or sell his shares, but solely to the management of the institution. Moreover, the notification required by the Polish law refers to the situation ( <i>post factum</i> ) after making changes in shareholding, whereas the Directive refers to the situation before the shareholder takes any steps relating to his shareholding. The role of the Polish provisions in terms of ensuring safeguarding is therefore smaller compared to the Directive.<br><br>Therefore, partial conformity should be concluded. |
| <b>Art. 3(3) 2<sup>nd</sup> subparagraph a.</b> | The proposed acquirer shall supply to the competent authority information indicating the size of the intended holding and relevant   | Proponowany nabywca przekazuje właściwemu organowi informacje o wielkości pakietu, który zamierza nabyć, oraz odpowiednie informacje, o  | <b>APS, Art. 61(1) pt (8) and</b> | <b>APS, Art. 61</b><br><br>1. An applicant for the authorisation referred to in Article 60 paragraph 1 shall append to its  | <b>APS, Art. 61</b><br><br>1. Do wniosku o wydanie zezwolenia, o którym mowa w art. 60 ust. 1,   | <b>PARTIALLY CONFORM</b><br><br>Articles 61(1) point (8) and 61(2) of the APS transpose Article 3(3) second subparagraph of the Directive.   |

| Directive 2009/110/EC  |  | National Implementing Measures |  | Conformity Assessment  |  |
|--|--|--------------------------------|--|--|--|
| information referred to in Article 19a(4) of Directive 2006/48/EC. | których mowa w art. 19a ust. 4 dyrektywy 2006/48/WE. | (2)                            | <p>application:</p> <p>8) information that makes it possible to establish the identity of persons who directly or indirectly have a significant shareholding in the company or cooperative that intends to perform payment services, indicating the size of their shares and holdings, and documents that confirm that these persons ensure sound and prudent management of the payment institution;</p> <p>2. The applicant and the payment institution, after obtaining authorisation, shall inform the PFSA promptly of each change that affects the up-to-datedness of the information and documents appended to the application in accordance with paragraph 1.</p> | <p>wnioskodawca dołącza:</p> <p>8) dane pozwalające na ustalenie tożsamości osób, które bezpośrednio lub pośrednio posiadają znaczny pakiet akcji lub udziałów w spółce lub spółdzielni zamierzającej wykonywać usługi płatnicze, ze wskazaniem wielkości należącego do nich pakietu akcji lub udziałów, oraz dokumenty potwierdzające, iż osoby te dają rękojmię ostrożnego i stabilnego zarządzania instytucją płatniczą;</p> <p>2. Wnioskodawca oraz instytucja płatnicza, po uzyskaniu zezwolenia, niezwłocznie powiadamia KNF o każdej zmianie mającej wpływ na aktualność informacji i dokumentów dołączonych do wniosku zgodnie z ust. 1.</p> | <p>According to the cross-reference made in Article 39 of the EPI, with respect to those aspects of the taking up or the pursuit of electronic money business which is not regulated by the EPI, Chapter I of Part IV of the APS shall apply.</p> <p>In line with the APS quoted provisions, the institution shall inform the PFSA on every change affecting information provided in the initial application for authorization.</p> <p>Amongst that information, Article 61(1) point (8) of the APS lists information that makes it possible to establish the identity of persons who directly or indirectly have a significant shareholding in the company or cooperative that intends to perform payment services as well as indicates the size of their shares and holdings, and documents that confirm that these persons ensure sound and prudent management of the payment institution.</p> <p>The discrepancy between the Polish law and the Directive lies in the fact that the obligation of notification does not refer to the shareholder who is about to acquire or sell his shares, but solely to the management of the institution.</p> <p>Moreover, the notification foreseen in the Polish law refers to the situation (<i>post factum</i>) after making changes in shareholding, whereas the Directive refers to the situation before the shareholder takes any steps relating to his shareholding.</p> |

| Directive 2009/110/EC                     |  |  | National Implementing Measures                                       |  |   | Conformity Assessment  |
|---|--|--|--|--|---|--|
|   |  |  |  |  |   | <p>The role of the Polish provisions in terms of ensuring safeguarding is therefore smaller compared to the Directive.</p> <p>Therefore, partial conformity should be concluded.</p>   |
| <b>Art. 3(3) 3<sup>rd</sup> subpar a.</b> | <p>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 of the voting rights attached to the shares held by the shareholders or members in question.</p> | <p>W przypadku gdy wpływ wywierany przez osoby, o których mowa w akapicie drugim, może okazać się niekorzystny z punktu widzenia ostrożnego i rzetelnego zarządzania daną instytucją, właściwe organy wyrażają sprzeciw lub podejmują inne odpowiednie środki w celu doprowadzenia do ustania tej sytuacji. Środki takie mogą obejmować nakazy, kary nakładane na członków kierownictwa lub zarządu lub na zawieszeniu korzystania z praw głosu wynikających z liczby akcji posiadanych przez akcjonariuszy lub danych członków.</p> | <p><b>EPI, Art. 65 pt(1)</b></p> <p><b>EPI, Art. 69(1) pt(5)</b></p> | <p><b>EPI, Art. 65 pt(1)</b></p> <p>The PFSA shall refuse to issue the authorisation referred to in Article 60 paragraph 1 if:</p> <p>1) the persons referred to in Article 61 paragraph 1 points 8 and 9 do not ensure sound and prudent management of the payment institution,</p> <p><b>EPI, Art. 69(1) pt(5)</b></p> <p>1. The PFSA may withdraw the authorisation referred to in Article 60 paragraph 1 if:</p> <p>5) persons who directly or indirectly possess a significant shareholding in the payment institution do not ensure sound and prudent management of the payment institution;</p> | <p><b>EPI, Art. 65 pt(1)</b></p> <p>KNF odmawia wydania zezwolenia, o którym mowa w art. 60 ust. 1, jeżeli:</p> <p>1) osoby, o których mowa w art. 61 ust. 1 pkt 8 i 9, nie dają rękojmi ostrożnego i stabilnego zarządzania instytucją płatniczą,</p> <p><b>EPI, Art. 69(1) pt(5)</b></p> <p>1. KNF może cofnąć zezwolenie, o którym mowa w art. 60 ust. 1, jeżeli:</p> <p>5) osoby, które bezpośrednio lub pośrednio posiadają znaczny pakiet akcji lub udziałów w instytucji płatniczej, nie dają rękojmi ostrożnego i</p> | <p><b>PARTIALLY CONFORM</b></p> <p>Articles 65 point (1) of the EPI and 69(1) point (5) of the EPI transpose Article 3(3) third subparagraph of the Directive.</p> <p>While the Directive refers to appropriate measures, the Polish law refers to the withdrawal which the PFSA may undertake towards an electronic money institution in which persons who directly or indirectly possess a significant shareholding in the payment institution do not ensure sound and prudent management of the payment institution.</p> <p>Compared to the Directive, the Polish law does not mention 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. This discrepancy is quite relevant and though the Polish law ensures some mechanisms against the detriment of the prudent and sound management of the institution (such as withdrawal of the authorisation) partial conformity should be suggested.</p> |

| Directive 2009/110/EC                     |  |   | National Implementing Measures |     |  | Conformity Assessment  |
|---|--|---|--------------------------------|-----|--|--|
|   |  |   |                                |     | stabilnego zarządzania instytucją płatniczą; | Therefore, partial conformity is concluded.  |
| <b>Art. 3(3) 4<sup>th</sup> subpar a.</b> | 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.  | Podobne środki mają zastosowanie do osób fizycznych lub prawnych, które nie dopełnią określonego w niniejszym ustępie obowiązku przekazania informacji.   | N/A                            | N/A | N/A  | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 3(3) fourth subparagraph of the Directive. The corresponding national provision(s) could not be located either.  |
| <b>Art. 3(3) 5<sup>th</sup> subpar a.</b> | If a holding is acquired despite the opposition of the competent authorities, those authorities shall, 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. | Jeżeli pomimo sprzeciwu właściwych organów dochodzi do nabycia pakietu akcji, właściwe organy, niezależnie od wszelkich innych kar, które mają być zastosowane, przewidują zawieszenie praw głosu nabywcy, nieważność głosów oddanych, lub też możliwość unieważnienia tych głosów. | N/A                            | N/A | N/A  | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 3(3) fifth subparagraph of the Directive. The corresponding national provision(s) could not be located either  |
| <b>Art. 3(3) 6<sup>th</sup> subpar a.</b> | 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   | Państwa członkowskie mogą, całkowicie lub częściowo, zwolnić z obowiązków na mocy niniejszego ustępu w odniesieniu do instytucji pieniądza elektronicznego, które prowadzą co najmniej jeden z rodzajów działalności  | N/A                            | N/A | N/A  | Article 3(3) sixth subparagraph of the Directive sets out an option. Owing to this option, Poland has not chosen to apply. In this regard, no corresponding provision(s) could be located in the legislation of Poland either. |

| Directive 2009/110/EC |  |   | National Implementing Measures |  |  | Conformity Assessment   |
|-----------------------|--|---|--------------------------------|--|--|---|
|                       | activities listed in Article 6(1)(e).  | wymienionych w art. 6 ust. 1 lit. e), lub zezwolić swoim właściwym organom na odstąpienie od stosowania części lub całości tych obowiązków.   |                                |  |  |   |
| <b>Art. 3(4)</b>      | 4. Member States shall allow electronic money 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. | 4. Państwa członkowskie zezwalają instytucjom pieniądza elektronicznego na dystrybucję i wykup pieniądza elektronicznego za pośrednictwem osób fizycznych lub prawnych działających w ich imieniu. W przypadku gdy instytucja pieniądza elektronicznego zamierza prowadzić dystrybucję pieniądza elektronicznego w innym państwie członkowskim przy udziale takiej osoby fizycznej lub prawnej, stosuje ona procedurę ustanowioną w art. 25 dyrektywy 2007/64/WE. | <b>APS, Art. 5(4)</b>          | <b>APS, Article 5(4)</b><br>4. The regulations of the Act apply to the issue and use of the electronic payment instruments referred to in the Act on Electronic Payment Instruments, in each currency. | <b>APS, Article 5(4)</b><br>4. Przepisy ustawy stosuje się do wydawania i używania elektronicznych instrumentów płatniczych, o których mowa w ustawie o elektronicznych instrumentach płatniczych, w każdej walucie. | <b>CONFORM</b><br>Article 3(4) of the Directive has been transposed in the Polish legal system.<br><br>In the Polish law transposing the PSD, that is the APS, there is a reference to branches and agents wishing to provide payment services in a Member State according to the procedure set out in Article 25 of Directive 2007/64/EC.<br><br>It has been considered that on the basis of Article 5(4) of the APS, provisions of the APS shall apply accordingly to aspects of issuing electronic money as well as to the usage thereof.<br><br>In consequence, electronic money institutions regulated in the EPI can act through intermediaries provided that they fulfill the conditions set out by the APS corresponding to Directive 2007/64/EC. This is in line with recital 10 of the Directive.<br><br>Therefore, conformity should be concluded. |
| <b>Art. 3(5)</b>      | 5. Notwithstanding paragraph 4, electronic money institutions shall not issue electronic money   | 5. Niezależnie od ust. 4, instytucje pieniądza elektronicznego nie mogą emitować pieniądza  | <b>APS, Art. 5(4)</b>          | <b>APS, Article 5(4)</b><br>4. The regulations of the Act apply to the issue and   | <b>APS, Article 5(4)</b><br>4. Przepisy ustawy stosuje się do wydawania i  | <b>CONFORM</b><br>Article 3(5) of the Directive has been  |

| Directive 2009/110/EC  |  | National Implementing Measures  |  | Conformity Assessment  |
|--|--|---|--|--|
| 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 met. | elektronicznego za pośrednictwem agentów. Instytucjom pieniądza elektronicznego zezwala się na świadczenie usług płatniczych, o których mowa w art. 6 ust. 1 lit. a), za pośrednictwem agentów jedynie wtedy, gdy spełnione są warunki określone w art. 17 dyrektywy 2007/64/WE. | <p>use of the electronic payment instruments referred to in the Act on Electronic Payment Instruments, in each currency.</p> <p><b>APS, Chapter 4</b></p> <p><b>„Agents and other operational entities of payment institutions”</b></p> <p><b>APS, Art. 84</b></p> <p>1. A domestic payment institution may provide payment services through the intermediation of agents.</p> <p>2. A contract between an agent and a domestic payment institution shall be concluded in writing or is otherwise invalid.</p> <p><b>APS, Art. 85</b></p> <p>1. A domestic payment institution shall notify the PFSA in writing of its intent to provide payment services through the intermediation of an agent and shall submit a request for entry of the agent in the register.</p> | <p>używania elektronicznych instrumentów płatniczych, o których mowa w ustawie o elektronicznych instrumentach płatniczych, w każdej walucie.</p> <p><b>APS, Rozdział 4</b></p> <p><b>„Korzystanie przez krajową instytucję płatniczą z usług agentów oraz powierzenie wykonywania niektórych czynności operacyjnych innym podmiotom”</b></p> <p><b>APS, Art. 84</b></p> <p>1. Krajowa instytucja płatnicza może świadczyć usługi płatnicze za pośrednictwem agentów.</p> <p>2. Umowa między agentem a krajową instytucją płatniczą jest zawierana w formie pisemnej pod rygorem nieważności.</p> <p><b>APS, Art. 85</b></p> <p>1. Krajowa instytucja płatnicza przekazuje KNF, w formie pisemnej,</p> | <p>transposed into the Polish law.</p> <p>On the basis of Article 5(4) of the APS, the provisions of the APS shall apply towards electronic money issuers.</p> <p>The provisions of Chapter 4 of the APS aimed at the transposition of Article 17 of Directive 2007/64/EC are therefore applicable.</p> <p>Article 17 of Directive 2007/64/EC has been properly transposed by Chapter 4 of the APS with respect to payment services institutions wishing to provide their services through branches. As a result of the reference present in Article 5(4) of the APS, it follows that electronic money institutions regulated in the EPI can act through intermediaries provided that they fulfill the conditions set out by the APS corresponding to the conditions referred to in Article 17 of Directive 2007/64/EC.</p> <p>This is in line with recital 10 of the Directive. Therefore, conformity could be concluded.</p> |

| Directive 2009/110/EC |                  |                  | National Implementing Measures |  |  | Conformity Assessment |
|-----------------------|------------------|------------------|--------------------------------|--|--|-----------------------|
|                       |                  |                  |                                | <p>2. The notification referred to in paragraph 1 should include:</p> <p>1) the forename and surname or name (or brand) of the agent;</p> <p>2) the registered office and address or place of residence and address and the address of the principal place of business of the agent;</p> <p>3) a description of the internal control mechanisms related to the prevention of money laundering and the financing of terrorism in accordance with the Act on Combating Money Laundering;</p> <p>4) the names, surnames and functions of the persons responsible for management of the agent.</p> | <p>zawiadomienie o zamiarze świadczenia usług płatniczych za pośrednictwem agenta, wraz z wnioskiem o dokonanie wpisu agenta do rejestru.</p> <p>2. Zawiadomienie, o którym mowa w ust. 1, powinno zawierać:</p> <p>1) imię i nazwisko albo nazwę (firmę) agenta;</p> <p>2) siedzibę i adres albo miejsce zamieszkania i adres oraz adres głównego miejsca wykonywania działalności agenta;</p> <p>3) opis mechanizmów kontroli wewnętrznej związanych z zapobieganiem praniu pieniędzy i finansowaniu terroryzmu zgodnie z ustawą o przeciwdziałaniu praniu pieniędzy;</p> <p>4) imiona i nazwiska oraz funkcje osób odpowiedzialnych za zarządzanie agentem.</p> |                       |
| <b>Art. 4</b>         | <i>Article 4</i> | <i>Artykuł 4</i> | <b>EPI, Art.</b>               | <b>EPI, Art. 40</b>  | <b>EPI, Art. 40</b>  | <b>CONFORM</b>        |

| Directive 2009/110/EC   |   | National Implementing Measures  |  |   | Conformity Assessment  |  |
|-------------------------|---|---|--|---|--|--|
|                         | <p><b>Initial capital</b></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><b>Kapitał założycielski</b></p> <p>Państwa członkowskie wymagają od instytucji pieniądza elektronicznego posiadania, w czasie wydawania zezwolenia, kapitału założycielskiego, na który składają się pozycje określone w art. 57 lit. a) i b) dyrektywy 2006/48/WE, wynoszącego nie mniej niż 350000 EUR.</p> | <p><b>40</b></p>   | <p>The initial capital which is introduced by founders shall not be lower than the PLN equivalent of 350 000 EUR, calculated on the basis of the average exchange rate announced by the National Polish bank at the day of granting authorisation to the institution.</p> | <p>Wnoszony przez założycieli instytucji pieniądza elektronicznego kapitał założycielski nie może być niższy od równowartości w złotych 350.000 euro, obliczanej według średniego kursu ogłaszanego przez NBP, obowiązującego w dniu wydania zezwolenia.</p> | <p>Article 40 of the EPI transposes Article 4 of the Directive.</p> <p>According to Article 40 of the EPI, the initial capital which is introduced by founders of the electronic money institution shall not be less than the PLN equivalent of 350 000 EUR. The currency exchange is calculated on the basis of the average exchange rate announced by the National Polish bank at the day of granting authorisation to the institution.</p> <p>This is explicitly corresponding to the Directive provision in question.</p> <p>By setting a minimum capital, Polish legislator ensured an appropriate level of consumer protection and the sound and prudent operation of electronic money institutions referred to in recital 11 of the Directive.</p> <p>Therefore, conformity could be concluded.</p> |
| <p><b>Art. 5(1)</b></p> | <p><i>Article 5</i><br/><b>Own funds</b></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</p> | <p><i>Artykuł 5</i><br/><b>Fundusze własne</b></p> <p>1. Fundusze własne instytucji pieniądza elektronicznego, określone w art. 57–61, 63, 64 i 66 dyrektywy 2006/48/WE, nie mogą być niższe od wyższej z kwot wymaganych zgodnie z ust. 2–5 niniejszego</p>  | <p><b>EPI, Art. 47</b></p> <p><b>APS, Art. 64(1) pt(3)</b></p> | <p><b>EPI, Art. 47</b></p> <p>1. The electronic money institution's own funds include:</p> <p>1) when the institution acts as a joint-stock company – a paid up company capital, reserve capital and reserves;</p>  | <p><b>EPI, Art. 47</b></p> <p>1. Fundusze własne instytucji pieniądza elektronicznego obejmują:</p> <p>1) w instytucji pieniądza elektronicznego w formie spółki akcyjnej – wpłacony i zarejestrowany kapitał zakładowy oraz kapitał zapasowy i</p>          | <p><b>CONFORM</b></p> <p>Article 47(1) and (2) of the EPI and Article 64(1) point (3) of the APS transpose Article 5 of the Directive.</p> <p>In line with recital 11 of the Directive Poland provided for a regime of initial capital combined with one for ongoing capital to ensure an appropriate level of consumer protection and the sound and prudent operation of electronic money institutions.</p>   |



| Directive 2009/110/EC                    |   | National Implementing Measures  |  | Conformity Assessment  |
|--|---|---|--|--|
| of this Directive, whichever the higher. | artykułu lub art. 4 niniejszej dyrektywy. | <p>2) in case of the branch of a foreign electronic money institution – a paid up and reserve capital to be used for the pursuit of activity of the branch of the electronic money institution in the territory of the Republic of Poland;</p> <p>3) profits brought forward as a result of the application of the final profit;</p> <p>4) deductions which include:</p> <p>a) shares possessed by the electronic money institution, valued according to purchase pricing, depreciated by charges caused by a permanent loss of their value,</p> <p>b) intangible and legal values,</p> <p>c) uncovered loss form previous years, including the loss at the moment of reporting,</p> <p>d) the loss at the end of the</p> | <p>kapitały rezerwowe;</p> <p>2) w oddziale zagranicznej instytucji pieniądza elektronicznego – wpłacony i zarejestrowany kapitał przeznaczony na działalność oddziału zagranicznej instytucji pieniądza elektronicznego na terytorium Rzeczypospolitej Polskiej;</p> <p>3) niepodzielony zysk z lat ubiegłych;</p> <p>4) pozycje pomniejszające, które stanowią:</p> <p>a) akcje własne posiadane przez instytucję pieniądza elektronicznego, wycenione według cen nabycia, pomniejszone o odpisy spowodowane trwałą utratą ich wartości,</p> <p>b) wartości niematerialne i prawne,</p> <p>c) niepokryta strata z lat ubiegłych, w tym również strata w trakcie zatwierdzania,</p> | <p>As it will be shown below, an additional method for calculating ongoing capital corresponding to the method prescribed in the Directive has been provided for by the Polish legislator.</p> <p>In line with the Directive, Polish electronic money institutions are required to keep the funds of electronic money holders separate from the funds of the electronic money institution for other business activities. Specificities of the electronic money institution's own funds have been regulated in the Polish law in correspondence to the Directive.</p> <p>Therefore, conformity could be observed.</p> |

| Directive 2009/110/EC                     |   |  | National Implementing Measures   |  |   | Conformity Assessment   |
|---|---|--|--|--|---|---|
|   |   |  |  | <p>reporting period, calculated increasingly from the beginning of the financial year.</p> <p>2. An electronic money institution is obliged to have:</p> <p>1) own funds which shall not fall below the amount required under Article 40, calculated on the basis of the average exchange rate announced by the National Polish Bank, in force at the reporting day;</p> | <p>d) strata na koniec okresu sprawozdawczego, obliczona narastająco od początku roku obrotowego.</p> <p>2. Instytucja pieniądza elektronicznego jest obowiązana utrzymywać:</p> <p>1) fundusze własne na poziomie nie niższym niż równowartość w złotych kwoty określonej w art. 40, obliczonej w złotych według średniego kursu ogłaszanego przez NBP obowiązującego w dniu sprawozdawczym;</p> |   |
| <b>Art. 5(2) 1<sup>st</sup> subpar a.</b> | <p>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</p> | <p>2. W odniesieniu do działalności, o której mowa w art. 6 ust. 1 lit. a), niezwiązanej z emisją pieniądza elektronicznego, wymagane fundusze własne instytucji pieniądza elektronicznego oblicza się zgodnie z jedną z trzech metod (A, B lub C) określonych w art. 8 ust. 1 i 2 dyrektywy 2007/64/WE. Odpowiednią metodę określają właściwe organy zgodnie z przepisami</p> | <p><b>EPI, Art. 45 pt(2)</b></p> <p><b>APS, Art. 76(4)</b></p> <p><b>Regulation on method of calculation</b></p> | <p><b>EPI, Art. 45 pt(2)</b></p> <p>1. An electronic money institution, in the scope of the pursued economic activity other than issuance of electronic money, may:</p> <p>2) provide payment services in the meaning of Act of 19 August 2011 on payment services, while respecting capital and safeguarding requirements referred to in this Act;</p>                  | <p><b>EPI, Art. 45 pt(2)</b></p> <p>1. Instytucja pieniądza elektronicznego, w zakresie wykonywanej działalności gospodarczej innej niż wydawanie pieniądza elektronicznego, może:</p> <p>2) świadczyć usługi płatnicze w rozumieniu ustawy z dnia 19 sierpnia 2011 r. o usługach płatniczych, z zachowaniem wymogów</p>  | <p><b>CONFORM</b></p> <p>Article 76(4) of the APS and Regulation method of calculation of 2011, §2 transpose Article 5(2) first subparagraph of the Directive.</p> <p>First of all, according to Article 45 point (2) of the EPI, electronic money institutions carrying out activities other than the issuance of electronic money may provide payment services provided that they respect capital and safeguarding requirements set in the APS.</p> <p>This is in line with the Directive as the activities referred to in Article 6(1)(a) that are</p> |

| Directive 2009/110/EC                 |            | National Implementing Measures |  | Conformity Assessment   |   |
|---------------------------------------|------------|--------------------------------|--|---|---|
| accordance with national legislation. | krajowymi. | of 2011, §2                    | <p><b>APS, Art. 76(4)</b></p> <p>4. The amount of a domestic payment institution's own funds may not be less than the higher of:</p> <p>1) the minimum value of initial capital required in accordance with Article 64 paragraph 1 point 1 and</p> <p>2) the amount calculated in accordance with regulations issued on the basis of paragraph 6.</p> <p><b>Regulation on method of calculation of 2011, §2</b></p> <p>§ 2. The amount referred to in Article 76(4), pt (2) shall be calculated as sum of following elements: (a) 4,0 % of the amount of PV up to EUR 5 million,</p> <p>(b) 2,5 % of the amount of PV above EUR 5 million up to EUR 10 million,</p> <p>(c) 1 % of the amount of PV above EUR 10 million up to EUR 100 million,</p> | <p>kapitałowych i ostrożnościowych, o których mowa w tej ustawie;</p> <p><b>APS, Art. 76(4)</b></p> <p>4. Wysokość funduszy własnych krajowej instytucji płatniczej nie może być niższa od wyższej z wartości:</p> <p>1) minimalnej wartości kapitału założycielskiego wymaganego zgodnie z art. 64 ust. 1 pkt 1, albo</p> <p>2) kwoty obliczonej zgodnie z przepisami wydanymi na podstawie ust. 6.</p> <p><b>Regulation on method of calculation of 2011, §2</b></p> <p>§ 2. Kwotę, o której mowa w art. 76 ust. 4 pkt 2 ustawy, oblicza się jako sumę następujących elementów:</p> <p>1) 4% części wielkości płatności do 5 mln euro,</p> <p>2) 2,5% części wielkości płatności w przedziale</p> | <p>not linked to the issuance of electronic money, include payment services listed in the Annex of Directive 2007/64/EC.</p> <p>Thus, the possibility of electronic money institutions to provide payment services depends on the fulfillment of capital and safeguarding requirements set in the APS.</p> <p>According to the APS, Poland has decided to choose the second method (Method B) for the calculation of own funds of payment service providers. Therefore, the own funds of the institutions carrying out activities referred to in Article 6(1)(a) of the Directive would be calculated on the basis of Method B prescribed by Regulation on method of calculation of 2011. The calculation Method B has been transposed in a conform manner into the specific regulation.</p> <p>It is in line with recital 11. It is stressed therein that the own funds calculation method used by electronic money institutions shall take into account the specificity of this business.</p> <p>Therefore, conformity should be concluded.</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures  |   | Conformity Assessment |
|-----------------------|--|--|---|---|-----------------------|
|                       |  |  | <p>(d) 0,5 % of the amount of PV above EUR 100 million up to EUR 250 million,</p> <p>(e) 0,25 % of the amount of PV above EUR 250 million.</p> <p>— where payment volume represents one twelfth of the total amount of payment transactions executed by the domestic payment institution in the preceding business year.</p> <p><b>Regulation on method of calculation of 2011, §3</b></p> <p>§ 3. 1. In case when a domestic payment institution after obtaining of an authorisation can perform only:</p> <p>1) services referred to in Art. 3(1), pt. (6) of the Act, or</p> <p>2) services referred to in Art. 3(1), pt. (7) of the Act</p> <p>— the amount calculated according to §2 shall be multiplied by the scaling</p> | <p>powyżej 5 mln euro do 10 mln euro,</p> <p>3) 1% części wielkości płatności w przedziale powyżej 10 mln euro do 100 mln euro,</p> <p>4) 0,5% części wielkości płatności w przedziale powyżej 100 mln euro do 250 mln euro,</p> <p>5) 0,25% części wielkości płatności powyżej 250 mln euro</p> <p>— przy czym wielkość płatności stanowi jedną dwunastą całkowitej wartości transakcji płatniczych wykonanych w ciągu ostatniego roku obrotowego przez krajową instytucję płatniczą.</p> <p><b>Regulation on method of calculation of 2011, §3</b></p> <p>§3. 1. W przypadku gdy krajowa instytucja płatnicza, na podstawie posiadanego zezwolenia, może świadczyć wyłącznie:</p> <p>1) usługę, o której mowa</p> |                       |

| Directive 2009/110/EC                     |   |  | National Implementing Measures |  |   | Conformity Assessment  |
|---|---|--|--------------------------------|--|---|--|
|   |   |  |                                | factor k.  | w art. 3 ust. 1 pkt 6 ustawy, albo<br><br>2) usługę, o której mowa w art. 3 ust. 1 pkt 7 ustawy<br><br>— kwotę obliczoną w sposób określony w §2 mnoży się przez współczynnik korygujący k. |  |
| <b>Art. 5(2) 2<sup>nd</sup> subpar a.</b> | 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. | W odniesieniu do działalności polegającej na emisji pieniądza elektronicznego wymagane fundusze własne instytucji pieniądza elektronicznego oblicza się zgodnie z metodą D określoną w ust. 3. | <b>EPI, Art. 47(2) pt(2)</b>   | <b>EPI, Art. 47(2) pt(2)</b><br><br>2) own funds which shall not fall below 2% of the value of the issued electronic money in the circulation; | <b>EPI, Art. 47(2) pt(2)</b><br><br>2) fundusze własne na poziomie nie niższym niż 2% wartości wydanego przez tę instytucję pieniądza elektronicznego w obiegu;                             | <b>CONFORM</b><br><br>Article 47(2) point (2) of the EPI transposes Article 5(2), second subparagraph of the Directive.<br><br>According to Article 47(2) point (2) of the EPI, in regard to the activity of issuing electronic money the own funds of an electronic money institution shall not fall below 2% of the value of the issued electronic money in the circulation.<br><br>Method D as specified in Article 5(3) of the Directive states that the own funds of an electronic money institution for the activity of issuing electronic money shall amount to at least 2 % of the average outstanding electronic money.<br><br>Compared to the Directive, the Polish law sets the amount of own funds higher, since it refers to 2% of the entire amount of electronic money in issue, while the Directive refers to 2% of the average outstanding electronic |

| Directive 2009/110/EC                     |   |   | National Implementing Measures |  |  | Conformity Assessment  |
|---|---|---|--------------------------------|--|--|--|
|   |   |   |                                |  |  | <p>money.</p> <p>This difference however does not hamper conformity. The Polish legislator had the right to set the value on higher level; the Directive sets a minimum amount.</p> <p>Such an approach is moreover in line with the one described in recital 11. It is stressed therein that the own funds calculation method used by electronic money institutions shall take into account the specificity of this business. Therefore, conformity should be observed.</p>   |
| <b>Art. 5(2) 3<sup>rd</sup> subpar a.</b> | 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. | Instytucje pieniądza elektronicznego zawsze dysponują funduszami własnymi co najmniej równymi sumie wymogów, o których mowa w ust. 1 i 2. | <b>EPI, Art. 47(2)</b>         | <p><b>EPI, Art. 47(2)</b></p> <p>2. Electronic money institution is obliged to have:</p> <p>1) own funds which shall not fall below the amount required under Article 40, calculated on the basis of the average exchange rate announced by the National Polish Bank, in force at the reporting day;</p> <p>2) own funds which shall not fall below 2% of the value of the issued electronic money in the circulation;</p> <p>3) coefficient of solvency</p> | <p><b>EPI, Art. 47(2)</b></p> <p>2. Instytucja pieniądza elektronicznego jest obowiązana utrzymywać:</p> <p>1) fundusze własne na poziomie nie niższym niż równowartość w złotych kwoty określonej w art. 40, obliczonej w złotych według średniego kursu ogłaszanego przez NBP obowiązującego w dniu sprawozdawczym;</p> <p>2) fundusze własne na poziomie nie niższym niż 2% wartości wydanego przez tę instytucję pieniądza elektronicznego</p> | <p><b>CONFORM</b></p> <p>Article 47(2) of the EPI transposes Article 5(2), third subparagraph of the Directive.</p> <p>Article 47(2) sets out cumulative conditions to be fulfilled by the electronic money institutions with respect to their own funds.</p> <p>According to Article 47(2), the electronic money institution shall have own funds:</p> <ul style="list-style-type: none"> <li>• which shall not fall below the amount required under Article 40, calculated on the basis of the average exchange rate announced by the National Polish Bank, in force at the reporting day;</li> <li>• which shall not fall below 2% of the value of the issued electronic money</li> </ul> |

| Directive 2009/110/EC |  |   | National Implementing Measures |  | Conformity Assessment   |   |
|-----------------------|--|---|--------------------------------|--|---|---|
|                       |  |   |                                | which shall not fall below 2%.   | w obiegu;<br>3) współczynnik wypłacalności na poziomie co najmniej 2%.  | in the circulation;<br><br>The first condition corresponds to the amount specified in first subparagraph of Article 5 of the Directive. Whereas, the second condition set out by the Polish provision corresponds to the percentage specified in the second subparagraph of Article 5 of the Directive.<br><br>Therefore, conformity could be concluded.  |
| <b>Art. 5(3)</b>      | 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 the average outstanding electronic money. | 3. Metoda D: Fundusze własne instytucji pieniądza elektronicznego na cele działalności polegającej na emisji pieniądza elektronicznego są równe co najmniej 2 % średniej wartości pieniądza elektronicznego pozostającego w obiegu. | <b>EPI, Art. 47(2) pt(2)</b>   | <b>EPI, Art. 47(2) pt(2)</b><br>2) own funds which shall not fall below 2% of the value of the issued electronic money in the circulation; | <b>EPI, Art. 47(2) pt(2)</b><br>2) fundusze własne na poziomie nie niższym niż 2% wartości wydanego przez tę instytucję pieniądza elektronicznego w obiegu; | <b>CONFORM</b><br><br>Article 47(2) point (2) of the EPI transposes Article 5(3) of the Directive.<br><br>According to Article 47(2) point (2) of the EPI, in regard to the activity of issuing electronic money the own funds of an electronic money institution shall not fall below 2% of the value of the issued electronic money in the circulation.<br><br>Method D as specified by the Directive states that the own funds of an electronic money institution for the activity of issuing electronic money shall amount to at least 2 % of the average outstanding electronic money.<br><br>Compared to the Directive, the Polish law sets the amount of own funds higher, since it refers to 2% of the entire amount of electronic money in issue, while the Directive refers to 2% of the average outstanding electronic money.<br><br>This difference however does not hamper |

| Directive 2009/110/EC |   |   | National Implementing Measures |  |   | Conformity Assessment  |
|-----------------------|---|---|--------------------------------|--|---|--|
|                       |   |   |                                |  |   | <p>conformity. The Polish legislator had the right to set the value on higher level; the Directive sets a minimum amount.</p> <p>Such an approach is moreover in line with the one described in recital 11. It is stressed therein that the own funds calculation method used by electronic money institutions shall take into account the specificity of this business.</p> <p>Therefore, conformity should be observed.</p>  |
| <b>Art. 5(4)</b>      | <p>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 representative portion can be reasonably estimated on the basis of historical</p> | <p>4. W przypadku gdy instytucja pieniądza elektronicznego prowadzi jakiegokolwiek rodzaju działalność, o której mowa w art. 6 ust. 1 lit. a), niezwiązaną z emisją pieniądza elektronicznego, lub którykolwiek z rodzajów działalności, o których mowa w art. 6 ust. 1 lit. b)–e), a kwota pieniądza elektronicznego pozostającego w obiegu nie jest wcześniej znana, właściwe organy zezwalają tej instytucji pieniądza elektronicznego na obliczenie jej wymaganych funduszy własnych na podstawie reprezentatywnej części przeznaczonych na emisję pieniądza elektronicznego,</p> | <b>EPI, Art. 47(3)</b>         | <p><b>EPI, Art. 47(3)</b></p> <p>3. The value of electronic money in issue is calculated as the greater of the values of:</p> <p>1) the total amount of financial liabilities related to electronic money in issue at the end of the reporting period;</p> <p>2) the average total amount of financial liabilities related to electronic money in issue at the end of the preceding six calendar months or in case of the electronic money institution which is running its activity shorter than 6 months – the average total amount of</p> | <p><b>EPI, Art. 47(3)</b></p> <p>3. Wartość pieniądza elektronicznego w obiegu oblicza się jako większą z wartości:</p> <p>1) zobowiązań finansowych ogółem z tytułu pieniądza elektronicznego pozostającego w obiegu na koniec okresu sprawozdawczego;</p> <p>2) średniej wartości zobowiązań z tytułu pieniądza elektronicznego na koniec ostatnich 6 miesięcy lub w przypadku instytucji pieniądza elektronicznego prowadzącej działalność krócej niż 6 miesięcy –</p> | <p><b>PARTIALLY CONFORM</b></p> <p>Article 47(3) of the EPI transposes Article 5(4) of the Directive.</p> <p>First, it should be noted that unlike the Directive, the EPI does not provide for two types of provisions with regard to own funds which would treat differently electronic money institutions and electronic money institutions carrying 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).</p> <p>In the light of the Polish law, once the institution is considered to be an electronic money institution, no matter whether it carries out additional activities, it falls under the scope of Article 47 of the EPI regulating own funds.</p> <p>In line with the Directive, the calculation of</p> |



| Directive 2009/110/EC |   |  | National Implementing Measures |   |   | Conformity Assessment  |
|-----------------------|---|--|--------------------------------|---|---|--|
|                       | <p>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.</p> | <p>pod warunkiem że taka reprezentatywna część może zostać rozsądnie oszacowana na podstawie danych historycznych i w sposób satysfakcjonujący właściwe organy. W przypadku gdy instytucja pieniądza elektronicznego nie prowadzi działalności dostatecznie długo, jej wymagane fundusze własne obliczane są na podstawie przewidywanej wartości pieniądza elektronicznego pozostającego w obiegu, wykazanej w planie biznesowym tej instytucji, z zastrzeżeniem wszelkich dostosowań tego planu wymaganych przez właściwe organy.</p> |                                | <p>foreseen liabilities related to electronic money at the end of 6 months of activity, included in the business plan which should be adjusted at the request of PFSA (Polish Financial Supervision Authority).</p> | <p>średniej wartości przewidywanych zobowiązań z tego tytułu na koniec pierwszych 6 miesięcy działalności, ujętych w planie działalności, który winien zostać skorygowany na żądanie KNF.</p> | <p>own funds of Polish electronic money institutions requires the exact knowledge of the value of the issued electronic money in circulation.</p> <p>In case the exact value of the issued electronic money in the circulation is not known, as this might be characteristic for institutions which are not linked to the issuance of electronic money, in order to set this value, the average total amount of foreseen liabilities related to electronic money at the end of 6 months of activity shall be taken into account. The liabilities referred to in the Polish provision are the ones included in the business plan which can be adjusted at the request of PFSA (Polish Financial Supervision Authority). This corresponds to the second part of the Directive provision in question.</p> <p>The Polish law however does not refer to the first part of the Directive provision stipulating that the authorities may allow the 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 representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities.</p> <p>Therefore, partial conformity should be concluded.</p> |
| <b>Art.</b>           | 5. On the basis of an evaluation of the risk-   | 5. Na podstawie oceny procesów zarządzania   | <b>EPI, Art.</b>               | <b>EPI, Art. 43</b>   | <b>EPI, Art. 43</b>   | <b>CONFORM</b>   |

| Directive 2009/110/EC |  | National Implementing Measures   |   |  | Conformity Assessment   |   |
|-----------------------|--|--|---|--|---|---|
| 5(5)                  | 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. | ryzykiem, bazy danych związanych z ryzykiem strat i mechanizmów kontroli wewnętrznej instytucji pieniądza elektronicznego, właściwe organy mogą wymagać od instytucji pieniądza elektronicznego posiadania kwoty funduszy własnych do 20 % wyższej od kwoty, która byłaby wynikiem zastosowania odpowiedniej metody zgodnie z ust. 2, lub pozwolić instytucji pieniądza elektronicznego na posiadanie kwoty funduszy własnych do 20 % niższej od kwoty, która byłaby wynikiem zastosowania odpowiedniej metody zgodnie z ust. 2. | <p><b>43</b></p> <p><b>APS, Art. 76(7)</b></p> <p><b>APS, Art. 5(4)</b></p> | <p>1. By mean of supervision, the PFSA may especially recommend:</p> <p>1) taking measures necessary to ensure a proper level of protection of interest of customers of electronic money institution;</p> <p>2) taking measures necessary to achieve and comply with the provisions referred to in this Act and in the Regulation adopted on the basis of Article 48:</p> <p>3) increasing own funds.</p> <p><b>APS, Art. 76(7)</b></p> <p>7. The PFSA may, by issuing a decision, on the basis of risk analysis and assessment of the risk management processes and internal control mechanisms of a domestic payment institution:</p> <p>1) require the domestic payment institution to increase its own funds but not more than 120% of the amount referred to in</p> | <p>1. W ramach nadzoru KNF może zalecić w szczególności:</p> <p>1) podjęcie środków koniecznych do zapewnienia właściwego poziomu ochrony interesów klientów instytucji pieniądza elektronicznego;</p> <p>2) podjęcie środków koniecznych do osiągnięcia i przestrzegania norm, o których mowa w ustawie oraz w rozporządzeniu wydanym na podstawie art. 48;</p> <p>3) zwiększenie funduszy własnych.</p> <p><b>APS, Art. 76(7)</b></p> <p>7. KNF może, w drodze decyzji, na podstawie analizy ryzyka strat oraz oceny procesów zarządzania ryzykiem i mechanizmów kontroli wewnętrznej krajowej instytucji płatniczej:</p> <p>1) zażądać od krajowej</p> | <p>Article 5(5) of the Directive sets out an option which Poland chose to apply.</p> <p>Article 43 of the EPI jointly with Article 76(7) of the APS transpose this option into the Polish legal system.</p> <p>According to Article 43 of the EPI, the PFSA by means of its supervisory powers may require the electronic money institution to increase their own funds. No specification is foreseen as to what extent those funds may be increased.</p> <p>It should be observed that a specification as to what extent own funds shall be increased as well to what extent they could be lowered is available under Article 76(7) of the APS. The APS gives the right to the PFSA to require the payment service provider to either increase its own funds up to 120% or to decrease it to 80%.</p> <p>Since, the APS on the basis of Article 5 of the APS applies to electronic money issuers, conformity can be concluded.</p> <p>Therefore, conformity is observed.</p> |

| Directive 2009/110/EC          |  |   | National Implementing Measures                      |  |   | Conformity Assessment  |
|--------------------------------|--|---|---|--|---|--|
|                                |  |   |   | <p>paragraph 4 point 2; or</p> <p>2) permit the domestic payment institution to reduce the amount of its own funds but not to less than 80% of the amount referred to in paragraph 4 point 2.</p> <p><b>APS, Art. 5(4)</b></p> <p>4. The regulations of the Act apply to the issue and use of the electronic payment instruments referred to in the Act on Electronic Payment Instruments, in each currency.</p> | <p>instytucji płatniczej zwiększenia wysokości funduszy własnych, jednak do wysokości nie większej niż 120% kwoty, o której mowa w ust. 4 pkt 2;</p> <p>2) zezwolić krajowej instytucji płatniczej na zmniejszenie wysokości funduszy własnych, jednak do wysokości nie mniejszej niż 80% kwoty, o której mowa w ust. 4 pkt 2.</p> <p><b>APS, Art. 5(4)</b></p> <p>4. Przepisy ustawy stosuje się do wydawania i używania elektronicznych instrumentów płatniczych, o których mowa w ustawie o elektronicznych instrumentach płatniczych, w każdej walucie.</p> |  |
| <b>Art. 5(6) intr. wording</b> | 6. Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds: | 6. Państwa członkowskie podejmują niezbędne środki w celu przeciwdziałania wielokrotnemu zaliczaniu tych samych elementów do funduszy własnych: | <b>APS, Art. 77(1)</b><br><br><b>APS, Art. 5(4)</b> | <b>APS, Art. 77(1)</b><br><br>1. When calculating the own funds of a domestic payment institution which:<br><br>1) belongs to the same group as another domestic   | <b>APS, Art. 77(1)</b><br><br>1. Przy obliczaniu funduszy własnych krajowej instytucji płatniczej, która:<br><br>1) należy do tej samej   | <b>CONFORM</b><br><br>Article 77 of the APS transposes Article 5(6) introductory wording of the Directive.<br><br>The APS quoted provision prevents the multiple use of elements eligible for own funds. |

| Directive 2009/110/EC |  | National Implementing Measures |   | Conformity Assessment  |   |
|-----------------------|--|--------------------------------|---|--|---|
|                       |  |                                | <p>payment institution, a domestic bank, a branch of a foreign bank, a branch of credit institution, an electronic money institution, an investment firm, an asset management entity or an insurance undertaking, or</p> <p>2) engages in business as a hybrid payment institution funds which were included in the own funds of another group entity or of a hybrid payment institution that were calculated in relation to capital requirements arising from separate regulations may not be in any way included in the calculation.</p> <p>2. Guided by the need to ensure maintenance of the real level of capital requirements specified in the Act, the minister responsible for financial institutions, after consulting the PFSA, may, by issuing a regulation, specify means of counteracting the multiple inclusion of the same items in own funds in the</p> | <p>grupy co inna krajowa instytucja płatnicza, bank krajowy, oddział banku zagranicznego, oddział instytucji kredytowej, instytucja pieniądza elektronicznego, firma inwestycyjna, podmiot zarządzający aktywami lub zakład ubezpieczeń,</p> <p>2) prowadzi działalność w charakterze hybrydowej instytucji płatniczej</p> <p>– nie mogą być w jakikolwiek sposób uwzględniane fundusze, które zostały uwzględnione w funduszach własnych innego podmiotu grupy lub hybrydowej instytucji płatniczej obliczanych w związku z wymogami kapitałowymi wynikającymi z odrębnych przepisów.</p> <p><b>APS, Art. 5(4)</b></p> <p>4. Przepisy ustawy stosuje się do wydawania i używania elektronicznych instrumentów płatniczych, o których mowa w ustawie o elektronicznych</p> | <p>Since the APS on the basis of Article 5 of the APS applies to electronic money issuers, conformity can be concluded.</p> <p>Therefore, conformity is observed.</p> |

| Directive 2009/110/EC |   |  | National Implementing Measures                          |   | Conformity Assessment   |  |
|-----------------------|---|--|---|---|---|--|
|                       |   |  |   | <p>circumstances referred to in paragraph 1.</p> <p><b>APS, Art. 5(4)</b></p> <p>4. The regulations of the Act apply to the issue and use of the electronic payment instruments referred to in the Act on Electronic Payment Instruments, in each currency.</p>   | <p>instrumentach płatniczych, w każdej walucie.</p>   |  |
| <b>Art. 5(6)(a)</b>   | <p>(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;</p> | <p>a) w przypadku gdy instytucja pieniądza elektronicznego należy do tej samej grupy co inna instytucja pieniądza elektronicznego, instytucja kredytowa, instytucja płatnicza, przedsiębiorstwo inwestycyjne, spółka zarządzająca aktywami lub zakład ubezpieczeń bądź reasekuracji;</p> | <p><b>APS, Art. 77</b></p> <p><b>APS, Art. 5(4)</b></p> | <p><b>APS, Art. 77</b></p> <p>1) belongs to the same group as another domestic payment institution, a domestic bank, a branch of a foreign bank, a branch of credit institution, an electronic money institution, an investment firm, an asset management entity or an insurance undertaking, or</p> <p><b>APS, Art. 5(4)</b></p> <p>4. The regulations of the Act apply to the issue and use of the electronic payment instruments referred to in the Act on Electronic Payment Instruments, in each</p> | <p><b>APS, Art. 77</b></p> <p>1) należy do tej samej grupy co inna krajowa instytucja płatnicza, bank krajowy, oddział banku zagranicznego, oddział instytucji kredytowej, instytucja pieniądza elektronicznego, firma inwestycyjna, podmiot zarządzający aktywami lub zakład ubezpieczeń,</p> <p><b>APS, Art. 5(4)</b></p> <p>4. Przepisy ustawy stosuje się do wydawania i używania elektronicznych instrumentów płatniczych, o których mowa w ustawie o elektronicznych instrumentach płatniczych,</p> | <p><b>CONFORM</b></p> <p>Article 77 of the APS almost literally transposes Article 5(6)(a) introductory wording of the Directive.</p> <p>The APS quoted provision refers to the institution which belongs to the same group as another domestic payment institution, a domestic bank, a branch of a foreign bank, a branch of credit institution, an electronic money institution, an investment firm, an asset management entity or an insurance undertaking.</p> <p>Since the APS on the basis of Article 5 of the APS applies to electronic money issuers, conformity can be concluded.</p> <p>Therefore, conformity is observed.</p> |

| Directive 2009/110/EC |   |  | National Implementing Measures               |   |  | Conformity Assessment   |
|-----------------------|---|--|--|---|--|---|
|                       |   |  |  | currency.   | w każdej walucie.  |   |
| <b>Art. 5(6)(b)</b>   | (b) where an electronic money institution carries out activities other than the issuance of electronic money. | b) w przypadku gdy instytucja pieniądza elektronicznego prowadzi rodzaje działalności inne niż emisja pieniądza elektronicznego. | <b>APS, Art. 77</b><br><b>APS, Art. 5(4)</b> | <b>APS, Art. 77</b><br>2) engages in business as a hybrid payment institution<br><br>- funds which were included in the own funds of another group entity or of a hybrid payment institution that were calculated in relation to capital requirements arising from separate regulations may not be in any way included in the calculation.<br><br><b>APS, Art. 5(4)</b><br><br>4. The regulations of the Act apply to the issue and use of the electronic payment instruments referred to in the Act on Electronic Payment Instruments, in each currency. | <b>APS, Art. 77</b><br>2) prowadzi działalność w charakterze hybrydowej instytucji płatniczej<br><br>– nie mogą być w jakikolwiek sposób uwzględniane fundusze, które zostały uwzględnione w funduszach własnych innego podmiotu grupy lub hybrydowej instytucji płatniczej obliczanych w związku z wymogami kapitałowymi wynikającymi z odrębnych przepisów.<br><br><b>APS, Art. 5(4)</b><br><br>4. Przepisy ustawy stosuje się do wydawania i używania elektronicznych instrumentów płatniczych, o których mowa w ustawie o elektronicznych instrumentach płatniczych, w każdej walucie. | <b>CONFORM</b><br><br>Article 77 of the APS almost literally transposes Article 5(6)(a) introductory wording of the Directive.<br><br>The APS quoted provision refers to the institution which engages in business as a hybrid payment institution.<br><br>Since the APS on the basis of Article 5 of the APS applies to electronic money issuers, conformity can be concluded.<br><br>Therefore, conformity is observed. |
| <b>Art. 5(7)</b>      | 7. Where the conditions laid down in Article 69 of Directive 2006/48/EC are                                   | 7. W przypadku gdy spełnione są warunki określone w art. 69  | <b>N/A</b>                                   | N/A   | N/A  | Article 5(7) of the Directive sets out an option. Owing to this option, Poland has not chosen to apply. In this regard, no  |

| Directive 2009/110/EC                     |  | National Implementing Measures  |                        |  | Conformity Assessment   |   |
|---|--|---|------------------------|--|---|---|
|   | 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. | dyrektywy 2006/48/WE, państwa członkowskie lub ich właściwe organy mogą postanowić o niestosowaniu ust. 2 i 3 niniejszego artykułu wobec instytucji pieniądza elektronicznego objętych skonsolidowanym nadzorem dominującej instytucji kredytowej na mocy dyrektywy 2006/48/WE. |                        |  |   | corresponding provision(s) could be located in the legislation of Poland either.  |
| <b>Art. 6(1) 1<sup>st</sup> subpar a.</b> | <i>Article 6 Activities</i><br>1. In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:   | <i>Artykuł 6 Rodzaje działalności</i><br>1. Oprócz emisji pieniądza elektronicznego, instytucje pieniądza elektronicznego uprawnione są do prowadzenia następujących rodzajów działalności:   | <b>EPI, Art. 45(1)</b> | <b>EPI, Art. 45</b><br>1. An electronic money institution, in the scope of the pursued economic activity other than issuance of electronic money, may:<br><br>1) provide financial and non-financial services strictly related to the issuance of electronic money; such as exercising operational and other auxiliary functions, as well as may issue and manage other payment measures;<br><br>2) provide payment services in the meaning of Act of 19 August 2011 on payment services, while respecting capital and | <b>EPI, Art. 45</b><br>1. Instytucja pieniądza elektronicznego, w zakresie wykonywanej działalności gospodarczej innej niż wydawanie pieniądza elektronicznego, może:<br><br>1) świadczyć ściśle powiązane z wydawaniem pieniądza elektronicznego usługi finansowe i niefinansowe, takie jak wykonywanie funkcji operacyjnych i innych funkcji pomocniczych, a także wydawać oraz administrować innymi środkami płatniczymi;<br><br>2) świadczyć usługi | <b>CONFORM</b><br><br>Article 45 of the EPI transposes Article 6(1), first subparagraph of the Directive.<br><br>The Polish quoted provision explicitly entitles electronic money institutions to engage in various economic activities.<br><br>As it will be shown below, the Polish legislator nearly completely transposed Article 6 of the Directive.<br><br>Therefore, conformity could be observed. |

| Directive 2009/110/EC                         |  |   | National Implementing Measures |   | Conformity Assessment   |   |
|---|--|---|--------------------------------|---|---|---|
|   |  |   |                                | <p>safeguarding requirements referred to in this Act;</p> <p>3) store <i>tele - informatic</i> data on the data carrier on behalf of other entities or public institutions;</p> <p>4) grant credits exclusively for the purpose of payment service provision, as referred to in Article 3(1) pt(2) to (6) of Act of 19 August 2011 on payment services, except for Article 74(3) of this Act;</p> <p>5) pursue other type of economic activity.</p> | <p>płatnicze w rozumieniu ustawy z dnia 19 sierpnia 2011 r. o usługach płatniczych, z zachowaniem wymogów kapitałowych i ostrożnościowych, o których mowa w tej ustawie;</p> <p>3) przechowywać dane na informatycznych nośnikach danych w imieniu innych podmiotów lub instytucji publicznych;</p> <p>4) udzielać kredytów wyłącznie w celu świadczenia usług płatniczych, o których mowa w art. 3 ust. 1 pkt 2-6 ustawy z dnia 19 sierpnia 2011 r. o usługach płatniczych, z zastrzeżeniem art. 74 ust. 3 tej ustawy;</p> <p>5) prowadzić inną działalność gospodarczą.</p> |   |
| <b>Art. 6(1) 1<sup>st</sup> subpar a. (a)</b> | (a) the provision of payment services listed in the Annex to Directive 2007/64/EC; | a) świadczenia usług płatniczych wymienionych w załączniku do dyrektywy 2007/64/WE; | <b>EPI, Art. 45(1) pt(2)</b>   | <b>EPI, Art. 45(1) pt(2)</b><br><br>2) provide payment services in the meaning of Act of 19 August 2011 on payment services, while respecting capital and   | <b>EPI, Art. 45(1) pt(2)</b><br><br>2) świadczyć usługi płatnicze w rozumieniu ustawy z dnia 19 sierpnia 2011 r. o usługach płatniczych, z  | <b>CONFORM</b><br><br>Article 45(1) point (2) of the EPI transposes Article 6(1), first subparagraph of the Directive.<br><br>Article 45(1) point (2) explicitly states that an |



| Directive 2009/110/EC                                |  |   | National Implementing Measures  |   | Conformity Assessment   |
|--|--|---|---|---|---|
|  |  |   |   | <p>safeguarding requirements referred to in this Act;</p> <p>zachowaniem wymogów kapitałowych i ostrożnościowych, o których mowa w tej ustawie;</p>   | <p>electronic money institution, in the scope of the pursued economic activity apart from issuing electronic money, may provide payment services in the meaning of Act of 19 August 2011 on payment services.</p> <p>The Polish quoted provision sets out one condition according to which such institutions have to respect capital and safeguarding requirements referred to in the APS.</p> <p>The services referred to in the APS correspond to the services listed in the Annex of Directive 2007/64/EC (PSD).</p> <p>Therefore, conformity could be concluded.</p>  |
| <p><b>Art. 6(1) 1<sup>st</sup> subpar a. (b)</b></p> | <p>(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;</p> | <p>b) udzielania kredytów związanych z usługami płatniczymi, o których mowa w pkt 4, 5 lub 7 załącznika do dyrektywy 2007/64/WE, w przypadku gdy spełnione są warunki określone w art. 16 ust. 3 i 5 tej dyrektywy;</p> | <p><b>EPI, Art. 45(1) pt(4)</b></p> <p>4) grant credits exclusively for the purpose of payment service provision, as referred to in Article 3(1) pt(2) to (6) of Act of 19 August 2011 on payment services, except for Article 74(3) of this Act;</p> <p><b>APS, Art. 3(1) pt(2) to(6)</b></p> <p>2) execution of payment transactions, including transfer of funds to a payment account with the user's provider or with another provider:</p> | <p><b>EPI, Art. 45(1) pt(4)</b></p> <p>4) udzielać kredytów wyłącznie w celu świadczenia usług płatniczych, o których mowa w art. 3 ust. 1 pkt 2-6 ustawy z dnia 19 sierpnia 2011 r. o usługach płatniczych, z zastrzeżeniem art. 74 ust. 3 tej ustawy;</p> <p><b>APS, Art. 3(1)</b></p> <p>2) wykonywaniu transakcji płatniczych, w tym transferu środków pieniężnych na rachunek płatniczy u dostawcy</p> | <p><b>CONFORM</b></p> <p>Article 45(1) point (4) of the EPI transposes Article 6(1), first subparagraph, (b) of the Directive.</p> <p>Article 45(1) point (4) explicitly states that electronic money institution, in the scope of the pursued economic activity apart from issuing electronic money may grant credits exclusively for the purpose of payment service provision, as referred to in Article 3(1) point (2) to (6) of Act of 19 August 2011 on payment services, except for Article 74(3) of this Act.</p> <p>Services referred to in Article 3(1) point (2) to (6) of Act of 19 August 2011 on payment services include:</p> |

| Directive 2009/110/EC |  | National Implementing Measures |   | Conformity Assessment   |   |
|-----------------------|--|--------------------------------|---|---|---|
|                       |  |                                | <p>a) execution of direct debits, including one-off direct debits,</p> <p>b) execution of transactions through a payment card or similar payment instrument, and</p> <p>c) execution of transfers services, including standing orders;</p> <p>3) execution of the payment transactions listed in point 2, where the funds made available to the user derive from credit, and in the case of a payment institution from a credit as referred to in Article 74 paragraph 3;</p> <p>4) the issuing of payment instruments;</p> <p>5) the conclusion of contracts with businesses for the acceptance of payments using payment instruments;</p> <p>6) the provision of money remittance services; and</p> | <p>użytkownika lub u innego dostawcy:</p> <p>a) przez wykonywanie usług polecenia zapłaty, w tym jednorazowych poleceń zapłaty,</p> <p>b) przy użyciu karty płatniczej lub podobnego instrumentu płatniczego,</p> <p>c) przez wykonywanie usług polecenia przelewu, w tym stałych zleceń;</p> <p>3) wykonywaniu transakcji płatniczych wymienionych w pkt 2, w ciężar środków pieniężnych udostępnionych użytkownikowi z tytułu kredytu, a w przypadku instytucji płatniczej – kredytu, o którym mowa w art. 74 ust. 3;</p> <p>4) wydawaniu instrumentów płatniczych;</p> <p>5) zawieraniu umów z przedsiębiorcami o przyjmowanie zapłaty przy użyciu instrumentów płatniczych;</p> | <ul style="list-style-type: none"> <li>• execution of payment transactions, including transfer of funds to a payment account with the user's provider or with another provider (such as execution of direct debits, including one-off direct debits, execution of transactions through a payment card or similar payment instrument, and execution of transfers services, including standing orders;</li> <li>• execution of the payment transactions listed in point 2, where the funds made available to the user derive from credit, and in the case of a payment institution from a credit as referred to in Article 74 paragraph 3;</li> <li>• the issuing of payment instruments;</li> <li>• the conclusion of contracts with businesses for the acceptance of payments using payment instruments;</li> <li>• the provision of money remittance services; and</li> </ul> <p>The services listed in points 4, 5 and 7 of the Annex of Directive 2007/64/EC (PSD) include:</p> <ul style="list-style-type: none"> <li>• execution of payment transactions where the funds are covered by a credit line for a payment service user,</li> </ul> |

| Directive 2009/110/EC                         |  |   | National Implementing Measures |  |   | Conformity Assessment   |
|---|--|---|--------------------------------|--|---|---|
|   |  |   |                                |  | 6) świadczeniu usługi przekazu pieniężnego;   | <p>such as execution of direct debits, including one-off direct debits, execution of payment transactions through a payment card or a similar device, execution of credit transfers, including standing orders.</p> <ul style="list-style-type: none"> <li>• issuing and/or acquiring of payment instruments.</li> <li>• execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.</li> </ul> <p>The services referred to in the Polish law correspond to the activities listed by points 4, 5 and 6 of the Annex to the PSD.</p> <p>Therefore, conformity is observed.</p> |
| <b>Art. 6(1) 1<sup>st</sup> subpar a. (c)</b> | (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) świadczenia usług operacyjnych i ściśle powiązanych usług dodatkowych w odniesieniu do emitowania pieniądza elektronicznego lub świadczenia usług płatniczych, o których | <b>EPI, Art. 45(1) pt(1)</b>   | <b>EPI, Art. 45(1) pt(1)</b><br>1) provide financial and non-financial services strictly related to the issuance of electronic money, such as exercising operational and other | <b>EPI, Art. 45(1) pt(1)</b><br>1) świadczyć ściśle powiązane z wydawaniem pieniądza elektronicznego usługi finansowe i niefinansowe, takie jak wykonywanie funkcji | <b>CONFORM</b><br><br>Article 45(1) point (1) almost literally transposes Article 6(1) first subparagraph (c) of the Directive.<br><br>Article 45(1) point (4) explicitly states that electronic money institution, in the scope of   |

| Directive 2009/110/EC                         |  | National Implementing Measures   |   |  | Conformity Assessment  |  |
|---|--|--|---|--|--|--|
|   |  | mowa w lit. a);  |   | auxiliary functions, as well as may issue and manage other payment measures;   | operacyjnych i innych funkcji pomocniczych, a także wydawać oraz administrować innymi środkami płatniczymi;  | the pursued economic activity apart from issuing electronic money, may provide financial and non-financial services strictly related to the issuance of electronic money; such as exercising operational and other auxiliary functions, as well as may issue and manage other payment measures.<br><br>Therefore, conformity is observed.  |
| <b>Art. 6(1) 1<sup>st</sup> subpar a. (d)</b> | (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) prowadzenie systemów płatności określonych w art. 4 pkt 6 dyrektywy 2007/64/WE, bez uszczerbku dla art. 28 tej dyrektywy; | <b>EPI, Art. 45(1) pt(2)</b><br><br><b>APS, Art. 74(2)</b><br><br>2) the operation of payment systems | 2) provide payment services in the meaning of Act of 19 August 2011 on payment services, while respecting capital and safeguarding requirements referred to in this Act; | 2) świadczyć usługi płatnicze w rozumieniu ustawy z dnia 19 sierpnia 2011 r. o usługach płatniczych, z zachowaniem wymogów kapitałowych i ostrożnościowych, o których mowa w tej ustawie;<br><br><b>APS, Art. 74(2)</b><br><br>2) prowadzić systemy płatności; | <b>CONFORM</b><br><br>Article 45(1) point (2) of the EPI transposes Article 6(1) first subparagraph, (d) of the Directive.<br><br>According to the Polish quoted provision, electronic money institutions in the scope of their activity may provide payment services in the meaning of Act of 19 August 2011 on payment services on condition that they respect capital and safeguarding requirements referred to in the APS.<br><br>Compared to the Directive, the Polish law does not explicitly refer to the operation of systems defined in Article 4 point (6) of the PSD.<br><br>Article 45(1) point (2) of the EPI is more general than the one of the Directive. However, it can be concluded that the Polish provision corresponds to the Directive provision in question. Since it cross-refers the services described in the APS, and as stated in Article 74(1) point (2) of the APS it also covers the operation of payment systems as |

| Directive 2009/110/EC                         |  |  | National Implementing Measures |  |  | Conformity Assessment  |
|---|--|--|--------------------------------|--|--|--|
|   |  |  |                                |  |  | defined in point 6 of Article 4 of Directive 2007/64/EC.<br><br>Therefore, conformity is observed.   |
| <b>Art. 6(1) 1<sup>st</sup> subpar a. (e)</b> | (e) business activities other than issuance of electronic money, having regard to the applicable Community and national law. | e) działalności gospodarczej innej niż emisja pieniądza elektronicznego, z uwzględnieniem mającego zastosowanie prawa wspólnotowego i krajowego. | <b>EPI, Art. 45(1) pt(5)</b>   | <b>EPI, Art. 45(1) pt(5)</b><br>5) pursue other type of economic activity. | <b>EPI, Art. 45(1) pt(5)</b><br>5) prowadzić inną działalność gospodarczą. | <b>PARTIALLY CONFORM</b><br><br>Article 45(1) point (5) transposes Article 6(1), first subparagraph, (e) of the Directive.<br><br>According to Article 45(1) point (5), electronic money institutions may also pursue other type of economic activity than issuance of electronic money.<br><br>The rules relating to the pursuit of economic activity in Poland will apply.<br><br>It should be noted though that unlike in the Directive, in the Polish quoted provision there is no explicit reference to the phrase ‘having regard to the applicable Community and national law’. <b>However</b> , there is no provision which would exempt electronic money institutions from respecting Community or Polish rules regarding the pursuit of economic activity, in particular as regards specifically regulated types of activity (e.g., telecom, medical or food sectors). <b>Moreover, in those specifically regulated sectors</b> , electronic money institutions will be required to obtain a license or a concession to operate legally on the market.<br><br><b>Nevertheless, it seems that the lack of explicit reference to the national and Community law, clearly stipulated by the Directive as a</b> |

| Directive 2009/110/EC                            |   |  | National Implementing Measures |  |  | Conformity Assessment  |
|--|---|--|--------------------------------|--|--|--|
|  |   |  |                                |  |  | <p>benchmark with regard to other business activities carried out by electronic money institutions, may somehow hamper legal certainty as explicitly required by the Directive.</p> <p>Therefore, partial conformity is observed.</p>  |
| <p><b>Art. 6(1) 2<sup>nd</sup> subpar a.</b></p> | <p>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).</p> | <p>Kredytu, o którym mowa w ust. 1 lit. b), nie udziela się ze środków otrzymanych w zamian za pieniądź elektroniczny i przechowywanych zgodnie z art. 7 ust. 1.</p> | <p><b>APS, Art. 74(3)</b></p>  | <p><b>APS, Art. 74(3)</b></p> <p>3. In connection with the execution of payment services a payment institution may grant a credit for the execution of a payment transaction (a payment loan) only for the purpose of providing the payment services referred to in Article 3 paragraph 1 points 2-6 and provided that the credit is not granted:</p> <p>1) for a period longer than 12 months; or</p> <p>2) from funds received or held for the purpose of undertaking a payment transaction.</p> | <p><b>APS, Art. 74(3)</b></p> <p>3. W związku z wykonywaniem usług płatniczych instytucja płatnicza może udzielać pożyczki służącej wykonaniu transakcji płatniczej (kredyt płatniczy) wyłącznie w celu świadczenia usług płatniczych, o których mowa w art. 3 ust. 1 pkt 2– 6, oraz pod warunkiem że pożyczka ta nie jest udzielana:</p> <p>1) na okres dłuższy niż 12 miesięcy;</p> <p>2) ze środków pieniężnych otrzymanych lub przechowywanych w celu wykonania transakcji płatniczej.</p> | <p><b>CONFORM</b></p> <p>Article 74(3) of the APS transposes Article 6(1), second subparagraph of the Directive.</p> <p>The EPI does not contain a specific provision transposing the Directive provision in question. However, as already stated above, the cross-reference present in Article 5 of the APS, makes provisions of this Act applicable towards electronic money issuers.</p> <p>According to Article 74(3) of the APS, payment loans referred therein and at the same time corresponding to credit referred to in point (b) of the first subparagraph shall not be granted from funds received or held for the purpose of undertaking a payment transaction.</p> <p>This is completely in line with the Directive provision in question. For clarity purposes, it should be noted the funds received or held in order to undertake a payment transaction referred to in Article 74 of the APS are held in accordance with rules reflecting Article 7(1) of the Directive.</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures |  |  | Conformity Assessment  |
|-----------------------|--|--|--------------------------------|--|--|--|
|                       |  |  |                                |  |  | Therefore, conformity is observed.   |
| <b>Art. 6(2)</b>      | 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. Instytucje pieniądza elektronicznego nie przyjmują od ludności depozytów lub innych środków podlegających zwrotowi w rozumieniu art. 5 dyrektywy 2006/48/WE.  | <b>EPI, Art. 46</b>            | <b>EPI, Art. 46</b><br>An electronic money institution shall not take and store deposits or other repayable funds from the public, in particular it shall not take those funds and run accounts thereof. | <b>EPI, Art. 46</b><br>Instytucja pieniądza elektronicznego nie może przyjmować w celu zarobkowym pod tytułem zwrotnym środków pieniężnych oraz gromadzić tych środków, w szczególności przyjmować środków pieniężnych podlegających zwrotowi oraz prowadzić rachunków tych środków. | <b>CONFORM</b><br><br>Article 46 of the EPI transposes Article 6(2) of the Directive.<br><br>Article 46 of the EPI states that an electronic money institution shall not take and store deposits or other repayable funds from the public, in particular it shall not take those funds and run accounts thereof.<br><br>This is in a full compliance with Article 5 if Directive 2006/48/EC as well as with recital 13 of the Directive.<br><br>Therefore, conformity is concluded.  |
| <b>Art. 6(3)</b>      | 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. Wszelkie środki otrzymywane przez instytucje pieniądza elektronicznego od posiadacza pieniądza elektronicznego są niezwłocznie wymieniane na pieniądz elektroniczny. Takie środki nie stanowią depozytu ani innych podlegających zwrotowi środków otrzymywanych od ludności w rozumieniu art. 5 dyrektywy 2006/48/WE. | <b>EPI, Art. 46</b>            | <b>EPI, Art. 46</b><br>An electronic money institution shall not take and store deposits or other repayable funds from the public, in particular it shall not take those funds and run accounts thereof. | <b>EPI, Art. 46</b><br>Instytucja pieniądza elektronicznego nie może przyjmować w celu zarobkowym pod tytułem zwrotnym środków pieniężnych oraz gromadzić tych środków, w szczególności przyjmować środków pieniężnych podlegających zwrotowi oraz prowadzić rachunków tych środków. | <b>PARTIALLY CONFORM</b><br><br>Article 46 of the EPI transposes Article 6(3) of the Directive in a conform manner.<br><br>Article 46 of the EPI ensures that no funds received by an electronic money institution from the public will be taken and stored as deposits. The quoted Polish provision in particular ensures that those funds will not be taken by the electronic money institution for the purpose of running accounts thereof.<br><br>On the other hand, the Polish provision does not explicitly state that any funds received by electronic money institutions from the electronic money holder shall be exchanged |

| Directive 2009/110/EC |  |   | National Implementing Measures |   |   | Conformity Assessment  |
|-----------------------|--|---|--------------------------------|---|---|--|
|                       |  |   |                                |   |   | for electronic money without delay.<br><br>Since this fact is not explicitly stated partial conformity is concluded.   |
| <b>Art. 6(4)</b>      | 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. Artykuł 16 ust. 2 i 4 dyrektywy 2007/64/WE ma zastosowanie do środków pieniężnych otrzymywanych na działalności, o których mowa w ust. 1 lit. a) niniejszego artykułu, niezwiązanych z działalnością polegającą na emisji pieniądza elektronicznego. | <b>APS, Art. 7(1) and (2)</b>  | <b>APS, Art. 7(1) and (2)</b><br><br>1. Funds received by payment institutions and payment service offices from users in connection with the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of Article 726 of the Civil Code of 23 April 1964.<br><br>2. Payment institutions and payment service offices may not conduct the business of taking deposits or other repayable funds within the meaning of the Banking Law. | <b>APS, Art. 7(1) and (2)</b><br><br>1. Środki pieniężne otrzymywane przez instytucje płatnicze oraz biura usług płatniczych od użytkowników w związku ze świadczeniem usług płatniczych nie stanowią depozytu ani innych podlegających zwrotowi środków w rozumieniu art. 726 ustawy z dnia 23 kwietnia 1964 r. – Kodeks cywilny.<br><br>2. Instytucje płatnicze oraz biura usług płatniczych nie mogą prowadzić działalności polegającej na przyjmowaniu depozytów lub innych środków pieniężnych podlegających zwrotowi w rozumieniu ustawy – Prawo bankowe. | <b>CONFORM</b><br><br>Article 7 (1) and (2) of the APS transposes Article 6(4) of the Directive.<br><br>Institutions referred to in Article 45 of the EPI, which apart from electronic money business pursue other types of activities, such as services enhanced by the APS, fall by consequence under the relevant provisions of the APS.<br><br>Consequently, Article 7(1) and (2) of the APS correctly transposing Article 16(2) and (4) of the PSD would be applicable.<br><br>As such, the Polish quoted provision contains the same requirements as the PSD’s provision.<br><br>Therefore the Polish law complies with the Directive provision. |
| <b>Art. 7(1)</b>      | <i>Article 7</i><br><b>Safeguarding requirements</b><br><br>1. Member States shall   | <i>Artykuł 7</i><br><b>Wymogi ochronne</b><br><br>1. Państwa członkowskie wymagają od instytucji  | <b>EPI, Art. 48</b>            | <b>EPI, Art. 48</b><br><br>Driven by the need to ensure sound and prudent operations of electronic  | <b>EPI, Art. 48</b><br><br>Kierując się potrzebą zapewnienia stabilnej i ostrożnej działalności   | <b>PARTIALLY CONFORM</b><br><br>Article 48 of the EPI transposed Article 7(1) of the Directive.  |



| Directive 2009/110/EC           |   |  | National Implementing Measures |   |   | Conformity Assessment   |
|---------------------------------|---|--|--------------------------------|---|---|---|
|                                 | <p>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 Article 4 of that Directive, after the issuance of electronic money.</p> | <p>pieniądza elektronicznego ochrony środków pieniężnych otrzymanych w zamian za wyemitowany pieniądz elektroniczny, zgodnie z art. 9 ust. 1 i 2 dyrektywy 2007/64/WE. Środki pieniężne otrzymane w formie płatności przez instrument płatniczy nie muszą być chronione do chwili, gdy zostaną zapisane na dobro rachunku płatniczego instytucji pieniądza elektronicznego lub w inny sposób udostępnione instytucji pieniądza elektronicznego zgodnie z wymogami dotyczącymi czasu wykonania określonymi w dyrektywie 2007/64/WE, w stosownych przypadkach. W każdym przypadku takie środki pieniężne zostają objęte ochroną nie później niż w terminie pięciu dni roboczych, określonych w art. 4 pkt 27 tej dyrektywy, po emisji pieniądza elektronicznego.</p> |                                | <p>money institutions and protect them against market risks arising from the issuance of electronic money, the minister responsible for financial institutions, after consultation with the FSA, shall establish by regulation:</p> <p>1) prudential rules defining acceptable risk in the activities of electronic money institutions, and the scope of their application;</p> <p>2) the types of financial instruments and principles of investing in funds under commitments made as a result of issuing electronic money and other risk mitigation rules.</p> | <p>instytucji pieniądza elektronicznego oraz zabezpieczenia ich przed ryzykiem rynkowym wynikającym z wydawania pieniądza elektronicznego, minister właściwy do spraw instytucji finansowych, po zasięgnięciu opinii KNF, określi, w drodze rozporządzenia:</p> <p>1) zasady ostrożnościowe, określające dopuszczalne ryzyko w działalności instytucji pieniądza elektronicznego, oraz zakres ich stosowania;</p> <p>2) rodzaje instrumentów finansowych i zasady inwestowania w nie środków z tytułu zobowiązań podjętych w wyniku wydawania pieniądza elektronicznego oraz inne zasady ograniczania ryzyka.</p> | <p>According to Article 48 of the EPI, institutions covered by this Act shall be subject to prudential rules defining acceptable risks of their activity as well as they shall act in line with the rules laying down certain types of financial instruments and principles of investing in funds under commitments made as a result of issuing electronic money and other risk mitigation rules.</p> <p>Although Art 48 EPI ensures the general obligation for electronic money institutions to ensure safeguards of funds, conformity cannot be drawn solely on that provision. In particular, the wording of the national provision is very general and does not address the specific safeguarding requirements of the Directive article, namely the nature of the transaction prior to the safeguarding of funds and the specific time-limit applicable.</p> <p>Therefore, partial conformity is concluded.</p> |
| <b>Art. 7(2) 1<sup>st</sup></b> | 2. For the purposes of paragraph 1, secure, low-  | 2. Na użytek ust. 1 bezpieczne, obciążone  | <b>EPI, Art.</b>               | <b>EPI, Art. 48</b>   | <b>EPI, Art. 48</b>   | <b>PARTIALLY CONFORM</b>  |

| Directive 2009/110/EC |  | National Implementing Measures   |  | Conformity Assessment   |   |
|-----------------------|--|--|--|---|---|
| <b>subpar a.</b>      | <p>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 Annex.</p> | <p>niskim ryzykiem aktywa są pozycjami aktywów należącymi do jednej z kategorii określonych w tabeli 1 w pkt 14 załącznika I do dyrektywy 2006/49/WE Parlamentu Europejskiego i Rady z dnia 14 czerwca 2006 r. w sprawie adekwatności kapitałowej przedsiębiorstw inwestycyjnych i instytucji kredytowych, w przypadku których narzut kapitałowy z tytułu ryzyka szczególnego nie przekracza 1,6 %, jednak z wyłączeniem innych pozycji o obniżonym ryzyku określonych w pkt 15 tego załącznika.</p> | <p><b>48</b></p> <p><b>Regulation on the safeguarding measures 2003</b></p> <p>Driven by the need to ensure sound and prudent operations of electronic money institutions and protect them against market risks arising from the issuance of electronic money, the minister responsible for financial institutions, after consultation with the FSA, shall establish by regulation:</p> <p>1) prudential rules defining acceptable risk in the activities of electronic money institutions, and the scope of their application;</p> <p>2) the types of financial instruments and principles of investing in funds under commitments made as a result of issuing electronic money and other risk mitigation rules.</p> <p><b>Regulation on the safeguarding measures 2003</b></p> <p>§ 1 An electronic money institution may invest only in EU Member States or in countries that are members</p> | <p>Kierując się potrzebą zapewnienia stabilnej i ostrożnej działalności instytucji pieniądza elektronicznego oraz zabezpieczenia ich przed ryzykiem rynkowym wynikającym z wydawania pieniądza elektronicznego, minister właściwy do spraw instytucji finansowych, po zasięgnięciu opinii KNF, określi, w drodze rozporządzenia:</p> <p>1) zasady ostrożnościowe, określające dopuszczalne ryzyko w działalności instytucji pieniądza elektronicznego, oraz zakres ich stosowania;</p> <p>2) rodzaje instrumentów finansowych i zasady inwestowania w nie środków z tytułu zobowiązań podjętych w wyniku wydawania pieniądza elektronicznego oraz inne zasady ograniczania ryzyka.</p> <p><b>Regulation on the safeguarding measures 2003</b></p> | <p>Article 48 of the EPI and Regulation on the safeguarding measures 2003 transposes Article 7(2), first subparagraph of the Directive.</p> <p>The Polish legislator in line with the framework of the safeguarding principles set out by the Directive has allowed electronic money institutions to invest funds received from the public solely in safe, liquid low-risk assets that are deposited in separate accounts.</p> <p>According to Article 48 of the EPI, the Ministry of Finance adopted an enforcing regulation in which it specified the categories of financial instruments and principles of investing in funds such as the maximum proportion of funds that may be invested in various categories of assets, with a view to ensure the sound and prudent operations of electronic money institutions, including reduction of investment risk.</p> <p>Pursuant to the said regulation the following might be considered as safe assets:</p> <ul style="list-style-type: none"> <li>• debt securities issued or guaranteed by the Treasury or Polish National Bank, debt securities or financial instruments admitted to trading on a regulated market in the Republic of Poland or foreign regulated market;</li> <li>• financial market instruments admitted to trading on the primary market acquired in the initial public</li> </ul> |

| Directive 2009/110/EC |  | National Implementing Measures  | Conformity Assessment   |
|-----------------------|--|---|---|
|                       |  | <p>of the Organisation for Economic Co-operation and Development (OECD) countries belonging to European Economic Area or in other countries with which the Republic of Poland signed an agreement on support and mutual protection of investment.</p> <p>§ 2 Electronic money institution invests assets of an amount not less than the amount of issued electronic money:</p> <p>1) in debt securities issued or guaranteed by the Treasury or Polish National Bank, debt securities or financial instruments admitted to trading on a regulated market in the Republic of Polish or foreign regulated market;</p> <p>2) in financial market instruments admitted to trading on the primary market acquired in the initial public offering, or if the terms of issue or of the first offering require the application for market</p> | <p>Regulation on the safeguarding measures 2003</p> <p>§1. Instytucja pieniądza elektronicznego może lokować swoje aktywa wyłącznie w państwach członkowskich Unii Europejskiej lub w państwach będących członkami Organizacji Współpracy Gospodarczej i Rozwoju (OECD), w państwach należących do Europejskiego Obszaru Gospodarczego lub w innych państwach, z którymi Rzeczpospolita Polska zawarła umowy o popieraniu i wzajemnej ochronie inwestycji.</p> <p>§2. Instytucja pieniądza elektronicznego lokuje aktywa w kwocie nie niższej niż zobowiązania z tytułu wydanego pieniądza elektronicznego wyłącznie :</p> <p>1) w dłużne papiery wartościowe emitowane, poręczone lub gwarantowane przez Skarb Państwa lub Narodowy</p> <p>offering, or if the terms of issue or of the first offering require the application for market authorization referred to in paragraph 1, and the admission to trading is ensured no later than one year after admission to public trading;</p> <ul style="list-style-type: none"> <li>• securities and financial market instruments other than those referred to in points 1 and 2, if the debt securities or instruments or the issuer fall under the regulation aimed at protecting investors and savings, and which fulfill certain conditions as set out by the quoted Regulation</li> <li>• the mortgage;</li> <li>• bank accounts in national banks and credit institutions, provided that the credit institution's head office is located on the Polish territory or in another Member State of the European Union.</li> </ul> <p>Compared to the Directive provision in question and especially in comparison with the Annex of Directive 2006/49/EC referred to therein, the Polish legislation allows electronic money institutions to invest their assets in mortgages and bank accounts in national banks and credit institutions. The Annex I, point 14, Table I of Directive 2006/49/EC refers solely to debt securities issued or guaranteed by public institutions,</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures  |  | Conformity Assessment   |
|-----------------------|--|--|---|--|---|
|                       |  |  | <p>authorization referred to in paragraph 1, and the admission to trading is ensured no later than one year after admission to public trading;</p> <p>3) in debt securities and financial market instruments other than those referred to in points 1 and 2, if the debt securities or instruments or the issuer fall under the regulation aimed at protecting investors and savings, and are:</p> <p>a) issued or guaranteed by the competent authorities at central, regional, or local level or central bank of the Member State, the European Central Bank or the European Investment Bank, a State, or in the case of a Federal State, by one of the members of the federation, or by a contributory international organization to which at least one Member State is a member, or</p> <p>b) issued or guaranteed by an entity subject to supervision of financial</p> | <p>Bank Polski, dłużne papiery wartościowe lub instrumenty rynku pieniężnego dopuszczone do obrotu na rynku regulowanym na terytorium Rzeczypospolitej Polskiej lub na zagranicznym rynku regulowanym;</p> <p>2) w instrumenty rynku pieniężnego dopuszczone do obrotu publicznego nabywane w obrocie pierwotnym lub w pierwszej ofercie publicznej, jeżeli warunki emisji lub pierwszej oferty publicznej zakładają złożenie wniosku o dopuszczenie do obrotu, o którym mowa w pkt 1, oraz gdy dopuszczenie do tego obrotu jest zapewnione w okresie nie dłuższym niż rok od dopuszczenia do publicznego obrotu;</p> <p>3) w dłużne papiery wartościowe lub instrumenty rynku pieniężnego, inne niż określone w pkt 1 i 2, jeżeli dłużne papiery wartościowe lub te</p> | <p>central banks and governments or institutions qualifying certain level of risk. The Polish law therefore goes beyond the Directive and does not guarantee the same level of protection.</p> <p>When it comes to the specific risk capital charge, which in line with the Directive it cannot be higher than 1,6%, this fact can be retrieved from Annex 9 to Decision No 1/2007 of the Commission for Banking Supervision of 13 March 2007. According to the table enclosed in this Annex low risk assets are not charged more than 1,6%. This approach corresponds to the Directive.</p> <p>Therefore, partial conformity is concluded.</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures  |  | Conformity Assessment |
|-----------------------|--|--|---|--|-----------------------|
|                       |  |  | <p>market supervisory authority in accordance with the criteria laid down by Community law, or by an entity which is subject to the principles that are at least as stringent as those laid down in the Community law, or</p> <p>c) issued by entity whose securities are traded on a regulated market as referred to in paragraph 1, or</p> <p>d) issued by other entities, provided that investments in securities are under the regulation on investors protection equivalent to that described in point. a - c, and the issuer meets the following conditions:</p> <ul style="list-style-type: none"> <li>- Is a company which capital is equivalent to at least EUR 10 000 000,</li> <li>- Publish annual financial reports in accordance with the provisions of Community law concerning the annual financial reporting of certain types of companies,</li> </ul> | <p>instrumenty lub ich emitent podlegają regulacjom mającym na celu ochronę inwestorów i oszczędności oraz są:</p> <p>a) emitowane olub gwarantowane przez właściwe organy szczebla centralnego, regionalnego, lub lokalnego albo przez bank centralny państwa członkowskiego, Europejski Bank Centralny, lub Europejski Bank Inwestycyjny, państwo członkowskie albo w wypadku państwa federalnego, przez jednego z członków federacji, albo przez oragnizację międzynarodową, do której należy co najmniej jedno państwo członkowskie, lub</p> <p>b) emitowane lub gwarantowane przez podmiot podlegający nadzorowi właściwego oragnu nadzoru nad rynkiem finansowym, zgodnie z kryteriami określonymi prawem wspólnotowym, albo przez podmiot podlegający i stosujący się do zasad,</p> |                       |

| Directive 2009/110/EC |  |  | National Implementing Measures  |   | Conformity Assessment |
|-----------------------|--|--|---|---|-----------------------|
|                       |  |  | <p>- Belongs to the group, which includes at least one company whose securities are traded on a regulated market,</p> <p>- Deals with the financing of the group, mentioned above, or with the financing of conversion mechanisms of debt in securities;</p> <p>4) the mortgage;</p> <p>5) bank accounts in national banks and credit institutions, provided that the credit institution's head office is located on the Polish territory or in another Member State of the European Union.</p> <p><b>Annex 9 to Decision No 1/2007 of the Commission for Banking Supervision of 13 March 2007</b></p> <p><b>BASIC APPROACH</b></p> <p>§14 The capital requirement for specific</p> | <p>które są co najmniej tak rygorystyczne jak określone w prawie wspólnotowym, lub</p> <p>c) emitowane przez podmiot, którego papiery wartościowe są w obrocie na rynku regulowanym, o którym mowa w pkt 1, lub</p> <p>d) emitowane przez inne podmioty pod warunkiem, że inwestycje w takie papiery wartościowe podlegają ochronie inwestorów równoważnej do określonej w lit. a– c, oraz emitent spełnia łącznie następujące warunki:</p> <p>- jest spółką, której kapitał własny wynosi równowartość co najmniej 10 000 000 EUR,</p> <p>-publikuje roczne sprawozdania finansowe zgodnie z przepisami prawa wspólnotowego dotyczącymi rocznych sprawozdań finansowych niektórych rodzajów spółek,</p> <p>- należy do grupy</p> |                       |

| Directive 2009/110/EC |  |  | National Implementing Measures   |  | Conformity Assessment |
|-----------------------|--|--|--|--|-----------------------|
|                       |  |  | <p>risk of debt instruments are calculated according to the following rules:</p> <p>1) the capital requirement for specific risk of debt instruments is calculated for primary positions resulting from the operations of trading book;</p> <p>2) net positions in individual debt instruments denominated in that currency are classified into one of the groups listed in the first column of the table below;</p> <p><b>Table</b></p> <p>Rates qualifying low risk:</p> <ul style="list-style-type: none"> <li>• 0,25%</li> <li>• 1,00%</li> <li>• 1,60%</li> </ul> | <p>kapitałowej, w skład której wchodzi co najmniej jedna spółka, której papiery wartościowe są przedmiotem obrotu na rynku regulowanym,</p> <p>- zajmuje się finansowaniem grupy, o której mowa powyżej, albo finansowaniem mechanizmów przekształcenia długu w papiery wartościowe z wykorzystaniem bankowej linii kredytowej;</p> <p>4) w listy zastawne;</p> <p>5) na rachunkach bankowych w bankach krajowych oraz instytucjach kredytowych, pod warunkiem, że siedziba instytucji kredytowej znajduje się na terytorium Rzeczypospolitej Polskiej lub państwa członkowskiego Unii Europejskiej.</p> <p><b>Załącznik nr 9 do uchwały nr 1/2007 Komisji Nadzoru</b></p> |                       |

| Directive 2009/110/EC |  |  | National Implementing Measures |  |  | Conformity Assessment |
|-----------------------|--|--|--------------------------------|--|--|-----------------------|
|                       |  |  |                                |  | <p><b>Bankowego z dnia 13 marca 2007 r. (poz. 3)</b></p> <p><b>METODA PODSTAWOWA</b></p> <p>§14. Wymóg kapitałowy z tytułu ryzyka szczególnego cen instrumentów dłużnych oblicza się zgodnie z następującymi zasadami:</p> <p>1) wymóg kapitałowy z tytułu ryzyka szczególnego cen instrumentów dłużnych oblicza się dla pozycji pierwotnych wynikających z operacji zaliczonych do portfela handlowego;</p> <p>2) pozycje netto w poszczególnych instrumentach dłużnych wyrażonych w danej walucie zalicza się do jednej z grup wymienionych w pierwszej kolumnie poniższej tabeli;</p> <p><b>Tabela</b></p> <p>Pozycje o obniżonym ryzyku szczególnym:</p> |                       |



| Directive 2009/110/EC                     |  |   | National Implementing Measures |     |  | Conformity Assessment  |
|---|--|---|--------------------------------|-----|--|--|
|   |  |   |                                |     | <ul style="list-style-type: none"> <li>• 0,25%</li> <li>• 1,00%</li> <li>• 1,60 %</li> </ul> |  |
| <b>Art. 7(2) 2<sup>nd</sup> subpar a.</b> | 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.            | Na użytek ust. 1 bezpieczne, obciążone niskim ryzykiem aktywa są również jednostkami uczestnictwa w przedsiębiorstwach zbiorowego inwestowania w zbywalne papiery wartościowe (UCITS) inwestujących wyłącznie w aktywa wymienione w akapicie pierwszym. | N/A                            | N/A | N/A  | <p><b>NOT CONFORM</b></p> <p>Regulation on the safeguarding measures 2003 has been adopted in 2003 that is one year before the adoption of the Polish Act aimed at the transposition of the UCITS Directive (Act of 27 May 2004 on investment funds).</p> <p>In consequence, the Polish legislator at the time of drafting the Regulation on the safeguarding measures could not have referred to units in an undertaking for collective investment in transferable securities (UCITS) to be treated as secure, low-risk assets in which electronic money institutions may invest.</p> <p>Therefore, non -conformity is concluded.</p> |
| <b>Art. 7(2) 3<sup>rd</sup> subpar a.</b> | In exceptional circumstances and with adequate justification, the 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, | W wyjątkowych okolicznościach i przy odpowiednim uzasadnieniu właściwe organy mogą, na podstawie oceny bezpieczeństwa, okresu zapadalności, wartości lub innych czynników ryzyka dotyczących aktywów  | N/A                            | N/A | N/A  | <p>Article 7(2) third subparagraph of the Directive sets out an option. Owing to this option, Poland has not chosen to apply. In this regard, no corresponding provision(s) could be located in the legislation of Poland either.</p>  |

| Directive 2009/110/EC |  |   | National Implementing Measures             |   |  | Conformity Assessment  |
|-----------------------|--|---|--|---|--|--|
|                       | determine which of those assets do not constitute secure, low-risk assets for the purposes of paragraph 1.   | wymienionych w akapicie pierwszym i drugim, określić, które z tych aktywów nie stanowią bezpiecznych, obciążonych niskim ryzykiem aktywów na użytek ust. 1.   |  |   |  |  |
| <b>Art. 7(3)</b>      | 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. Artykuł 9 dyrektywy 2007/64/WE ma zastosowanie do instytucji pieniądza elektronicznego w przypadku działalności, o których mowa w art. 6 ust. 1 lit. a) niniejszej dyrektywy, niezwiązanej z działalnością polegającą na emisji pieniądza elektronicznego. | <b>EPI, Art. 45</b><br><b>APS, Art. 78</b> | <b>EPI, Art. 45</b><br>1. An electronic money institution, in the scope of the pursued economic activity other than issuance of electronic money, may:<br><br>(...)<br><br>2) provide payment services in the meaning of Act of 19 August 2011 on payment services, while respecting capital and safeguarding requirements referred to in this Act;<br><br><b>APS, Art. 78</b><br><br>1. If a domestic payment institution accepts funds from users for execution of payment transactions, either directly or through the intermediation of another provider, it must | <b>EPI, 45</b><br>Instytucja pieniądza elektronicznego, w zakresie wykonywanej działalności gospodarczej innej niż wydawanie pieniądza elektronicznego, może:<br><br>(...)<br><br>2) świadczyć usługi płatnicze w rozumieniu ustawy z dnia 19 sierpnia 2011 r. o usługach płatniczych, z zachowaniem wymogów kapitałowych i ostrożnościowych, o których mowa w tej ustawie;<br><br><b>APS, Art. 78</b><br><br>1. W przypadku gdy krajowa instytucja płatnicza przyjmuje od użytkowników środki | <b>CONFORM</b><br><br>Article 45 of the EPI, together with Article 78 of the APS transpose Article 7(3) of the Directive.<br><br>In line with Article 45 of the EPI, electronic money institutions which in the scope of the pursued economic activity other than the issuance of electronic money provide payment services referred to in the APS are required to respect capital and safeguarding requirements referred therein.<br><br>Capital and safeguarding requirements referred to in Article 78 of the APS correspond to the requirements set out in Article 9 of Directive 2007/64/EC. Moreover, this fact has been confirmed by the PSD conformity assessment published on the EC website.<br><br>Summing up, according to the Polish law, the national provisions reflecting Article 9 of Directive 2007/64/EE apply to electronic money institutions which carry out activities referred to in Article 6(1)(a) of the Directive. |

| Directive 2009/110/EC |  |  | National Implementing Measures   |   | Conformity Assessment              |
|-----------------------|--|--|--|---|------------------------------------|
|                       |  |  | <p>keep them safely in accordance with the following principles:</p> <p>1) funds which are accepted for the execution of payment transactions in the amount to be transferred to another payee or to a provider for transfer to the payee may not at any time during their safekeeping be combined with funds held by the domestic payment institution for other purposes;</p> <p>2) funds which are accepted for the execution of payment transactions that have not been transferred to the payee or to another provider by the end of the business day following the date of receipt of those funds shall be, in at least as much as the amount to be transferred to the payee or to another provider for transfer to the payee,:</p> <p>a) placed in a separate bank account established for this purpose in a</p> | <p>pieniężne na poczet wykonania transakcji płatniczych bezpośrednio lub za pośrednictwem innego dostawcy, jest zobowiązana do ich ochrony z zastosowaniem następujących zasad:</p> <p>1) środki pieniężne przyjęte w celu wykonania transakcji płatniczych, w wysokości podlegającej przekazaniu odbiorcy albo innemu dostawcy w celu przekazania odbiorcy, nie są w żadnym momencie podczas przechowywania łączone ze środkami pieniężnymi posiadanymi przez krajową instytucję płatniczą z innego tytułu;</p> <p>2) środki pieniężne przyjęte w celu wykonania transakcji płatniczych, które nie zostały przekazane odbiorcy lub innemu dostawcy do końca dnia roboczego następującego po dniu otrzymania tych środków, są co najmniej w wysokości podlegającej przekazaniu odbiorcy albo innemu dostawcy w celu</p> | Therefore, conformity is observed. |

| Directive 2009/110/EC |  |  | National Implementing Measures  |   | Conformity Assessment |
|-----------------------|--|--|---|---|-----------------------|
|                       |  |  | <p>domestic bank, a credit institution or a branch of a foreign bank, or</p> <p>b) invested in safe, liquid low-risk assets that are deposited in a separate account established for this purpose.</p> <p>2. The regulation of paragraph 1 shall not apply if the funds accepted for the execution of payment transactions are covered by a bank guarantee or insurance contract or by an insurance policy concluded with an insurance undertaking, a domestic bank, a branch of a foreign bank or a credit institution which does not belong to the same group as the domestic payment institution, for an amount equal to the amount which, if the principles spoken of in paragraph 1 applied would be subject to separation from other funds held by the domestic payment institution and placing on a separate bank account or invested.</p> <p>3. The bank or insurance</p> | <p>przekazania odbiorcy:</p> <p>a) składane na wyodrębnionym do tego celu rachunku bankowym w banku krajowym, instytucji kredytowej lub oddziale banku zagranicznego lub</p> <p>b) inwestowane w bezpieczne, płynne aktywa o niskim ryzyku, deponowane na wyodrębnionym do tego celu rachunku.</p> <p>2. Przepisu ust. 1 nie stosuje się, jeżeli środki pieniężne przyjęte w celu wykonania transakcji płatniczych są objęte umową gwarancji bankowej albo ubezpieczeniowej albo umową ubezpieczenia zawartą z zakładem ubezpieczeń, bankiem krajowym, oddziałem banku zagranicznego, instytucją kredytową, które nie należą do tej samej grupy co krajową instytucją płatniczą, na kwotę równą kwocie, która w przypadku</p> |                       |

| Directive 2009/110/EC |  |  | National Implementing Measures   |  | Conformity Assessment |
|-----------------------|--|--|--|--|-----------------------|
|                       |  |  | <p>guarantee or insurance policy should cover the payment by the guarantor or the insurance undertaking of funds from the guarantee or the provision of compensation in the event of the domestic payment institution's failure to comply with obligations arising from contracts for the provision of payment services, and in particular of the obligation to refund payments made by users in the event of the domestic payment institution's failure to perform or improper performance of its obligations to users.</p> <p>4. The bank or insurance guarantee contract should include authorisation for the PFSA to direct payment by the guarantor or the insurance undertaking of funds from the guarantee.</p> <p>5. A domestic payment institution applying the requirements specified in paragraph 2 must submit to the PFSA the originals of documents that confirm</p> | <p>zastosowania zasad określonych w ust. 1 podlegałyby wydzieleniu z innych środków pieniężnych posiadanych przez krajową instytucję płatniczą oraz złożeniu na wyodrębnionym rachunku bankowym lub zainwestowaniu.</p> <p>3. Umowa gwarancji bankowej albo ubezpieczeniowej albo umowa ubezpieczenia powinna obejmować wypłatę przez gwaranta lub zakład ubezpieczeń środków pieniężnych z gwarancji lub świadczenia odszkodowawczego w przypadku niemożności wykonania przez krajową instytucję płatniczą zobowiązań wynikających z umów o świadczenie usług płatniczych, w szczególności obowiązku zwrotu wpłat wniesionych przez użytkowników w przypadku niewykonania lub nienależytego wykonania zobowiązania przez krajową instytucję płatniczą wobec użytkowników.</p> |                       |

| Directive 2009/110/EC |  | National Implementing Measures |   | Conformity Assessment   |  |
|-----------------------|--|--------------------------------|---|---|--|
|                       |  |                                | <p>that the next guarantee or insurance contract has been concluded prior to the expiry of the period of validity of the previous contract. The contract should cover the entire range of the institution's business.</p> <p>6. In the case of domestic payment institutions that are commencing operations the amount spoken of in paragraph 2 shall be determined on the basis of the programme of operations and financing plan spoken of in Article 61 paragraph 1 point 4.</p> | <p>4. Umowa gwarancji bankowej albo ubezpieczeniowej powinna obejmować upoważnienie dla KNF do wydawania dyspozycji wypłaty przez gwaranta lub zakład ubezpieczeń środków pieniężnych z gwarancji.</p> <p>5. Krajowa instytucja płatnicza stosująca wymogi określone w ust. 2 jest obowiązana składać KNF oryginały dokumentów potwierdzających zawarcie kolejnej umowy gwarancji albo ubezpieczenia, przed upływem terminu obowiązywania umowy poprzedniej. Umowy powinny obejmować cały okres prowadzenia działalności.</p> <p>6. W przypadku krajowych instytucji płatniczych rozpoczynających działalność kwotę, o której mowa w ust. 2, określa się na podstawie programu działalności i planu</p> |  |

| Directive 2009/110/EC |   |  | National Implementing Measures  |   |  | Conformity Assessment   |
|-----------------------|---|--|---|---|--|---|
|                       |   |  |   |   | finansowego, o których mowa w art. 61 ust. 1 pkt 4.  |   |
| <b>Art. 7(4)</b>      | 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. Na użytek ust. 1 i 3, państwa członkowskie lub ich właściwe organy mogą zgodnie z przepisami krajowymi określić metodę wykorzystywaną przez instytucje pieniądza elektronicznego do ochrony środków pieniężnych.  | N/A   | N/A   | N/A  | Article 7(4) of the Directive sets out an option. Owing to this option, Poland has not chosen to apply. In this regard, no corresponding provision(s) could be located in the legislation of Poland either.   |
| <b>Art. 8(1)</b>      | <p><i>Article 8</i><br/><b>Relations with third countries</b></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>Artykuł 8</i><br/><b>Stosunki z państwami trzecimi</b></p> <p>1. Państwa członkowskie nie stosują wobec oddziału instytucji pieniądza elektronicznego mającego swoją siedzibę główną poza Wspólnotą, rozpoczynającego lub prowadzącego swoją działalność, przepisów, z których wynika jego uprzywilejowane traktowanie w porównaniu z instytucją pieniądza elektronicznego mającą swoją siedzibę główną we Wspólnocie.</p> | <p><b>EPI, Art. 41</b></p> <p><b>BL, Art. 4(1) pt(2) and (17) and (3)</b></p> <p><b>BL, Art. 48i</b></p> <p><b>BL, Art. 48j</b></p> | <p><b>EPI, Art. 41</b></p> <p>The taking up and pursuit of the business in the territory of the Republic of Poland by electronic money institutions established in the territory of other Member States of the European Union or Member States of the European Free Trade Association (EFTA) - parties to the Agreement on the European Economic Area and the supervision of these institutions as well as the taking up and pursuit of the business by national electronic money institutions in countries</p> | <p><b>EPI, Art. 41</b></p> <p>Do podejmowania i prowadzenia działalności na terytorium Rzeczypospolitej Polskiej przez instytucje pieniądza elektronicznego mające siedzibę na terytorium państw członkowskich Unii Europejskiej lub państw członkowskich Europejskiego Porozumienia o Wolnym Handlu (EFTA) – stron umowy o Europejskim Obszarze Gospodarczym, wykonywania nad tymi instytucjami nadzoru oraz prowadzenia działalności</p> | <p><b>CONFORM</b></p> <p>Article 41 of the EPI transposes Article 1(1)(b) of the Directive.</p> <p>The Polish law contains a specific provision concerning the treatment of branches of foreign electronic money institutions. According to Article 41 of the EPS, electronic money institutions located within the EU, which are planning to start up a branch in Poland shall be treated in the same way as EU credit institutions are treated under the BL, therefore they shall benefit from the EU passport.</p> <p>However, the EPS does not explicitly refer to the situation in which electronic money institutions established in third countries are interested in setting up a branch in Poland. It can be implied on the basis of analogy, that those institutions, just like banks established</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures   |  | Conformity Assessment  |
|-----------------------|--|--|--|--|--|
|                       |  |  | <p>that are Members of the European Union or the European Free Trade Association (EFTA) - parties to the agreement on the European Economic Area, shall be governed by the provisions of the Banking Law relating to credit institutions.</p> <p><b>BL, Art. 4(1) and (3)</b></p> <p>1. The terms employed in the present Act shall be construed as follows:</p> <p>2) foreign bank — a bank having its registered office outside the Republic of Poland, in a country that is not a member of the European Union,</p> <p>17) credit institution — an undertaking having its registered office outside the Republic of Poland, in one of the Member States of the European Union, hereinafter referred to as “Member States”, which, acting on its own behalf and for its own account, on the basis of authorisation by the competent supervisory authorities,</p> | <p>przez krajowe instytucje pieniądza elektronicznego w krajach będących członkami Unii Europejskiej lub Europejskiego Porozumienia o Wolnym Handlu (EFTA) – stronami umowy o Europejskim Obszarze Gospodarczym stosuje się odpowiednio przepisy Prawa bankowego odnoszące się do instytucji kredytowych.</p> <p><b>BL, Art. 4(1) and (3)</b></p> <p>1. Użyte w ustawie określenia oznaczają:</p> <p>2) bank zagraniczny – bank mający siedzibę za granicą Rzeczypospolitej Polskiej, na terytorium państwa niebędącego członkiem Unii Europejskiej;</p> <p>17) instytucja kredytowa – podmiot mający swoją siedzibę za granicą Rzeczypospolitej Polskiej na terytorium jednego z państw członkowskich Unii Europejskiej, zwanych dalej „państwami</p> | <p>in third countries willing to open their branch in Poland, in order to set up a branch in Poland would have to fulfil additional requirements and therefore they would never benefit from the single licence. This corresponds also to the content of recital 15 of the Directive.</p> <p>Therefore, conformity is concluded.</p> |



| Directive 2009/110/EC |  |  | National Implementing Measures   |  | Conformity Assessment |
|-----------------------|--|--|--|--|-----------------------|
|                       |  |  | <p>carries out the business of receiving deposits or other funds entrusted to it, which are in any way repayable, and of extending loans, or of issuing electronic money,</p> <p>3. The provisions of the present Act referring to Member States shall also apply to the states which are not Member States but are part of the European Economic Area.</p> <p><b>BL, Art. 48i</b></p> <p>A credit institution may pursue business in the Republic of Poland via a branch or within the framework of its cross-border activity.</p> <p><b>BL, Art. 48j</b></p> <p>A credit institution may perform in the Republic of Poland the operations specified in Art. 5, paras. 1 and 2, and Art. 6, para. 1 subparas. 1-4 and 6-8, in the scope that derives from the authorisation granted to it by the competent supervisory authorities of</p> | <p>członkowskimi”, prowadzący we własnym imieniu i na własny rachunek, na podstawie zezwolenia właściwych władz nadzorczych, działalność polegającą na przyjmowaniu depozytów lub innych środków powierzonych pod jakimkolwiek tytułem zwrotnym i udzieleniu kredytów lub na wydawaniu pieniądza elektronicznego;</p> <p>3. Przepisy ustawy dotyczące państw członkowskich stosuje się również do państw niebędących państwami członkowskimi, ale należących do Europejskiego Obszaru.</p> <p><b>BL, Art. 48i</b></p> <p>Instytucja kredytowa może prowadzić działalność na terytorium Rzeczypospolitej Polskiej poprzez oddział lub w ramach działalności transgranicznej.</p> <p><b>BL, Art. 48j</b></p> |                       |

| Directive 2009/110/EC |   |   | National Implementing Measures |                        |   | Conformity Assessment   |
|-----------------------|---|---|--------------------------------|------------------------|---|---|
|                       |   |   |                                | the home Member State. | Instytucja kredytowa może wykonywać na terytorium Rzeczypospolitej Polskiej czynności określone w art. 5 ust. 1 i 2 oraz art. 6 ust. 1 pkt 1–4 i 6–8 w zakresie wynikającym z zezwolenia udzielonego przez właściwe władze nadzorcze państwa macierzystego. |   |
| <b>Art. 8(2)</b>      | 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. Właściwe organy powiadamiają Komisję o wszystkich zezwoleniach udzielonych oddziałom instytucji pieniądza elektronicznego mających swoją siedzibę główną poza Wspólnotą. | N/A                            | N/A                    | N/A   | <p><b>PARTIALLY CONFORM</b></p> <p>There is no specific disposition in the Polish law which would reflect the Directive provision in question.</p> <p>However, the lack of a literal transposition, does not necessarily entail non-compliance of the Polish authorities with the requirement concerned. Practice shows that often Polish authorities fulfil their obligations imposed by the EU law without a strict reference thereto in the Polish legislation.</p> <p>Therefore, partial conformity is concluded.</p> |
| <b>Art. 8(3)</b>      | 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 | 3. Bez uszczerbku dla ust. 1, Wspólnota może zgodzić się, na mocy umów zawartych z co najmniej jednym państwem trzecim, na stosowanie przepisów, które zapewniają           | N/A                            | N/A                    | N/A   | <p><b>CONFORM</b></p> <p>Article 8(3) of the Directive lays down the obligation which rests upon the Community. As such, it does not need to be transposed in the Polish legislation.</p> <p>As stated in Article 8 (3), the Community</p>  |

| Directive 2009/110/EC                                  |  | National Implementing Measures   |                     |                     | Conformity Assessment   |  |
|--|--|--|---------------------|---------------------|---|--|
|  | money institution having its head office outside the Community are treated identically throughout the Community.   | oddziałom instytucji pieniądza elektronicznego mających swoją siedzibę główną poza Wspólnotą identyczne traktowanie w całej Wspólnocie.                                      |                     |                     | <p>may conclude agreements with third countries with effect for the whole community.</p> <p>Poland is free to have a case by case authorization process for branches of electronic money institutions having their head office outside the Community, or to make agreements with third countries which have effect at national level. The branch cannot receive an EU passport.</p> <p>However, when concluding such an agreement Article 8(1) states that 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>Poland as assessed above complied with Article 8(1) of the Directive.</p> <p>Therefore, conformity could be also concluded with respect to Article 8(3) of the Directive.</p> |  |
| <b>Art. 9(1) 1<sup>st</sup> subpara. intr. wording</b> | <p><i>Article 9</i><br/><b>Optional Exemptions</b></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>Artykuł 9</i><br/><b>Wyłączenia fakultatywne</b></p> <p>1. Państwa członkowskie mogą odstąpić od stosowania lub zezwolić swoim właściwym organom na odstąpienie od</p> | <b>EPI, Art. 50</b> | <b>EPI, Art. 50</b> | <b>EPI, Art. 50</b>   | <p><b>CONFORM</b></p> <p>Article 9(1) first subparagraph, introductory wording of the Directive sets out an option which Poland chose to apply.</p> <p>Article 50 of the EPI transposes this option. More specifically, the Polish legislation</p> |

| 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: | stosowania całości lub części procedur i warunków określonych w art. 3, 4, 5 i 7 niniejszej dyrektywy, bez uszczerbku dla art. 20, 22, 23 i 24 dyrektywy 2007/64/WE, oraz zezwolić na wpis osób prawnych do rejestru instytucji pieniądza elektronicznego, jeżeli spełnione są oba następujące warunki: | <p>electronic money instrument does not exceed a PLN equivalent of 75 EUR, calculated on the basis of currency rate announced by the National Polish Bank on the day of its issuance, the total financial liabilities of electronic money institution including issued but not redeemed electronic money at any time which do not exceed a PLN equivalent of 1 000 000 EUR and one of the following conditions is fulfilled:</p> <p>1) electronic money serves as a payment instrument and is used by entities which are organisationally connected;</p> <p>2) electronic money is used as a payment instrument exclusively in the territory of commune, in territory of which electronic money is established.</p> | <p>umieszczona na instrumencie pieniądza elektronicznego nie przekracza równowartości w złotych 75 euro, obliczanej według średniego kursu ogłoszanego przez NBP obowiązującego w dniu jego wydania, całkowite zobowiązania finansowe instytucji pieniądza elektronicznego z uwzględnieniem wydanego, a niewykupionego przez nią pieniądza elektronicznego, w każdym czasie, nie przekraczają równowartości w złotych 1 000 000 euro oraz spełniony jest jeden z poniższych warunków:</p> <p>1) pieniądz elektroniczny służy jako środek płatniczy używany przez podmioty powiązane ze sobą organizacyjnie;</p> <p>2) pieniądz elektroniczny służy jako środek płatniczy używany wyłącznie na obszarze gminy, w której siedzibę ma instytucja pieniądza</p> | <p>foresees the possibility to waive the application of some provisions of the EPI, namely provisions of Chapter 5 of the EPI in relation to the supervision of electronic money issuers.</p> <p>The Polish legislator has set two conditions which have to be fulfilled cumulatively in order for the waiver to be applicable:</p> <ul style="list-style-type: none"> <li>the maximum amount on the electronic money instrument cannot exceed a PLN equivalent of 75 EUR,</li> <li>the total financial liabilities of an electronic money institution including issued but not redeemed electronic money at any time, which cannot exceed a PLN equivalent of 1 000 000 EUR, provided either that electronic money serves as a payment instrument and is used by entities which are organisationally connected or that electronic money is used as a payment instrument exclusively in the territory of commune, in territory of which electronic money is established.</li> </ul> <p>The Polish legislation made use of the possibility stipulated in recital 16 of the Directive according to which, EU law allows Member States to waive the application of certain provisions of the Directive as regards institutions issuing only a limited amount of electronic money. It should be noted that</p> |

| Directive 2009/110/EC                        |  |   | National Implementing Measures |  |   | Conformity Assessment   |
|--|--|---|--------------------------------|--|---|---|
|  |  |   |                                |  | elektronicznego.  | <p>provisions of the APS corresponding to Article 20, 22, 23, 24 excluded by the Directive from the waiver, do not form part of Chapter 5 of the EPI either.</p> <p>The Polish law corresponds also to the Directive stipulation according to which institutions benefiting from such a waiver should not have the right under this Directive to exercise the freedom of establishment or the freedom to provide services and they should not indirectly exercise those rights as members of a payment system.</p> <p>Therefore, conformity could be concluded.</p>   |
| <b>Art. 9(1) 1<sup>st</sup> subpar . (a)</b> | (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 5 000 000; and | a) ogół działalności gospodarczej generuje średnią wartość pieniądza elektronicznego pozostającego w obiegu nieprzekraczającą limitu określonego przez państwo członkowskie, jednak w każdym razie nie wyższą niż 5 000 000 EUR; oraz | <b>EPI, Art. 50</b>            | <b>EPI, Art. 50</b><br><br>The provisions of this Chapter relating to the supervision shall not apply to electronic money institutions if<br><br>[...]<br><br>the total financial liabilities of an electronic money institution including issued but not redeemed electronic money at any time which do not exceed a PLN equivalent of 1 000 000 EUR and one of the following conditions is | <b>EPI, Art. 50</b><br><br>Przepisów niniejszego rozdziału, w zakresie sprawowania nadzoru, nie stosuje się do instytucji pieniądza elektronicznego,<br><br>całkowite zobowiązania finansowe instytucji pieniądza elektronicznego z uwzględnieniem wydanego, a niewykupionego przez nią pieniądza elektronicznego, w każdym czasie, nie przekraczają równowartości w złotych 1 000 000 euro oraz spełniony jest jeden z | <b>CONFORM</b><br><br>Article 50 of the EPI transposes Article 9(1) first subparagraph (a) of the Directive.<br><br>In line with the Directive, the Polish legislator stipulated that the waiver is applicable to those electronic money institutions of which the total financial liabilities including an outstanding electronic money do not exceed EUR 1 000 000. Compared to the Directive, the Polish law laid down a stricter limit for electronic money institutions in order to benefit from the waiver, that is 1 000 000 EUR. This however does not contradict the spirit of the Directive.<br><br>Therefore, conformity could be concluded. |

| Directive 2009/110/EC                         |   |   | National Implementing Measures |   |  | Conformity Assessment  |
|---|---|---|--------------------------------|---|--|--|
|   |   |   |                                | <p>fulfilled:</p> <p>1) electronic money serves as a payment instrument and is used by entities which are organisationally connected;</p> <p>2) electronic money is used as payment instrument exclusively in the territory of commune, in territory of which electronic money is established.</p>  | <p>poniższych warunków:</p> <p>1) pieniądz elektroniczny służy jako środek płatniczy używany przez podmioty powiązane ze sobą organizacyjnie;</p> <p>2) pieniądz elektroniczny służy jako środek płatniczy używany wyłącznie na obszarze gminy, w której siedzibę ma instytucja pieniądza elektronicznego.</p>   |  |
| <b>Art. 9(1) 1<sup>st</sup> subpar a. (b)</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) żadna z osób fizycznych odpowiedzialnych za zarządzanie przedsiębiorstwem lub za jego prowadzenie nie została skazana za przestępstwa związane z praniem pieniędzy lub finansowaniem terroryzmu albo za inne przestępstwa finansowe. | <b>EPI, Art. 36</b>            | <p><b>EPI, Art. 36</b></p> <p>4. While granting an authorisation referred to in paragraph 3, the PFSA shall take into account the protection of consumer of the institution concerned or the branch of the foreign electronic money institution. The PFSA shall in particular take into account the need of ensuring a safe and stable management of the institution.</p> <p><b>APS, Art. 61(1) pt(9)</b></p> <p>1. An applicant for the authorisation referred to in</p> | <p><b>EPI, Art. 36</b></p> <p>4. Wydając zezwolenie, o którym mowa w ust. 3, KNF kieruje się względami ochrony interesu klientów zainteresowanej instytucji pieniądza elektronicznego lub oddziału zagranicznej instytucji pieniądza elektronicznego, a w szczególności potrzebą zapewnienia bezpiecznego i stabilnego zarządzania instytucją.</p> <p><b>APS, Art. 61(1) pt(9)</b></p> <p>9) dane pozwalające na ustalenie tożsamości osób</p> | <p><b>CONFORM</b></p> <p>Articles 36(4) of the EPI and 61(1) point (9) of the APS transpose Article 9(1) first subparagraph (b) of the Directive.</p> <p>There are no provisions apart from Article 50 of the EPI, which would explicitly refer to institutions benefiting from the waiver.</p> <p>However, taking into consideration several provisions which continue to apply to electronic money institutions notwithstanding an exceptional treatment, it can be implied that every electronic money institution in Poland would be required to comply with the condition that none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or</p> |

| Directive 2009/110/EC                  |  |   | National Implementing Measures |   | Conformity Assessment   |   |
|--|--|---|--------------------------------|---|---|---|
|  |  |   |                                | <p>Article 60 paragraph 1 shall append to its application:</p> <p>9) information that allows the identification of managers and documents that make it possible to assess whether these people ensure the sound and prudent management of the payment institution, including whether they have the education and professional experience necessary for the management of operations in the area of the provision of payment services;</p> | <p>zarządzających oraz dokumenty pozwalające na ocenę, czy osoby te dają rękojmię ostrożnego i stabilnego zarządzania instytucją płatniczą, w tym posiadają wykształcenie i doświadczenie zawodowe niezbędne do zarządzania działalnością w zakresie świadczenia usług płatniczych;</p> | <p>terrorist financing or other financial crimes.</p> <p>As a general principle set out by the EPI, the PFSA grants an authorization to those institutions which are able to ensure a safe and stable management of the institution. It can be inferred that persons who have been convicted of offences relating to money laundering or terrorist financing or other financial crimes are not reliable with this respect.</p> <p>Secondly, according to Article 61(1) point (9) of the APS (applicable to electronic money institutions because of the cross-reference present in Article 39 of the EPI), every application for an authorisation for electronic money business shall include information that allows the identification of managers and documents that make it possible to assess whether these people ensure the sound and prudent management of the payment institution, including whether they have the education and professional experience necessary for the management of operations in the area of the provision of payment services. This stipulation implies the same conclusion as the provision of Article 36 of the EPI.</p> <p>Therefore, conformity could be concluded.</p> |
| <b>Art. 9(1) 2<sup>nd</sup> subpar</b> | Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked | W przypadku gdy instytucja pieniądza elektronicznego prowadzi jakiegokolwiek rodzaju działalność, o której mowa | <b>EPI, Art. 47(3)</b>         | <b>EPI, Art. 47(3)</b><br>3. The value of electronic money in issue is calculated as the greater of   | <b>EPI, Art. 47(3)</b><br>3. Wartość pieniądza elektronicznego w obiegu oblicza się jako większą z  | <b>PARTIALLY CONFORM</b><br><br>Article 47(3) of the EPI transposes Article 9(1) second subparagraph of the Directive.  |

| Directive 2009/110/EC |   | National Implementing Measures   |  | Conformity Assessment  |   |
|-----------------------|---|--|--|--|---|
| a,                    | <p>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 plan subject to any adjustment to that plan having been required by the competent authorities.</p> | <p>w art. 6 ust. 1 lit. a), niezwiązaną z emisją pieniądza elektronicznego, lub którykolwiek z rodzajów działalności, o których mowa w art. 6 ust. 1 lit. b)–e), a kwota pieniądza elektronicznego pozostającego w obiegu nie jest wcześniej znana, właściwe organy zezwalają tej instytucji pieniądza elektronicznego na stosowanie lit. a) pierwszego akapitu na podstawie reprezentatywnej części przeznaczonej na emisję pieniądza elektronicznego, pod warunkiem że taka reprezentatywna część może zostać rozsądnie oszacowana na podstawie danych historycznych i w sposób satysfakcjonujący właściwe organy. W przypadku gdy instytucja pieniądza elektronicznego nie prowadzi działalności dostatecznie długo, spełnienie tego wymogu jest oceniane na podstawie przewidywanej wartości pieniądza elektronicznego pozostającego w obiegu, wykazanej w planie biznesowym</p> | <p>the values of:</p> <ol style="list-style-type: none"> <li>1) the total amount of financial liabilities related to electronic money in issue at the end of the reporting period;</li> <li>2) the average total amount of financial liabilities related to electronic money in issue at the end of the preceding six calendar months or in case of the electronic money institution which is running its activity shorter than 6 months – the average total amount of foreseen liabilities related to electronic money at the end of 6 months of activity, included in the business plan which should be adjusted at the request of PFSA (Polish Financial Supervision Authority).</li> </ol> | <p>wartości:</p> <ol style="list-style-type: none"> <li>1) zobowiązań finansowych ogółem z tytułu pieniądza elektronicznego pozostającego w obiegu na koniec okresu sprawozdawczego;</li> <li>2) średniej wartości zobowiązań z tytułu pieniądza elektronicznego na koniec ostatnich 6 miesięcy lub w przypadku instytucji pieniądza elektronicznego prowadzącej działalność krócej niż 6 miesięcy – średniej wartości przewidywanych zobowiązań z tego tytułu na koniec pierwszych 6 miesięcy działalności, ujętych w planie działalności, który winien zostać skorygowany na żądanie KNF.</li> </ol> | <p>First, it should be noted that unlike the Directive, the EPI does not provide for a specific provision according to which outstanding electronic money could be calculated. The EPI provision which explicitly refers to the own funds of electronic money institutions requires nevertheless the knowledge of the exact amount of outstanding electronic money in issue.</p> <p>In particular, once the institution is considered to be an electronic money institution, no matter whether it carries out additional activities, it falls under the scope of Article 47 of the EPI regulating the own funds.</p> <p>In line with the Directive, the calculation of own funds of Polish electronic money institutions requires the exact knowledge of the value of the issued electronic money in the circulation.</p> <p>In case the exact value of the issued electronic money in the circulation is not known, in order to set this value, the average total amount of foreseen liabilities related to electronic money at the end of 6 months of activity shall be taken into account. The liabilities referred to in the Polish provision are the ones included in the business plan which can be adjusted at the request of PFSA (Polish Financial Supervision Authority).</p> <p>This corresponds to the second part of the</p> |



| Directive 2009/110/EC                     |   |   | National Implementing Measures |  |  | Conformity Assessment   |
|---|---|---|--------------------------------|--|--|---|
|   |   | wnioskodawcy, z zastrzeżeniem wszelkich dostosowań tego planu wymaganych przez właściwe organy.   |                                |  |  | <p>Directive provision in question. The Polish law however does not refer the first part of the Directive provision stipulating that the authorities may allow the 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 representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities.</p> <p>Therefore, partial conformity should be concluded.</p> |
| <b>Art. 9(1) 3<sup>rd</sup> subpar a.</b> | 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. | Państwa członkowskie mogą też postanowić, że przyznawanie wyłączeń fakultatywnych zgodnie z niniejszym artykułem będzie uzależnione od dodatkowego wymogu dotyczącego maksymalnej kwoty przechowywanej w instrumencie płatniczym lub na rachunku płatniczym konsumenta służącym przechowywaniu pieniądza elektronicznego. | <b>EPI, Art. 50</b>            | <b>EPI, Art. 50</b><br><br>The provisions of this Chapter relating to the supervision shall not apply to electronic money institutions if the maximum amount on the electronic money instrument does not exceed a PLN equivalent of 75 EUR, calculated on the basis of currency rate announced by the National Polish Bank on the day of its issuance, | <b>EPI, Art. 50</b><br><br>Przepisów niniejszego rozdziału, w zakresie sprawowania nadzoru, nie stosuje się do instytucji pieniądza elektronicznego, jeżeli maksymalna kwota umieszczona na instrumencie pieniądza elektronicznego nie przekracza równowartości w złotych 75 euro, obliczanej według średniego kursu ogłaszanego przez NBP obowiązującego w dniu jego wydania, | <b>CONFORM</b><br><br>Article 9(1) third subparagraph of the Directive sets out an option which Poland chose to apply.<br><br>Article 50 of the EPI transposes this option. More specifically, Poland has provided that for the granting of the optional exemptions the institutions are subject to an additional requirement of a maximum storage amount on the payment instrument that is no more than 75 EUR.<br><br>This is in line with the Directive stipulation.<br><br>Therefore, conformity could be concluded.                        |
| <b>Art. 9(1) 4<sup>th</sup> subpar</b>    | A legal person registered in accordance with this paragraph may provide   | Osoba prawna zarejestrowana zgodnie z niniejszym ustępem może   | <b>N/A</b>                     | N/A  | N/A  | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 9(1) fourth   |

| Directive 2009/110/EC |  |  | National Implementing Measures |  |  | Conformity Assessment   |
|-----------------------|--|--|--------------------------------|--|--|---|
| a.                    | 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.    | świadczyć usługi płatnicze niezwiązane z pieniądzem elektronicznym emitowanym zgodnie z niniejszym artykułem, tylko gdy spełnione są warunki określone w art. 26 dyrektywy 2007/64/WE. |                                |  |  | subparagraph of the Directive. The corresponding national provision(s) could not be located either.   |
| <b>Art. 9(2)</b>      | 2. A legal person 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. | 2. Osoba prawna zarejestrowana zgodnie z ust. 1 zobowiązana jest do posiadania siedziby w tym państwie członkowskim, w którym faktycznie prowadzi ona swoją działalność.               | N/A                            | <b>EPI, Art. 50</b><br><br>[...]<br><br>and one of the following conditions is fulfilled:<br><br>1) electronic money serves as a payment instrument and is used by entities which are organisationally connected;<br><br>2) electronic money is used as payment instrument exclusively in the territory of the commune, in territory of which the electronic money institution is established. | <b>EPI, Art. 50</b><br><br>2) pieniądź elektroniczny służy jako środek płatniczy używany wyłącznie na obszarze gminy, w której siedzibę ma instytucja pieniądza elektronicznego. | <b>PARTIALLY CONFORM</b><br><br>Article 50 of the EPI transposes Article 9(2) of the Directive.<br><br>Article 50 of the EPI sets out two additional conditions which need to be fulfilled by the institution to benefit from the waiver.<br><br>The condition laid down by point 2 can be considered as transposing Article 9(2) of the Directive. In essence, it requires the electronic money issued by the institution in question to be used exclusively in the territory of the commune, in which the electronic money institution is established.<br><br>However, those conditions are not cumulative; on the opposite their application is alternative.<br><br>Therefore, there is a risk that an institution would be able to benefit from the waiver and at the same time would not be obliged to comply with the condition laid down by point 2. |

| Directive 2009/110/EC          |   |   | National Implementing Measures |     |     | Conformity Assessment   |
|--------------------------------|---|---|--------------------------------|-----|-----|---|
|                                |   |   |                                |     |     | Therefore, partial conformity shall be concluded.   |
| <b>Art. 9(3)</b>               | 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. Osobę prawną zarejestrowaną zgodnie z ust. 1 traktuje się jako instytucję pieniądza elektronicznego. Nie stosuje się jednak do niej art. 10 ust. 9 i art. 25 dyrektywy 2007/64/WE. | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 9(3) of the Directive. The corresponding national provision(s) could not be located either.   |
| <b>Art. 9(4)</b>               | 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. Państwa członkowskie mogą postanowić, że osoba prawna zarejestrowana zgodnie z ust. 1 może prowadzić tylko niektóre rodzaje działalności spośród wymienionych w art. 6 ust. 1.     | N/A                            | N/A | N/A | Article 9(4) of the Directive sets out an option. Owing to this option, Poland has not chosen to apply. In this regard, no corresponding provision(s) could be located in the legislation of Poland either.   |
| <b>Art. 9(5) intr. wording</b> | 5. A legal person referred to in paragraph 1 shall:   | 5. Osoba prawna, o której mowa w ust. 1:  | N/A                            | N/A | N/A | <b>PARTIALLY CONFORM</b><br><br>There has been no provision found in the Polish legal system which would specifically transpose Article 9(5), introductory wording of the Directive.<br><br>First of all, this discrepancy is due to a different structure followed by the Polish legislator than the one of the Directive.<br><br>On a general basis, Polish electronic money institutions, including the ones benefitting |

| Directive 2009/110/EC |  |  | National Implementing Measures |  |  | Conformity Assessment  |
|-----------------------|--|--|--------------------------------|--|--|--|
|                       |  |  |                                |  |  | <p>from the waiver, are obliged to notify the competent authorities of any change in their situation which is relevant to the conditions specified in paragraph 1. This can be considered as a generally applicable requirement to all electronic money institutions.</p> <p>It also seems that electronic money institutions, including the ones benefitting from the waiver are obliged to at least annually, on a date specified by the competent authorities; report on the average outstanding electronic money. Nevertheless, it should be noted that the provision setting out the obligation to provide competent authorities with an annual report forms part of Chapter 5 of the EPI. As it was already stated, the purpose of the waiver is to exclude applicability of the provisions of this Chapter towards smaller institutions. It should be noted that the waiver excludes especially the applicability of the provisions related to supervision.</p> <p>It is quite difficult however to deduce which exactly provisions related to the supervision the legislator intended to exclude.</p> <p>In consequence, it is also quite difficult to foresee whether the provision according to which electronic money institution is obliged to report annually to the competent authority continues to apply to institutions benefitting from the waiver.</p> <p>For this reason partial conformity is</p> |

| Directive 2009/110/EC |   |  | National Implementing Measures |   |   | Conformity Assessment  |
|-----------------------|---|--|--------------------------------|---|---|--|
|                       |   |  |                                |   |   | suggested.   |
| <b>Art. 9(5)(a)</b>   | (a) notify the competent authorities of any change in its situation which is relevant to the conditions specified in paragraph 1; and | a) zgłasza właściwym organom każdą zmianę swojej sytuacji istotną ze względu na warunki określone w ust. 1; oraz | <b>APS, Art. 61(2)</b>         | <p><b>APS, Art. 61(2)</b></p> <p>2. The applicant and the payment institution, after obtaining authorisation, shall inform the PFSA promptly of each change that affects the information and documents appended to the application in accordance with paragraph 1.</p> <p><b>APS, Art. 61</b></p> <p>1. An applicant for the authorisation referred to in Article 60 paragraph 1 shall append to its application:</p> <p>1) up-to-date information about the number of its entry in the National Court Register;</p> <p>2) its statutes or memorandum and Articles of incorporation;</p> <p>3) a schedule of the payment services that it intends to operate;</p> | <p><b>APS, Art. 61(2)</b></p> <p>2. Wnioskodawca oraz instytucja płatnicza, po uzyskaniu zezwolenia, niezwłocznie powiadamia KNF o każdej zmianie mającej wpływ na aktualność informacji i dokumentów dołączonych do wniosku zgodnie z ust. 1.</p> <p><b>APS, Art. 61</b></p> <p>1. Do wniosku o wydanie zezwolenia, o którym mowa w art. 60 ust. 1, wnioskodawca dołącza:</p> <p>1) aktualną informację o numerze wpisu do Krajowego Rejestru Sądowego;</p> <p>2) statut, akt założycielski albo umowę spółki;</p> <p>3) wykaz usług płatniczych, które zamierza świadczyć;</p> <p>4) program działalności i plan finansowy na okres</p> | <p><b>CONFORM</b></p> <p>Article 61(2) of the APS transposes Article 9(5)(a) of the Directive.</p> <p>According to Article 61(2) of the APS which is accordingly applicable to the electronic money institutions on the basis of a general cross-reference present in the EPI (Article 39 of the EPI), the electronic money institution shall inform the PFSA promptly of each change that affects the of the information and documents appended to the application in accordance with paragraph 1.</p> <p>Amongst others, paragraph 1, refers to the obligation of providing authorities with any change with respect to:</p> <ul style="list-style-type: none"> <li>• up-to-date information about the number of its entry in the National Court Register;</li> <li>• its statutes or memorandum and Articles of incorporation;</li> <li>• a schedule of the payment services that it intends to operate;</li> <li>• a programme of operations and a financial plan for a period of at least three years;</li> <li>• documents that confirm the</li> </ul> |

| Directive 2009/110/EC |  | National Implementing Measures  | Conformity Assessment  |   |
|-----------------------|--|---|--|---|
|                       |  | <p>4) a programme of operations and a financial plan for a period of at least three years;</p> <p>5) documents that confirm the possession of funds allocated to own funds;</p> <p>6) a description of solutions for governance and internal control mechanisms concerning duties related to the prevention of money laundering and the financing of terrorism, in accordance with the Act on Countering Money Laundering and the Financing of Terrorism of 16 November 2000 (Journal of Laws 2010 No. 46 item 276 and No. 182 item 1228 and 2011 No. 134 item. 779), referred to hereinafter as the "Act on Countering Money Laundering";</p> <p>7) a description of the organisational arrangements referred to in Article 64 paragraph 1 points 3 and 4;</p> | <p>co najmniej trzyletni;</p> <p>5) dokumenty potwierdzające posiadanie środków finansowych przeznaczonych na fundusze własne;</p> <p>6) opis rozwiązań w zakresie zarządzania i mechanizmów kontroli wewnętrznej dotyczących obowiązków związanych z przeciwdziałaniem praniu pieniędzy i finansowaniu terroryzmu, zgodnie z ustawą z dnia 16 listopada 2000 r. o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu (Dz. U. z 2010 r. Nr 46, poz. 276 i Nr 182, poz. 1228 oraz z 2011 r. Nr 134, poz. 779), zwaną dalej „ustawą o przeciwdziałaniu praniu pieniędzy”;</p> <p>7) opis rozwiązań organizacyjnych, o których mowa w art. 64 ust. 1 pkt 3 i 4;</p> <p>8) dane pozwalające na ustalenie tożsamości osób, które bezpośrednio lub pośrednio posiadają</p> | <p>possession of funds allocated to own funds;</p> <ul style="list-style-type: none"> <li>• a description of solutions for governance and internal control mechanisms concerning duties related to the prevention of money laundering and the financing of terrorism, in accordance with the Act on Countering Money Laundering and the Financing of Terrorism of 16 November 2000 (Journal of Laws 2010 No. 46 item 276 and No. 182 item 1228 and 2011 No. 134 item. 779), referred to hereinafter as the "Act on Countering Money Laundering",</li> <li>• information that makes it possible to establish the identity of persons who directly or indirectly have a significant shareholding in the company or cooperative that intends to perform payment services, indicating the size of their holdings, and documents that confirm that these persons ensure sound and prudent management of the payment institution;</li> <li>• information that allows the identification of managers and documents that make it possible to assess whether these people ensure sound and prudent management of the payment institution, including</li> </ul> |

| Directive 2009/110/EC |  |  | National Implementing Measures  |   | Conformity Assessment  |
|-----------------------|--|--|---|---|--|
|                       |  |  | <p>8) information that makes it possible to establish the identity of persons who directly or indirectly have a significant shareholding in the company or cooperative that intends to perform payment services, indicating the size of their holdings, and documents that confirm that these persons ensure sound and prudent management of the payment institution;</p> <p>9) information that allows the identification of managers and documents that make it possible to assess whether these people ensure sound and prudent management of the payment institution, including whether they have the education and professional experience necessary for the management of operations in the area of the provision of payment services;</p> <p>10) information that allows the identification of auditors and others authorised to audit accounts.</p> | <p>znaczny pakiet akcji lub udziałów w spółce lub spółdzielni zamierzającej wykonywać usługi płatnicze, ze wskazaniem wielkości należącego do nich pakietu akcji lub udziałów, oraz dokumenty potwierdzające, iż osoby te dają rękojmię ostrożnego i stabilnego zarządzania instytucją płatniczą;</p> <p>9) dane pozwalające na ustalenie tożsamości osób zarządzających oraz dokumenty pozwalające na ocenę, czy osoby te dają rękojmię ostrożnego i stabilnego zarządzania instytucją płatniczą, w tym posiadają wykształcenie i doświadczenie zawodowe niezbędne do zarządzania działalnością w zakresie świadczenia usług płatniczych;</p> <p>10) dane pozwalające na ustalenie tożsamości biegłych rewidentów i innych podmiotów uprawnionych do badania sprawozdań finansowych.</p> | <p>whether they have the education and professional experience necessary for the management of operations in the area of the provision of payment services;</p> <p>The information required to be up-to-date corresponds to the information referred to in paragraph 1 of Article 9 of the Directive.</p> <p>Therefore, conformity could be concluded.</p> |

| Directive 2009/110/EC |  |  | National Implementing Measures |  |   | Conformity Assessment  |
|-----------------------|--|--|--------------------------------|--|---|--|
| <b>Art. 9(5)(b)</b>   | (b) at least annually, on date specified by the competent authorities, report on the average outstanding electronic money. | b) co najmniej raz do roku, w terminie określonym przez właściwe organy, składa sprawozdanie dotyczące średniej wartości pieniądza elektronicznego pozostającego w obiegu. | <b>EPI, Art. 49(1)</b>         | <b>EPI, Art. 49(1)</b><br>1. An electronic money institution shall provide the supervisory authority with an annual financial report along with the opinion and report of the expert auditor within 15 days of their approval as well as with a transcript of the resolution approving the financial report. | <b>EPI, Art. 49(1)</b><br>1. Instytucja pieniądza elektronicznego jest obowiązana przekazywać do organu nadzoru zbadane roczne sprawozdanie finansowe wraz z opinią i raportem biegłego rewidenta w ciągu 15 dni od dnia ich zatwierdzenia oraz z odpisem uchwały o zatwierdzeniu sprawozdania finansowego. | <b>PARTIALLY CONFORM</b><br><br>Article 49(1) of the EPI transposes Article 9(5)(b) of the Directive.<br><br>According to Article 49(1) of the EPI, electronic money institutions are obliged, at least annually and on a date specified by the competent authorities, to report on the financial situation of the institution. It can be inferred that the report will include information on the average outstanding electronic money.<br><br>Nevertheless, it should be noted that the provision setting out the obligation to provide competent authorities with an annual report forms part of Chapter 5 of the EPI. As it was already stated, the purpose of the waiver is to exclude the applicability of the provisions of this Chapter towards less significant institutions with respect to the outstanding electronic money in issue. It should be noted that the waiver literally excludes the applicability of the provisions of Chapter 5 related to the supervision.<br><br>It is quite difficult however to deduce which exactly provisions related to the supervision the legislator intended to exclude.<br><br>In consequence, it is also quite problematic to foresee whether the provision according to which an electronic money institution is obliged to report annually to the competent authority continues to apply to institutions |



| Directive 2009/110/EC |   |  | National Implementing Measures                 |  |  | Conformity Assessment   |
|-----------------------|---|--|--|--|--|---|
|                       |   |  |  |  |  | benefitting from the waiver or not.<br><br>Due to this uncertainty, partial conformity is suggested.  |
| <b>Art. 9(6)</b>      | 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. Państwa członkowskie podejmują niezbędne kroki w celu zapewnienia, aby w przypadkach gdy przestają być spełniane warunki określone w ust. 1, 2 i 4, dana osoba prawna występowała o udzielenie zezwolenia w terminie 30 dni kalendarzowych zgodnie z art. 3. Zgodnie z art. 10 zakazuje się emisji pieniądza elektronicznego każdej takiej osobie, która nie wystąpiła w tym okresie o udzielenie zezwolenia. | N/A  | N/A  | N/A  | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 9(6) of the Directive. The corresponding national provision(s) could not be located either.   |
| <b>Art. 9(7)</b>      | 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. Państwa członkowskie zapewniają, aby właściwe organy były wystarczająco uprawnione do sprawdzania stałego przestrzegania wymogów określonych w niniejszym artykule.   | <b>EPI, Art. 36</b><br><br><b>EPI, Art. 50</b> | <b>EPI, Art. 36</b><br><br>The PFSA supervises electronic money institutions on the basis of rules set out by this Chapter.<br><br><b>EPI, Art. 50</b><br><br>The provisions of this Chapter relating to the supervision shall not apply | <b>EPI, Art. 36</b><br><br>Nadzór nad instytucjami pieniądza elektronicznego sprawuje KNF na zasadach określonych w niniejszym rozdziale.<br><br><b>EPI, Art. 50</b><br><br>Przepisów niniejszego rozdziału, w zakresie sprawowania nadzoru, nie | <b>CONFORM</b><br><br>Article 36 of the EPI transposes Article 9(7) of the Directive.<br><br>In line with the EPI, the PFSA is in charge of the supervision of electronic money institutions.<br><br>Although it is not explicitly stated in the EPI, it seems that the PFSA's power to verify compliance with the requirements laid down in Article 9 can be inferred. For the sake of |

| Directive 2009/110/EC |   | National Implementing Measures   |   | Conformity Assessment  |  |
|-----------------------|---|--|---|--|--|
|                       |   |  | <p>to electronic money institutions if the maximum amount on the electronic money instrument does not exceed a PLN equivalent of 75 EUR, calculated on the basis of currency rate announced by the National Polish Bank on the day of its issuance.</p>   | <p>stosuje się do instytucji pieniądza elektronicznego, jeżeli maksymalna kwota umieszczona na instrumencie pieniądza elektronicznego nie przekracza równowartości w złotych 75 euro, obliczanej według średniego kursu ogłaszanego przez NBP obowiązującego w dniu jego wydania.</p>  | <p>clarity, it should be noted that according to Article 50 of the EPI, electronic money benefiting from the waiver are not subject to all supervisory requirements set out in the EPI. This however does not exclude the PFSA's competence to verify whether the institution indeed complies with the fundamental conditions in order to benefit from such waiver.</p> <p>Therefore, conformity can be concluded.</p>   |
| <b>Art. 9(8)</b>      | <p>8. This Article shall not apply in respect of the provisions of Directive 2005/60/EC or national anti-money-laundering provisions.</p> | <p>8. Niniejszego artykułu nie stosuje się w odniesieniu do przepisów dyrektywy 2005/60/WE lub krajowych przepisów w zakresie przeciwdziałania praniu pieniędzy.</p> | <p><b>AML, Art. 1 and 2 pt 1(e)</b></p> <p><b>AML, Art. 1</b></p> <p>The Act sets out rules and procedures for combating money laundering, financing terrorism, the use of specific restrictive measures against groups and entities and lays down duties of the entities participating in the financial turnover with respect to the collection and transmission of information.</p> <p><b>AML, Art. 2</b></p> <p>In the light of this Act:</p> <p>1) "obliged institutions" shall mean:</p> | <p><b>AML, Art. 1</b></p> <p>Ustawa określa zasady oraz tryb przeciwdziałania praniu pieniędzy, przeciwdziałania finansowaniu terroryzmu, stosowania szczególnych środków ograniczających przeciwko osobom, grupom i podmiotom oraz obowiązki podmiotów uczestniczących w obrocie finansowym w zakresie gromadzenia i przekazywania informacji.</p> <p><b>AML, Art. 2</b></p> <p>Ilekoć w ustawie jest mowa o:</p> <p>1) „instytucji</p> | <p><b>CONFORM</b></p> <p>AML and in particular Article 1 and 2 point (1)(e) thereof, transpose Article 9(8) of the Directive.</p> <p>Owing to the broad scope of the application of the AML towards all types of entities participating in the financial turnover on the Polish financial market, including also electronic money institutions, the Polish law is in line with the Directive provision in question. In addition, there is no provision which would exclude application of the AML provisions towards e-money institutions benefiting from the waiver.</p> <p>Therefore, conformity is concluded.</p> |

| Directive 2009/110/EC |  |   | National Implementing Measures |   |  | Conformity Assessment   |
|-----------------------|--|---|--------------------------------|---|--|---|
|                       |  |   |                                | e) electronic money institutions, branches of foreign electronic money institutions, agents thereof carrying out their activity on the basis of Act of 12 September 2002 on electronic payment instruments. | obowiązanej” – rozumie się przez to:<br><br>e) instytucje pieniądza elektronicznego, oddziały zagranicznych instytucji pieniądza elektronicznego oraz agentów rozliczeniowych, prowadzących działalność na podstawie ustawy z dnia 12 września 2002 r. o elektronicznych instrumentach płatniczych |   |
| <b>Art. 9(9)</b>      | 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. W przypadku gdy państwo członkowskie korzysta ze zwolnienia przewidzianego w ust. 1, powiadamia ono odpowiednio Komisję do dnia 30 kwietnia 2011 r. Państwo członkowskie niezwłocznie powiadamia Komisję o wszelkich późniejszych zmianach. Ponadto państwo członkowskie informuje Komisję o liczbie osób prawnych, których to dotyczy, oraz, corocznie, o całkowitej kwocie pieniądza elektronicznego pozostającego w obiegu, wyemitowanego na dzień 31 grudnia każdego roku kalendarzowego, o czym | N/A                            | N/A   | N/A  | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 9(9) of the Directive. The corresponding national provision(s) could not be located either. |

| Directive 2009/110/EC |  |   | National Implementing Measures |   |   | Conformity Assessment  |
|-----------------------|--|---|--------------------------------|---|---|--|
|                       |  | mowa w ust. 1.  |                                |   |   |  |
| <b>Art. 10</b>        | <p><b>TITLE III<br/>ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY</b></p> <p><i>Article 10</i><br/><b>Prohibition from issuing electronic money</b></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><b>Tytuł III<br/>EMISJA I MOŻLIWOŚĆ WYKUPU PIENIĄDZA ELEKTRONICZNEGO</b></p> <p><i>Artykuł 10</i><br/><b>Zakaz emisji pieniądza elektronicznego</b></p> <p>Bez uszczerbku dla art. 18, państwa członkowskie zakazują emisji pieniądza elektronicznego osobom fizycznym lub prawnym, które nie są emitentami pieniądza elektronicznego.</p> | <b>EPI, Art. 36(1)</b>         | <b>EPI, Art. 36(1)</b><br><br>1. An electronic money institution may be established and pursue its activity as a legal person who was granted a permission to pursue the activity as an electronic money institution. | <b>EPI, Art. 36(1)</b><br><br>1. Instytucja pieniądza elektronicznego może być utworzona i prowadzić działalność jako osoba prawna, której udzielono zezwolenia na prowadzenie działalności w charakterze instytucji pieniądza elektronicznego. | <p><b>CONFORM</b></p> <p>Article 36(1) of the EPI transposes Article 10 of the Directive.</p> <p>According to Article 36(1) only those legal persons who obtained a formal permission/authorisation from the PFSA are allowed to pursue an economic activity as an electronic money institution.</p> <p>It can be therefore implied that electronic money business is a specifically regulated form of economic activity. In other words, no person is entitled to issue electronic money without obtaining an authorisation from the competent authority. Several conditions set out by the Polish law (the EPS and the APS) have to be fulfilled in order to receive such permission.</p> <p>This complies with the Directive prohibition from issuing electronic money by natural or legal persons who are not electronic money issuers.</p> <p>Therefore, conformity could be concluded.</p> |
| <b>Art. 11(1)</b>     | <p><i>Article 11</i><br/><b>Issuance and redeemability</b></p> <p>1. Member States shall ensure that electronic</p>  | <p><i>Artykuł 11</i><br/><b>Emisja i możliwość wykupu</b></p> <p>1. Państwa członkowskie zapewniają, aby emitenci</p>   | <b>EPI, Art. 2 pt(10)</b>      | <b>EPI, Art. 2 pt(10)</b><br><br>10) electronic money – means monetary value representing an equivalent of money which fulfils the  | <b>EPI, Art. 2 pt(10)</b><br><br>10) pieniądz elektroniczny – wartość pieniężną stanowiącą elektroniczny odpowiednik znaków   | <p><b>CONFORM</b></p> <p>Article 2 point (1) of the EPI transposes Article 11(1) of the Directive.</p> <p>According to the electronic money definition</p>   |

| Directive 2009/110/EC |   | National Implementing Measures   |                        |  | Conformity Assessment   |   |
|-----------------------|---|--|------------------------|--|---|---|
|                       | money issuers issue electronic money at par value on the receipt of funds.  | pieniądza elektronicznego emitowali pieniądz elektroniczny według wartości nominalnej w chwili otrzymania środków pieniężnych.                   |                        | <p>following conditions:</p> <p>a) is electronically, including magnetically stored,</p> <p>b) is issued for disposal on the basis of a contract in exchange for money of nominal value not smaller than the value of electronic money,</p> <p>[...]</p> <p><b>EPI, Art. 60(1)</b></p> <p>1. During the period of the contract for the purpose of issuing electronic money, the holder may require the issuer to redeem the electronic money possessed at any time and at par nominal value.</p> | <p>pieniężnych, która spełnia łącznie następujące przesłanki:</p> <p>a) jest przechowywana elektronicznie, w tym magnetycznie,</p> <p>b) jest wydawana do dyspozycji na podstawie umowy w zamian za środki pieniężne o nominalnej wartości nie mniejszej niż ta wartość,</p> <p>[...]</p> <p><b>EPI, Art. 60(1)</b></p> <p>1. W okresie obowiązywania umowy o wydanie pieniądza elektronicznego, posiadacz może żądać od wydawcy wykupienia posiadanego pieniądza elektronicznego w każdym czasie i według wartości nominalnej.</p> | <p>enclosed in Article 2 point (10) of the EPI, electronic money is issued for disposal on the basis of a contract in exchange for money of a corresponding nominal value not smaller than the value of electronic money.</p> <p>In line with Article 60(1) of the EPI, during the period of the contract for the purpose of issuing electronic money, the holder of electronic money may at any time require the issuer to redeem the electronic money possessed at par nominal value.</p> <p>Therefore, it can be concluded that the Polish legislator ensured redeemability of electronic money in Poland. By doing so, the Polish legislator preserved the confidence of the electronic money holder towards electronic money institutions as referred to in recital 18 of the Directive.</p> <p>Pursuant to the quoted EPI provisions, redemption is possible at any time, at par value without any possibility to agree a minimum threshold for redemption. It can be implied that redemption should, in general, be granted free of charge.</p> <p>Therefore, conformity could be concluded.</p> |
| <b>Art. 11(2)</b>     | 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 | 2. Państwa członkowskie zapewniają, aby na wniosek posiadacza pieniądza elektronicznego emitenci pieniądza elektronicznego umożliwiali, w każdym | <b>EPI, Art. 60(1)</b> | <b>EPI, Art. 60(1)</b>   | <b>EPI, Art. 60(1)</b>  | <p><b>CONFORM</b></p> <p>Article 60(1) of the EPI transposes Article 11(2) of the Directive.</p> <p>In line with Article 60(1) of the EPI, during the period of the contract for the purpose of</p>   |

| Directive 2009/110/EC |   | National Implementing Measures  |   |  | Conformity Assessment   |   |
|-----------------------|---|---|---|--|---|---|
|                       | electronic money held.  | czasie i według wartości nominalnej, wykup wartości pieniężnej posiadanego pieniądza elektronicznego.   |   | <p>electronic money possessed at any time and at par nominal value.</p> <p>2. The contract for the purpose of issuing electronic money clearly and straightforward determines the conditions of redemption of electronic money as well as any additional cost related to it.</p> | <p>wydawcy wykupienia posiadanego pieniądza elektronicznego w każdym czasie i według wartości nominalnej.</p> <p>2. Umowa o wydanie pieniądza elektronicznego jednoznacznie i w sposób zrozumiały określa warunki wykupu pieniądza elektronicznego, w tym wszelkie związane z tym koszty.</p> | <p>issuing electronic money, the holder of electronic money may at any time require the issuer to redeem the electronic money possessed at par nominal value.</p> <p>Therefore, it can be concluded that the Polish legislator ensured redeemability of electronic money in Poland.</p> <p>Pursuant to the quoted EPI provisions, redemption is possible at any time and at par value without any possibility to agree a minimum threshold for redemption. It can be implied that redemption should, in general, be granted free of charge. In line with Article 61(2) of the EPI, any additional charges or conditions may be however imposed on the basis of a contractual agreement by the parties.</p> <p>Therefore, in line with the Directive, the Polish law leaves it up to the contractual freedom to determine the conditions of redemption.</p> <p>Therefore, conformity could be concluded.</p> |
| <b>Art. 11(3)</b>     | 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. Umowa między emitentem pieniądza elektronicznego a posiadaczem pieniądza elektronicznego jasno i wyraźnie określa warunki wykupu, w tym wszelkie związane z nim koszty, a posiadacz pieniądza elektronicznego jest | <b>EPI, Art. 60(2)</b>  | <b>EPI, Art. 60(2)</b>   | <b>EPI, Art. 60(2)</b>  | <b>CONFORM</b>  |
|                       |   |   | 2. The contract for the purpose of issuing electronic money clearly and prominently determines the conditions of redemption of electronic money as well as any additional charges related | 2. Umowa o wydanie pieniądza elektronicznego jednoznacznie i w sposób zrozumiały określa warunki wykupu pieniądza elektronicznego, w tym wszelkie związane z tym   | Article 60(2) of the EPI almost literally transposes Article 11(3) of the Directive.  | The Polish law foresees that 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  |

| Directive 2009/110/EC                                    |   | National Implementing Measures   |                        |  | Conformity Assessment  |  |
|--|---|--|------------------------|--|--|--|
|  | conditions before being bound by any contract or offer.   | informowany o tych warunkach przed jakimkolwiek wiążącym zawarciem umowy lub przyjęciem oferty.                                  |                        | thereto.   | koszty.  | thereto.<br><br>The Polish quoted provision does not however correspond to the Directive provision's part according to which the electronic money holder shall be informed of those conditions before being bound by any contract or offer. This discrepancy does not harm the conformity of the Polish law. The fact that the parties shall be aware of all the aspects of the contract they conclude can be actually implied from the general rules of the Polish contract law (principles of the Civil Code concerning the offer).<br><br>Therefore, conformity could be concluded.   |
| <b>Art. 11(4) 1<sup>st</sup> subpar a. intr. wording</b> | 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. Wykup może podlegać opłatom jedynie, gdy jest to przewidziane w umowie zgodnie z ust. 3, i tylko w następujących przypadkach: | <b>EPI, Art. 60(2)</b> | <b>EPI, Art. 60(2)</b><br><br>2. The contract for the purpose of issuing electronic money clearly and prominently determines the conditions of redemption of electronic money as well as any additional charges related thereto. | <b>EPI, Art. 60(2)</b><br><br>2. Umowa o wydanie pieniądza elektronicznego jednoznacznie i w sposób zrozumiały określa warunki wykupu pieniądza elektronicznego, w tym wszelkie związane z tym koszty. | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 11(4) first subparagraph, introductory wording of the Directive. The corresponding national provision(s) could not be located either.<br><br>Article 60(2) of the EPI refers solely to the possibility for parties to stipulate in the contract any additional fees accompanying the redemption of electronic money by its holder.<br><br>Contrary to the Directive, the Polish law does not refer to the three cases in which redemption may be exclusively subject to a fee.<br><br>Therefore, the Polish law is considered as not complying with the Directive provision in |

| Directive 2009/110/EC                          |   |   | National Implementing Measures |     |     | Conformity Assessment   |
|--|---|---|--------------------------------|-----|-----|---|
|  |   |   |                                |     |     | question.   |
| <b>Art.11 (4) 1<sup>st</sup> subpar a. (a)</b> | (a) where redemption is requested before the termination of the contract;   | a) w przypadku gdy wniosek o wykup jest składany przed wygaśnięciem umowy;  | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 11(4) first subparagraph (a) of the Directive. The corresponding national provision(s) could not be located either. |
| <b>Art. 11(4) 1<sup>st</sup> subpar a. (b)</b> | (b) where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or | b) w przypadku gdy w umowie przewidziana jest data jej wygaśnięcia, a posiadacz pieniądza elektronicznego rozwiązuje umowę przed tą datą; lub | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 11(4) first subparagraph (b) of the Directive. The corresponding national provision(s) could not be located either. |
| <b>Art. 11(4) 1<sup>st</sup> subpar a. (c)</b> | (c) where redemption is requested more than one year after the date of termination of the contract.                                 | c) w przypadku gdy wniosek o wykup składany jest ponad rok po dacie wygaśnięcia umowy.  | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 11(4) first subparagraph (c) of the Directive. The corresponding national provision(s) could not be located either. |
| <b>Art. 11(4) 2<sup>nd</sup> subpar a.</b>     | Any such fee shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer.                 | Wszelkie takie opłaty są proporcjonalne i współmierne do rzeczywistych kosztów poniesionych przez emitenta pieniądza elektronicznego.         | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 11(4) second subparagraph of the Directive. The corresponding national provision(s) could not be located either.    |
| <b>Art. 11(5)</b>                              | 5. Where redemption is requested before the termination of the contract, the electronic   | 5. W przypadku gdy wniosek o wykup jest składany przed wygaśnięciem umowy,  | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 11(5) of the Directive. The corresponding national  |



| Directive 2009/110/EC           |   |   | National Implementing Measures |     |     | Conformity Assessment   |
|---------------------------------|---|---|--------------------------------|-----|-----|---|
|                                 | money holder may request redemption of the electronic money in whole or in part.  | posiadacz pieniądza elektronicznego może zażądać wypłaty pieniądza elektronicznego w całości lub w części.                                  |                                |     |     | provision(s) could not be located either.   |
| <b>Art. 11(6) intr. wording</b> | 6. Where redemption is requested by the electronic money holder on or up to one year after the date of the termination of the contract:   | 6. W przypadku gdy wniosek o wypłatę jest składany przez posiadacza pieniądza elektronicznego w okresie do roku po dacie wygaśnięcia umowy: | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 11(6) introductory wording of the Directive. The corresponding national provision(s) could not be located either. |
| <b>Art. 11(6)(a)</b>            | a) the total monetary value of the electronic money held shall be redeemed; or  | a) wypłacie podlega całkowita wartość pieniężna pieniądza elektronicznego;  | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 11(6)(a) of the Directive. The corresponding national provision(s) could not be located either.                   |
| <b>Art. 11(6)(b)</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. | Insert text   | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 11(6)(b) of the Directive. The corresponding national provision(s) could not be located either.                   |
| <b>Art. 11(7)</b>               | 7. Notwithstanding paragraphs 4, 5 and 6, redemption rights of a person, other than a consumer, who accepts   | Insert text   | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 11(7) of the Directive. The corresponding national provision(s) could not be located either.                      |

| Directive 2009/110/EC |   | National Implementing Measures  |                     |  | Conformity Assessment  |                    |
|-----------------------|---|---|---------------------|--|--|--------------------|
|                       | electronic money shall be subject to the contractual agreement between the electronic money issuer and that person.   |   |                     |  |  |                    |
| <b>Art. 12</b>        | <p><i>Article 12</i><br/><b>Prohibition of interest</b></p> <p>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.</p>   |   | N/A                 | N/A  | N/A  | <b>NOT CONFORM</b> |
| <b>Art. 13</b>        | <p><i>Article 13</i><br/><b>Out-of-court complaint and redress procedures for the settlement of disputes</b></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>Artykuł 13</i><br/><b>Pozasądowe procedury wnoszenia skarg i rozstrzyganie sporów</b></p> <p>Bez uszczerbku dla niniejszej dyrektywy, rozdział 5 tytułu IV dyrektywy 2007/64/WE stosuje się odpowiednio do emitentów pieniądza elektronicznego w zakresie ich obowiązków wynikających z niniejszego tytułu.</p> | <b>FMS, Art. 18</b> | <p><b>FMS, Art. 18</b></p> <p>1. An arbitration court shall operate within the PFSA's structures. Its purpose shall be to resolve disputes between participants of the financial market, in particular those arising from contractual relationships between entities which are subject to the FSA's supervision and customers buying their services.</p> <p>2. Proceedings before the arbitration court shall be</p> | <p><b>FMS, Art. 18</b></p> <p>1. Przy Komisji tworzy się sąd polubowny, którego celem jest rozpatrywanie sporów między uczestnikami rynku finansowego, w szczególności sporów wynikających ze stosunków umownych między podmiotami podlegającymi nadzorowi Komisji, a odbiorcami usług świadczonych przez te podmioty.</p> <p>2. W postępowaniu przed sądem polubownym</p> | <b>CONFORM</b>     |

| Directive 2009/110/EC |  |  | National Implementing Measures |   |  | Conformity Assessment  |
|-----------------------|--|--|--------------------------------|---|--|--|
|                       |  |  |                                | governed by the provisions of the Civil Code of 17 November 1964.<br><br>3. By way of a resolution the FSA shall determine rules of procedure of the arbitration court. | stosuje się przepisy ustawy z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego.<br><br>3. Komisja ustala, w drodze uchwały, regulamin sądu polubownego. | Therefore, conformity is suggested.  |
| <b>Art. 16(1)</b>     | <p style="text-align: center;"><b>TITLE IV<br/>FINAL PROVISIONS<br/>AND IMPLEMENTING<br/>MEASURES</b></p> <p style="text-align: center;"><i>Article 16</i><br/><b>Full harmonization</b></p> <p>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.</p> | <p style="text-align: center;"><b>TYTUŁ IV<br/>PRZEPISY KOŃCOWE<br/>I ŚRODKI<br/>WYKONAWCZE</b></p> <p style="text-align: center;"><i>Artykuł 16</i><br/><b>Pełna harmonizacja</b></p> <p>1. Bez uszczerbku dla art. 1 ust. 3, art. 3 ust. 3 akapit szósty, art. 5 ust. 7, art. 7 ust. 4, art. 9 i art. 18 ust. 2, oraz w zakresie, w jakim niniejsza dyrektywa przewiduje harmonizację, państwa członkowskie nie utrzymują ani nie wprowadzają przepisów innych niż przepisy określone w niniejszej dyrektywie.</p> | N/A                            | N/A   | N/A  | <p><b>NOT CONFORM</b></p> <p>The Polish transposition of the Directive contains plenty of discrepancies. Numerous cases of partial and non conformity have been found.</p> <p>Poland has therefore did not ensure a full harmonization required by the Directive.</p> <p>For this reasons, non-conformity is observed with respect to the Directive in question.</p> |
| <b>Art. 16(2)</b>     | 2. Member States shall ensure that an electronic money issuer does not derogate, to the detriment of an electronic money   | 2. Państwa członkowskie zapewniają, aby emitenci pieniądza elektronicznego nie stosowali na niekorzyść posiadaczy  | <b>APS, Art. 64(1) pt(3)</b>   | <b>APS, Art. 64(1) pt(3)</b><br><br>1. The authorisation referred to in Article 60 paragraph 1 may be issued  | <b>APS, Art. 64(1) pt(3)</b><br><br>1. Zezwolenie, o którym mowa w art. 60 ust. 1, może być wydane   | <b>CONFORM</b><br><br>Article 64(1) point (3) of the APS transposes Article 16(2) of the Directive.  |

| Directive 2009/110/EC   |  | National Implementing Measures  |  | Conformity Assessment  |
|---|--|---|--|--|
| holder, from the provisions of national law implementing or corresponding to provisions of this Directive except where explicitly provided for therein. | pieniądza elektronicznego odstępstw od przepisów krajowych przyjętych w celu wdrożenia niniejszej dyrektywy lub odpowiadających przepisom niniejszej dyrektywy, z wyjątkiem przypadków, gdy taka możliwość została w niej wyraźnie przewidziana. | to entities:<br><br>[...]<br><br>3) that ensure prudent and sound management of operations in the area of the provision of payment services by having organisational arrangements which are adequate given the type of payment services, their scale and their complexity, including:<br><br>a) effective procedures for identifying, managing, monitoring and reporting risk to which the applicant is or may be exposed,<br><br>b), an organisational structure with transparent and consistent lines of responsibility<br><br>c) adequate internal control mechanisms, including administrative and accounting procedures and procedures for countering money laundering and the financing of terrorism; and | podmiotom:<br><br>[...]<br><br>3) zapewniającym ostrożne i stabilne zarządzanie działalnością w zakresie świadczenia usług płatniczych przez posiadanie, adekwatnych do rodzaju usług płatniczych, ich skali i stopnia złożoności, rozwiązań organizacyjnych obejmujących:<br><br>a) skuteczne procedury identyfikowania, zarządzania, monitorowania i zawiadamiania o ryzyku, na które wnioskodawca jest lub może być narażony,<br><br>b) strukturę organizacyjną z przejrzystymi i spójnymi zakresami odpowiedzialności,<br><br>c) odpowiednie mechanizmy kontroli wewnętrznej, obejmujące procedury w zakresie administracji, księgowości oraz przeciwdziałania | However the transposition is not explicit; the Polish legislator has set out some prudential measures which have to be respected by payment service providers in Poland. The APS quoted provision is applicable towards electronic money issuers thanks to the cross-reference available in Article 39 of the EPI.<br><br>Those prudential measures, in particular the obligation of having adequate internal control mechanisms, including administrative and accounting procedures and procedures for countering money laundering and the financing of terrorism by electronic money institutions seem to fairly correspond the Directive requirement of not derogating from set rules to the detriment of their clients.<br><br>Therefore, conformity can be concluded. |

| Directive 2009/110/EC                      |  |  | National Implementing Measures |       |  | Conformity Assessment  |
|--|--|--|--------------------------------|-------|--|--|
|  |  |  |                                | [...] | praniu pieniędzy i finansowaniu terroryzmu;<br>[...] |  |
| <b>Art. 18(1) 1<sup>st</sup> subpar a.</b> | <p><i>Article 18</i><br/><b>Transitional provisions</b></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><i>Artykuł 18</i><br/><b>Przepisy przejściowe</b></p> <p>1. Państwa członkowskie zezwalają instytucjom pieniądza elektronicznego, które podjęły – przed dniem 1 listopada 2012 r. – działalność zgodnie z prawem krajowym transponującym dyrektywę 2000/46/WE w państwie członkowskim, w którym mają swoją siedzibę główną, na kontynuowanie tej działalności w tym państwie członkowskim lub w innym państwie członkowskim zgodnie z ustaleniami dotyczącymi wzajemnego uznawania przewidzianymi w dyrektywie 2000/46/WE, bez wymogu występowania o zezwolenie zgodnie z art. 3 niniejszej dyrektywy lub przestrzegania pozostałych przepisów, które są zawarte lub o których mowa w tytule II</p> | N/A                            | N/A   | N/A  | <p><b>NOT CONFORM</b></p> <p>Poland has not transposed Article 18(1) first subparagraph of the Directive. The corresponding national provision(s) could not be located either.</p> |

| Directive 2009/110/EC                      |   | National Implementing Measures   |     |     | Conformity Assessment  |
|--|---|--|-----|-----|--|
|  |   | niniejszej dyrektywy.  |     |     |  |
| <b>Art. 18(1) 2<sup>nd</sup> subpar a.</b> | Member States shall require such electronic money institutions to submit all relevant information to the competent authorities in order to allow the latter to 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. | Państwa członkowskie wymagają od takich instytucji pieniądza elektronicznego przekazania właściwym organom wszystkich stosownych informacji w celu umożliwienia tym ostatnim – do dnia 30 października 2011 r. – oceny tego, czy instytucje pieniądza elektronicznego spełniają wymogi określone w niniejszej dyrektywie, a jeżeli nie, jakie środki należy podjąć w celu zapewnienia zgodności, lub czy odpowiednim środkiem jest cofnięcie zezwolenia. | N/A | N/A | N/A  |
|  |   |  |     |     | <p><b>NOT CONFORM</b></p> <p>Poland has not transposed Article 18(1) second subparagraph of the Directive. The corresponding national provision(s) could not be located either.</p> <p>According to the so far analysed provisions of the EPI and the APS, the electronic money institutions have a general obligation to inform the PFSA on every change affecting their business activities. They are therefore required to inform on changes with respect to shareholding, own funds, e.-money outstanding in issue, competences of persons involved in management of electronic money institution etc. The information provided to the PFSA, makes it possible to assess whether the electronic money institutions active on the payment service market pursue their economic activity in line with the law which is currently in force.</p> <p>However, it should be noted that the Polish law, as revealed in numerous cases, does not fully comply with the EU law. In consequence, electronic money institutions established in Poland are likely not to comply with all the requirements laid down in this Directive.</p> <p>The Polish legal system cannot be considered as conforming to Art. 18(1) second subparagraph of the Directive, principally due</p> |

| Directive 2009/110/EC                      |  |  | National Implementing Measures |     |     | Conformity Assessment   |
|--|--|--|--------------------------------|-----|-----|---|
|  |  |  |                                |     |     | to the fact that Poland did not ensure a full harmonization as required by the Directive.<br><br>Therefore, non-conformity is concluded.  |
| <b>Art. 18(1) 3<sup>rd</sup> subpar a.</b> | 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. | Instytucjom pieniądza elektronicznego spełniającym wymogi udziela się zezwolenia, wpisywane są one do rejestru oraz zobowiązane zostają do spełniania wymogów określonych w tytule II. W przypadku gdy instytucje pieniądza elektronicznego nie spełniają wymogów określonych w niniejszej dyrektywie do dnia 30 października 2011 r., zakazuje się im emitowania pieniądza elektronicznego. | N/A                            | N/A | N/A | <b>NOT CONFORM</b><br><br>Poland has not transposed Article 18(1) third subparagraph of the Directive. The corresponding national provision(s) could not be located either.<br><br>The fact that numerous provisions of the Directive have not been transposed into the Polish law, leads to the conclusion that Poland was not able to transpose the Directive provision in question in a conform manner either.<br><br>However, it should be noted that, despite some relevant discrepancies between the Polish law and the Directive, the Polish legal system follows the same principle as laid down by Article 18(1) third subparagraph of the Directive.<br><br>As such, e-money institutions have to fulfil certain requirements laid down by the law in order to obtain an authorisation. Where electronic money institutions do not comply with the requirements laid down in the Polish law, consequently they shall be prohibited from issuing electronic money.<br><br>However, it should be repeated that the Polish law, as revealed in numerous cases, does not fully comply with the EU law. In |

| Directive 2009/110/EC |   |  | National Implementing Measures |     |     | Conformity Assessment  |
|-----------------------|---|--|--------------------------------|-----|-----|--|
|                       |   |  |                                |     |     | <p>consequence, electronic money institutions established in Poland which even though acting in line with the Polish law, they are nevertheless likely not to comply with all the requirements laid down in this Directive.</p> <p>Therefore, non-conformity is concluded.</p>                       |
| <b>Art. 18(2)</b>     | <p>2. Member States may provide for an electronic money institution to be automatically granted authorisation and entered in the register provided for 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.</p> | <p>2. Państwa członkowskie mogą przewidzieć automatyczne udzielanie zezwolenia instytucjom pieniądza elektronicznego oraz ich wpis do rejestru przewidzianego w art. 3, jeżeli właściwe organy posiadają już dokumentację potwierdzającą, że dana instytucja pieniądza elektronicznego spełnia wymogi określone w art. 3, 4 i 5. Właściwe organy informują dane instytucje pieniądza elektronicznego przed udzieleniem zezwolenia.</p> | N/A                            | N/A | N/A | <p>Article 18(2) sets out an option. Owing to this option, Poland has not chosen to apply. In this regard, no corresponding provision(s) could be located in the legislation of Poland either.</p>   |
| <b>Art. 18(3)</b>     | <p>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</p>  | <p>3. Państwa członkowskie zezwalają instytucjom pieniądza elektronicznego, które przed dniem 30 kwietnia 2011 r. podjęły działalność zgodnie z prawem krajowym transponującym art. 8</p>  | N/A                            | N/A | N/A | <p><b>NOT CONFORM</b></p> <p>Poland has not transposed Article 18(3) of the Directive. The corresponding national provision(s) could not be located either.</p> <p>The fact that numerous provisions of the Directive have not been transposed into the Polish law, leads to the conclusion that</p> |



| Directive 2009/110/EC  |   | National Implementing Measures |  |  | Conformity Assessment   |
|--|---|--------------------------------|--|--|---|
| <p>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 been neither authorised nor waived within the meaning of Article 9 of this Directive, shall be prohibited from issuing electronic money.</p> | <p>dyrektywy 2000/46/WE, na kontynuowanie tej działalności na terytorium danego państwa członkowskiego zgodnie z dyrektywą 2000/46/WE do dnia 30 kwietnia 2012 r., bez wymogu występowania o zezwolenie zgodnie z art. 3 niniejszej dyrektywy oraz przestrzegania pozostałych przepisów, które są zawarte lub o których mowa w tytule II niniejszej dyrektywy. Zakazuje się emitowania pieniądza elektronicznego wszystkim instytucjom pieniądza elektronicznego, którym nie udzielono zezwolenia lub wobec których nie zastosowano w tym okresie zwolnienia zgodnie z art. 9 niniejszej dyrektywy.</p> |                                |  |  | <p>Poland was not able to transpose the Directive provision in question in a conform manner either.</p> <p>In principle, Polish electronic money institutions in order to obtain an authorisation have to fulfil certain requirements laid down by the law. Where electronic money institutions do not comply with the requirements laid down in the Polish law, consequently they shall be prohibited from issuing electronic money.</p> <p>However, it should be noted that the Polish law, as revealed in numerous cases, does not fully comply with the EU law. In consequence, electronic money institutions established in Poland which even though act in line with the Polish law, they are nevertheless likely not to comply with all the requirements laid down in this Directive.</p> <p>Therefore, non-conformity is concluded.</p> |