

# Conformity Assessment of Directive 2009/110/EC MALTA

**Final Report**  
Version 2.0 – 08/02/2013

[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



Eco-active business



Charter signatory



## NATIONAL IMPLEMENTING MEASURES

### List of the national implementing measures notified to the European Commission

### General observations

#### **‘Act No. X of 2011’ titled ‘the Various Financial Services Laws (Amendment) Act, 2011’**

Date of entry into force of the Act: 24<sup>th</sup> June, 2011

Act No. X of 2011 consists of an act of the President, by and with the advice and consent of the House of Representatives. The mentioned amending act entered into force on 24 June 2011. Its scope is to amend various financial services laws. In this regard, this Act contains the principal amendments to the ‘Financial Institutions Act’ [Chapter 376 of the Laws of Malta].

The mentioned amending act was notified by Malta to the European Commission and consists of one of the principal national transposing measures for Directive 2009/110/EC.

In this regard however, reference was made to the actual principal legislation which contains part of the relative amending provisions of Act No. X of 2011, that is, the ‘Financial Institutions Act’, which will be addressed below in further detail.

The mentioned amending act may be accessed from the official website of the Government of Malta, namely from the following website:

<http://doi.gov.mt/EN/parliamentacts/2011/>

## NATIONAL IMPLEMENTING MEASURES

**‘Financial Institutions Act (Safeguarding of Funds) Regulations’**  
**[Subsidiary Legislation 376.04]**

Date of entry into force of the Regulations: 30<sup>th</sup> April, 2011 by means of Legal Notice 191 of 2011.

The ‘Financial Institutions Act (Safeguarding of Funds’ Regulations’ consists of the one of the national implementing measures (hereinafter referred to as ‘NIMs) which was notified by Malta to the European Commission. The mentioned Regulations consist of subsidiary legislation (Subsidiary legislation 376.04) to the principal chapter of law which regulates the business of financial institutions, that is, the ‘Financial Institutions Act’ [Chapter 376 of the Laws of Malta].

The mentioned Regulations entered into force on the 30th of April 2011 and as set out in Regulation 2(3) thereof, the mentioned Regulations apply to financial institutions providing payment services in terms of the Second Schedule to the ‘Financial Institutions Act’ and financial institutions issuing electronic money in terms of the Third Schedule to the mentioned Act.

The provisions therein deal with:

- Funds held under control constitute a distinct patrimony (Regulation 3);
- Payment services user enjoys right of ownership of funds (Regulation 4);
- Funds held under control not subject to the rights of creditors of the subject person (Regulation 5);
- Applicability of the Duty on Documents and Transfers Act and Income Tax Act (Regulation 6);
- Duties of the financial institution (Regulation 7);
- Liability of the subject person (Regulation 8);
- Financial institution may delegate functions and duties or entrust funds to another person (Regulation 9); and
- Funds received as payment to be credited to the payment account of a financial institution (Regulation 10).

It should be pointed out that, despite that mentioned Regulations constitute a NIM for Directive 2009/110/EC, the provisions contained therein were not considered to transpose the relative provisions of the Directive. Thus, the mentioned Regulations were not utilised for the purposes of the present Conformity Assessment Report.

In addition, it should also be pointed out that the mentioned Regulations consisted of the most updated version, since there were no further amendments consequent to Legal Notice 191 of 2011.

The Regulations may be accessed from the following official website of the Ministry of Justice and Home Affairs, which provides for all of the official and updated legislation, which is currently in force in Malta:

<http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotoID=376>

## NATIONAL IMPLEMENTING MEASURES

### **‘Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act 1994: Financial Institutions Rule 01 of 2011’**

(hereinafter referred to as ‘FIR/01/2011’ in the present Report)

The ‘Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act 1994’ (hereinafter referred to as ‘FIR/01/2011’) consists of a NIM which was notified by Malta to the European Commission.

In this regard, FIR/01/2011 consists of a soft law, specifically, it consists of Rules issued under the ‘Financial Institutions Act’ [Chapter 376 of the Laws of Malta]. In terms of Article 13(2) of the ‘Financial Institutions Act’, the national designated competent authority, that is, the ‘Malta Financial Services Authority’ as appointed under Article 12(1) of the Act, may make Financial Institutions Rules as may be required to carry into effect any of the provisions of the mentioned Act. The Financial Institutions Rules and any amendment or revocation thereof are required to be officially communicated to Financial Institutions and the authority is furthermore required to make copies thereof available to the public, also through publication on the authority’s website, namely on the following official website:

<http://www.mfsa.com.mt/pages/viewcontent.aspx?id=260>

FIR/01/2011 was thus made by the ‘Malta Financial Services Authority’, specifically by the ‘Banking Supervision Unit’.

As set out in Paragraph 7 of FIR/01/2011, the Rule applies to all companies as defined in Article 2 of the ‘Financial Institutions Act’, desirous of carrying out any of the activities listed in the Schedules to the mentioned Act in or from Malta and is based in part on the requisites of the EU Directive 2007/64/EC on payment services in the EU internal market and EU Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

Furthermore, on the basis of Paragraphs 3 and 4 of FIR/01/2011, the ‘Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act 1994’ is being made pursuant to Article 4 of the ‘Financial Institutions Act’, which requires the authority to publish its requirements for an application for a licence under the mentioned Act. Moreover, FIR/01/2011 provides applicants with the procedures and requirements of the authority for the processing of applications. It also sets out a summary of the authority’s interpretation of certain provisions of the mentioned Act most relevant to applicants.

FIR/01/2011 was referred to in the observations relating to the transposition of:

- Article 3(1) of the Directive;
- Article 3(4) of the Directive;
- Article 6(1), second subparagraph of the Directive;
- Article 7(1) of the Directive; and
- Article 7(3) of the Directive.

It should be pointed out that the notified FIR/01/2011 consisted of the most recent and updated rules.

## NATIONAL IMPLEMENTING MEASURES

**‘Supervisory and Regulatory Requirements of Institutions Authorised under the Financial Institutions Act 1994: Financial Institutions Rule 02 of 2011’**  
(hereinafter referred to as ‘FIR/02/2011’ in the present Report)

The ‘Supervisory and Regulatory Requirements of Institutions Authorised under the Financial Institutions Act 1994’ (hereinafter referred to as ‘FIR/02/2011’ consists of a NIM which was notified by Malta to the European Commission.

In this regard, FIR/01/2011 consists of a soft law, specifically, it consists of Rules issued under the ‘Financial Institutions Act’ [Chapter 376 of the Laws of Malta].

On the basis of Paragraphs 2 and 3 of FIR/02/2011, FIR/02/2011 is being issued in terms of Article 13(4) of the Act which empowers the authority to provide for different regulatory requirements applicable to different classes of institutions. The requirements in the FIR/02/2011 are of a general nature and the ‘Malta Financial Services Authority’ will apply particular requirements to specific classes of institutions as it deems appropriate through the licence. Moreover, FIR/02/2011 also highlights the supervisory and investigative powers of the authority as provided for in the ‘Financial Institutions Act’.

The Financial Institutions Rules and any amendment or revocation thereof are required to be officially communicated to Financial Institutions and the authority is furthermore required to make copies thereof available to the public, also through publication on the authority’s website, namely on the following official website:

<http://www.mfsa.com.mt/pages/viewcontent.aspx?id=260>

FIR/02/2011 was thus made by the ‘Malta Financial Services Authority’, specifically by the ‘Banking Supervision Unit’.

FIR/02/2011 was referred to in the observation relating to the transposition of the first subparagraph of Article 5(2) of the Directive.

It should be pointed out that the notified FIR/02/2011 consisted of the most recent and updated rules.

## NATIONAL IMPLEMENTING MEASURES

<p><b>‘Taking up, Pursuit of and Prudential Supervision of the business of financial institutions authorised under the Financial Institutions Act 1994: Financial Institutions Rule 03 of 2011’</b> (hereinafter referred to as ‘FIR/03/2011’ in the present Report)</p>	<p>The ‘Taking up, Pursuit of and Prudential Supervision of the business of financial institutions authorised under the Financial Institutions Act 1994: Financial Institutions Rule 03 of 2011’ (hereinafter referred to as ‘FIR/03/2011’ consists of a NIM which was notified by Malta to the European Commission.</p> <p>In this regard, FIR/03/2011 consists of a soft law, specifically, it consists of Rules issued under the ‘Financial Institutions Act’ [Chapter 376 of the Laws of Malta].</p> <p>On the basis of Paragraphs 2 and 3 of FIR/03/2011, the objective of FIR/03/2011 is to lay down all the regulatory and supervisory procedures the ‘Malta Financial Services Authority’ will adopt in respect of such financial institutions. It also includes a summary of the provisions of the ‘Financial Institutions Act’ that, in the authority’s opinion are most relevant. Furthermore, FIR/03/2011 is modelled on the requisites of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 relating to the taking up, pursuit and prudential supervision of the business of electronic money institutions and is being issued pursuant to Article 5(4)(b) of the ‘Financial Institutions Act’. In this respect, Article 5(4)(b) of the ‘Financial Institutions Act’ provides that for the better carrying out of the provisions of the mentioned Act and to better transpose the provisions of the Electronic Money Directive and the Payment Services Directive, the competent authority may, from time to time, issue and publish Rules which shall be binding on licence holders and others as may be specified therein. Moreover, such Rules may lay down additional requirements and conditions in relation to activities of licence holders, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements and any other matters as the competent authority may consider appropriate.</p> <p>FIR/03/2011 was thus made by the ‘Malta Financial Services Authority’, specifically by the ‘Banking Supervision Unit’.</p> <p>The Financial Institutions Rules and any amendment or revocation thereof are required to be officially communicated to Financial Institutions and the authority is furthermore required to make copies thereof available to the public, also through publication on the authority’s website, namely on the following official website:</p> <p><a href="http://www.mfsa.com.mt/pages/viewcontent.aspx?id=260">http://www.mfsa.com.mt/pages/viewcontent.aspx?id=260</a></p> <p>FIR/03/2011 was referred to in almost all of the observations contained in the present Report. FIR/03/2011 is thus one of the principal transposing measures for Directive 2009/110/EC.</p> <p>It should be pointed out that the notified FIR/03/2011 consisted of the most recent and updated rules.</p>
<p style="text-align: center;"><b>List of additional national implementing measures referred to in the conformity assessment</b></p>	<p style="text-align: center;"><b>General observations</b></p>

## NATIONAL IMPLEMENTING MEASURES

<p><b>‘Financial Institutions Act’</b> [Chapter 376 of the Laws of Malta]</p> <p>Date of entry into force: 15<sup>th</sup> November 1994 by Act XXII of 1994, as subsequently amended by Acts XXIV and XXV of 1995, XVII of 2002, IV of 2003, XIII of 2004 and XII of 2006; Legal Notice 425 of 2007; and Acts II of 2010 and X of 2011.</p>	<p>The ‘Financial Institutions Act’ consists of primary legislation [Chapter 376 of the Laws of Malta], whose scope is to regulate the business of financial institutions.</p> <p>The mentioned Act entered into force on 15 November 1994 by Act XXII of 1994 and was subsequently amended by Acts XXIV and XXV of 1995, XVII of 2002, IV of 2003, XIII of 2004 and XII of 2006; Legal Notice 425 of 2007; and Acts II of 2010 and X of 2011. It should be pointed out that the final amending Act, that is, Act X of 2011, consists of one of the NIMs for Directive 2009/110/EC (mentioned above).</p> <p>In terms of Article 27 of the ‘Financial Institutions Act’, the objective of this act is, in part, to implement the provisions of Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market, in particular Titles I, II, Chapter 5 of Title IV and the Annex and of Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions and shall be interpreted and applied accordingly.</p> <p>Reference to the Act is made in several observations in the present Report. Thus, the ‘Financial Institutions Act’ consists of one of the principal NIMs for the implementation of Directive 2009/110/EC into Maltese legislation.</p> <p>On the basis of Article 5(4)(b) of the mentioned Act, for the better carrying out of the provisions of this Act and to better transpose the provisions of the Electronic Money Directive and the Payment Services Directive, the competent authority may, from time to time, issue and publish Rules which shall be binding on licence holders and others as may be specified therein. Such Rules may lay down additional requirements and conditions in relation to activities of licence holders, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements and any other matters as the competent authority may consider appropriate. Thus, the competent designated authority, that is, the ‘Malta Financial Services Authority’, may make rules so as to better implement Directive 2009/110/EC, amongst others. In this respect, the above-mentioned notified financial institutions rules, namely FIR/03/2011, consist of the rules which further implement the Directive.</p> <p>The ‘Financial Institutions Act’ may be sourced and accessed from the official website of the Ministry of Justice and Home Affairs, which provides for all of the official and updated legislation, which is currently in force in Malta:</p> <p><a href="http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=376">http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=376</a></p>
<p><b>‘Banking Act’</b> [Chapter 371 of the Laws of Malta]</p> <p>Date of entry into force of the Act: 15th November, 1994 by Act XV of 1994, as amended by Acts XXIV and XXV of 1995, VI of 2001, XVII of 2002, IV and IX of 2003, XIII of 2004 and XX of 2007; Legal Notice 425 of 2007;</p>	<p>The ‘Banking Act’ consists of primary legislation [Chapter 371 of the Laws of Malta] and the scope thereof is to regulate the business of banking.</p> <p>The mentioned Act entered into force on the 15th November, 1994 by Act XV of 1994 and was subsequently amended by Acts XXIV and XXV of 1995, VI of 2001, XVII of 2002, IV and IX of 2003, XIII of 2004 and XX of 2007; Legal Notice 425 of 2007; and Acts III and XVII of 2009, II of 2010, and II and X of 2011. It should be pointed out that the final amending Act, that is, Act X of 2011, consists of one of the NIMs for Directive 2009/110/EC (mentioned above).</p>

## NATIONAL IMPLEMENTING MEASURES

<p>and Acts III and XVII of 2009, II of 2010, and II and X of 2011.</p>	<p>The ‘Banking Act’ was referred to in the observation relating to the transposition of Article 6(2) of the Directive.</p> <p>The ‘Banking Act’ may be sourced and accessed from the official website of the Ministry of Justice and Home Affairs, which provides for all of the official and updated legislation, which is currently in force in Malta:</p> <p><a href="http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=371">http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=371</a></p>
<p><b>‘Malta Financial Services Authority Act’</b> [Chapter 330 of the Laws of Malta]</p> <p>Date of entry into force of the mentioned Act: 20<sup>th</sup> January, 1989; 30<sup>th</sup> June, 1989</p> <p>By Act XXXIV of 1988, as amended by Act XV of 1989; Legal Notice 167 of 1989; Legal Notice 79 of 1990; Act XXXI of 1990; Legal Notice 183 of 1990; Acts XIII of 1994, XXV of 1995, XVII of 2002, IV of 2003, XIII of 2004, XII of 2006 and XX of 2007; Legal Notice 424 of 2007; and Acts III of 2009, II and XIX of 2010, and X of 2011.</p>	<p>The ‘Malta Financial Services Authority Act’ consists of primary legislation [Chapter 330 of the Laws of Malta] and the scope thereof is to establish an Authority for Financial Services from within Malta, to regulate such activities and to provide for matters ancillary or incidental thereto or connected therewith.</p> <p>The date of entry into force of the mentioned Act took place on the 20<sup>th</sup> of January 1989 and on 30 June 1989 by Act XXXIV of 1988 and was last amended by Act X of 2011. It should be pointed out that the final amending Act, that is, Act X of 2011, consists of one of the NIMs for Directive 2009/110/EC (mentioned above).</p> <p>The mentioned Act was referred to in the observation relating to the transposition of Article 13 of the Directive.</p> <p>The ‘Malta Financial Services Authority Act’ may be sourced and accessed from the official website of the Ministry of Justice and Home Affairs, which provides for all of the official and updated legislation, which is currently in force in Malta:</p> <p><a href="http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=330">http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=330</a></p>
<p><b>‘Consumer Affairs Act’</b> [Chapter 378 of the Laws of Malta]</p> <p>Date of entry into force of the Act took place on: 23<sup>rd</sup> January, 1996 by Act XXVIII of 1994 as amended by Acts V of 1995, XIX of 1996, XXVI of 2000, VI of 2001 and XV of 2006; Legal Notice 425 of 2007; and Acts II of 2008, XIV of 2009, and VI and IX of 2011.</p>	<p>The ‘Consumers Affairs Act’ consists of primary legislation [Chapter 378 of the Laws of Malta], whose scope is to provide for the powers of the Director General (Consumer Affairs), for the establishment and functions of a Consumer Affairs Council and for the establishment and jurisdiction of the Consumer Claims Tribunal and for other matters ancillary or consequent thereto.</p> <p>The date of entry into force of the mentioned Act took place on 23 January, 1996 by Act XXVIII and was last amended by Act IX of 2011.</p> <p>The mentioned Act was referred to in the observation relating to the transposition of Article 13 of the Directive.</p> <p>The ‘Consumer Affairs Act’ may be sourced and accessed from the official website of the Ministry of Justice and Home Affairs, which provides for all of the official and updated legislation, which is currently in force in Malta:</p> <p><a href="http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=378">http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=378</a></p>



## NATIONAL IMPLEMENTING MEASURES

<p><b>‘Arbitration Act’</b> [Chapter 387 of the Laws of Malta]</p> <p>Date of entry into force of the Act took place on: 23<sup>rd</sup> February, 1998; 23<sup>rd</sup> March, 2000; 1<sup>st</sup> August, 2000</p> <p>by Act II of 1996, as amended by Acts XVIII of 1999 and XXXI of 2002; Legal Notice 304 of 2004; Acts IX and XIII of 2004; Legal Notices 420 of 2004, and 7 and 279 of 2005; Act XXII of 2005; Legal Notices 165 and 166 of 2006, and 425 of 2007; Act IX of 2010; and Legal Notices 218 and 244 of 2012.</p>	<p>The ‘Arbitration Act’ constitutes primary legislation [Chapter 387 of the Laws of Malta] and its scope is to encourage and facilitate the settlement of disputes through arbitration in Malta, to establish the Malta Arbitration Centre as a centre for domestic arbitration and international commercial arbitration, to make provisions regulating the conduct of arbitration proceedings and the recognition and enforcement of certain arbitral awards.</p> <p>The date of entry into force of the mentioned Act took place on 23 February, 1998, 23 March, 2000 and 1 August, 2000 by Act II of 1996 and was last amended by Legal Notice 244 of 2012.</p> <p>The mentioned Act was referred to in the observation relating to the transposition of Article 13 of the Directive.</p> <p>The ‘Arbitration Act’ may be sourced and accessed from the official website of the Ministry of Justice and Home Affairs, which provides for all of the official and updated legislation, which is currently in force in Malta: <a href="http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=387">http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=387</a></p>
<p><b>‘Own Funds of Credit Institutions authorised under the Banking Act, 1994’ and Appendices 1 and 2 thereof</b> (hereinafter referred to as ‘BR/03/2012)</p>	<p>The ‘Own Funds of Credit Institutions authorised under the Banking Act, 1994’, as well as Appendices 1 and 2 thereof, consist of soft laws. In this regard, in terms of Article 4(2) of the ‘Banking Act’ [Chapter 371 of the Laws of Malta: mentioned above], the competent authority, that is, the ‘Malta Financial Services Authority’ may make Banking Rules as may be required for carrying into effect any of the provisions of the ‘Banking Act’. Furthermore, the authority may amend or revoke such Rules. In this regard, the making of such rules and any amendment or revocation thereof, are required to be officially communicated to credit institutions and the authority is required to make copies thereof available to the public. BR/03/2012 was thus made by the ‘Malta Financial Services Authority’, specifically by the Banking Supervision Unit.</p> <p>In this regard, the mentioned BR/03/2012, as well as Appendices 1 and 2 thereto, were sourced from the official website of the ‘Malta Financial Services Authority’, namely from the following website: <a href="http://www.mfsa.com.mt/pages/viewcontent.aspx?id=379">http://www.mfsa.com.mt/pages/viewcontent.aspx?id=379</a></p> <p>As set out in Paragraph 6 of BR/03/2012, the scope of thereof is to standardise the requirements for the compilation of Own Funds. In order to achieve this scope, BR/03/2012 has been modelled on the requisites of the European Union’s Capital Requirements Directive 2006/48/EC – Chapter 2 – ‘Technical Instruments of Prudential Supervision’, the Committee of European Banking Supervisors’ (CEBS) publication dated 21 December 2004, entitled ‘Guidelines on Prudential Filters for Regulatory Capital’, CEBS ‘Implementation Guidelines for Hybrid Capital Instruments’ issued on 10 December 2009 and CEBS ‘Implementation Guidelines regarding Instruments referred to in Article 57(a) of Directive 2006/48/EC recast’ issued on 14 June 2010.</p> <p>Appendices 1 and 2 to BR/03/2012 were referred to in the observation relating to the transposition of Article 4 of the Directive, for the purposes of the calculation of initial capital.</p>

## SUMMARY

### 1. Executive summary

Following the Conformity Assessment concerning the implementation of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 relating to the taking up, pursuit and prudential supervision of the business of electronic money institutions (hereinafter referred to as ‘the Directive’ in the present Report) into Maltese legislation, it can be concluded that Malta transposed the requirements set out in the Directive in an almost fully conform manner. In this regard, partial conformity was observed in two instances and five cases of non-conformity were detected. The cases of non-conformity relate to the transposition of the three subparagraphs of Article 18(1) of the Directive. Transposition was affected by means of provisions contained in a pre-existing specific piece of legislation and provisions contained in a newly promulgated specific piece of legislation. Furthermore, transposition was affected by means of literal or almost literal wording. Moreover, the structure of the national implementing measures (hereinafter referred to as ‘NIMs’) closely follow the structure and layout of the Directive.

In this regard, the ‘Financial Institutions Act’, which consists of primary legislation, is the principal national legislation and main chapter of law [Chapter 376 of the Laws of Malta] which regulates the business of financial institutions. The mentioned Act was not notified by Malta to the European Commission. However, the final act which last amended the ‘Financial Institutions Act’, that is, Act X of 2011, which contains most of the national corresponding and transposing provisions in relation to the Directive was indeed notified by Malta to the European Commission. The ‘Financial Institutions Act’ constitutes one of the principal NIMs in relation to the implementation of Directive 2009/110/EC. As set out in Article 27 of the mentioned Act, the objective of the ‘Financial Institutions Act’ is, in part, to implement the provisions of Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market, in particular Titles I, II, Chapter 5 of Title IV and the Annex and of Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions. Moreover, the ‘Financial Institutions Act’ is required to be interpreted and applied accordingly.

In addition to the ‘Financial Institutions Act’, the ‘Taking up, Pursuit of and Prudential Supervision of the business of financial institutions authorised under the Financial Institutions Act 1994: Financial Institutions Rule 03 of 2011’ (hereinafter referred to as ‘FIR/03/2011’) consists of the other principal transposing legislation for Directive 2009/110/EC. In this regard, FIR/03/2011 was notified by Malta to the European Commission.

FIR/03/2011 is a new Rule and deals specifically with the taking up, pursuit of and prudential supervision of the business of financial institutions authorised to Issue Electronic Money. The latter rule replaces the previous Electronic Money Institutions Directive (EMID/01/2002 on the Taking Up, Pursuit of and Prudential Supervision of the Business of Electronic Money Institutions Authorised under the Banking Act 1994). It should be pointed out that FIR/03/2011 consists of a soft law, specifically, it consists of Rules issued under the ‘Financial Institutions Act’ [Chapter 376 of the Laws of Malta].

In this respect, FIR/03/2011 are a consequence of Article 5(4)(b) of the ‘Financial Institutions Act’ which provides that for the better carrying out of the provisions of the ‘Financial Institutions Act’ and to better transpose the provisions of the Electronic Money Directive (Directive 2009/110/EC) and the Payment Services Directive (Directive 2007/64/EC), the competent authority, being the ‘Malta Financial Services Authority’ may, from time to time, issue and publish Rules which shall be binding on licence holders and others as may be specified therein. Furthermore, such Rules may lay down additional requirements and conditions in relation to activities of licence holders, the conduct of their business, their relations with customers, the public and other parties, their responsibilities to the competent authority, reporting requirements and any other matters as the competent authority may consider appropriate.

Thus, FIR/03/2011 was specifically made so as to ensure that any matter which is not specifically regulated by the ‘Financial Institutions Act’ will be regulated by more specific rules.

FIR/03/2011 was thus made by the 'Malta Financial Services Authority', specifically by the 'Banking Supervision Unit'. On the basis of Paragraphs 2 and 3 of FIR/03/2011, the objective of FIR/03/2011 is to lay down all the regulatory and supervisory procedures the 'Malta Financial Services Authority' will adopt in respect of such financial institutions. It also includes a summary of the provisions of the 'Financial Institutions Act' that, in the authority's opinion are most relevant. Furthermore, FIR/03/2011 is modelled on the requisites of Directive 2009/110/EC. The Financial Institutions Rules and any amendment or revocation thereof are required to be officially communicated to Financial Institutions and the authority is furthermore required to make copies thereof available to the public, also through publication on the authority's website, namely on the following official website:

<http://www.mfsa.com.mt/pages/viewcontent.aspx?id=260>

The 'Financial Institutions Act', as well as FIR/03/2011 were referred to in almost all of the observations contained in the present Report. FIR/03/2011 as well as the 'Financial Institutions Act' thus consist of the principal transposing measures for Directive 2009/110/EC.

It should be pointed out that, contrary to the 'Financial Institutions Act', the Rules issued under the 'Financial Institutions Act' (such as FIR/03/2011), do not constitute laws *per se*. Rather, they constitute soft laws, since their promulgation does not require an act of the President, by and with the advice and consent of the House of Representatives. In addition to this, the rules issued under the 'Financial Institutions Act' do not require publication in the official Government Gazette of Malta upon such enactment, amendment or revocation, is required in the event of the enactment, amendment or revocation of national laws.

In relation to the competent national designated authority for the purposes of the 'Financial Institutions Act' and for FIR/03/2011, the competent authority in this regard is the 'Malta Financial Services Authority'. In this regard, the definition set out in Article 2(1) of the 'Financial Institutions Act' clarifies that the term "competent authority" is to be understood as the 'Malta Financial Services Authority' established by the 'Malta Financial Services Authority Act' [Chapter 330 of the Laws of Malta]. Article 13 of the 'Financial Institutions Act' sets out the powers of the competent authority. In this regard, the competent designated authority is encumbered with the duty of carrying out the functions assigned to it by the 'Financial Institutions Act' and to ensure that financial institutions carrying on business in Malta comply with the mentioned Act, regulations, directives and Rules thereunder and with the conditions of their licence. Furthermore, in carrying out such functions, the competent authority is required to ensure that the controls exercised for checking continued compliance in terms of the 'Financial Institutions Act', or any Regulations and Rules issued thereunder are proportionate, adequate and responsive to the risks to which financial institutions are exposed. Such functions consist *inter alia* of the following:

- to require the financial institution (in terms of Article 14) to provide any information needed to monitor compliance;
- to carry out on-site inspections at the financial institution, at any agent or branch providing licensable activities under the responsibility of the financial institution, or at any entity to which activities are outsourced;
- to suspend or withdraw authorisation (in cases referred to in Article 6); and
- to take all necessary steps to ensure sufficient capital for the activities carried out by a financial institution, in particular where activities of a financial institution other than those listed in the Schedules impair or are likely to impair the financial soundness of the institution.

As was already pointed out above, the 'Malta Financial Services Authority' may also make Financial Institutions Rules as may be required for carrying into effect any of the provisions of the 'Financial Institutions Act'. Moreover, the competent authority may amend or revoke such Financial Institutions Rules.

For the purposes of the present conformity assessment, additional NIMs were resorted to for the purpose of clarifying matters that were dealt with in the relative transposing provisions. Thus, the principal national legislation which was required to be notified by Malta appears to have been notified.

Finally, it should be noted that, Article 2(2) of the 'Financial Institutions Act' provides that in the 'Financial Institutions Act' and in any regulations made thereunder, if there is any conflict between the English and the Maltese texts, the English text shall prevail. Thus, on this basis, the present Conformity Assessment Report was carried out solely in the English language.

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

### **2.1. Scope**

Following the present Conformity Assessment Report, it may be concluded that the relative NIMs did not present any problems or difficulties in relation to the scope of application of Directive 2009/110/EC. Thus, no particular issues concerning the scope of application of the NIMs were encountered.

### **2.2. Terminology**

The NIMs did not present any terminological discrepancies, differences or distortions when compared to the terminology used in the Directive. Rather, in many instances the terminology resorted to in the NIMs closely follows the terminology used in the Directive. Therefore, no cases of partial or non-conformity were detected as a result of the terminology that was utilised. Rather, the terminology used within the NIMs closely follows and in most instances, literally or almost literally reproduces, the terminology used in the Directive.

### **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*

Title I of the Directive was transposed in a conform manner, save the transposition of Article 1(e) of the Directive referring to the status of electronic money issuer of Member States or their regional or local authorities when acting in their capacity as public authorities wherein non-conformity was observed.

##### **2.4.1.1. Article 1 – Subject**

Article 1 of the Directive was considered to have been transposed into Maltese legislation in a conform manner, save the transposition of Article 1(e) of the Directive, wherein non-conformity was observed.

The scope of the two principal transposing NIMs, that is, FIR/03/2011 and the ‘Financial Institutions Act’, was considered to be in line with the subject matter and scope of the Directive, as set out in Article 1 thereof. The categories of electronic money issuers, set out in points (a) to (e) of Article 1 of the Directive, are likewise set out in the relative national transposing provisions. Literal and/or almost literal wording was used in this regard. Non-conformity was observed in relation to the transposition of Article 1(e) of the Directive, since the Maltese transposing provision appears to cater for the opposite scenario when compared to the Directive provision, namely, it refers to Member States or their regional or local

authorities when not acting in their capacity as public authorities, as opposed to when acting in their capacity as public authorities. Thus, owing to this, non conformity is observed.

In relation to the transposition of Article 1(2) of the Directive, despite that an explicit provision/s corresponding thereto was not located within the NIMs, conformity was still however observed, since the requirements set out in Title II of the Directive were considered to have been transposed in a conform manner, save Article 9(6) of the Directive.

The option set out in Article 1(3) of the Directive was considered to have not been chosen to be applied by Malta.

Paragraphs 4 and 5 of Article 1 of the Directive, which set out the negative scope of application of the Directive, were considered to have been correctly transposed into Maltese legislation.

Thus, overall, conformity was observed in relation to the transposition of the requirements set out in Article 1 of the Directive, save the transposition of Article 1(e) of the Directive.

#### 2.4.1.2. Article 2 – Definitions

Article 2 of the Directive sets out the definitions which are required to apply for the purposes thereof. In this regard, Malta was considered to have transposed the relative definitions in a conform manner. Furthermore, almost literal and/or literal wording was resorted to by the Maltese legislator in this regard.

Conformity was consequently observed in relation to the transposition of Articles 1 and 2 of the Directive, that is, in relation to the requirements set out in Title I of the Directive.

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

For Title II of the Directive conformity was observed in relation to the transposition of Articles 3 to 9 thereof, save Article 9(6). Thus, one case of partial conformity was detected in Title II of the Directive, since the transposing provisions do not refer to the provisions which transpose paragraphs 2 and 4 of Article 9 of the Directive, referred to in the first sentence of Article 9(6) of the Directive.

##### 2.4.2.1. Article 3 – General Prudential rules

Article 3 of the Directive was considered to have been transposed into Maltese legislation in a conform manner. In this regard, it was considered that the general prudential rules set out in Article 3 of the Directive, were correctly transposed and included within the relative Maltese transposing provisions. Moreover, conformity was also observed in relation to the option set out in the sixth subparagraph of Article 3(3) of the Directive, wherein it was considered that Malta had properly transposed the option set out therein. Thus, it was considered that Malta chose to allow the designated competent authorities to waive the application of all or part of the obligations set out in the provision corresponding to Article 3(3) of the Directive, in respect of electronic money institutions that carry out one or more of the activities listed in the national provision corresponding to Article 6(1)(e) of the Directive.

##### 2.4.2.2. Article 4 – Initial capital

The requirements relating to initial capital set out in Article 4 of the Directive were considered to have been almost literally transposed into Maltese legislation in a conform manner. Thus, in accordance with the Directive provision, Paragraph 18 of FIR/03/2011 sets out an obligation upon electronic money institutions whereby at the time of authorisation, electronic money institutions are required to hold initial capital amounting to not less than EUR 350,000. Furthermore, on the basis of the Maltese transposing provision, initial capital is the sum of items 1.1.5 and 1.1.12 excluding items 1.1.9 and 1.1.11 of Appendix 1 and 2 of Banking Rule 03. It was considered that this was in line with the calculation comprised of the items set out in Article 57(a) and (b) of Directive 2006/48/EC, referred to in the Directive provision.

##### 2.4.2.3. Article 5 – Own funds

Article 5 of the Directive, which sets out requirements relating to own funds of electronic money institutions, was considered to have been transposed into Maltese legislation in a conform manner. With regard to the transposition of Article 5(1) of the Directive, very similar wording was used. The Maltese transposing provision requires electronic money institutions to hold, at all times, own funds calculated in line with the provisions corresponding to Article 5(2) to (5) of the Directive or the initial capital amount laid down in the national provision corresponding to Article 4 of the Directive, whichever is the higher. This was considered to be in line with the Directive provision.

Furthermore, conformity was also observed in relation to the transposition of Article 5(2) to (6) of the Directive as it was considered that the relative national transposing provisions contained all of the requirements set out therein.

In relation to Article 5(7) of the Directive, it was concluded that it appeared that Malta did not choose to transpose the option set out therein into its relative national legislation.

#### 2.4.2.4. Article 6 – Activities

Conformity was also observed in relation to the transposition of Article 6 of the Directive. Literal or almost literal wording was resorted to in relation to Article 6(1)(a) to (e) of the Directive. The requirements set out in Article 6(2) to (4) of the Directive were also deemed to have been correctly transposed.

#### 2.4.2.5. Article 7 – Safeguarding requirements

Conformity was observed in relation to the transposition of Article 7 of the Directive. Article 7(1) and the first and second subparagraphs of paragraph 2 thereof were transposed into Maltese legislation by means of almost literal wording.

The option set out in the third subparagraph of Article 7 of the Directive was considered to have been chosen to be transposed into Maltese legislation. In this regard, the competent authority, being the ‘Malta Financial Services Authority’, may in exceptional circumstances and with adequate justification, based on an evaluation of security, maturity, value or other risk elements of assets as specified in the provisions which transpose the first and second subparagraphs of Article 7(2) of the Directive, determine which of those assets do not constitute secure, low-risk assets.

Article 7(3) of the Directive also sets out an option, which was considered to have been transposed by Malta. In this regard, the Maltese transposing provision sets out that the safeguarding requirements, in line with the national provision which transposes Article 9(1) and (2) of Directive 2007/64/EC, referred to in the Directive provision, shall be applicable to electronic money institutions which undertake payment services listed in the Second Schedule to the ‘Financial Institutions Act’, which contains the content of the Annex to Directive 2007/64/EC (referred to in Article 6(1)(a) of the Directive), that are not linked to the activity of issuing electronic money.

With regard to the option set out in Article 7(4) of the Directive, it was considered that it appeared that Malta did not choose to apply the option set out therein into its relative national legislation.

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

Conformity was observed in relation to the transposition of the requirements set out in Article 8(1) and (2) of the Directive. In this regard, the relative Maltese transposing provisions require the ‘Malta Financial Services Authority’ not to apply provisions which result in more favourable treatment than that accorded to a financial institution having its head office within the Community in the assessment of an application for the opening of a branch by a financial institution authorised to issue electronic money and having its head office outside the Community. Furthermore, the mentioned competent authority is required to notify the European Commission of all authorisations for branches of financial institutions having their head office outside the Community, as stated in the provision which corresponds to Article 8(1) of the Directive.

With regard to Article 8(3) of the Directive, it was considered that the mentioned Directive provision does not appear to require transposition by the Member States, since it refers to requirements set out upon the Community. Thus, it was concluded that Malta does not seem to be required to transpose the requirements set out therein into its relative national legislation.

#### 2.4.2.7. Article 9 – Optional exemptions

Conformity was observed in relation to the transposition of Article 9(1) to (5), (7) to (8) of the Directive into Maltese legislation. However, partial conformity was observed with regard to the transposition of Article 9(6) of the Directive.

Almost literal wording was resorted to in relation to the transposition of the first and second subparagraphs of Article 9(1) of the Directive. With regard to the option set out in the third subparagraph of Article 9(1) of the Directive, it was considered that Malta chose to apply the option set out therein into its relative national legislation. Thus, both national transposing provisions set out an additional requirement in relation to the granting of the optional exemptions under the provisions which correspond to Article 9 of the Directive. In this respect, the

underlying contractual arrangements of the company are required to provide that the payment instrument or payment account of the consumer where the electronic money is stored is subject to a maximum storage amount of not more than two hundred and fifty Euros (€250).

As for the transposition of the fourth subparagraph of Article 9(1) of the Directive, in compliance with the Directive provision, the Maltese transposing provision requires a small electronic money issuer to seek authorisation from the 'Malta Financial Services Authority, in the event that, in addition to the issuance of electronic money it intends to undertake any activity listed in the First or Second Schedule to the 'Financial Institutions Act'. Authorisation must therefore be sought in the event the institution engages in the provision of payment services not related to the issuance of the electronic money.

In relation to Article 9(3) of the Directive, the Maltese transposing provisions set out that a company, as referred to in sub-article (7) of Article 3 of the 'Financial Institutions Act', is required to be treated as a financial institution authorised to issue electronic money. However, such a company is prevented from benefiting from the freedom to provide services and the right of establishment.

As for the option set out in Article 9(4) of the Directive, it was considered that Malta appears to have chosen to apply this provision within its relative national legislation.

Almost literal wording was used in relation to the transposition of Article 9(5) of the Directive.

As was already stated above, a case of partial conformity was observed in relation to the transposition of Article 9(6) of the Directive, since the transposing provisions do not seem to refer to the provisions which transpose paragraphs 2 and 4 of Article 9 of the Directive, referred to in the first sentence of the Directive provision.

With regard to the requirements set out in Article 9(7) of the Directive, conformity was observed since it was considered that the designated competent authority was indeed sufficiently empowered to verify continued compliance with the requirements laid down in the provisions which transpose Article 9 of the Directive. More specifically, Article 3(12) of the 'Financial Institutions Act' empowers the 'Malta Financial Services Authority' to publish Financial Institutions Rules, from time to time, which shall be binding on licence holders as specified therein, for the better carrying out of the provisions on the granting of waivers. Moreover, the first sentence of Article 13(1) of the mentioned Act sets out a general obligation upon the competent authority, namely, it sets out a duty upon it, wherein it is required to carry out the functions assigned to it by the 'Financial Institutions Act' and it is required to ensure that financial institutions carrying on business in Malta comply with the mentioned Act, regulations, directives and Rules issued under it, as well as with the conditions of their licences.

Conformity was also observed in relation to Article 9(8) of the Directive whereby the Maltese transposing provision sets out that notwithstanding anything provided for in Article 3 of the 'Financial Institutions Act', the application of the provisions of the Prevention of Money Laundering Act shall not be waived.

As for Article 9(9) of the Directive, it was considered that it could not be determined whether Malta in fact complied with its notification obligation. Moreover, it was concluded that there did not seem to be any national provision which ensures that Malta complied or is complying with the requirements set out in the second sentence of the Directive provision. Thus, it was suggested that clarification be sought from the relative competent national authorities in this regard.

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

Title III of the Directive was transposed in a conform manner in relation to Articles 10, 11 and 13. Partial conformity was however observed in relation to the transposition of Article 12 of the Directive, despite that Article 10A of the 'Financial Institutions Act' complies with the requirements which are set out in the Directive provision, it may be considered that Paragraph 50 of FIR/03/2011 does not seem to fully comply with the requirements set out therein, since the second sentence of the mentioned transposing provision provides that, offering rewards to customers such as anniversary gifts are not permissible, whereas the offering of discount vouchers for use when purchasing particular products for customers who for instance hold electronic money above a particular minimum threshold or who undertake a set number of transactions, is allowable. Thus, the second sentence of Paragraph 50 of FIR/03/2011 appears to hamper the proper transposition of the prohibition set out in the Directive provision, since it provides for an exception. Consequently, on the basis of this, partial conformity was observed.

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

Conformity was observed in relation to the transposition of the requirements set out in Article 10 of the Directive despite that an explicit national provision was not located within the NIMs. Conformity was observed in particular since there do not seem any provisions contained within the transposing legislation, which would suggest that natural or legal persons who are not electronic money issuers, are permitted from issuing electronic money.

#### 2.4.3.2. Article 11 – Issuance and redeemability

Conformity was observed in relation to the transposition of Article 11 of the Directive into Maltese legislation. In this regard, transposition was affected by means of similar wording and literal or almost literal wording.

In accordance with Article 11(1) of the Directive, financial institutions and electronic money institutions authorised to issue electronic money are required to issue electronic money at par value on the receipt of funds. Furthermore, in compliance with Article 11(2) of the Directive, financial institutions authorised to issue electronic money are required to ensure that, at any moment, upon request by the holder thereof, it is in a position to redeem the monetary value of any electronic money held, at par value and without delay. With regard to the transposition of Article 11(3) of the Directive, the Maltese transposing provision requires the contract between the electronic money institution and the electronic money holder to clearly and prominently state the conditions of redemption, including any fees relating thereto, and the electronic money holder is required to be informed of those conditions before being bound by any contract or offer. In this regard, it was pointed out that the Maltese transposing provision makes reference to the contract between the “electronic money institution” and the electronic money holder, as opposed to the contract between the “electronic money issuer” and the electronic money holder. However, this difference was not considered to have a negative impact upon the level of conformity.

Almost literal wording was used in relation to the transposition of Article 11(4) to (7) of the Directive and it was considered that all of the requirements set out therein were satisfied.

Thus, overall, conformity was observed in relation to the transposition of the requirements set out in Article 11 of the Directive.

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

A case of partial conformity was detected in relation to the transposition of Article 12 of the Directive into Maltese legislation. In this regard, it was considered that one of the national transposing provisions did in fact comply with the requirements set out in the Directive provision. However, another transposing provision, that is, Paragraph 50 of FIR/03/2011, was considered not to fully comply with the requirements set out therein. In this regard, the mentioned transposing provision provides that an electronic money institution shall not be allowed to grant interest or any other benefit, unless such benefits are not related to the length during which the electronic money is held. This appears to comply with the Directive provision. However, the second sentence of the mentioned transposing provision further provides that, in this respect, offering rewards to customers such as anniversary gifts are not permissible, whereas the offering of discount vouchers for use when purchasing particular products for customers who for instance hold electronic money above a particular minimum threshold or who undertake a set number of transactions, is allowable. Thus, it was considered that the second sentence of Paragraph 50 of FIR/03/2011 appears to hamper the proper transposition of the prohibition set out in the Directive provision, since it provides for an exception.

Thus, owing to this, partial conformity was observed.

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

Article 13 of the Directive requires Chapter 5 of Title IV of Directive 2007/64/EC to apply, *mutatis mutandis*, to electronic money issuers in respect of their duties arising from Title III of the Directive. Following a screening of the NIMs, it was considered that two national provisions transpose Article 13 of the Directive. National provisions dealing with the ‘Investigation of complaints by the Consumer Complaints Manager’ and with settlement of disputes, were considered to satisfy the requirements set out in the Directive provision.

Thus, the formalities involved in the settlement of disputes as well as the powers of the Consumer Complaints Manager were analysed and explained and were considered to conform to the Directive provision.



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

In respect of Title IV of the Directive, conformity was observed in relation to the transposition of Article 16. With regard to Article 18(1) and (3) of the Directive, non-conformity was observed and it was suggested that clarification be sought from the relative Maltese competent authorities, since following a screening of the NIMs, there did not appear to be any corresponding transposing provisions. With regard to the option set out in Article 18(2) of the Directive, it was concluded that Malta did not choose to apply it within its relative national legislation.

##### 2.4.4.1. Article 16 – Full harmonisation

Conformity was observed in relation to the transposition of Article 16 of the Directive into Maltese legislation. With regard to Article 16(1) of the Directive, it was concluded that Malta did not appear to have maintained or introduced provisions other than those laid down in the Directive. Thus, conformity was thereby observed. With respect to Article 16(2) of the Directive, it was pointed out that an explicit national provision corresponding thereto was not located within the NIMs. However, the third and fourth sentences of Paragraph 4 of FIR/03/2011 were quoted simply for the purposes of emphasising that the financial institution itself, its Board of Directors and its management, are obliged to observe and adhere to the rules set out in the relative applicable legislation, namely, the ‘Financial Institutions Act’ as well as the relevant Rules made thereunder. It was pointed out that, as stated in Paragraph 3 of FIR/03/2011, the Rule is modelled on the requisites of Directive 2009/110/EC. Furthermore, as stated in Article 27 of the ‘Financial Institutions Act’, the objective of the Act is, in part, to implement the provisions of Directive 2009/110/EC. Furthermore, the first sentence of Article 13(1), as well as, Article 15(1) of the ‘Financial Institutions Act’ were quoted. The first sentence of Article 13(1) of the ‘Financial Institutions Act’ sets out an obligation upon the competent authority, which is required to carry out the functions assigned to it by the said Act and is required to ensure that financial institutions carrying on business in Malta comply with ‘Financial Institutions Act’, regulations, directives and Rules issued under the said Act and with the conditions of their licences. Thus, it was pointed out that the ‘Malta Financial Services Authority’ is required to ensure that financial institutions comply with the national rules concerning such financial institutions, including but not limited to, compliance with the national provisions which transpose the relative provisions of the Directive. Moreover, on the basis of Article 15(1) of the ‘Financial Institutions Act’, the competent authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of a financial institution. From the quoted provisions, it was considered that it did not appear that electronic money issuers are permitted from derogating from the provisions of national law implementing or corresponding to the provisions of the Directive, save the cases where explicitly provided therein. On the basis of this, conformity was observed.

##### 2.4.4.2. Article 18 – Transitional provisions

With regard to the transposition of Article 18 of the Directive into Maltese legislation, non-conformity was observed in relation to Article 18(1) and (3) of the Directive. In relation to the first subparagraph of Article 18(1) of the Directive, it was considered that following a screening of the national implementing measures which transpose Directive 2009/110/EC, a corresponding national provision was not located. It was pointed out that the principal implementing measures relative to Directive 2009/110/EC entered into force after 30 April 2011, specifically, the relative transposing provisions of the ‘Financial Institutions Act’ entered into force on 24 June 2011, by Act X of 2011. Moreover, it was noted that FIR/03/2011 appears to have been published on a date which is anterior to 30 April 2011. In this respect, non-conformity was observed and it was suggested that clarification be sought from the competent national authorities.

Concerning the second subparagraph of Article 18(1) of the Directive, following a screening of the national implementing measures which transpose Directive 2009/110/EC, it was pointed out that a corresponding national provision was not located. It was considered that both the ‘Financial Institutions Act’, as well as FIR/03/2011, contain a provision (Article 14(1) and Paragraph 52 respectively), which deal with the power of the competent authority to require the submission of information by a financial institution. However, there did not appear to be any requirement relating to the fact that such information should be submitted by 30 October 2011, as set out in the Directive provision. Thus, owing to this, the mentioned national provisions were not quoted, since they were not considered to transpose the Directive provision. In this case too, non-conformity was observed and it was suggested that clarification be sought from the competent national authorities.

Likewise, in the case of the third subparagraph of Article 18(1) of the Directive, following a screening of the national implementing measures which transpose Directive 2009/110/EC, a corresponding national provision was not located. Consequently, non-conformity was concluded and it was also suggested that clarification be sought from the competent national

authorities.

Concerning the option set out in Article 18(2) of the Directive, it was concluded that it appeared that Malta did not choose to apply it within its relative national legislation.

With regard to Article 18(3) of the Directive, following a screening of the national implementing measures which transpose Directive 2009/110/EC, a corresponding national provision was not located. Thus, non-conformity was concluded and it was suggested that clarification be sought from the competent national authorities.

### 3. Conclusions on conformity

#### 3.1. Cases of partial conformity

**Article 9(6) of the Directive**, in respect of requiring small electronic money institutions to apply for authorisation in certain circumstances and the withdrawal of waiver: Partial conformity was observed, since the transposing provisions do not seem to refer to the provisions which transpose paragraphs 2 and 4 of Article 9 of the Directive, referred to in the first sentence of the Directive provision.

**Article 12 of the Directive**, in respect of the prohibition of interest: despite that Article 10A of the 'Financial Institutions Act' complies with the requirements which are set out in the Directive provision, it may be considered that Paragraph 50 of FIR/03/2011 does not seem to fully comply with the requirements set out therein, since the second sentence of the mentioned transposing provision provides that, offering rewards to customers, such as anniversary gifts are not permissible, whereas the offering of discount vouchers for use when purchasing particular products for customers who for instance hold electronic money above a particular minimum threshold or who undertake a set number of transactions, is allowable. Thus, the second sentence of Paragraph 50 of FIR/03/2011 appears to hamper the proper transposition of the prohibition set out in the Directive provision, since it provides for an exception. Consequently, on the basis of this, partial conformity was observed.

#### 3.2. Cases of non-conformity

**Article 1(e) of the Directive** in respect of when Member States or their regional or local authorities act in their capacity as public authorities: Non-conformity was observed, since the transposing provision appears to cater for the opposite scenario when compared to the Directive provision, namely, it refers to Member States or their regional or local authorities when not acting in their capacity as public authorities, as opposed to when acting in their capacity as public authorities. Thus, owing to this, non-conformity is observed.

**Article 18(1) (first, second and third subparagraphs) of the Directive**, in respect of transnational provisions: Non-conformity was observed, since the NIMs do not contain any national provisions which would satisfy the requirements set out in the Directive provision.

**Article 18(3) of the Directive**, in respect of transnational provisions: Non-conformity was observed, since the NIMs do not contain any national provisions which would satisfy the requirements set out in the Directive provision.

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

##### 3.3.1. Malta has chosen to transpose the following options into its national legislation:

**Article 3(3), sixth subparagraph of the Directive**: concerning the waiver of acquisition obligations under Article 3(3) for hybrid e-money institutions: Malta appears to have chosen to apply this option by Article 9(6) of the 'Financial Institutions Act'. In this regard, the mentioned transposing provision sets out a discretionary power upon the national competent authority, being the 'Malta Financial Services Authority', wherein by means of a Financial Institutions Rule and subject to such criteria as may be established therein, it may provide that all or part of the provisions of this article, that is, Article 9 thereof, be waived. Thus, in this regard, Malta chose to allow the national competent authority to apply the possible waiver, as opposed to Malta itself. Therefore, it left the discretion of the possible application of the waiver in the hands of the competent national authority. Conformity was observed in this regard.

**Article 5(5) of the Directive**: concerning the possibility for competent authorities to require e-money institutions to hold 20 % more or 20 % less own funds Malta appears to have chosen to apply this possibility by Paragraph 23 of FIR/03/2011. In this regard, the mentioned Maltese transposing provision sets out a possibility in relation to an electronic money

institution whereby, it may, based on an evaluation by the ‘Malta Financial Services Authority’ of the institution’s risk-management processes, risk loss databases and internal control mechanisms, be required by the authority to hold an amount of own funds which is up to 20% higher or 20% lower than the amount of own funds which would result from the application of the relevant method/s chosen in accordance with Paragraph 21 of FIR/03/2011, referred to in Paragraph 23 of FIR/03/2011. Conformity was observed in this regard.

**Article 7(1) of the Directive:** concerning the calculation of safeguarding requirements when funds can be used for future payment transactions and for non-payment services: Malta appears to have chosen to apply this option by Paragraph 40 of FIR/03/2011. Details concerning the requirements set out therein are provided in the relative observation.

**Article 7(2), third subparagraph of the Directive:** concerning the determination of assets which do not constitute secure, low-risk assets for the purposes of Article 7(1) of the Directive: Malta appears to have chosen to apply this option by the second subparagraph of Paragraph 41 of FIR/03/2011. In this regard, the Maltese transposing provision sets out a discretionary power upon the authority, which may, in exceptional circumstances and with adequate justification, based on an evaluation of security, maturity, value or other risk elements of assets as specified above, determine which of those assets do not constitute secure, low-risk assets. Conformity was observed in this regard.

**Article 7(3) of the Directive:** concerning the application of safeguarding requirements only to funds that individually exceed EUR 600: Malta appears to have chosen to apply this option by Paragraph 42 of FIR/03/2011. The Maltese transposing provision sets out that the safeguarding requirements, in line with paragraph 56 of FIR/01/2011, shall be applicable to electronic money institutions which undertake payment services listed in the Second Schedule to the ‘Financial Institutions Act’ that are not linked to the activity of issuing electronic money. Conformity was observed in this regard.

**Article 9(1), first subparagraph of the Directive:** concerning the waiver of authorisation/supervision requirements for small payment institutions: Malta appears to have chosen to apply it by the introductory wording of Article 3(7) and (8) of the ‘Financial Institutions Act’, as well as by the introductory wording of Paragraph 26, and by the first sentence of Paragraph 31 of FIR/03/2011. Conformity was observed in this regard.

**Article 9(1), third subparagraph of the Directive:** concerning the additional requirement of a maximum storage: Malta appears to have chosen to apply it by the proviso to Article 3(7) of the ‘Financial Institutions Act’ as well as by the second paragraph of Paragraph 26 of FIR/03/2011. In this regard, both transposing provisions set out an additional requirement in relation to the granting of the optional exemptions under Article 3(7) of the ‘Financial Institutions Act’ and Paragraph 26 of FIR/03/2011. In this respect, the underlying contractual arrangements of the company are required to provide that the payment instrument or payment account of the consumer where the electronic money is stored is subject to a maximum storage amount of not more than two hundred and fifty Euros (€250). Conformity was observed in this regard.

**Article 9(4) of the Directive:** concerning the limitation of activities carried out by waived entities under Article 26: Malta appears to have chosen to apply it by Article 3(9) of the ‘Financial Institutions Act’ as well as by the third sentence of the second paragraph of Paragraph 29 of FIR/03/2011. Conformity was observed in this regard.

*3.3.2. Malta has not chosen to transpose the following options into its national legislation:*

**Article 1(3) of the Directive:** concerning the possible waiver of the application of all or part of the provisions mentioned therein.

**Article 5(7) of the Directive:** concerning the non-application of the of paragraphs 2 and 3 of Article 5 of the Directive to electronic money institutions which are included in the consolidated supervision of the parent credit institutions pursuant to Directive 2006/48/EC.

**Article 7(4) of the Directive:** concerning the determination of the safeguarding method allowed by Member States.

**Article 18(2) of the Directive (transitional provision):** concerning the possibility for Member States to provide for an electronic money institution to be automatically granted authorisation and entered in the register provided for in Article 3 of the Directive 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 thereof.

#### 4. List of acronyms

‘The Directive’ / ‘Directive’ – Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC;

‘NIM/s’ – National Implementing Measure/s;

‘FIR/01/2011’ – Financial Institution Rule titled ‘Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act’;

‘FIR/02/2011’ – ‘Supervisory and Regulatory Requirements of Institutions Authorised under the Financial Institutions Act 1994’;

‘FIR/03/2011’ – ‘Taking up, Pursuit of and Prudential Supervision of the business of financial institutions authorised under the Financial Institutions Act 1994’;

‘FIA’ – ‘Financial Institutions Act’ [Chapter 376 of the Laws of Malta];

‘Art.’ – Article/s;

‘intr.’ – introductory;

‘Para./s’ – Paragraph/s;

‘def.’ – definition/s;

‘intr.’ – introductory.

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
Article No.	EN	Act, Article No.	EN	Observations
Art. 1(1) intr. wording	<p style="text-align: center;">TITLE I <b>SCOPE AND DEFINITIONS</b></p> <p style="text-align: center;"><i>Article 1</i></p> <p style="text-align: center;"><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>FIR/03/2011</b></p> <p><b>Para. 2 &amp; Para. 5, intr. wording thereto</b></p>	<p><b>Para. 2 of FIR/03/2011</b></p> <p>2. The objective of the Rule on the taking up, pursuit of and prudential supervision of the business of financial institutions authorised to issue electronic money in terms of the Third Schedule to the Act (“the Rule”) is to lay down all the regulatory and supervisory procedures the authority will adopt in respect of such financial institutions. [...]</p> <p><b>Intr. wording of Para. 5 of FIR/03/2011</b></p> <p>5. This Directive recognises the following categories of electronic money issuers:</p>	<p><b>CONFORM</b></p> <p>Paragraph 2, as well as the introductory wording to Paragraph 5 of FIR/03/2011, transpose the introductory wording of Article 1 of the Directive.</p> <p>FIR/03/2011, titled the ‘Taking up, pursuit of and prudential supervision of the business of financial institutions authorised to issue electronic money under the Financial Institutions Act 1994’, specifically Paragraph 2 thereof, sets out the objective of the mentioned Rule. In this regard, the mentioned paragraph sets out that the objective of the Rule on the taking up, pursuit of and prudential supervision of the business of financial institutions authorised to issue electronic money in terms of the Third Schedule to the Act (“the Rule”) is to lay down all the regulatory and supervisory procedures the authority will adopt in respect of such financial institutions.</p> <p>The words “the Act”, which are included in the Maltese transposing provision, are to be understood as a reference to the principal chapter of law, namely Chapter 376 of the Laws of Malta titled the ‘Financial Institutions Act’, whose scope is to regulate the business of financial institutions. The Third Schedule thereof, which is referred to in the mentioned Maltese transposing provision, deals with ‘Financial Institutions issuing electronic money’ and the objective thereof is to set out the activities that may be undertaken by financial institutions that issue electronic money in terms of the ‘Financial Institutions Act’.</p> <p>The second national transposing provision for the purposes of the transposition of the introductory wording of Article 1 of the Directive is also considered to be the introductory wording of Paragraph 5 of FIR/03/2011, which provides that the FIR/03/2011 recognises the categories of electronic</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>money issuers, which will be dealt with and addressed in more detail below.</p> <p>Since the Maltese transposing provisions appear to correctly include all of the requirements which are set out in the Directive provision, conformity is thereby observed.</p>
<p><b>Art. 1(1)(a)</b></p>	<p>(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;</p>	<p><b>FIR/03 2011 Para. 5(a)</b></p>	<p><b>Para. 5(a) of FIR/03/2011</b></p> <p>(a) credit institutions licensed under the Banking Act (Cap 371), or their equivalent under the laws of a Member State or an EEA State, and includes branches of credit institutions which have their head offices outside the Community;</p>	<p><b>CONFORM</b></p> <p>Paragraph 5(a) of FIR/03/2011 transposes Article 1(1)(a) of the Directive.</p> <p>In terms of the Maltese transposing provision, credit institutions licensed under the Banking Act. Additionally, Paragraph 5(a) of FIR/03/2011 further adds that the equivalent of such credit institutions as established under the laws of a Member State or an EEA State are also to be regarded as being credit institutions for the purposes of FIR/03/2011. Furthermore, branches of credit institutions which have their head offices outside the Community are to be recognised as a category of electronic money issuers.</p> <p>Reference to the ‘Banking Act’ is made in Paragraph 5(a) of FIR/03/2011. In this regard, this Act constitutes primary legislation and is the principal chapter of law (Chapter 371 of the Laws of Malta), whose scope is to regulate the business of banking. The second definition of Article 2(1) of the ‘Banking Act’ sets out a definition of the term “credit institution”, which is to be understood as an undertaking, the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account. In this regard, the mentioned definition corresponds to and includes all of the elements of the definition of the term “credit institution” set out in point 1 of Article 4 of Directive 2006/48/EC, which is referred to in Article 1(1)(a) of the Directive.</p> <p>In relation to the term “branch” which is included in the Maltese transposing provision, the ‘Financial Institutions Act’, specifically the fourth definition set out in Article 2(1) therein, provides that “‘branch’ means a place of business other than the head office which is part of a financial institution not having a legal personality and which carries out directly some or all of the transactions, as authorised, inherent in the business of a financial institution; all the places of business set up in Malta by an institution with a head office in another Member State shall be regarded as a single branch”. The mentioned definition appears to be in line with the definition of the term</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>“branch” set out in point 3 of Article 4 of Directive 2006/48/EC, which is referred to in Article 1(1)(a) of the Directive.</p> <p>In relation to the reference to Article 38 of Directive 2006/48/EC, which is referred to in the Directive provision, such a corresponding reference does not appear to be included within Paragraph 5(a) of FIR/03/2011. However, Article 8E of the ‘Financial Institutions Act’, which deals with the ‘Opening of branches having their head office outside the European Union’, is the corresponding provision of Article 38 of Directive 2006/48/EC and sets out that in the assessment of an application for the opening of a branch by a financial institution authorised to issue electronic money and having its head office outside the Community, the competent authority may not apply provisions which result in more favourable treatment than that accorded to a financial institution having its head office within the Community. Furthermore, the competent authority is required to notify the European Commission of all authorisations for branches of financial institutions having their head office outside the Community. This is in accordance with the referred-to Article 38 of Directive 2006/48/EC. Despite that Paragraph 5(a) of FIR/03/2011 does not make explicit reference to the corresponding Maltese provision, it can be inferred that Article 8E of the ‘Financial Institutions Act’ is applicable to Paragraph 5(a) of FIR/03/2011, since it deals with branches of credit institutions which have their head offices outside the Community.</p> <p>Thus, since Paragraph 5(a) of DIR/03/2011 includes all of the requirements which are set out in the Directive provision, conformity is observed.</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>FIR/03/2011 Para. 5(b) &amp; Para. 8, 3<sup>rd</sup> def. thereof</b>	<p><b>Para. 5(b) of FIR/03/2011</b>  (b) electronic money institutions as defined in the Rule (see paragraph 8 below), or their equivalent under the laws of a Member State or an EEA State, and includes branches thereof which have their head offices outside the Community;</p> <p><b>3<sup>rd</sup> def. of Para. 8 of FIR/03/2011</b></p>	<p><b>CONFORM</b></p> <p>Paragraph 5(b), as well as the third definition located in Paragraph 8 of FIR/03/2011, transpose Article 1(1)(b) of the Directive.</p> <p>In this regard, Paragraph 5(b) of FIR/03/2011 refers to electronic money institutions as defined in FIR/03/2011, specifically paragraph 8 thereof, or, additionally, their equivalent under the laws of a Member State or an EEA State, and also includes branches thereof which have their head offices outside the Community. Paragraph 5(b) of FIR/03/2011 makes reference to the definition of “electronic money institutions” as set out in Paragraph 8</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
	<p>“electronic money institution” means a financial institution that has been licensed in accordance with the Act or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive (2009/110/EC) to issue electronic money. For the purposes of this Rule, financial institutions authorised to undertake activities listed in the Third Schedule to the Act shall be referred to as “electronic money institutions”;</p>	<p>thereof, specifically in the third definition thereof. In this regard, the mentioned definition provides that “electronic money institution” means a financial institution that has been licensed in accordance with ‘Financial Institutions Act’ or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive, namely Directive 2009/110/EC, to issue electronic money. Moreover, for the purposes of FIR/03/2011, financial institutions authorised to undertake activities listed in the Third Schedule to the ‘Financial Institutions Act’ shall be referred to as “electronic money institutions”.</p> <p>In this regard, the Third Schedule to the ‘Financial Institutions Act’, which is referred to in the third definition of Paragraph 8 of FIR/03/2011, deals with ‘Financial Institutions issuing electronic money’ and the objective thereof is to set out the activities that may be undertaken by financial institutions that issue electronic money in terms of the ‘Financial Institutions Act’. Thus, such a reference is in accordance with the reference to point 1 of Article 2 of the Directive, which is referred to in the Directive provision, since as mentioned, the Third Schedule to the ‘Financial Institutions Act’ likewise sets out the activities that may be undertaken by financial institutions that issue electronic money, and thus, which have been authorised in doing so under the mentioned Act.</p> <p>In relation to the reference to Article 8 of the Directive, which is referred to in the Directive provision, such a corresponding reference does not appear to be included within Paragraph 5(b) of FIR/03/2011. However, Article 8E of the ‘Financial Institutions Act’, which deals with the ‘Opening of branches having their head office outside the European Union’, is the corresponding provision of Article 8 of the Directive and sets out that in the assessment of an application for the opening of a branch by a financial institution authorised to issue electronic money and having its head office outside the Community, the competent authority may not apply provisions which result in more favourable treatment than that accorded to a financial institution having its head office within the Community. Furthermore, the competent authority is required to notify the European Commission of all authorisations for branches of financial institutions having their head office outside the Community. This is in accordance with the referred-to Article 8 of the Directive. Despite that Paragraph 5(b) of FIR/03/2011 does not make</p>



Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>explicit reference to Article 8E of the ‘Financial Institutions Act’, it can be inferred that the mentioned provision is applicable to Paragraph 5(b) of FIR/03/2011, since it deals with branches of credit institutions which have their head offices outside the Community.</p> <p>Therefore, since the Maltese transposing provisions include all of the requirements which are set out in the Directive provision, conformity is thereby observed.</p>
<b>Art. 1(1)(c)</b>	(c) post office giro institutions which are entitled under national law to issue electronic money;	<b>FIR/03/2011</b> <b>Para. 5(c)</b>	<b>Para. 5(c) of FIR/03/2011</b> (c) post office giro institutions which are entitled under national law to issue electronic money;	<b>CONFORM</b> Paragraph 5(c) of FIR/03/2011 literally transposes Article 1(1)(c) of the Directive.
<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;	<b>FIR/03/2011</b> <b>Para. 5(d)</b>	<b>Para. 5(d) of FIR/03/2011</b> (d) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;	<b>CONFORM</b> Paragraph 5(d) of FIR/03/2011 literally transposes Article 1(1)(d) of the Directive.
<b>Art. 1(1)(e)</b>	(e) Member States or their regional or local authorities when acting in their capacity as public authorities.	<b>FIR/03/2011</b> <b>Para. 5(e)</b>	<b>Para. 5(e) of FIR/03/2011</b> (e) Member States or their regional or local authorities when not acting in their capacity as public authorities.	<b>NOT CONFORM</b> Paragraph 5(e) of FIR/03/2011 almost literally transposes Article 1(1)(e) of the Directive.  Paragraph 5(e) of FIR/03/2011 refers to Member States or their regional or local authorities when not acting in their capacity as public authorities. In this regard, the Maltese transposing provision appears to cater for the opposite scenario when compared to the Directive provision, namely, it refers to Member States or their regional or local authorities when not acting in their capacity as public authorities, as opposed to when acting in their capacity as public authorities.  Thus, owing to this, non-conformity is observed.
<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	<b>N/A</b>	<b>N/A</b>	<b>CONFORM</b> Following an explicit screening of the national implementing measures

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	business of electronic money institutions.			<p>relative to Directive 2009/110/EC, an explicit provision/s which would transpose Article 1(2) of the Directive was not located.</p> <p>However, conformity is being observed, since the provisions contained in Title II of the Directive were correctly transposed into Maltese legislation, as will be shown in the forthcoming observations of the present Conformity Assessment Report. Thus, the requirements relating to the rules for the taking up, the pursuit and the prudential supervision of the business of electronic money institutions were correctly transposed and catered for in the relative Maltese transposing legislation.</p> <p>It should be however pointed out that, as will result from the present Report, partial conformity was observed in relation to one of the provisions contained in Title II of the Directive, that is, in relation to Article 9(6) of the Directive. However, conformity is still being observed in relation to compliance with the requirements set out in Article 1(2) of the Directive.</p>
<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.	N/A	N/A	Article 1(3) of the Directive sets out an option in relation to Member States. Concerning this option, Malta did not choose to apply it within its relative national legislation.
<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.	<b>FIR/03/2011</b> <b>Para. 7(a)</b>	<p><b>Para. 7(a) of FIR/03/2011</b> 7. This Rule shall not apply to the following:</p> <p>(a) monetary value stored on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;</p>	<p><b>CONFORM</b></p> <p>Paragraph 7(a) of FIR/03/2011 transposes Article 1(4) of the Directive.</p> <p>In full compliance with the Directive provision, Paragraph 7(a) of FIR/03/2011 sets out that FIR/03/2011 shall not apply to monetary value stored on instruments. Moreover, in full compliance with Article 3(k) of Directive 2007/64/EC, which is referred to in the Directive provision, paragraph 7(a) of FIR/03/2011 further specifies monetary value stored on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services. Thus, rather than including a corresponding reference</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>within the Maltese transposing provision, the Maltese legislator chose to reproduce and include the content of Article 3(k) of Directive 2007/64/EC within Paragraph 7(a) of FIR/03/2011.</p> <p>Since all of the requirements which are included within the Directive provision are correctly transposed, conformity is observed.</p> <p>As an additional comment, it should be pointed out that the second subparagraph of Article 7(a) of FIR/03/2011 sets out that an instrument shall be considered to be used within such a limited network if it can be used only either for the purchase of goods and services in a specific store or chain of stores, or for a limited range of goods or services, regardless of the geographical location of the point of sale. Where such an instrument develops into a general-purpose instrument, the exemption from the scope of this Rule shall no longer apply. Instruments which can be used for purchases in stores of listed merchants shall not be exempted as such instruments are typically designed for a network of service providers which is continuously growing.</p>
<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(l) of Directive 2007/64/EC.	<b>FIR/03/2011</b> <b>Para. 7(b)</b>	<p><b>Para. 7(b) of FIR/03/2011</b></p> <p>7. This Rule shall not apply to the following:</p> <p>(b) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT device or IT operator does not act only as an intermediary between the holder of electronic money and/or the payment service user and the supplier of the goods and services.</p>	<p><b>CONFORM</b></p> <p>Paragraph 7(b) of FIR/03/2011 transposes Article 1(5) of the Directive.</p> <p>In full compliance with the Directive provision, Paragraph 7(b) of FIR/03/2011 sets out that FIR/03/2011 shall not apply to monetary value that is used to make payment transactions. In addition, in full compliance with Article 3(l) of Directive 2007/64/EC, which is referred to in Article 1(5) of the Directive, FIR/03/2011 shall not apply to monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT device or IT operator does not act only as an intermediary between the holder of electronic money and/or the payment service user and the supplier of the goods and services. This fully reflects the content of the referred-to Article 3(l) of Directive 2007/64/EC.</p> <p>Thus, rather than including a corresponding reference within the Maltese transposing provision, the Maltese legislator chose to reproduce and include</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>the content of the referred-to Article 3(l) of Directive 2007/64/EC within Paragraph 7(b) of FIR/03/2011.</p> <p>Since all of the requirements which are included within the Directive provision are correctly transposed, conformity is observed.</p> <p>As an additional comment, it should be pointed out that the second subparagraph of Article 7(b) of FIR/03/2011 sets out a concrete example of when such a situation arises, namely the mentioned provision sets out that this is a situation where, for instance, a mobile phone or other digital network subscriber (i.e. the electronic money holder and/or payment service user) pays the network operator directly and there is neither a direct payment relationship nor a direct debtor-creditor relationship between the network subscriber and any third party supplier of goods or services delivered as part of the transaction.</p>
<b>Art. 2 intr. wording</b>	<p><i>Article 2</i> <b>Definitions</b></p> <p>For the purposes of this Directive, the following definitions shall apply:</p>	<b>FIR/03 2011</b> <b>Para. 8, intr. wording</b>	<p><b>Para. 8, intr. wording of FIR/03/2011</b></p> <p>8. In this Rule, unless the context otherwise requires, the following definitions shall apply:</p>	<p><b>CONFORM</b></p> <p>The introductory wording of Paragraph 8 of FIR/03/2011 transposes the Article 2, introductory wording of the Directive.</p> <p>In compliance with the Directive provision, the mentioned Maltese transposing provision provides that unless the context otherwise requires, the definitions which will be addressed in more detail below shall apply for the purposes of FIR/03/2011.</p> <p>Owing the correct transposition of the Directive provision, conformity is observed.</p>
<b>Art. 2 pt (1)</b>	<p>1. “electronic money institution” means a legal person that has been granted authorisation under Title II to issue electronic money;</p>	<b>FIR/03 2011</b> <b>Para. 8, 3<sup>rd</sup> def. &amp; Art. 1, 2<sup>nd</sup> para. of the FIA, 3<sup>rd</sup> Schedul</b>	<p><b>Para. 8, 3<sup>rd</sup> def. of FIR/03/2011</b></p> <p><i>‘electronic money institution’</i> means a financial institution that has been licensed in accordance with the Act or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive (2009/110/EC) to issue electronic money. For the purposes of this Rule, financial institutions authorised to</p>	<p><b>CONFORM</b></p> <p>The third definition set out in Paragraph 8 of FIR/03/2011, as well as the second paragraph of Article 1 of the Third Schedule to the ‘Financial Institutions Act’, transpose Article 2, point 1, of the Directive.</p> <p>In this regard, the third definition set out in Paragraph 8 of FIR/03/2011 sets out that ‘electronic money institution’ means:</p> <ul style="list-style-type: none"> <li>- a financial institution that has been licensed in accordance with the Act, being the ‘Financial Institutions Act’, or</li> </ul>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
	<p><b>e thereto</b> undertake activities listed in the Third Schedule to the Act shall be referred to as “electronic money institutions”;</p> <p><b>Art. 1, 2<sup>nd</sup> para. of the 3<sup>rd</sup> Schedule to the ‘Financial Institutions Act’</b>  1. In this Schedule, unless the context otherwise requires, the following definitions shall apply -</p> <p>“electronic money institution” means a financial institution that has been licensed in accordance with this Act and authorised to issue electronic money or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive to issue electronic money.</p>	<ul style="list-style-type: none"> <li>- additionally, a financial institution that holds an equivalent authorisation in another country in terms of the Electronic Money Directive (2009/110/EC) to issue electronic money.</li> </ul> <p>Moreover, the third definition set out in Paragraph 8 of FIR/03/2011 sets out that for the purposes of FIR/03/2011, financial institutions authorised to undertake activities listed in the Third Schedule to the Act shall be referred to as ‘electronic money institutions’.</p> <p>The third definition set out in Paragraph 8 of FIR/03/2011 appears to be more specific and detailed when compared to the Directive provision. In relation to the details, third definition set out in Paragraph 8 of FIR/03/2011 does not explicitly set out that an electronic money institution means a legal person.</p> <p>In this regard, the sixteenth definition set out in Article 2(1) of the ‘Financial Institutions Act’ defines the term “financial institution” as any person who regularly or habitually acquires holdings or undertakes the carrying out of any activity listed in the First Schedule (which sets out the activities of financial institutions) for the account and at the risk of the person carrying out the activity. Thus, it may be inferred that a financial institution is endowed with legal personality and would thus be regarded as being a legal person, in compliance with the Directive provision.</p> <p>Furthermore, the second paragraph of Article 1 of the Third Schedule to the ‘Financial Institutions Act’ sets out that “electronic money institution” means a financial institution that has been licensed in accordance with the ‘Financial Institutions Act’ and authorised to issue electronic money or, additionally, a financial institution that holds an equivalent authorisation in another country in terms of the Electronic Money Directive to issue electronic money. The argument that was raised above concerning the non-inclusion of the words “legal personality” likewise applies in the case of the definition set out in the second paragraph of Article 1 of the Third Schedule to the ‘Financial Institutions Act’.</p> <p>The second paragraph of Article 1 of the Third Schedule to the ‘Financial Institutions Act’ makes explicit reference to the ‘Electronic Money Directive’. In this regard, Article 2(1) of the mentioned Act, specifically the fifteenth definition thereof, defines the words “Electronic Money Directive”</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
		<p>as Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as may be amended from time to time and includes any implementing measures that have been issued or may be issued thereunder [...].</p> <p>Since all of the requirements which are included within the Directive provision are included within the Maltese transposing provisions, conformity is observed.</p> <p>Concerning the requirements set out in recital 25 of the Directive, in accordance with the first sentence thereof, Article 3(5) of the Financial Institutions Act prohibits a licensed financial institution from taking deposits or other repayable funds from the public within the meaning of the 'Banking Act'. Thus, financial institutions are considered not to fall within the scope of the Banking Act, which is the primary chapter of law which regulates the business of banking in Malta. Concerning the second sentence of recital 25 of the Directive, wherein it is provided that it is appropriate to amend the definition of credit institution in Directive 2006/48/EC in order to ensure that electronic money institutions are not considered to be credit institutions: in this regard, the second definition set out in Article 2(1) of the 'Banking Act', set out a definition of the terms "bank" and "credit institution", which, in terms of the said definition are defined in the following manner:</p> <p>"bank or credit institution means an undertaking, the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account". Thus, financial institutions are not included within such a definition. It is also worth to point out that, on the basis of Article 2(3) of the 'Banking Act', the business activities of a credit institution may, besides the business of banking, include any or all of the additional activities listed in the Schedule thereto as may be determined by the competent authority, being the 'Malta Financial Services Authority'. In this regard, the said Schedule to the 'Banking Act' sets out a list of additional activities which may be carried out by credit institutions, amongst others, the issuance of electronic money (point 13 thereof). Thus, in terms of the said national provision, credit institutions may carry out the business of issuing electronic money. Thus, this complies with the requirements set out in recital 25 of the</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				Directive.
<b>Art. 2 pt (2)</b>	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;	<b>FIR/03 2011 Para. 8, 2<sup>nd</sup> def. &amp; Art. 1, 1<sup>st</sup> para. of the FIA, 3<sup>rd</sup> Schedule thereto</b>	<p><b>Para. 8, 2<sup>nd</sup> def. of FIR/03/2011</b> ‘<i>electronic money</i>’ 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 paragraph 1 of the Second Schedule to the Act, and which is accepted by a natural or legal person other than the electronic money issuer;</p> <p><b>Art. 1, 1<sup>st</sup> para. of the 3<sup>rd</sup> Schedule to the ‘Financial Institutions Act’</b></p> <p>1. In this Schedule, unless the context otherwise requires, the following definitions shall apply –</p> <p>“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 paragraph 1 of the Second Schedule and which is accepted by a natural or legal person other than the financial institutions that issued the electronic money;</p>	<p><b>CONFORM</b></p> <p>The second definition set out in Paragraph 8 of FIR/03/2011, as well as the first paragraph of Article 1 of the Third Schedule to the ‘Financial Institutions Act’, literally transpose Article 2, point 2, of the Directive.</p> <p>Both transposing provisions make reference to the definition of “payment transactions” as defined in paragraph 1 of the Second Schedule to the ‘Financial Institutions Act’. In this regard, the mentioned definition sets out that “‘payment transaction’ means the act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee”. The mentioned definition fully reflects and corresponds to the definition of “payment transactions” set out in point 5 of Article 4 of Directive 2007/64/EC, which is referred to in Article 2(2) of Directive 2009/110/EC.</p> <p>It should be pointed out that, owing to the literal wording which was resorted to by both Maltese transposing provisions, the scope of recitals 7 and 8 of the Directive is met, since the national definitions are unequivocal and fully in line with the Directive provision.</p> <p>Thus, owing to the correct transposition of the Directive provision into Maltese legislation, conformity is observed.</p> <p>As an additional observation, it should be pointed out that the second paragraph of second definition set out in Paragraph 8 of FIR/03/2011 further specifies that the definition of electronic money covers electronic money held on a payment device in the possession of the electronic money holder (that is, a physical device) or stored remotely at a server and managed by the electronic money holder through a specific account for electronic money (that is, a non-physical device).</p>
<b>Art. 2 pt (3)</b>	3. “electronic money issuer” means entities referred to in Article 1(1), institutions benefiting from the waiver	<b>FIR/03 2011 Para. 8,</b>	<b>Para. 8, 4<sup>th</sup> def. of FIR/03/2011</b> ‘ <i>electronic money issuer</i> ’ means entities referred to in paragraph 5 and	<p><b>CONFORM</b></p> <p>The fourth definition set out in Paragraph 8 of FIR/03/2011 transposes in an</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	under Article 1(3) and legal persons benefiting from a waiver under Article 9;	<b>4<sup>th</sup> def.</b>	legal persons benefiting from the waiver under Article 3(7) of the Act;	<p>almost literal manner Article 2, point 3, of the Directive.</p> <p>In this regard, the mentioned transposing provision sets out that ‘electronic money issuer’ means entities referred to in paragraph 5 and legal persons benefiting from the waiver under Article 3(7) of the Act. In the national provision, reference is made to paragraph 5 of FIR/03/2011, as well as to Article 3(7) of the ‘Financial Institutions Act’. Paragraph 5 of FIR/03/2011 sets out the categories of electronic money issuers and reflects and transposes Article 1(1) of the Directive. Thus, the first reference corresponds to the reference to Article 1(1) of the Directive, present in Article 2(3) of the Directive. As for the second reference which is present in the Maltese transposing provision, specifically, the reference to Article 3(7) of the ‘Financial Institutions Act’: this provision empowers the competent national authority with the discretionary power to waive the application of all or part of the provisions relating to general prudential requirements, initial capital, own funds and safeguarding requirements. Thus, this provision transposes Article 9 of the Directive, which likewise deals with the mentioned waiver. Therefore, the reference to Article 3(7) of the ‘Financial Institutions Act’ corresponds to and reflects the content of Article 9 of the Directive, referred to in Article 2(3) of the Directive.</p> <p>Consequently, owing to the correct transposition of the Directive provision into Maltese legislation, conformity is observed.</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 the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.	<b>FIR/03 2011 Para. 8, 1<sup>st</sup> def.</b>	<b>Para. 8, 1<sup>st</sup> def. of FIR/03/2011</b> <i>‘average outstanding electronic money’</i> means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.	<b>CONFORM</b> The first definition set out in Paragraph 8 of FIR/03/2011 literally transposes Article 2, point 4, of the Directive.



Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
Art. 3(1)	<p style="text-align: center;"><b>TITLE II</b> <b>REQUIREMENTS FOR THE TAKING UP, PURSUIT AND PRUDENTIAL SUPERVISION OF THE BUSINESS OF ELECTRONIC MONEY INSTITUTIONS</b></p> <p style="text-align: center;"><i>Article 3</i> <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>FIR/03/2011</b> <b>Paras. 16 &amp; 17</b></p>	<p><b>Para. 16 of FIR/03/2011</b></p> <p>16. Pursuant to Article 4(2) of the Act, the authority will apply the provisions of Financial Institutions Rule FIR/01 on the <i>Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act</i> in respect of prospective electronic money institutions as appropriate.</p> <p><b>Para. 17 of FIR/03/2011</b></p> <p>17. Any company desirous of establishing the business of a financial institution issuing electronic money operating in or from Malta shall, before commencing such business, apply in writing to the authority for a licence. The authority furthermore requires that all applications for a licence shall be filed in accordance with its official application forms as applicable, and shall follow the procedures stated in paragraphs 28 to 31 of FIR/01.</p>	<p><b>CONFORM</b></p> <p>Paragraphs 16 and 17 of FIR/03/2011 transpose Article 3(1) of the Directive.</p> <p>In this regard, Paragraph 16 of FIR/03/2011 sets out that, the authority, being the ‘Malta Financial Services Authority’, will apply the provisions of Financial Institutions Rule FIR/01 on the <i>Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act</i> in respect of prospective electronic money institutions, as appropriate. Paragraph 16 of FIR/03/2011 is made pursuant to Article 4(2) of the ‘Financial Institutions Act’. Article 4(2) of the mentioned Act, which is referred to in Paragraph 16 of FIR/03/2011, requires all applications for a licence to be in such form and accompanied by such information and to conform to such conditions as shall be prescribed from time to time by a Financial Institutions Rule. Furthermore, an application may only be withdrawn by written notice to the competent authority at a time before it has been granted or refused. Thus, Paragraph 16 of FIR/03/2011 is made pursuant to and is a consequence of the rules set out in the mentioned provision of the ‘Financial Institutions Act’.</p> <p>Paragraph 16 of FIR/03/2011 sets out an obligation upon the competent national authority, being the ‘Malta Financial Services Authority’, namely, to apply the provisions of Financial Institutions Rule FIR/01 titled the ‘<i>Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act</i>’, in respect of prospective electronic money institutions. In this regard, the mentioned Financial Institutions Rule (hereinafter referred to as ‘FIR/01/2011’), specifically Paragraph 7 thereof, sets out the scope and application of FIR/01/2011 and sets out that FIR/01/2011 applies to all companies as defined in Article 2 of the ‘Financial Institutions Act’, desirous of carrying out any of the activities listed in the Schedules to the mentioned Act in or from Malta and is based in part on the requisites of Directive 2007/64/EC on payment services in the EU internal market and Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions. Thus, Paragraph 7 of FIR/01/2011 makes a specific reference to Directive 2007/64/EC and furthermore provides that FIR/01/2011 is based upon the requisites of the mentioned Directive, amongst others. Thus, such a reference</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
		<p>appears to be appropriate, considering that Article 3(1) of the Directive refers to Directive 2007/64/EC.</p> <p>Paragraph 16 of FIR/03/2011 appears to be less specific when compared to Article 3(1) of the Directive, since it does not make specific reference to the national provisions which transpose Articles 5 and 10 to 15, Article 17(7) and Articles 18 to 25 of Directive 2007/64/EC, as referred to and specified in the Directive provision. Rather, Paragraph 16 of FIR/03/2011 refers to the application of the provisions of “the provisions of Financial Institutions Rule FIR/01/2011”. Thus, Paragraph 16 of FIR/03/2011 contains a general reference to FIR/01/2011, as opposed to a specific reference. However, such a general reference does not seem to detract from the level of conformity of the Maltese transposing provisions. Furthermore, the second national transposing provision relative to Article 3(1) of the Directive, that is, Paragraph 17 of FIR/03/2011, makes specific reference to particular provisions contained within FIR/01/2011, which will be addressed and assessed in more detail below.</p> <p>In this respect, therefore, Paragraph 17 of FIR/03/2011 requires any company desirous of establishing the business of a financial institution issuing electronic money operating in or from Malta, to apply in writing to the authority for a licence before commencing such business. Furthermore, the national authority, that is, the ‘Malta Financial Services Authority’ requires that all applications for a licence to be filed in accordance with its official application forms as applicable and to follow the procedures stated in paragraphs 28 to 31 of FIR/01/2011, which deal with the application for authorisation, referred to in Paragraph 17 of FIR/03/2011.</p> <p>In this regard, the referred-to paragraphs of FIR/01/2011 in Paragraph 17 of FIR/03/2011, consist of the following:</p> <ul style="list-style-type: none"> <li>- Paragraph 28 of FIR/01/2011 is the transposing provision relative to Article 5 of Directive 2007/64/EC, which is referred to in Article 3(1) of the Directive; and</li> <li>- Paragraph 31 of FIR/01/2011 is the transposing provision relative to Article 14 of Directive 2007/64/EC, which is referred to in Article 3(1) of the Directive.</li> </ul>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>However, the remaining referred-to national provisions contained in FIR/01/2011, that is, Paragraphs 29 to 30 thereof, do not seem to be the transposing provisions of Articles 10, 11, 12, 13, 15, 17(7) and Articles 18 to 25 of Directive 2007/64/EC, referred to in the Directive provision.</p> <p>However, despite that Paragraph 17 of FIR/03/2011 does not refer to all of the provisions of Directive 2007/64/EC which are referred to in Article 3(1) of the Directive, conformity may however still be observed, since, as was stated above, Paragraph 16 of FIR/03/2011 obliges the ‘Malta Financial Services Authority’ to apply the provisions of Financial Institutions Rule FIR/01/2011 on the ‘<i>Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act</i>’ in respect of prospective electronic money institutions. Thus, the rules contained within FIR/01/2011 are required to be applied to electronic money institutions.</p> <p>Therefore, despite the non-specific reference to the corresponding provisions mentioned in the Directive provision, since the overall scope of Article 3(1) of the Directive appears to have been satisfied, conformity is thereby observed.</p> <p>Concerning the requirements set out in recital 9 of the Directive, the provisions of Financial Institutions Rule FIR/01/2011 on the ‘<i>Application Procedures and Requirements for Authorisation of Licences under the Financial Institutions Act</i>’, are based, in part on the requisites of Directive 2007/64/EC and Directive 2009/110/EC and the rules contained therein apply to financial institutions as defined in Article 2 of the ‘Financial Institutions Act’. The First Schedule to the ‘Financial Institutions Act’ sets out the activities of financial institutions which, amongst others, includes the issuing of electronic money as defined in the Third Schedule of the said Act (point 10 thereof). Thus, the rules contained within FIR/01/2011, which, amongst others, contain the prudential supervisory regime, apply to financial institutions thus including electronic money institutions. This complies with recital 9 of the Directive.</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	<b>FIR/03 2011 Para. 43</b>	<b>Para. 43 of FIR/03/2011</b> 43. Given the crucial importance of safeguarding, an electronic money institution shall inform the authority in	<b>CONFORM</b> Paragraph 43 of FIR/03/2011, specifically the first sentence thereof, almost literally transposes Article 3(2) of the Directive.

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	funds that have been received in exchange for electronic money issued.		advance of any material change in measures taken for safeguarding of funds that have been received in exchange for electronic money issued. Such a material change may include <i>inter alia</i> a change in the safeguarding method, a change in the credit institution where safeguarded funds are deposited or a change in the insurance undertaking which insured or guaranteed the safeguarded funds.	<p>It has to be mentioned, as a reflection of recital 14 of the Directive, which sets out further clarity upon the meaning of the words “material change”, that the second sentence of the Maltese transposing provision provides concrete examples of what such a material change may include, namely, a change in the safeguarding method, a change in the credit institution where safeguarded funds are deposited or a change in the insurance undertaking which insured or guaranteed the safeguarded funds, <i>inter alia</i>. Such examples fully reflect the content of the cases set out in recital 14 of the Directive.</p> <p>Thus, since all of the requirements which are set out in the Directive provision are correctly included within the Maltese transposing provision, conformity is thereby observed.</p>
<b>Art. 3(3) 1<sup>st</sup> subpara.</b>	3. Any natural or legal person who has taken a decision to acquire or dispose of, directly or indirectly, a qualifying holding within the meaning of point 11 of Article 4 of Directive 2006/48/EC in an electronic money institution, or to further increase or reduce, directly or indirectly, such qualifying holding as a result of which the proportion of the capital or of the voting rights held would reach, exceed or fall below 20 %, 30 % or 50 %, or so that the electronic money institution would become or cease to be its subsidiary, shall inform the competent authorities of their intention in advance of such acquisition, disposal, increase or reduction.	<b>FIA Art. 9(1)(a)</b>	<p><b>Article 9(1)(a) FIA</b></p> <p>9. (1) If –</p> <p>(a) any person takes or intends to take any action to acquire or dispose, directly or indirectly, of a qualifying shareholding in a financial institution or to further increase or reduce, directly or indirectly, such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in that financial institution reaches, exceeds or falls below 20 per cent, 30 per cent or 50 per cent or so that the financial institution becomes or ceases to be the subsidiary of such person;</p> <p>without obtaining the prior approval of the competent authority [...]</p>	<p><b>CONFORM</b></p> <p>Article 9(1)(a) of the ‘Financial Institutions Act’ transposes Article 3(3), first subparagraph of the Directive. Very similar wording was used in the regard. Article 9 of the mentioned Act deals with ‘Notification of new or variation in participation or control’.</p> <p>Article 9(1)(a) of the ‘Financial Institutions Act’ requires any person who takes or intends to take any action to acquire or dispose, directly or indirectly, of a qualifying shareholding in a financial institution or to further increase or reduce, directly or indirectly, such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in that financial institution reaches, exceeds or falls below 20 %, 30 % or 50 % or so that the financial institution becomes or ceases to be the subsidiary of such person, to obtain the prior approval of the competent national authority, that is, the ‘Malta Financial Services Authority’.</p> <p>It should be noted that Article 9(1)(a) of the ‘Financial Institutions Act’ is formulated in a different manner when compared to the Directive provision and it may be inferred there from that the concerned person is duty bound to inform the competent authorities, in advance, of his/her intention to acquire, dispose, increase or decrease a qualifying shareholding, in line with the requirement set out in the Directive provision. Such an inference is made since in the event wherein the prior approval of the ‘Malta Financial Services</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
		<p>Authority’ is not sought in relation to the above, certain specific consequences will ensue. Specifically, wherein the prior approval of the competent national authority is not sought, the competent authority may take the measures which correspond to those set out in the second sentence of the third subparagraph of Article 3(3) of the Directive, which will be assessed in more detail below. Thus, it may be concluded that the prior approval of the ‘Malta Financial Services Authority’ is obligatory, since if no such notification takes place, the mentioned consequences will come into play.</p> <p>For the purposes of clarity, the thirty-first definition set out in Article 2(1) of the ‘Financial Institutions Act’, sets out a definition of the words “qualifying shareholding”, which are included within the Maltese transposing provision and which are defined in the following manner:</p> <p>“qualifying shareholding” means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights, taking into account, the voting rights as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading and amending Directive 2001/34/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists, and “qualifying shareholder” shall be construed accordingly:</p> <p>Provided that, in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and, or placing of financial instruments on a firm commitment basis in terms of point 6 of Section A of Annex 1 to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition”.</p> <p>The above appears to be in line with point 11 of Article 4 of Directive 2006/48/EC, which is referred to in the first subparagraph of Article 3(3) of</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>the Directive.</p> <p>It should be pointed out that certain differences were noted between the Maltese transposing provision and the Directive provision: whereas the Directive provision specifically refers to a “natural or legal person”, the Maltese transposing provision simply refers to “any person”, without specifying whether such a person constitutes a natural or a legal person.</p> <p>Moreover, whereas the Directive provision specifically refers to an “electronic money institution”, the Maltese transposing provision refers to a “financial institution”. The sixteenth definition set out in Article 2(1) of the ‘Financial Institutions Act’ sets out a definition of the mentioned words, that is, of the words “financial institution”, which are defined in the following manner:</p> <p>“financial institution’ means any person who regularly or habitually acquires holdings or undertakes the carrying out of any activity listed in the First Schedule for the account and at the risk of the person carrying out the activity;”. In this regard, the First Schedule to the ‘Financial Institutions Act’ sets out the activities of financial institutions and the content thereof corresponds to the content of Annex I to Directive 2006/48/EC.</p> <p>The above-mentioned differences do not however seem to hamper the overall transposition of the Directive provision.</p> <p>Thus, since the Directive provision appears to have been transposed in a correct manner, conformity is thereby observed.</p>
<b>Art. 3(3) 2<sup>nd</sup> subpara.</b>	The proposed acquirer shall supply to the competent authority information indicating the size of the intended holding and relevant information referred to in Article 19a(4) of Directive 2006/48/EC.	<b>FIA Art. 9(4)(a)</b>	<b>Article 9(4)(a) FIA</b> (4) (a) Where a person intends to take any action as set out in sub-article (1)(a) and (b), such person shall notify the competent authority in writing of any such decision, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by a Financial	<b>CONFORM</b> Article 9(4)(a) of the ‘Financial Institutions Act’ transposes Article 3(3), second subparagraph of the Directive. Article 9(4)(a) of the ‘Financial Institutions Act’ sets out requirements which are applicable in the event where a person intends to take any action as set out in sub-article (1)(a) and (b) of Article 9 thereof (referred to in the Maltese transposing provision). In this regard, the referred-to national provisions, specifically Article 9(1)(a) of the ‘Financial Institutions Act’ is the national transposing provision of the first subparagraph of Article 3(3) of

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
	<p>Institutions Rule require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a suitable person. The competent authority shall, within two months of receiving such notification, give its approval or otherwise and if such period elapses without the competent authority having notified its decision, such decision shall be deemed to be an approval.</p>	<p>the Directive.</p> <p>On the other hand, Article 9(1)(b) of the ‘Financial Institutions Act’ foresees the situation wherein a financial institution takes or intends to take action to sell or dispose of its business or any significant part thereof, merge with any other company, undergo any reconstruction or vary its nominal or issued share capital or effect any material change in voting rights. With regard to the transposition of the second subparagraph of Article 3(3) of the Directive, Article 9(1)(a) of the ‘Financial Institutions Act’ is relevant.</p> <p>Thus, in the event wherein the situation foreseen in Article 9(1)(a) of the mentioned Act comes into play, Article 9(4)(a) of the ‘Financial Institutions Act’ sets out an obligation upon such a person, namely, such person is required to notify the competent authority, being the ‘Malta Financial Services Authority’ in writing of any such decision, wherein the size of the intended shareholding is required to be indicated, in line with the Directive provision. Moreover, such a person is required to provide any relevant information as and in the manner that the competent authority may require by a Financial Institutions Rule, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a suitable person. This part of the Maltese transposing provision appears to address the requirements which are set out in Article 19a(4) of Directive 2006/48/EC, which is referred to in the Directive provision, which sets out an obligation upon Member States to make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 19(1) thereof.</p> <p>Finally, the final sentence of the Maltese transposing provision requires the ‘Malta Financial Services Authority’ to give its approval or otherwise within two months of receiving such notification. This is in line with Article 19(1) of Directive 2006/48/EC, which stipulates that the national competent authorities shall have a maximum of three months from the date of the notification to oppose such a plan. Furthermore, the final sentence of the Maltese transposing provision sets out that if the mentioned two-month period elapses, without the competent authority having notified its decision,</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>such decision shall be deemed to be an approval.</p> <p>Since the requirements which are set out in the Directive provision appear to have been correctly transposed into Maltese legislation, conformity is observed.</p> <p>As an additional observation, it should be pointed out that Article 9(5)(a) of the 'Financial Institutions Act' sets out a specific notification obligation upon a financial institution, namely, that a institution is required to notify to the competent authority in writing the full particulars of any person who is proposed to become a controller or director of the financial institution or any person who is proposed to cease to be a controller or director of the financial institution.</p>
<p><b>Art. 3(3) 3<sup>rd</sup> subpara.</b></p>	<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><b>FIA Art. 9(4)(b) &amp; Art. 9(1)(a)</b></p>	<p><b>Article 9(4)(b) FIA</b></p> <p>(4) (b) If the competent authority is of the opinion that any person who is or is proposed to become a controller or director of a financial institution is not a suitable person to be a controller or director, the competent authority may make an order requiring such a person to cease to be a controller or director, or restraining such a person from becoming a controller or director.</p> <p><b>Article 9(1)(a) FIA</b></p> <p>9. (1) If -</p> <p>(a) any person takes or intends to take any action to acquire or dispose, directly or indirectly, of a qualifying shareholding in a financial institution or to further increase or reduce, directly or indirectly, such qualifying shareholding so that the proportion of the voting rights or of the share capital</p>	<p><b>CONFORM</b></p> <p>Article 9(4)(b) and 9(1)(a) of the 'Financial Institutions Act' transpose Article 3(3), third subparagraph of the Directive.</p> <p>Article 9(4)(b) of the mentioned Act transposes the requirement, set out in the Directive provision, relating to the expression of opposition by the competent authorities in relation to the influence exercise by the persons referred to in the second subparagraph of Article 3(3) of the Directive. In this regard, the Maltese transposing provision sets out that in the event where the competent authority, being the 'Malta Financial Services Authority', is of the opinion that any person who is or is proposed to become a controller or director of a financial institution is not a suitable person to be a controller or director, it has the discretionary obligation to make an order requiring such a person to cease to be a controller or director, or restraining such a person from becoming a controller or director. Thus, this provision reflects the requirement relating to the expression of opposition by the competent authorities.</p> <p>In relation to the second transposing provision, that is, Article 9(1)(a) of the 'Financial Institutions Act', this provision transposes the second requirement set out in the Directive provision, namely, the power of the competent authority to take other appropriate measures to bring the situation mentioned in the Directive provision to an end. Moreover, Article 9(1)(a) of the 'Financial Institutions Act' transposes the second sentence of the third</p>



Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
	<p>held by him in that financial institution reaches, exceeds or falls below 20 per cent, 30 per cent or 50 per cent or so that the financial institution becomes or ceases to be the subsidiary of such person;</p> <p>[...] if after having obtained such approval it subsequently appears to the competent authority that any of these actions is operating, or is likely to operate, to the detriment of the prudent and sound management of the financial institution, then, without prejudice to any other penalty which may be imposed under this Act or any regulations or Rules issued thereunder, the competent authority shall have the power to make an order:</p> <p>(i) restraining the person or financial institution from taking or continuing the action;</p> <p>(ii) declaring the action to be void and of no effect;</p> <p>(iii) requiring the person or financial institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;</p> <p>(iv) restraining the person or financial institution from exercising any rights which the action would, if lawful, have</p>	<p>subparagraph of Article 3(3) of the Directive, which foresees the possibility of ordering injunctions, sanctions against directors or managers, the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members in question.</p> <p>In this regard, Article 9(1)(a) of the ‘Financial Institutions Act’ lays down that if any person takes or intends to take any action to acquire or dispose, directly or indirectly, of a qualifying shareholding in a financial institution or to further increase or reduce, directly or indirectly, such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in that financial institution reaches, exceeds or falls below 20 %, 30 % or 50 % or so that the financial institution becomes or ceases to be the subsidiary of such person (which transposes the first subparagraph of Article 3(3) of the Directive), and if after having obtained such approval it subsequently appears to the competent authority that any of these actions is operating, or is likely to operate, to the detriment of the prudent and sound management of the financial institution, then, in such an event, the competent authority shall have the power to make the orders foreseen in points (i) to (v) of Article 9(1)(a) of the ‘Financial Institutions Act’, respectively, namely:</p> <ul style="list-style-type: none"> <li>- restraining the person or financial institution from taking or continuing the action;</li> <li>- declaring the action to be void and of no effect;</li> <li>- requiring the person or financial institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;</li> <li>- restraining the person or financial institution from exercising any rights which the action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired; (this type of order reflects the requirement foreseen in the Directive provision, namely, the possibility wherein the competent authority may order “the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members in question”);</li> </ul>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			<p>conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;</p> <p>(v) restraining the person or financial institution from taking any similar action or any other action within the categories set out in paragraphs (a) and (b).</p>	<p>- restraining the person or financial institution from taking any similar action or any other action within the categories set out in paragraphs (a) and (b) of Article 9 of the ‘Financial Institutions Act, referred to in the Article 9(1)(a) of the ‘Financial Institutions Act’. The referred-to Article 9(1)(b) thereof was briefly addressed in the observation relating to the transposition of the second subparagraph of Article 3(3) of the Directive.</p> <p>Moreover, Article 9(1)(a) of the ‘Financial Institutions Act’ sets out that the above orders are without prejudice to any other penalty which may be imposed under the mentioned or any regulations or Rules issued thereunder. Thus, in accordance with the Directive provision, the issuance of a sanction by the ‘Malta Financial Services Authority’ is a possibility which is foreseen in Article 9(1)(a) of the mentioned Act.</p> <p>The above-mentioned orders which may be ordered by the ‘Malta Financial Services Authority’, reflect the requirement set out in the Directive provision, namely wherein it requires the relative competent authority to take other appropriate measures to bring the situation which is likely to operate to the detriment of the prudent and sound management of the institution, to an end. Furthermore, such orders which may be ordered by the ‘Malta Financial Services Authority’ would also seem to reflect the possibility of imposing injunctions, despite that the use of such a word is not explicitly present within Article 9(1)(a) of the ‘Financial Institutions Act’. This could be inferred from the wording used in the mentioned national transposing provision, specifically, the word “restraining”, which is included in points (i), (iv) and (v) of Article 9(1)(a) of the mentioned Act, which would indicate that the issuance of an injunction would be possible.</p> <p>Thus, since all of the requirements which are set out in the Directive provision have been correctly transposed into Maltese legislation, conformity is thereby observed.</p>
<b>Art. 3(3) 4<sup>th</sup> subpara.</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	<b>FIA Art. 9(1)(a)</b>	<p><b>Article 9(1)(a) FIA</b></p> <p>9. (1) If -</p> <p>a) any person takes or intends to take any action to acquire or dispose, directly or indirectly, of a qualifying</p>	<p><b>CONFORM</b></p> <p>Article 9(1)(a) of the ‘Financial Institutions Act’ transposes the fourth subparagraph of Article 3(3) of the Directive.</p> <p>Article 9(1)(a) of the ‘Financial Institutions Act’ foresees different</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
<p>paragraph.</p>	<p>shareholding in a financial institution or to further increase or reduce, directly or indirectly, such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in that financial institution reaches, exceeds or falls below 20 per cent, 30 per cent or 50 per cent or so that the financial institution becomes or ceases to be the subsidiary of such person;</p> <p>without obtaining the prior approval of the competent authority [...] without prejudice to any other penalty which may be imposed under this Act or any regulations or Rules issued thereunder, the competent authority shall have the power to make an order:</p> <ul style="list-style-type: none"> <li>(i) restraining the person or financial institution from taking or continuing the action;</li> <li>(ii) declaring the action to be void and of no effect;</li> <li>(iii) requiring the person or financial institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;</li> <li>(iv) restraining the person or financial institution from exercising any rights which the action would, if lawful, have</li> </ul>	<p>consequences which will be taken by the competent authority, being the ‘Malta Financial Services Authority’, in the event wherein any person who takes or intends to take any action to acquire or dispose, directly or indirectly, of a qualifying shareholding in a financial institution or to further increase or reduce, directly or indirectly, such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in that financial institution reaches, exceeds or falls below 20 %, 30 % or 50 % or so that the financial institution becomes or ceases to be the subsidiary of such person (which transposes the first subparagraph of Article 3(3) of the Directive), does not obtain the prior approval of the competent authority.</p> <p>The above-mentioned orders which may be ordered by the ‘Malta Financial Services Authority’, reflect the requirement set out in the Directive provision, specifically that similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information, as laid down in Article 3(3) of the Directive. Compliance with such a requirement, that is, that the above-mentioned orders apply to both natural and legal persons, is inferred from the ‘Financial Institutions Act’.</p> <p>Thus, since the Directive provision appears to have been transposed in a correct manner, conformity is thereby observed.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			<p>conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;</p> <p>(v) restraining the person or financial institution from taking any similar action or any other action within the categories set out in paragraphs (a) and (b).</p>	
<b>Art. 3(3) 5<sup>th</sup> subpara.</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.	<b>FIA Art. 9(4)(b)</b>	<p><b>Art. 9(4)(b) of the FIA</b></p> <p>(b) Where the qualifying shareholding is acquired despite the opposition of the competent authority, the competent authority shall, regardless of any other sanction which may be adopted, provide for the suspension of the exercise of the voting rights of the acquirer, the nullity of the votes cast or the possibility of annulling those votes.</p>	<p><b>CONFORM</b></p> <p>Article 9(4)(b) of the ‘Financial Institutions Act’ almost literally transposes the fifth subparagraph of Article 3(3) of the Directive.</p> <p>In this regard, the Maltese transposing provision foresees a consequence in the event where the qualifying shareholding is acquired despite the opposition of the competent authority. In such an event, the competent authority shall provide for the suspension of the exercise of the voting rights of the acquirer, the nullity of the votes cast or the possibility of annulling those votes. The Maltese transposing provision also sets out that this rule applies regardless of any other sanction which may be adopted.</p> <p>Owing to the correct transposition of the Directive provision into Maltese legislation, conformity is observed.</p>
<b>Art. 3(3) 6<sup>th</sup> subpara.</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 activities listed in Article 6(1)(e).	<b>FIA Art. 9(6)</b>	<p><b>Art. 9(6) of the FIA</b></p> <p>(6) The competent authority may, by means of a Financial Institutions Rule and subject to such criteria as may be established therein, provide that all or part of the provisions of this article be waived.</p>	<p><b>CONFORM</b></p> <p>The sixth subparagraph of Article 3(3) of the Directive sets out an option. Concerning this option, Malta chose to transpose it within its relative national legislation by Article 9(6) of the ‘Financial Institutions Act’.</p> <p>In this regard, the mentioned transposing provision sets out a discretionary power upon the national competent authority, being the ‘Malta Financial Services Authority’, wherein by means of a Financial Institutions Rule and subject to such criteria as may be established therein, it may provide that all or part of the provisions of this article, that is, Article 9 thereof, be waived.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>Thus, in this regard, Malta chose to allow the national competent authority to apply the possible waiver, as opposed to Malta itself.</p> <p>A difference that was noted relates to the fact that wording corresponding to “in respect of electronic money institutions that carry out one or more of the activities listed in Article 6(1)(e)” of the Directive, which is present in the Directive provision, is not present within the Maltese transposing provision.</p> <p>However, it should be noted that such a non-inclusion does not seem to hamper the proper transposition of the option which is set out in the Directive provision, namely since it appears that the activities listed in Article 6(1)(e) of the Directive, which is referred to in the Directive provision, that is, the activities of business activities other than the issuance of electronic money, impliedly do not apply to Article 9 of the ‘Financial Institutions Act’.</p> <p>Therefore, owing to the correct transposition of the option set out in the Directive provision, conformity is observed.</p>
<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.	<b>FIR/03/2011 Paras. 37, 2<sup>nd</sup> sentence &amp; 38</b>	<p><b>AGENTS AND DISTRIBUTION NETWORK</b></p> <p><b>Para. 37, 2<sup>nd</sup> sentence of FIR/03/2011</b></p> <p>37. [...] It may nonetheless <b>distribute</b> and <b>redeem</b> electronic money through such agents or distributors which act on its behalf according to the requirements of its business model. [...]</p> <p><b>Para. 38 of FIR/03/2011</b></p> <p>38. Electronic money institutions wishing to distribute electronic money in another member state by engaging such natural or legal persons shall be required to follow the notification</p>	<p><b>CONFORM</b></p> <p>The second sentence of Paragraph 37, as well as Paragraph 38 of FIR/03/2011, transpose Article 3(4) of the Directive. More specifically, the second sentence of Paragraph 37 of FIR/03/2011 transposes the first sentence of the Directive provision, whereas Paragraph 38 of FIR/03/2011 transposes the second sentence of the Directive provision.</p> <p>In this regard, the second sentence of Paragraph 37 of FIR/03/2011 sets out that an electronic money institution may nonetheless distribute and redeem electronic money through such agents or distributors which act on its behalf according to the requirements of its business model. In relation to the words “business model”, such wording does not appear to be defined in the principal legislation which regulates the business of financial institutions, that is, the ‘Financial Institutions Act’ or in FIR/03/2011. However, this requirement reflects the first sentence of recital 10 of the Directive, wherein reference to the requirements of the respective electronic money institutions’ business models is made.</p> <p>In relation to the transposition of the second sentence of the Directive</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
	<p>procedures laid down in Articles 8(5) and 8A(1) of the Act.</p>	<p>provision, Paragraph 38 of FIR/03/2011 requires electronic money institutions wishing to distribute electronic money in another Member State by engaging such natural or legal persons, to follow the notification procedures laid down in Articles 8(5) and 8A(1) of the Act, being the ‘Financial Institutions Act’. In this regard, Article 8(5) and Article 8A(1) of the ‘Financial Institutions Act’, which are referred to in Paragraph 38 of FIR/03/2011, deal with the following.</p> <p>Article 8(5) of the ‘Financial Institutions Act’ requires licensed financial institutions carrying out payment services or issuing electronic money, or both, wishing to provide services for the first time in a Member State or an EEA State, in exercise of a European right, to inform the competent authority of their intention to exercise a European right. Within one month of receiving this information, the competent authority is required to inform the overseas regulatory authority concerned of:</p> <ul style="list-style-type: none"> <li>(a) the name and address of the financial institution;</li> <li>(b) the names of those responsible for the management of the branch;</li> <li>(c) its organisational structure; and</li> <li>(d) the kind of services it intends to provide in the territory of the Member State or EEA State. This reflects the requirements set out in the second subparagraph of Article 25(1) of Directive 2007/64/EC.</li> </ul> <p>In addition, the second referred-to national provision, that is, Article 8A(1) of the ‘Financial Institutions Act’ prohibits a financial institution from entering into agency arrangements with third parties, unless it has communicated the following information to the competent authority:</p> <ul style="list-style-type: none"> <li>(a) the name and address of the agent;</li> <li>(b) a description of the internal control mechanisms that will be used by agents in order to comply with the obligation in relation to money laundering and terrorist financing under the Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations; and</li> <li>(c) the identity of the directors and persons responsible for the management of the agent to be used in the provision of services, and evidence that they</li> </ul>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>are suitable persons. This reflects the requirements set out in Article 17 of Directive 2007/64/EC.</p> <p>As a condition, a person who is appointed as agent of a financial institution shall only act as agent:</p> <p>(i) in respect of those activities for which the financial institution to which he will act as agent, is licensed under the ‘Financial Institutions Act’;</p> <p>(ii) to not more than one person licensed under the ‘Financial Institutions Act’; and</p> <p>(iii) subsequent to the verification by the competent authority of the information provided by the financial institution.</p> <p>The referred-to provisions within Paragraph 38 of FIR/03/2011 appear to correspond to the procedure set out in Article 25 of Directive 2007/64/EC, which is referred to in the Directive provision. However, the national provision corresponding to Article 25(3) and (4) of Directive 2007/64/EC do not seem to be referred to in Paragraph 38 of FIR/03/2011. However, this does not seem to negatively affect the level of conformity.</p> <p>Thus, conformity is observed.</p> <p>As an additional comment, it should be pointed out that the third and fourth sentences of Paragraph 38 of FIR/03/2011 set out additional requirements, namely, they provide that the appointment of such agents by the institution are required to be undertaken in terms of Article 8A of the ‘Financial Institutions Act’, which deals with requirements in relation to agency agreements. Moreover, the fourth sentence of Paragraph 38 of FIR/03/2011 requires the intended use of such third party natural or legal persons for the distribution and redemption of electronic money to be indicated in the information accompanying the official application documentation, in line with the procedure stated in paragraph 28 of FIR/01/2011. For the purposes of clarity, Paragraph 28 of FIR/01/2011 is the transposing provision of Article 5 of Directive 2006/48/EC.</p>
<b>Art. 3(5)</b>	5. Notwithstanding paragraph 4, electronic money institutions shall not issue electronic money through agents.	<b>FIR/03/2011</b> <b>Para. 37,</b>	<b>Para. 37, 1<sup>st</sup> sentence of FIR/03/2011</b> 37. An electronic money institution	<b>CONFORM</b> The first sentence of Paragraph 37, as well as Paragraph 39 of FIR/03/2011,

Directive 2009/110/EC	National Implementing Measures		Conformity Assessment
<p>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.</p>	<p><b>1<sup>st</sup> sentence &amp; Para. 39</b></p>	<p>shall <b>not</b> issue electronic money through an agent or distributor. [...]</p> <p><b>Para. 39 of FIR/03/2011</b></p> <p>39. Electronic money institutions shall be allowed to provide services listed under the First and Second Schedules to the Act through such natural or legal persons which act on their behalf only if the third party is appointed by the institution as an agent in terms of Article 8A of the Act and in accordance with the procedures and rules laid down in the said Article, as may be applicable. The agent who is appointed by the institution can only act as agent with respect to those activities for which the institution is licensed. Such an agent shall be listed in the public register of agents undertaking payment services in terms of Article 8D of the Act, in the event that payment services not related to the issuance of electronic money are being undertaken through the agent.</p>	<p>transpose Article 3(5) of the Directive. More specifically, the first sentence of Paragraph 37 of FIR/03/2011 transposes the first sentence of the Directive provision, whereas Paragraph 39 of FIR/03/2011 transposes the second sentence of the Directive provision.</p> <p>The first sentence of Paragraph 37 of FIR/03/2011 prohibits an electronic money institution from issuing electronic money through an agent or a distributor. This is in line with the first sentence of the Directive provision. However, the Maltese transposing provision additionally also refers to distributors, in addition to agents. It should be pointed out that the ‘Financial Institutions Act’ does not contain a definition of the term ‘distributor’. However, the first definition of Article 2(1) of the said Act defines the term ‘agent’ in the following manner:</p> <p>“agent means a person who acts on behalf of a financial institution in providing those services listed under the First Schedule, other than issuing electronic money.” The First Schedule to the ‘Financial Institutions Act’ sets out the activities of financial institutions, the content of which corresponds to the content of Annex I to Directive 2006/48/EC.</p> <p>In relation to the transposition of the second sentence of the Directive provision, Paragraph 39 of FIR/03/2011 allows electronic money institutions to provide services listed under the First and Second Schedules to the ‘Financial Institutions Act’, being the ‘Financial Institutions Act’, through such natural or legal persons which act on their behalf provided the following conditions are met, namely, only if the third party is appointed by the institution as an agent in terms of Article 8A of the Act and in accordance with the procedures and rules laid down in the said Article, as may be applicable.</p> <p>In relation to the reference to the First and Second Schedules to the ‘Financial Institutions Act’: the content of the First Schedule to the ‘Financial Institutions Act’ corresponds to the content of Annex I to Directive 2006/48/EC, whereas the content of the Second Schedule thereto correctly corresponds to the content of the Annex to Directive 2007/64/EC, which is referred to in Article 6(1)(a) of the Directive and which cross-referred to in Article 3(5) of the Directive.</p> <p>In relation to the reference to Article 8A of the ‘Financial Institutions Act’,</p>



Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>which is referred to in Paragraph 39 of FIR/03/2011, this provision transposes Article 17(1) to (7), first subparagraph of Directive 2007/64/EC. This is in line with the reference to Article 17 of Directive 2007/64/EC within the Directive provision. However, a reference to the national provisions which correspond to the second and third subparagraphs of Article 17 of Directive 2007/64/EC and to Article 17(8) of the mentioned Directive does not seem to be present within Paragraph 39 of FIR/03/2011. In order for a correct reference to be present within Paragraph 39 thereof, reference would also have to be made to Article 8B of the ‘Financial Institutions Act’ which deals with ‘Outsourcing of operational functions’.</p> <p>Paragraph 39 of FIR/03/2011 provides that the agent who is appointed by the institution can only act as agent with respect to those activities for which the institution is licensed. Moreover, such an agent is required to be listed in the public register of agents undertaking payment services in terms of Article 8D of the ‘Financial Institutions Act’, in the event that payment services not related to the issuance of electronic money are being undertaken through the agent. In this regard, Article 8D of the ‘Financial Institutions Act’ deals with ‘Registration’ and sets out an obligatory obligation upon the national competent authority to maintain a public register of all licensed financial institutions or financial institutions holding an equivalent authorisation in another country, and their branches and agents, within which there shall be identified the services for which the financial institution is licensed. Such records shall be kept for a period of time as may be laid out in a Rule. Moreover, such a register is required to be publicly available for consultation, accessible online and updated on a regular basis.</p> <p>Finally, it should also be noted that the above is in line with the principles set out in the second sentence of recital 10 of the Directive.</p> <p>Since it appears that all of the requirements set out in the Directive provision are included within the Maltese transposing provisions, conformity is observed.</p>
<b>Art. 4</b>	<p><i>Article 4</i> <b>Initial capital</b> Member States shall require electronic</p>	<b>FIR/03/2011</b> <b>Para. 18</b>	<p><i>Initial Capital Requirements</i> <b>Para. 18 of FIR/03/2011</b> 18. Electronic money institutions shall be required to hold, at the time of</p>	<p><b>CONFORM</b> Paragraph 18 of FIR/03/2011 almost literally transposes Article 4 of the Directive. Paragraph 18 of FIR 03/2011 deals with ‘Initial capital</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
<p>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 350 000.</p>	<p>authorisation, initial capital<sup>1</sup> amounting to not less than EUR 350,000.</p> <p><sup>1</sup> The Act defines “initial capital” as “<i>paid up capital and reserves as defined in a Financial Institutions Rule</i>”. Accordingly, for the purposes of this Rule, initial capital is the sum of items 1.1.5 and 1.1.12 excluding items 1.1.9 and 1.1.11 of Appendix 1 and 2 of BR/03.</p>	<p>requirements’, as is likewise dealt with in the Directive provision.</p> <p>In this regard, Paragraph 18 of FIR/03/2011 sets out an obligation upon electronic money institutions whereby at the time of authorisation, electronic money institutions are required to hold initial capital amounting to not less than EUR 350,000. This is in line with part of the requirements which are set out in the Directive provision.</p> <p>Furthermore, the relative footnote to Paragraph 18 of FIR/03/2011 sets out that, the Act, namely the ‘Financial Institutions Act’, defines the term ‘initial capital’ as “<i>paid up capital and reserves as defined in a Financial Institutions Rule</i>”. Moreover, the mentioned footnote also provides clarity in relation to such initial capital and provides that accordingly, for the purposes of this Rule, initial capital is the sum of items 1.1.5 and 1.1.12 excluding items 1.1.9 and 1.1.11 of Appendix 1 and 2 of Banking Rule 03.</p> <p>For the purposes of clarity, the referred-to “BR/03”, which is referred to in footnote 1 to Paragraph 18 of FIR/03/2011 is to be understood as ‘Banking Rule 03/2012’ titled ‘Own Funds of Credit Institutions authorised under the Banking Act 1994’. In this regard, following a screening of the official website of the national competent authority, that is, of the ‘Malta Financial Services Authority’, the relevant Rule was identified and referred to for the purposes of the assessment of the transposition of Article 4 of the Directive into Maltese legislation.</p> <p><a href="http://www.mfsa.com.mt/pages/viewcontent.aspx?id=379">http://www.mfsa.com.mt/pages/viewcontent.aspx?id=379</a></p> <p>Footnote 1 to Paragraph 18 of FIR/03/2011 provides that initial capital is the sum of items 1.1.5 and 1.1.12 excluding items 1.1.9 and 1.1.11 of Appendix 1 and 2 of BR/03/2012. In this regard therefore, item 1.1.5, which is present in Appendix 1 to BR/03/2012 and which is further clarified in Appendix 2 thereof, consists of the ‘Total Paid up capital’ which is the sum of items listed in points 1.1.1 to 1.1.4, specifically, the sum of ordinary shares (1.1.1), share premium account (1.1.2), perpetual non-cumulative preference shares (1.1.3) and exchange rate revaluation adjustments on paid up capital (1.1.4) together with the sum of items listed in point 1.1.12 which deals with ‘Total Reserves’, namely it includes the sum of the following items: retained profits/losses (1.1.6), interim/year-end net profits (losses) (eligible for inclusion) (1.1.7), undistributable reserves (specify in calculation 1) (1.1.8)</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>and other reserves (specify in calculation 2) (1.1.10). Item 1.1.9 as well as item 1.1.11 were not referred-to, since for the purposes of Paragraph 18 of FIR/03/2011, they are excluded from the computation of the initial capital.</p> <p>The above appears to be in line with the calculation comprised of the items set out in Article 57(a) and (b) of Directive 2006/48/EC, referred to in the Directive provision.</p> <p>Finally, it should also be added that the Maltese transposing provision complies with the principles provided for in recital 11 of the Directive, concerning initial capital requirements.</p> <p>Thus, owing to the correct transposition of the requirements which are set out in the Directive provision, conformity is thereby observed</p>
<b>Art. 5(1)</b>	<p><i>Article 5</i> <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 of this Directive, whichever the higher.</p>	<p><b>FIR/03/2011</b> <b>Para. 20</b></p>	<p><b>Para. 20 of FIR/03/2011</b></p> <p>20. Electronic money institutions are required to hold, at all times, own funds calculated in line with the provisions of paragraph 21 to 23 below or the initial capital amount laid down in paragraph 18 of this Rule, whichever is the higher.</p>	<p><b>CONFORM</b></p> <p>Paragraph 20 of FIR/03/2011 transposes Article 5(1) of the Directive. Very similar wording was used in this regard.</p> <p>The Maltese transposing provision requires electronic money institutions to hold, at all times, own funds calculated in line with the provisions of paragraphs 21 to 23 or the initial capital amount laid down in paragraph 18 of FIR/03/2011, whichever is the higher.</p> <p>The referred-to national provisions, namely, Paragraphs 21 to 23 of FIR/03/2011, are the transposing provisions of Article 5(2) to (5) of the Directive and Paragraph 18 of FIR/03/2011 is the transposing provision of Article 4 of the Directive. Thus, the provisions which are referred to in the Maltese transposing provision correspond to the references to paragraphs 2 to 5 of Article 5 and to Article 4 of the Directive, respectively.</p> <p>It should be pointed out that the Maltese transposing provision does not include a reference to Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC, as is present within the Directive provision. However, such a non-inclusion of the corresponding provisions does not seem to detract from the level of conformity of the Maltese transposing provision.</p> <p>Finally, it should also be added that the Maltese transposing provision complies with the principles provided for in recital 11 of the Directive,</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				concerning initial capital requirements.  Thus, since all of the requirements which are set out in the Directive provision are included within Paragraph 20 of FIR/03/2011, conformity is thereby observed.
<b>Art. 5(2) 1<sup>st</sup> subpara.</b>	2. In regard to the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with one of the three methods (A, B or C) set out in Article 8(1) and (2) of Directive 2007/64/EC. The appropriate method shall be determined by the competent authorities in accordance with national legislation.	<b>FIR/03/2011 Para. 21, 2<sup>nd</sup> para.</b>	<b>Para. 21, 2<sup>nd</sup> para. of FIR/03/2011</b>  In the event that an electronic money institution undertakes payment services not related to the issuance of electronic money, the own funds requirement for this activity shall be calculated in accordance with one of the three methods A, B and C as may be directed by the authority and as laid down in paragraph 24 of the Financial Institutions Rule on the “ <i>Supervisory regulatory requirements of institutions authorised under the Financial Institutions Act 1994</i> ” – FIR/02.	<b>CONFORM</b>  The second paragraph of Paragraph 21 of FIR/03/2011 almost literally transposes the first subparagraph of Article 5(2) of the Directive.  In compliance with the Directive provision, the Maltese transposing provision sets out requirements relating to own funds, in the event that an electronic money institution undertakes payment services not related to the issuance of electronic money. Thus, this is in accordance with the introductory wording of the Directive provision, when it refers to the activities referred to in Article 6(1)(a) of the Directive that are not linked to the issuance of electronic money.  Therefore, in the event that an electronic money institution undertakes payment services not related to the issuance of electronic money, the second paragraph of Paragraph 21 of FIR/03/2011 requires the own funds for this activity to be calculated in accordance with one of the three methods A, B and C as may be directed by the authority and as laid down in Paragraph 24 of the Financial Institutions Rule on the “Supervisory regulatory requirements of institutions authorised under the Financial Institutions Act 1994” – FIR/02/2011, referred to in the Maltese transposing provision. It should be pointed out that the method to be utilised by the electronic money institution, may be directed by the authority, being the ‘Malta Financial Services Authority’. Thus, this is in line with the requirements set out in the final sentence of the Directive provision, which requires the appropriate method to be determined by the competent authorities in accordance with national legislation.  In relation to the reference to Paragraph 24 of FIR/02/2011 within the Maltese transposing provision, the mentioned provision is the transposing provision of Article 8(1) and (2) of Directive 2007/64/EC, referred to in the Directive provision. Thus, this cross-reference corresponds to the reference which is present in the Directive provision. Moreover, the three methods (A,

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>B or C) set out in Paragraph 24 of FIR/02/2011, correspond to the methods set out in Article 8(1) and (2) of Directive 2007/64/EC.</p> <p>Finally, it should also be added that the Maltese transposing provision complies with the principles provided for in recital 11 of the Directive, concerning initial capital requirements.</p> <p>Therefore, since the Maltese transposing provision includes all of the requirements which are set out in the Directive provision, conformity is observed.</p>
<b>Art. 5(2) 2<sup>nd</sup> subpara.</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.	<b>FIR/03/2011 Para. 21, 1<sup>st</sup> para.</b>	<b>Para. 21, 1<sup>st</sup> para. of FIR/03/2011</b> 21. The own funds of an electronic money institution for the activity of issuing electronic money shall be calculated utilising “Method D” of the Directive. This method stipulates that the own funds shall amount to at least 2% of the average outstanding electronic money.	<p><b>CONFORM</b></p> <p>The first paragraph of Paragraph 21 of FIR/03/2011 transposes the second subparagraph of Article 5(2) of the Directive.</p> <p>In compliance with the Directive provision, the Maltese transposing provision requires the own funds of an electronic money institution for the activity of issuing electronic money, to be calculated utilising “Method D” of the Directive. In this regard, the word “Directive” which is included in the first sentence of the first paragraph of Paragraph 21 of FIR/03/2011, is to be understood as being a reference to Directive 2009/110/EC, since Paragraph 3 of FIR/03/2011 specifies that “The Rule is modelled on the requisites of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 relating to the taking up, pursuit and prudential supervision of the business of electronic money institutions (“the Directive”) [...]”.</p> <p>Thus, this is in accordance with the Directive provision.</p> <p>Therefore, owing to the correct transposition of the Directive provision into Maltese legislation, conformity is thereby observed.</p>
<b>Art. 5(2) 3<sup>rd</sup> subpara.</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.	<b>FIR/03/2011 Para. 21, 3<sup>rd</sup> para.</b>	<b>Para. 21, 3<sup>rd</sup> para. of FIR/03/2011</b> Electronic money institutions shall at all times hold own funds that are at least equal to the <b>sum</b> of the requirements referred to in this paragraph.	<p><b>CONFORM</b></p> <p>The third paragraph of Paragraph 21 of FIR/03/2011 literally transposes the third subparagraph of Article 5(2) of the Directive.</p> <p>The inclusion of the reference to “this paragraph” within the Maltese transposing provision corresponds to and reflects the content of the first and second subparagraphs of Article 5(2) of the Directive, referred to in the</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>Directive provision.</p> <p>Owing to the correct transposition of the Directive provision, conformity is thereby observed.</p>
<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.	<b>FIR/03/2011</b> <b>Para. 21, 1<sup>st</sup> para., 2<sup>nd</sup> sentence</b>	<b>Para. 21, 1<sup>st</sup> para., 2<sup>nd</sup> sentence of FIR/03/2011</b> 21. The own funds of an electronic money institution for the activity of issuing electronic money shall be calculated utilising “Method D” of the Directive. This method stipulates that the own funds shall amount to at least 2% of the average outstanding electronic money.	<p><b>CONFORM</b></p> <p>The second sentence of the first paragraph of Paragraph 21 of FIR/03/2011 almost literally transposes Article 5(3) of the Directive.</p> <p>In compliance with the Directive provision, the mentioned transposing provision sets out that Method D stipulates that the own funds of an electronic money institution shall amount to at least 2% of the average outstanding electronic money. This reflects the requirements of the Directive provision. Moreover, the first sentence of the Directive provision requires the own funds of an electronic money institution for the activity of issuing electronic money to be calculated utilising “Method D” of the Directive, that is, of Directive 2009/110/EC, as was explained in the observation relating to the transposition of the second subparagraph of Article 5(2) of the Directive.</p> <p>Finally, it should also be added that the Maltese transposing provision complies with the principles provided for in recital 11 of the Directive, concerning initial capital requirements.</p> <p>Since the Directive provision was correctly transposed, conformity is observed.</p>
<b>Art. 5(4)</b>	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	<b>FIR/03/2011</b> <b>Para. 22</b>	<b>Para. 22 of FIR/03/2011</b> 22. Where an electronic money institution carries out any payment services not linked to the issuance of electronic money or any of the activities referred to in points (b) to (e) of paragraph 9 of this Rule, and the amount of outstanding electronic money is unknown in advance, the electronic money institution shall calculate its own funds requirements	<p><b>CONFORM</b></p> <p>Paragraph 22 of FIR/03/2011 almost literally transposes Article 5(4) of the Directive.</p> <p>In relation to the reference to points (b) and (e) of Paragraph 9 of FIR/03/2011, referred to in the first sentence of the Maltese transposing provision, fully correspond to the reference to the activities referred to in Article 6(1)(b) to (e) of the Directive, referred to in the first sentence of Directive provision.</p> <p>Therefore, owing to the correct transposition of the Directive provision, conformity is observed.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	<p>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. 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>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 authority.</p> <p>Where an electronic money institution has not completed a sufficient period of business, its own funds requirement shall be calculated on the basis of projected outstanding electronic money evidenced by its business plan, subject to any adjustment to the plan having been required by the authority.</p>	<p>Finally, it should also be added that the Maltese transposing provision complies with the principles provided for in recital 11 of the Directive, concerning initial capital requirements.</p>
<b>Art. 5(5)</b>	<p>5. On the basis of an evaluation of the risk-management processes, of the risk loss databases and internal control mechanisms of the electronic money institution, the competent authorities may require the electronic money institution to hold an amount of own funds which is up to 20 % higher than the amount which would result from the application of the relevant method in accordance with paragraph 2, or permit the electronic money institution to hold an amount of own funds which is up to 20 % lower than the amount which would result from the application of the relevant method in accordance with paragraph 2.</p>	<p><b>FIR/03/2011</b> <b>Para. 23</b></p>	<p><b>Para. 23 of FIR/03/2011</b></p> <p>23. An electronic money institution may, based on an evaluation by the authority of the institution's risk-management processes, risk loss databases and internal control mechanisms, be required by the authority to hold an amount of own funds which is up to 20% higher or 20% lower than the amount of own funds which would result from the application of the relevant method/s chosen in accordance with paragraph 21.</p>	<p><b>CONFORM</b></p> <p>Article 5(5) of the Directive sets out an option. Concerning this option, Malta chose to apply it within its relative national legislation by Paragraph 23 of FIR/03/2011.</p> <p>In this regard, the mentioned Maltese transposing provision sets out a possibility in relation to an electronic money institution whereby, it may, based on an evaluation by the 'Malta Financial Services Authority' of the institution's risk-management processes, risk loss databases and internal control mechanisms, be required by the authority to hold an amount of own funds which is up to 20% higher or 20% lower than the amount of own funds which would result from the application of the relevant method/s chosen in accordance with Paragraph 21 of FIR/03/2011, referred to in Paragraph 23 of FIR/03/2011.</p> <p>The reference to Paragraph 21 of FIR/03/2011, referred to in Paragraph 23 of FIR/03/2011 corresponds to the reference to paragraph 2 of Article 5 of the Directive.</p> <p>Therefore, since all of the requirements which are set out in the Directive</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				provision are correctly transposed, conformity is thereby observed.
<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:	N/A	N/A	<p><b>CONFORM</b></p> <p>FIR/03/2011 does not seem to contain wording corresponding to the introductory wording of Article 5(6) of the Directive, due to the different structure of the relevant national provision transposing the mentioned Directive provision.</p> <p>However, as will be shown below, the requirements set out in points (a) and (b) of Article 5(6) of the Directive have been correctly transposed.</p> <p>Thus, conformity is being observed in relation to the transposition of the introductory wording of Article 5(6) of the Directive.</p>
<b>Art. 5(6)(a)</b>	(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;	<b>FIR/03/2011 Para. 24, 1<sup>st</sup> sentence</b>	<b>Para. 24, 1<sup>st</sup> sentence of FIR/03/2011</b> 24. Where an electronic money institution belongs to the same group as another electronic money institution, credit institution, financial institution undertaking payment services, investment firm, asset management company or insurance undertaking, it may not make use of multiple elements eligible for own funds. [...]	<p><b>CONFORM</b></p> <p>The first sentence of Paragraph 24 of FIR/03/2011 transposes Article 5(6)(a) of the Directive.</p> <p>In compliance with the Directive provision, the mentioned Maltese transposing provision prevents an electronic money institution which belongs to the same group as another electronic money institution, credit institution, financial institution undertaking payment services, investment firm, asset management company or insurance undertaking, from making use of multiple elements eligible for own funds.</p> <p>This is in accordance with the Directive provision, as well as with the introductory wording of Article 5(6) of the Directive. Therefore, conformity is consequently observed.</p>
<b>Art. 5(6)(b)</b>	(b) where an electronic money institution carries out activities other than the issuance of electronic money.	<b>FIR/03/2011 Para. 24, 2<sup>nd</sup> sentence</b>	<b>Para. 24, 2<sup>nd</sup> sentence of FIR/03/2011</b> [...] This shall also apply where the electronic money institution has a hybrid character and carries out activities other than the issuance of	<p><b>CONFORM</b></p> <p>The second sentence of Paragraph 24 of FIR/03/2011 transposes Article 5(6)(b) of the Directive.</p> <p>In compliance with the Directive provision, the mentioned Maltese transposing provision prevents an electronic money institution which has a hybrid character and carries out activities other than the issuance of</p>



Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			electronic money.	<p>electronic money, from making use of multiple elements eligible for own funds.</p> <p>This is in accordance with the Directive provision, as well as with the introductory wording of Article 5(6) of the Directive. The Maltese transposing provision additionally includes the wording electronic money institution which “has a hybrid character”. However, this additional wording does not seem to detract from the level of conformity, since electronic money institutions which carry out activities other than the issuance of electronic money can be considered to be of a hybrid nature.</p> <p>Therefore, conformity is consequently observed.</p>
<b>Art. 5(7)</b>	7. Where the conditions laid down in Article 69 of Directive 2006/48/EC are met, Member States or their competent authorities may choose not to apply paragraphs 2 and 3 of this Article to electronic money institutions which are included in the consolidated supervision of the parent credit institutions pursuant to Directive 2006/48/EC.	<b>N/A</b>	<b>N/A</b>	Article 5(7) of the Directive sets out an option in relation to Member States. Concerning this option, Malta did not choose to apply it within its relative national legislation.
<b>Art. 6(1) 1<sup>st</sup> subpara.</b>	<p><i>Article 6 Activities</i></p> <p>1. In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:</p>	<b>FIR/03/2011 Para. 9, intr. wording</b>	<p><b>Para. 9, intr. wording of FIR/03/2011</b></p> <p>9. In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:</p>	<p><b>CONFORM</b></p> <p>The introductory wording of Paragraph 9 of FIR/03/2011 literally transposes the first subparagraph of Article 6(1) of the Directive.</p>
<b>Art. 6(1) 1<sup>st</sup> subpara. (a)</b>	(a) the provision of payment services listed in the Annex to Directive 2007/64/EC;	<b>FIR/03/2011 Para. 9(a)</b>	<p><b>Para. 9(a) of FIR/03/2011</b></p> <p>(a) the provision of payment services listed in Section 2 – List of Activities – of the Second Schedule to the Act;</p>	<p><b>CONFORM</b></p> <p>Paragraph 9(a) of FIR/03/2011 almost literally transposes Article 9(1)(a) of the Directive.</p> <p>Pursuant to the introductory wording of Paragraph 9 of FIR/03/2011, in addition to issuing electronic money, electronic money institutions are</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>entitled to engage in the provision of payment services listed in Section 2 – List of Activities – of the Second Schedule to the Act, that is, the ‘Financial Institutions Act’, referred to in the Maltese transposing provision.</p> <p>The reference to Section 2 – List of Activities – of the Second Schedule to the ‘Financial Institutions Act’, which is present in Paragraph 9(a) of FIR/03/2011, corresponds to and fully reflects the content of the Annex to Directive 2007/64/EC, referred to in the Directive provision.</p> <p>Owing to the correct transposition of the Directive provision into Maltese legislation, conformity is observed.</p>
<b>Art. 6(1) 1<sup>st</sup> subpara. (b)</b>	(b) the granting of credit related to payment services referred to in points 4, 5 or 7 of the Annex to Directive 2007/64/EC, where the conditions laid down in Article 16(3) and (5) of that Directive are met;	<b>FIR/03/2011 Para. 9(b)</b>	<b>Para. 9(b) of FIR/03/2011</b> (b) the granting of credit related to payment services referred to items (d), (e) and (g) of Section 2 – List of Activities - of the Second Schedule to the Act, only if the requirements listed therein are met;	<p><b>CONFORM</b></p> <p>Paragraph 9(b) of FIR/03/2011 almost literally transposes Article 9(1)(b) of the Directive.</p> <p>The reference to items (d), (e) and (g) of Section 2 – List of Activities – of the Second Schedule to the ‘Financial Institutions Act’, which is present in Paragraph 9(b) of FIR/03/2011, corresponds to and fully reflects the content of points 4, 5 or 7 of the Annex to Directive 2007/64/EC, referred to in the Directive provision.</p> <p>It should be pointed out that, the Maltese transposing provision does not include a specific reference to the provisions which correspond to Article 16(3) and (5) of Directive 2007/64/EC, referred to in the Directive provision. Rather, the Maltese transposing provision refers to the satisfaction of the conditions listed therein.</p> <p>However, despite this difference, conformity is still observed in this regard.</p>
<b>Art. 6(1) 1<sup>st</sup> subpara. (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);	<b>FIR/03/2011 Para. 9(c)</b>	<b>Para. 9(c) of FIR/03/2011</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) above;	<p><b>CONFORM</b></p> <p>Paragraph 9(c) of FIR/03/2011 literally transposes Article 9(1)(c) of the Directive.</p> <p>The reference to point (a) of Paragraph 9 of FIR/03/2011, corresponds to and fully reflects the content of Article 9(1)(a) of the Directive, referred to in the Directive provision.</p> <p>Owing to the correct transposition of the Directive provision into Maltese</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				legislation, conformity is observed.
<b>Art. 6(1) 1<sup>st</sup> subpara. (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;	<b>FIR/03/2011 Para. 9(d)</b>	<b>Para. 9(d) of FIR/03/2011</b>  (d) the operation of payment systems as defined in the Second Schedule to the Act;	<b>CONFORM</b>  Paragraph 9(d) of FIR/03/2011 almost literally transposes Article 9(1)(d) of the Directive.  The Maltese transposing provision makes reference to the term “payment systems” as defined in the Second Schedule to the ‘Financial Institutions Act’. In this regard, “payment systems” is defined as “a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions”. This definition fully corresponds to the definition set out in point 6 of Article 4 of Directive 2007/64/EC, referred to in the Directive provision.  It should however be pointed out that, the Maltese transposing provision does not contain the ‘without prejudice clause’ present in the Directive provision, specifically, the final wording of the Directive provision. However, this does not seem to have a negative impact upon the level of conformity.  Therefore, owing to the correct transposition of the Directive provision into Maltese legislation, conformity is observed.
<b>Art. 6(1) 1<sup>st</sup> subpara. (e)</b>	(e) business activities other than issuance of electronic money, having regard to the applicable Community and national law.	<b>FIR/03/2011 Para. 9(e)</b>	<b>Para. 9(e) of FIR/03/2011</b>  (e) business activities other than the issuance of electronic money, having regard to the applicable law regulating such activities.	<b>CONFORM</b>  Paragraph 9(e) of FIR/03/2011 almost literally transposes Article 9(1)(e) of the Directive.  Owing to the correct transposition of the Directive provision into Maltese legislation, conformity is thereby observed.
<b>Art. 6(1) 2<sup>nd</sup> subpara.</b>	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).	<b>FIR/03/2011 Para. 10</b>	<b>Para. 10 of FIR/03/2011</b>  10. Credit referred to in point (b) of paragraph 9 above shall not be granted from funds received in exchange of electronic money and held in accordance with the safeguarding	<b>CONFORM</b>  Paragraph 10 of FIR/03/2011 transposes the second subparagraph of Article 6(1) of the Directive. Very similar wording was used in this regard.  In accordance with the Directive provision, Paragraph 10 of FIR/03/2011 sets out that credit referred to in point (b) of paragraph 9, shall not be granted from funds received in exchange of electronic money and held in accordance

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			requirements as per paragraphs 40 to 43 of this Rule and the applicable provisions of FIR/01.	<p>with the safeguarding requirements as per paragraphs 40 to 43 of FIR/03/2011 and the applicable provisions of FIR/01/2011, referred to in the Directive provision.</p> <p>In relation to the references which are present in the Maltese transposing provision:</p> <ul style="list-style-type: none"> <li>- point (b) of paragraph 9 of FIR/03/2011 corresponds to the reference to point (b) of the first subparagraph of Article 6(1) of the Directive, which is present in the Directive provision;</li> <li>- paragraphs 40 to 43 of FIR/03/2011 transpose Article 7 of the Directive. In this regard therefore, the Maltese transposing provision refers to Article 7 of the Directive in its entirety rather than referring solely to Article 7(1) of the Directive, as is the case in the Directive provision. However, these additional references present in Paragraph 10 of FIR/03/2011, do not hamper the proper transposition of the Directive provision.</li> <li>- Finally, the Maltese transposing provision also refers to the applicable provisions of FIR/01/2011. FIR/01/2011, which is titled ‘Application procedures and requirements for authorisation of licences under the Financial Institutions Act 1994’ contains a provision, specifically Paragraph 56 thereof, which addresses safeguarding requirements. Despite that the Directive provision does not contain a similar reference, it appears that this additional reference which is present in the Maltese transposing provision, does not have a negative impact upon the level of conformity.</li> </ul> <p>Therefore, owing to the correct transposition of the Directive provision into Maltese legislation, conformity is observed.</p> <p>Finally, it should also be added that the Maltese transposing provision complies with the principles provided for in recital 13 of the Directive, concerning initial capital requirements.</p>
<b>Art. 6(2)</b>	2. Electronic money institutions shall not take deposits or other repayable funds from the public within the	<b>FIR/03/2011</b> <b>Para. 12</b>	<b>Para. 12 of FIR/03/2011</b> 12. Electronic money institutions shall not take deposits or other repayable	<b>CONFORM</b> Paragraph 12 of FIR/03/2011 literally transposes Article 6(2) of the

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	meaning of Article 5 of Directive 2006/48/EC.		funds from the public within the meaning of Article 2(1) of the Banking Act.	<p>Directive.</p> <p>In compliance with the Directive provision, Paragraph 12 of FIR/03/2011 prohibits electronic money institutions from taking deposits or other repayable funds from the public, within the meaning of Article 2(1) of the Banking Act, referred to in the Maltese transposing provision.</p> <p>Reference to Article 2(1) of the 'Banking Act' is made, which consists of the principal chapter of law [Chapter 371 of the Laws of Malta] which regulates the business of banking. In this regard, the term "deposit" is defined in the following manner: "'deposit' means a sum of money paid-in on terms under which it will be repaid, with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it".</p> <p>This reference does not seem to correspond to the reference to Article 5 of Directive 2006/48/EC, which is referred to in the Directive provision.</p> <p>However, the Maltese transposing provision appears to be in line with the requirements which are set out in the Directive provision.</p> <p>Therefore, conformity is observed.</p> <p>Finally, it should also be added that the Maltese transposing provision complies with the principles provided for in recital 13 of the Directive, concerning initial capital requirements.</p>
<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.	<b>FIR/03/2011</b> <b>Para. 13</b>	<b>Para. 13 of FIR/03/2011</b> 13. Any funds received by the electronic money institution from the electronic money holder shall be exchanged for electronic money without delay. In view of the specific character of electronic money as an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of a limited amount and not as a means of saving, such funds shall not constitute either a	<p><b>CONFORM</b></p> <p>Paragraph 13 of FIR/03/2011 transposes Article 6(3) of the Directive.</p> <p>In compliance with the Directive provision, Paragraph 13 of FIR/03/2011 requires any funds received by the electronic money institution from the electronic money holder, to be exchanged for electronic money without delay. This requirement fully corresponds to the requirement set out in the first sentence of the Directive provision. Furthermore, the second sentence of the Maltese transposing provision provides that, in view of the specific character of electronic money as an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of a limited amount and not as a means of saving, such funds shall not constitute either a deposit or other repayable funds received from the public within the meaning</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			<p>deposit or other repayable funds received from the public within the meaning of Article 2(1) of the Banking Act.</p>	<p>of Article 2(1) of the Banking Act, referred to in the second sentence of the Maltese transposing provision. This appears to be in accordance with the second sentence of Paragraph 13 of FIR/03/2011 as well as with the requirements set out in Article 5 of Directive 2006/48/EC, referred to in the Directive provision.</p> <p>Reference to Article 2(1) of the ‘Banking Act’ is made. As was already pointed out in the above observation, the term “deposit” is defined in the following manner in the mentioned national provision: “‘deposit’” means a sum of money paid-in on terms under which it will be repaid, with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it”.</p> <p>The Maltese transposing provision appears to be in line with the requirements which are set out in the Directive provision.</p> <p>Therefore, conformity is observed.</p>
<b>Art. 6(4)</b>	<p>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.</p>	<b>FIA Point 3(1)(d), Second Schedule thereto</b>	<p><b>Point 3(1)(d), Second Schedule to the FIA</b></p> <p>(d) When payment institutions engage in the provision of payment services, they may only hold payment accounts used exclusively for transactions; any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of article 2 of the Banking Act, or electronic money within the meaning of article 2 of the Banking Act;</p>	<p><b>CONFORM</b></p> <p>Point 3(1)(d) of the Second Schedule to the ‘Financial Institutions Act’ transposes Article 6(4) of the Directive.</p> <p>In this regard, the Second Schedule to the ‘Financial Institutions Act’ sets out the regulatory framework under which payment services within the means of issuing and administering payment may be carried out.</p> <p>The Maltese transposing provision requires payment institutions to only hold payment accounts used exclusively for transactions when payment institutions engage in the provision of payment services. Reference to Article 6(1)(a) of the Directive, as referred to in the Directive provision, is not made. However, the inclusion of the words “when payment institutions engage in the provision of payment services” in the Maltese transposing provision satisfies the reference present within the Directive provision. Point 3(1)(d) of the Second Schedule to the ‘Financial Institutions Act’ furthermore provides that any funds received by payment institutions from payment service users with a view to the provision of payment services, shall not constitute a deposit or other repayable funds within the meaning of Article 2 of the</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>‘Banking Act’, or electronic money within the meaning of Article 2 of the ‘Banking Act’, referred to in the Maltese transposing provision. This complies with the requirements set out in the Directive provision and conforms to the content of the references to Article 16(2) and (4) of Directive 2007/64/EC, referred to in the Directive provision.</p> <p>The Maltese transposing provision makes reference to Article 2 of the Banking Act in relation to:</p> <ul style="list-style-type: none"> <li>- the meaning of a deposit or other repayable funds; and</li> <li>- the meaning of electronic money.</li> </ul> <p>In this regard, the definition of the term “deposit”, set out in Article 2(1) of the ‘Banking Act’ was set out in the above observation, concerning the transposition of Article 6(3) of the Directive.</p> <p>However, the term “electronic money” does not appear to be defined in the mentioned Act.</p> <p>However, since the content of the Maltese transposing provision complies with the requirements which are set out in the Directive provision, conformity is observed.</p>
<b>Art. 7(1)</b>	<p><i>Article 7</i></p> <p><b>Safeguarding requirements</b></p> <p>1. Member States shall require an electronic money institution to safeguard funds that have been received in exchange for electronic money that has been issued, in accordance with Article 9(1) and (2) of Directive 2007/64/EC. Funds received in the form of payment by payment instrument need not be safeguarded until they are credited to the electronic money institution’s payment account or are otherwise made available to the electronic money institution in</p>	<b>FIR/03/2011</b> <b>Para. 40</b>	<p><b>SAFEGUARDING REQUIREMENTS</b></p> <p><b>Para. 40 of FIR/03/2011</b></p> <p>40. The authority requires electronic money institutions to safeguard funds which have been received in exchange for electronic money that has been issued in accordance with paragraph 56 of FIR/01. Funds received in the form of payment by <i>payment instrument</i> as defined in the Second Schedule to the Act need not be safeguarded until they are credited to the electronic money institution’s payment account or are otherwise</p>	<p><b>CONFORM</b></p> <p>Paragraph 40 of FIR/03/2011 almost literally transposes Article 7(1) of the Directive.</p> <p>In full compliance with the Directive provision, Paragraph 40 of FIR/03/2011 provides that the authority requires electronic money institutions to safeguard funds which have been received in exchange for electronic money that has been issued in accordance with paragraph 56 of FIR/01/2011, referred to in the first sentence of the Maltese transposing provision. In this regard, Paragraph 56 of FIR/01/2011 deals with ‘Safeguarding Requirements’ and is the transposing provision of Article 9(1) and (2) of Directive 2007/64/EC, referred to in the first sentence of the Directive provision. Thus, the reference present within the first sentence of the Maltese transposing provision corresponds to the reference which is present in the first sentence of the Directive provision. Moreover, it thus</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
<p>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>made available to the electronic money institution in accordance with the execution time requirements laid down in the Central Bank of Malta Directive No 1. In any event, such funds shall be safeguarded by no later than five business days after the issuance of the electronic money.</p>	<p>results that Malta chose to apply the option set out in Article 9(2) of Directive 2007/64/EC, concerning the calculation of safeguarding requirements when funds can be used for future payment transactions and for non-payment services.</p> <p>In addition to the above, the second sentence of the Maltese transposing provision also provides that funds received in the form of payment by payment instrument (as defined in the Second Schedule to the ‘Financial Institutions Act’), need not be safeguarded until:</p> <ul style="list-style-type: none"> <li>- they are credited to the electronic money institution’s payment account; or</li> <li>- are otherwise made available to the electronic money institution, in accordance with the execution time requirements laid down in the Central Bank of Malta Directive No 1, referred to in the second sentence of Paragraph 40 of FIR/03/2011. In this regard, the Central Bank of Malta Directive 1 was sourced from the official website of the ‘Malta Financial Services Authority’, namely from:</li> </ul> <p><a href="http://www.mfsa.com.mt/pages/viewcontent.aspx?id=379#BR/03/2010">http://www.mfsa.com.mt/pages/viewcontent.aspx?id=379#BR/03/2010</a></p> <p>The mentioned Directive may be accessed by clicking on ‘BR/01/2012 Application Procedures and Requirements for Authorisation of Licences for Banking Activities under the Banking Act 1994’. It should be pointed out, that the mentioned national Directive consists of one of the NIMs for the implementation of Directive 2007/64/EC. Thus, this is in accordance with the reference to the mentioned Directive in the second sentence of the Directive provision.</p> <p>Finally, the third sentence of the Maltese transposing provision requires such funds to be safeguarded by no later than five business days after the issuance of the electronic money, in any event. This is in accordance with the final sentence of the Directive provision. However, the Maltese transposing provision does not contain a reference to the provision corresponding to point 27 of Article 4 of Directive 2007/64/EC, referred to in the Directive provision. Despite this apparently non-included reference, conformity is still being observed, since this does not seem to detract from the level of conformity.</p>



Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				Thus, owing to the inclusion of all of the requirements which are set out in the Directive provision, conformity is observed.
<b>Art. 7(2) 1<sup>st</sup> subpara.</b>	2. For the purposes of paragraph 1, secure, low-risk assets are asset items falling into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions for which the specific risk capital charge is no higher than 1,6 %, but excluding other qualifying items as defined in point 15 of that Annex.	<b>FIR/03/2011 Para. 41, 1<sup>st</sup> sentence</b>	<b>Para. 41, 1<sup>st</sup> sentence of FIR/03/2011</b> 41. Pursuant to paragraph 56 of FIR/01, secure, low-risk assets are assets falling into one of the categories set out in Table 1 of paragraph 17 of Annex III to the <i>Banking Rule on the Capital Adequacy of Credit Institutions</i> (BR/08) for which the specific risk capital charge is no higher than 1.6%, but excluding other qualifying items as defined in paragraph 18 of the Annex. [...]	<b>CONFORM</b>  The first sentence of Paragraph 41 of FIR/03/2011 almost literally transposes the first subparagraph of Article 7(2) of the Directive. However, the references present in the Maltese transposing provision need to be verified.  The first reference consists of a reference to Paragraph 56 of FIR/01/2011. Paragraph 56 of FIR/01/2011 deals with ‘Safeguarding Requirements’ and is the transposing provision of Article 9(1) and (2) of Directive 2007/64/EC. Thus, it is not the transposing provision of Article 7(1) of the Directive, as referred to in the Directive provision. However, since Article 9(1) and (2) of Directive 2007/64/EC are referred to in paragraph 1 of Article 7 of the Directive, such a reference present in the Maltese transposing provision does not seem to have a negative effect upon the level of conformity.  The Maltese transposing provision also makes reference to the categories set out in Table 1 of paragraph 17 of Annex III to the Banking Rule on the Capital Adequacy of Credit Institutions (BR/08). In this regard, following a screening of the official website of the ‘Malta Financial Services Authority’, the applicable rule was located, specifically from the following webpage:  <a href="http://www.mfsa.com.mt/pages/viewcontent.aspx?id=379#BR/08/2010">http://www.mfsa.com.mt/pages/viewcontent.aspx?id=379#BR/08/2010</a>  The applicable Annex may be accessed by clicking on ‘BR/08/2011 Capital Adequacy of Credit Institutions Authorized Under the Banking Act 1994’ and subsequently by clicking on ‘Annex III – Calculating Capital Requirements for Position Risk’. In this regard, the categories set out in Table 1 of paragraph 17 of Annex III were compared to the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC, referred to in the Directive provision and it was noted that the content thereof fully corresponded to the latter content. Thus, the reference to the categories set out in Table 1 of paragraph 17 of Annex III to the Banking Rule on the Capital Adequacy of Credit Institutions (BR/08), which is present in the Maltese transposing provision, complies with the reference to Table 1 of point 14 of Annex I to Directive 2006/49/EC, present in the Directive

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>provision.</p> <p>Finally, the Maltese transposing provision makes reference to the qualifying items as defined in paragraph 18 of Annex III to Banking Rule 08/2011 (already referred to above). The content of the mentioned paragraph reflects the content of point 15 of Annex I to Directive 2006/49/EC. Specifically, Paragraph 18 of Annex III to Banking Rule 08/2011 sets out a list of items which are to be regarded as being included as qualifying items.</p> <p>Thus, owing to the proper transposition of the Directive provision into Maltese legislation, conformity is thereby observed.</p>
<b>Art. 7(2) 2<sup>nd</sup> subpara.</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.	<b>FIR/03/2011 Para. 41, 1<sup>st</sup> subpara., 2<sup>nd</sup> sentence</b>	<b>Para. 41, 1<sup>st</sup> subpara., 2<sup>nd</sup> sentence of FIR/03/2011</b> [...] 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 paragraph 40 above.	<p><b>CONFORM</b></p> <p>The second sentence of Paragraph 41 of FIR/03/2011 almost literally transposes the second subparagraph of Article 7(2) of the Directive.</p> <p>In accordance with the Directive provision, the Maltese transposing provision sets out that 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 paragraph 40 of FIR/03/2011, referred to in the second sentence of Paragraph 41 thereof. The reference to Paragraph 40 of FIR/03/2011 corresponds to the reference to the first subparagraph of Article 7(2) of the Directive.</p> <p>Since the Directive provision was correctly transposed, conformity is observed.</p>
<b>Art. 7(2) 3<sup>rd</sup> subpara.</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, determine which of those assets do not constitute secure, low-risk assets for the purposes of paragraph 1.	<b>FIR/03/2011 Para. 41, 2<sup>nd</sup> subpara.</b>	<b>Para. 41, 2<sup>nd</sup> subpara. of FIR/03/2011</b> The authority may in exceptional circumstances and with adequate justification, based on an evaluation of security, maturity, value or other risk elements of assets as specified above, determine which of those assets do not constitute secure, low-risk assets.	<p><b>CONFORM</b></p> <p>The third subparagraph of Article 7(2) of the Directive sets out an option. Concerning this option, Malta chose to transpose it into its relative national legislation by the second subparagraph of Paragraph 41 of FIR/03/2011.</p> <p>In this regard, the Maltese transposing provision sets out a discretionary power upon the authority, which may, in exceptional circumstances and with adequate justification, based on an evaluation of security, maturity, value or other risk elements of assets as specified above, determine which of those assets do not constitute secure, low-risk assets.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>Wording corresponding to “for the purposes of paragraph 1”, which is included in the Directive provision, is not likewise present within the Maltese transposing provision. However, this does not seem to have a negative effect upon the level of conformity.</p> <p>Thus, conformity is observed.</p>
<b>Art. 7(3)</b>	<p>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.</p>	<p><b>FIR/03/2011</b> <b>Para. 42</b></p>	<p><b>Para. 42 of FIR/03/2011</b></p> <p>42. Safeguarding requirements in line with paragraph 56 of FIR/01 shall be applicable to electronic money institutions undertaking payment services listed in the Second Schedule to the Act that are not linked to the activity of issuing electronic money.</p>	<p><b>CONFORM</b></p> <p>Article 7(3) of the Directive sets out an option. Concerning this option, Malta chose to transpose it into its relative national legislation by the second subparagraph of Paragraph 42 of FIR/03/2011.</p> <p>In this regard, the Maltese transposing provision sets out that the safeguarding requirements, in line with paragraph 56 of FIR/01/2011, shall be applicable to electronic money institutions which undertake payment services listed in the Second Schedule to the ‘Financial Institutions Act’ that are not linked to the activity of issuing electronic money. This complies with the Directive provision.</p> <p>In relation to the references which are present in the Maltese transposing provision, Paragraph 56 of FIR/01/2011 deals with ‘Safeguarding Requirements’ and is the transposing provision of Article 9(1) and (2) of Directive 2007/64/EC, referred to in the Directive provision. Thus, the reference present within the Maltese transposing provision corresponds to the reference which is present in the Directive provision. The Maltese transposing provision also refers to payment services listed in the Second Schedule to the ‘Financial Institutions Act’. In this regard, the content of the mentioned referred-to Schedule corresponds to the content present in the Annex to Directive 2007/64/EC, which is referred to in Article 6(1)(a) of the Directive.</p> <p>Thus, since the requirements which are set out in the Directive provision are included within the Maltese transposing provision, conformity is observed.</p>
<b>Art. 7(4)</b>	<p>4. For the purposes of paragraphs 1 and 3, Member States or their competent authorities may determine, in accordance with national legislation,</p>	N/A	N/A	<p>Article 7(4) of the Directive sets out an option. Concerning this option Malta did not choose to apply it within its relative national legislation.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	which method shall be used by the electronic money institutions to safeguard funds.			
<b>Art. 8(1)</b>	<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;"><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>	<b>FIA Art. 8E(1)</b>	<p><b>Art. 8E(1) of the FIA</b></p> <p>8E. (1) In the assessment of an application for the opening of a branch by a financial institution authorised to issue electronic money and having its head office outside the Community, the competent authority may not apply provisions which result in more favourable treatment than that accorded to a financial institution having its head office within the Community.</p>	<p><b>CONFORM</b></p> <p>Article 8E(1) of the ‘Financial Institutions Act’ transposes Article 8(1) of the Directive. Article 8E of the mentioned Act deals with ‘Opening of branches having their head office outside the European Union.’</p> <p>In compliance with the Directive provision, the Maltese transposing provision prohibits the competent authority, that is, the ‘Malta Financial Services Authority’ from applying provisions which result in more favourable treatment than that accorded to a financial institution having its head office within the Community when assessing an application for the opening of a branch by a financial institution authorised to issue electronic money and having its head office outside the Community. This reflects the requirements which are set out in the Directive provision.</p> <p>In addition, it should be noted that the Maltese transposing provision complies with the principles set out in recital 15 of the Directive.</p> <p>Therefore, owing to the correct transposition of the Directive provision into Maltese legislation, conformity is observed.</p>
<b>Art. 8(2)</b>	<p>2. The competent authorities shall notify the Commission of all authorisations for branches of electronic money institutions having their head office outside the Community.</p>	<b>FIA Art. 8E(2)</b>	<p><b>Art. 8E(2) of the FIA</b></p> <p>(2) The competent authority shall notify the European Commission of all authorisations for branches of financial institutions having their head office outside the Community as stated in sub-article (1).</p>	<p><b>CONFORM</b></p> <p>Article 8E(2) of the ‘Financial Institutions Act’ almost literally transposes Article 8(2) of the Directive.</p> <p>In compliance with the Directive provision, the ‘Malta Financial Services Authority’ is required to notify the European Commission of all authorisations for branches of financial institutions having their head office outside the Community, as stated in Article 8E(1) of the ‘Financial Institutions Act’(referred to in the Maltese transposing provision: transposing provision for Article 8(1) of the Directive).</p> <p>Since the Maltese transposing provision complies with the requirements which are set out in the Directive provision, conformity is observed.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
<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 money institution having its head office outside the Community are treated identically throughout the Community.	N/A	N/A	Article 8(3) of the Directive does not appear to require transposition by the Member States, since it refers to requirements set out upon the Community. Thus, Malta does not seem to be required to transpose the requirements set out therein into its relative national legislation.
<b>Art. 9(1) 1<sup>st</sup> subpara. intr. wording</b>	<p style="text-align: center;"><i>Article 9</i></p> <p style="text-align: center;"><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 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:</p>	<p><b>FIA Art. 3(7), intr. wording &amp; FIR/03/2011 Para. 26, intr. wording</b></p>	<p><b>Art. 3(7), intr. wording of the FIA</b></p> <p>(7) The competent authority may, in relation to a licensed company whose head office is in Malta and that issues electronic money in Malta, waive the application of all or part of the provisions relating to general prudential requirements, initial capital, own funds and safeguarding requirements, as set out in this Act and in any Financial Institutions Rules applying to financial institutions authorised to issue electronic money, in cases where:</p> <p><b>Art. 3(8) of the FIA</b></p> <p>(8) A company that issues electronic money which has been granted a waiver in terms of the preceding sub-article shall be entered into a public register of financial institutions held in accordance with article 8D.</p>	<p><b>CONFORM</b></p> <p>The introductory wording of the first subparagraph of Article 9(1) of the Directive sets out an option. Concerning this option, Malta chose to transpose it into its relative national legislation by the introductory wording of Article 3(7) and (8) of the ‘Financial Institutions Act’ as well as by the introductory wording of Paragraph 26 and by the first sentence of Paragraph 31 of FIR/03/2011.</p> <p>In this regard, the introductory wording of Article 3(7) of the ‘Financial Institutions Act’ sets out a discretionary power upon the competent authority, that is, upon the ‘Malta Financial Services Authority’, namely, it may, in relation to a licensed company whose head office is in Malta and that issues electronic money in Malta, waive the application of all or part of the provisions relating to general prudential requirements (in accordance with the reference to Article 3 present in the Directive provision), initial capital (in accordance with the reference to Article 4 present in the Directive provision), own funds (in accordance with the reference to Article 5 present in the Directive provision) and safeguarding requirements (in accordance with the reference to Article 7 present in the Directive provision), as set out in the ‘Financial Institutions Act’ and in any Financial Institutions Rules applying to financial institutions authorised to issue electronic money. Such an exception applies in the cases which will be addressed in more detail in the subsequent observations below.</p> <p>Moreover, Article 3(8) of the ‘Financial Institutions Act’ sets out that a company that issues electronic money which has been granted a waiver in</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
	<p><b>Para. 26, intr. wording of FIR/03/2011</b></p> <p>26. Article 3(7) of the Act provides that the authority may, in relation to a company whose head office is in Malta and that issues electronic money in Malta, waive the application of all or part of the provisions relating to general prudential requirements, initial capital, own funds and safeguarding requirements, as set out in the Act and in any applicable Rules, in cases where:</p> <p><b>Para. 31, 1<sup>st</sup> sentence of FIR/03/2011</b></p> <p>31. A company referred to in paragraph 26 (“small electronic money issuer”) shall be treated as a financial institution authorised to issue electronic money and shall be entered into a public register of electronic money institutions held in accordance with Article 8D of the Act. [...]</p>	<p>terms of Article 3(7) thereof, shall be entered into a public register of financial institutions held in accordance with Article 8D of the ‘Financial Institutions Act’, referred to in the Maltese transposing provision. This complies with the requirements which are set out in the Directive provision. For the purposes of clarity, Article 8D of the mentioned Act deals with ‘Registration’ and sets out a duty upon the ‘Malta Financial Services Authority’, to maintain a public register of all licensed financial institutions or financial institutions holding an equivalent authorisation in another country, and their branches and agents, within which there shall be identified the services for which the financial institution is licensed. Moreover, such records are required to be kept for a period of time as may be laid out in a Rule. Furthermore, the mentioned register is required to be publicly available for consultation, accessible online and updated on a regular basis. Thus, this complies with the requirement set out in the Directive provision relating to the registration of the legal persons to be entered in the register for electronic money institutions.</p> <p>A difference that was noted relates to the fact that both transposing provisions do not specify the following which is present in the Directive provision: “with the exception of Articles 20, 22, 23 and 24 of Directive 2007/64/EC”. However, since the Maltese transposing provisions only waive the application of all or part of the procedures and conditions set out in the provisions corresponding to Articles 3, 4, 5 and 7 of this Directive, it may be concluded that the other national provisions, including the provisions which correspond to Articles 20, 22, 23 and 24 of Directive 2007/64/EC are thus applicable.</p> <p>The third transposing provision, specifically, the introductory wording of Paragraph 26 of FIR/03/2011, sets out that Article 3(7) of the Act, which was also considered to transpose the Directive provision, sets out a discretionary power upon the ‘Malta Financial Services Authority’, whereby it may, in relation to a company whose head office is in Malta and that issues electronic money in Malta, waive the application of all or part of the provisions relating to general prudential requirements, initial capital, own funds and safeguarding requirements, as set out in the ‘Financial Institutions Act’ and in any applicable Rules. This waiver applies in the cases which will be addressed in more detail in the subsequent observations below. As is</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>likewise set out in Article 3(8) of the ‘Financial Institutions Act’, which was dealt with above, the first sentence of Paragraph 31 of FIR/03/2011 provides that a company referred to in paragraph 26 thereof, that is, a company which was granted a waiver is required to be treated as a financial institution authorised to issue electronic money and is required to be entered into a public register of electronic money institutions held in accordance with Article 8D of the ‘Financial Institutions Act’, referred to in the mentioned national transposing provision which, as was already mentioned above, deals with ‘Registration’.</p> <p>In addition, it should be noted that the Maltese transposing provision complies with the principles set out in recital 16 of the Directive.</p> <p>The Maltese transposing provisions are in accordance with the requirements set out in the Directive provision. Thus, conformity is thereby observed.</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	<b>FIA Art. 3(7)(a) &amp; FIR/03/2011 Para. 26(i)</b>	<p><b>Art. 3(7)(a) of the FIA</b></p> <p>(a) the total business activities of the company generate an average outstanding electronic money that does not exceed the amount of two million euro (€2,000,000); and</p> <p><b>Para. 26(i) of FIR/03/2011</b></p> <p>(i) the total business activities of the institution generate an average outstanding electronic money that does not exceed two million euro (€ 2,000,000), and</p>	<p><b>CONFORM</b></p> <p>Article 3(7)(a) of the ‘Financial Institutions Act’, as well as Paragraph 26(i) of FIR/03/2011, almost literally transpose the first subparagraph of Article 9(1)(a) of the Directive.</p> <p>Both requirements set out in the Maltese transposing provisions, comply with the requirements which are set out in the Directive provision. In this regard, Malta chose to set a threshold of a maximum of EUR 2 000 000. Thus, it appears that Malta chose to choose a more stringent amount when compared to the threshold set out in the Directive provision, namely, EUR 5 000 000. This complies with the requirements which are set out in the Directive provision.</p> <p>Therefore, since the Directive provision was correctly transposed, conformity is observed.</p>
<b>Art. 9(1) 1<sup>st</sup> subpara. (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	<b>FIA Art. 3(7)(b) &amp; FIR/03/</b>	<p><b>Art. 3(7)(b) of the FIA</b></p> <p>(b) none of the natural persons responsible for the management or operation of the company’s business has been convicted of offences relating</p>	<p><b>CONFORM</b></p> <p>Article 3(7)(b) of the ‘Financial Institutions Act’ as well as Paragraph 26(ii) of FIR/03/2011 almost literally and literally transpose the first subparagraph of Article 9(1)(b) of the Directive, respectively.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	financing or other financial crimes.	<b>2011 Para. 26(ii)</b>	to money laundering or terrorist financing or other financial crimes:  <b>Para. 26(ii) of FIR/03/2011</b>  (ii) 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.	All of the requirements which are set out in the Directive provision are correctly included within the Maltese transposing provisions. Thus, on this basis, conformity is observed.
<b>Art. 9(1) 2<sup>nd</sup> subpara,</b>	Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to apply point (a) of the first subparagraph on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where an electronic money institution has not completed a sufficiently long period of business, that requirement shall be assessed on the basis of projected outstanding electronic money evidenced by its business plan subject	<b>FIR/03/2011 Final para. of Para. 26</b>	<b>Final para. of Para. 26 of FIR/03/2011</b>  Where such a company carries out any of the additional activities referred to in paragraph 9 (a) to (e) of this Rule and the amount of outstanding electronic money is unknown in advance, the authority shall allow the company to apply point (i) of this paragraph 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 authority. Where the company 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	<b>CONFORM</b>  The final paragraph of Paragraph 26 of FIR/03/2011 almost literally transposes the second subparagraph of Article 9(1) of the Directive. It should be pointed out that the 'Financial Institutions Act' does not seem to contain a national provision which corresponds to the Directive provision.  The content of the Maltese transposing provision complies with the requirements which are set out in the Directive provision. Moreover, the references to paragraph 9 (a) to (e) of FIR/03/2011 and point (i) of Paragraph 26 of FIR/03/2011 which are present in the Maltese transposing provision, correspond and reproduce the content of Article 6(1)(b) to (e) and of point (a) of the first subparagraph of Article 9 of the Directive, referred to in the Directive provision, respectively.  Therefore, owing to the correct transposition of the Directive provision into Maltese legislation, conformity is observed.



Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	to any adjustment to that plan having been required by the competent authorities.		having been required by the authority.	
<b>Art. 9(1) 3<sup>rd</sup> subpara.</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.	<b>FIA Proviso to Art. 3(7) &amp; FIR/03/2011, Para. 26, 2<sup>nd</sup> para.</b>	<p><b>Proviso to Art. 3(7) of the FIA</b></p> <p>Provided that, the underlying contractual arrangements of the company shall provide that the payment instrument or payment account of the consumer where the electronic money is stored is subject to a maximum storage amount of not more than two hundred and fifty euro (€250).</p> <p><b>Para. 26, 2<sup>nd</sup> para. of FIR/03/2011</b></p> <p>However, in line with the proviso to Article 3(7) of the Act, for conditions (i) and (ii) to hold, the maximum storage amount on the payment instrument or payment account of the customer where the electronic money is stored cannot exceed two hundred fifty euro (€250).</p>	<p><b>CONFORM</b></p> <p>The third subparagraph of Article 9(1) of the Directive sets out an option. Concerning this option, Malta chose to transpose it into its relative national legislation by the proviso to Article 3(7) of the ‘Financial Institutions Act’, as well as by the second paragraph of Paragraph 26 of FIR/03/2011.</p> <p>In this regard, both transposing provisions set out an additional requirement in relation to the granting of the optional exemptions under Article 3(7) of the ‘Financial Institutions Act’ and Paragraph 26 of FIR/03/2011. In this respect, the underlying contractual arrangements of the company are required to provide that the payment instrument or payment account of the consumer where the electronic money is stored is subject to a maximum storage amount of not more than EUR 250.</p> <p>Since the optional Directive provision was correctly transposed into Maltese legislation, conformity is thereby observed.</p>
<b>Art. 9(1) 4<sup>th</sup> subpara.</b>	A legal person registered in accordance with this paragraph may provide payment services not related to electronic money issued in accordance with this Article only if conditions set out in Article 26 of Directive 2007/64/EC are met.	<b>FIR/03/2011 Para. 29, 2<sup>nd</sup> para., 1<sup>st</sup> &amp; 2<sup>nd</sup> sentence</b>	<p><b>Para. 29, 2<sup>nd</sup> para., 1<sup>st</sup> &amp; 2<sup>nd</sup> sentences of FIR/03/2011</b></p> <p>In the event that a small electronic money issuer, in addition to the issuance of electronic money as provided for in paragraph 26 above, intends to undertake any activity listed in the First or Second Schedule to the Act, it must seek authorisation from</p>	<p><b>CONFORM</b></p> <p>The first and second sentences of the second paragraph of Paragraph 29 of FIR/03/2011 transpose the fourth subparagraph of Article 9(1) of the Directive.</p> <p>In this regard, the Maltese transposing provision requires a small electronic money issuer to seek authorisation from the ‘Malta Financial Services Authority, in the event that, in addition to the issuance of electronic money as provided for in paragraph 26 of FIR/03/2011 (which is the transposing</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			<p>the authority. Authorisation must therefore be sought in the event the institution engages in the provision of payment services not related to the issuance of the electronic money. [...]</p>	<p>provision of the first paragraph of Article 9(1) of the Directive), it intends to undertake any activity listed in the First or Second Schedule to the 'Financial Institutions Act'. Authorisation must therefore be sought in the event the institution engages in the provision of payment services not related to the issuance of the electronic money.</p> <p>The Maltese transposing provision makes reference to the First and Second Schedules to the 'Financial Institutions Act': the mentioned schedules set out the 'Activities of Financial Institutions' and the list of activities of 'Financial Institutions carrying out Payment Services', respectively. Thus, they set out activities not related to the issuance of the electronic money.</p> <p>The Directive provision makes reference to Article 26 of Directive 2007/64/EC, which Malta did not choose to apply. Thus, such a reference to a provision/s corresponding to Article 26 of Directive 2007/64/EC does not seem to be applicable to Malta.</p> <p>Conformity is thereby observed.</p>
<b>Art. 9(2)</b>	<p>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.</p>	<p><b>FIA Art. 3(7), intr. wording &amp; FIR/03/2011 Para. 26, intr. wording</b></p>	<p><b>Art. 3(7), intr. wording of the FIA</b></p> <p>(7) The competent authority may, in relation to a licensed company whose head office is in Malta and that issues electronic money in Malta, [...]</p> <p><b>Para. 26, intr. wording of FIR/03/2011</b></p> <p>26. Article 3(7) of the Act provides that the authority may, in relation to a company whose head office is in Malta and that issues electronic money in Malta, [...]</p>	<p><b>CONFORM</b></p> <p>Article 9(2) of the Directive has not been transposed in an explicit manner into Maltese legislation. However, the requirements set out therein may be undoubtedly inferred from the introductory wording of Article 3(7) of the 'Financial Institutions Act', as well as by the introductory wording of Paragraph 26 of FIR/03/2011, which are the transposing provisions for the introductory wording of the first subparagraph of Article 9(1) of the Directive.</p> <p>In this regard, both transposing provisions make reference to a licensed company whose head office is in Malta and that issues electronic money in Malta. Thus, a requisite which is required in order for the waiver set out in the provision which corresponds to the first subparagraph of Article 9(1) of the Directive, to apply, the registered legal person is required to have its head office in Malta, that is, in the Member State in which it actually pursues its business.</p> <p>Thus, since the requirements which are set out in the Directive provision are correctly transposed, conformity is observed.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
<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.	<b>FIA Art. 3(9) &amp; FIR/03/2011 Para. 31</b>	<p><b>Art. 3(11) of the FIA</b></p> <p>(11) A company as referred to in sub-article (7) shall be treated as a financial institution authorised to issue electronic money but shall not benefit from the freedom to provide services and the right of establishment.</p> <p><b>Para. 31 of FIR/03/2011</b></p> <p>31. A company referred to in paragraph 26 (“small electronic money issuer”) shall be treated as a financial institution authorised to issue electronic money [...]. Such companies shall not benefit from the right of establishment or the freedom to provide services in another Member State or EEA state.</p>	<p><b>CONFORM</b></p> <p>Article 3(11) of the ‘Financial Institutions Act’, as well as Paragraph 31 of FIR/03/2011, transpose Article 9(3) of the Directive.</p> <p>In full compliance with the Directive provision, Article 3(11) of the ‘Financial Institutions Act’ sets out that a company, as referred to in sub-article (7) of Article 3 of the mentioned Act, is required to be treated as a financial institution authorised to issue electronic money. However, such company is prevented from benefiting from the freedom to provide services and the right of establishment.</p> <p>Moreover, Paragraph 31 of FIR/03/2011 sets out that a company, referred to in Paragraph 26 of FIR/03/2011, is required to be treated as a financial institution authorised to issue electronic money. However, such companies shall not benefit from the right of establishment or the freedom to provide services in another Member State or EEA state.</p> <p>The fourth definition set out in Paragraph 8 of FIR/03/2011 defines an electronic money institution in the following manner:</p> <p>“electronic money institution means a financial institution that has been licensed in accordance with the Act or that holds an equivalent authorisation in another country in terms of the Electronic Money Directive (2009/110/EC) to issue electronic money. For the purposes of this Rule (that is, of FIR/03/2011), financial institutions authorised to undertake activities listed in the Third Schedule to the Act shall be referred to as ‘electronic money institutions’”. The said definition was considered to be in conformity with Article 2, point 1, of the Directive.</p> <p>Rather than making a specific reference to the provisions which transpose Article 10(9) and Article 25 of Directive 2007/64/EC, referred to in the Directive provision, the Maltese transposing provisions state that the freedom to provide services and the right of establishment as <i>per</i> the mentioned Directive provisions, shall not apply to such companies.</p> <p>Moreover, the references to sub-article (7) of Article 3 of the ‘Financial Institutions Act’, as well as the reference to Paragraph 26 of FIR/03/2011 in the Maltese transposing provisions, correspond to the reference to paragraph</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				1 of Article 9 of the Directive, present in the Directive provision. Conformity is thereby being observed, owing to the proper transposition of the Directive provision into Maltese legislation.
<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).	<b>FIA Art. 3(9) &amp; FIR/03/ 2011 Para. 29, 2<sup>nd</sup> para., 3<sup>rd</sup> sentence</b>	<b>Art. 3(9) of the FIA</b>  (9) The competent authority shall determine which of the activities in the Third Schedule may be provided by the companies registered in accordance with the provisions of sub-article (8).  <b>Para. 29, 2<sup>nd</sup> para., 3<sup>rd</sup> sentence of FIR/03/2011</b>  [...] Article 3(9) of the Act furthermore grants the authority discretion to determine the activities provided for under the Third Schedule of the Act which such companies may undertake.	<b>CONFORM</b>  Article 9(4) of the Directive sets out an option. Concerning this option, Malta chose to transpose it into its relative national legislation by Article 3(9) of the ‘Financial Institutions Act’ as well as by the third sentence of the second paragraph of Paragraph 29 of FIR/03/2011.  In this regard, Article 3(9) of the ‘Financial Institutions Act’ sets out that the ‘Malta Financial Services Authority’ shall determine which of the activities in the Third Schedule thereto, may be provided by the companies registered in accordance with the provisions of Article 3(8) of the mentioned Act. Moreover, the third sentence of the second paragraph of Paragraph 29 of FIR/03/2011 makes reference to Article 3(9) of the Act and provides that the mentioned provision grants the authority discretion to determine the activities provided for under the Third Schedule of the Act which such companies may undertake. Both provisions comply with the Directive provision.  It should be noted that the Third Schedule of the ‘Financial Institutions Act’ contains content which corresponds to the content present in Article 6(1) of the Directive. Article 3(9) of the Act also refers to the provisions of Article 3(8) of the Act which deals with the requirement relating to registration of a company that issues electronic money which has been granted a waiver under Article 9(1) of the Directive. Thus, this reference complies with the reference to paragraph (1) of Article 9 of the Directive, which is present in the Directive provision.  The third sentence of the second paragraph of Paragraph 29 of FIR/03/2011 does not appear to contain a reference to Article 9(1) of the Directive. However, this does not seem to affect the level of conformity.  Thus, since the requirements of the Directive provision are included within the Maltese transposing provision, conformity is thereby observed.

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
<b>Art. 9(5) intr. wording</b>	5. A legal person referred to in paragraph 1 shall:	<b>FIA Art. 3(10), intr. wording &amp; FIR/03/2011 Para. 33, intr. wording</b>	<p><b>Art. 3(10), intr. wording of the FIA</b></p> <p>(10) A company that has been granted a waiver in terms of sub article (7) shall:</p> <p><b>Para. 33, intr. wording of FIR/03/2011</b></p> <p>33. Companies referred to in paragraph 26 to which the application of any or all of the provisions of the Act or of any Rules has been waived shall:</p>	<p><b>CONFORM</b></p> <p>The introductory wording of Article 3(10) of the ‘Financial Institutions Act’, as well as the introductory wording of Paragraph 33 of FIR/03/2011, transposes the introductory wording of Article 9(5) of the Directive.</p> <p>In accordance with the Directive provision, the introductory wording of Article 3(10) of the ‘Financial Institutions Act’ requires a company that has been granted a waiver in terms of sub article (7) of Article 3 of the ‘Financial Institutions Act’, to comply with the requirements that are set out in the forthcoming provisions, which will be addressed in more detail below.</p> <p>In addition, the introductory wording of Paragraph 33 of FIR/03/2011 likewise provides that companies referred to in paragraph 26 thereof, to which the application of any or all of the provisions of the Act or of any Rules has been waived, shall comply with the requirements set out in the forthcoming provisions which will be addressed in more detail below. Paragraph 26 of FIR/03/2011 corresponds to the reference to paragraph 1, which is present in the Directive provision.</p> <p>Therefore, owing to the correct transposition of the Directive provision, conformity is observed.</p>
<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	<b>FIA Art. 3(10)(a) &amp; FIR/03/2011 Para. 33(a)</b>	<p><b>Art. 3(10)(a) of the FIA</b></p> <p>(a) notify the competent authority of any change in its situation which is relevant to the conditions laid down in sub-article (7); and</p> <p><b>Para. 33(a) of FIR/03/2011</b></p> <p>(a) notify the authority of any change in its situation which is relevant to the conditions in paragraph 26;</p>	<p><b>CONFORM</b></p> <p>Article 3(10)(a) of the ‘Financial Institutions Act’, as well as Paragraph 33(a) of FIR/03/2011, almost literally transpose Article 9(5)(a) of the Directive.</p> <p>In compliance with the Directive provision, pursuant to the introductory wording of Article 3(10) of the ‘Financial Institutions Act’ and pursuant to the introductory wording of Paragraph 33 of FIR/03/2011, a company which has been granted a waiver is required to notify the ‘Malta Financial Services Authority’ of any change in its situation which is relevant to the conditions laid down in sub-article (7) of Article 3 of the ‘Financial Institutions Act’ and paragraph 26 of FIR/03/2012, respectively. The referred-to national provisions, that is, sub-article (7) of Article 3 of the ‘Financial Institutions Act’ and paragraph 26 of FIR/03/2012, correspond to the reference to</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>“paragraph 1”, which is referred to in the Directive provision.</p> <p>Since the Maltese transposing provisions include all of the requirements which are set out in the Directive provision, conformity is observed.</p>
<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>FIA Art. 3(10)(b) &amp; FIR/03/2011 Para. 33(b)</b>	<p><b>Art. 3(10)(b) of the FIA</b></p> <p>(b) report periodically, at least annually or during any other period which the competent authority may determine, on its average outstanding electronic money:</p> <p><b>Para. 33(b) of FIR/03/2011</b></p> <p>(b) report periodically, at least annually or as the authority shall determine, on the average outstanding electronic money and shall notify the authority of any change in its situation which is relevant to the condition specified in paragraph 26 above.</p>	<p><b>CONFORM</b></p> <p>Article 3(10)(b) of the ‘Financial Institutions Act’, as well as Paragraph 33(b) of FIR/03/2011, almost literally transpose Article 9(5)(b) of the Directive.</p> <p>In compliance with the Directive provision, pursuant to the introductory wording of Article 3(10) of the ‘Financial Institutions Act’ and pursuant to the introductory wording of Paragraph 33 of FIR/03/2011, a company which has been granted a waiver is required to report periodically, at least annually or during any other period which the ‘Malta Financial Services Authority’ may determine, on its average outstanding electronic money. Both transposing provisions require this.</p> <p>Moreover, Paragraph 33(b) of FIR/03/2011 additionally requires the company which has been granted a waiver, to notify the authority of any change in its situation which is relevant to the condition specified in paragraph 26 thereof (which transposes the first subparagraph of Article 9(1) of the Directive). Thus, Paragraph 33(b) of FIR/03/2011 adds another requirement, additional to the Directive provision, which the company is required to adhere to.</p> <p>Since the Maltese transposing provisions include all of the requirements which are set out in the Directive provision, conformity is observed.</p>
<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	<b>FIA Provisos to Art. 3(10) &amp; FIR/03/2011 Provisos</b>	<p><b>Provisos to Art. 3(10) of the FIA</b></p> <p>Provided that, where the conditions laid down in sub-article (7) are no longer met, the company shall within thirty calendar days apply to the competent authority for a modification of the licence to reflect the new circumstances of the company:</p>	<p><b>PARTIALLY CONFORM</b></p> <p>The provisos to Article 3(10) of the ‘Financial Institutions Act’, as well as the provisos to Paragraph 33 of FIR/03/2011, transpose Article 9(6) of the Directive.</p> <p>The first proviso to Article 3(10) of the ‘Financial Institutions Act’ sets out that where the conditions laid down in sub-article (7) are no longer met, the company is required to apply to the ‘Malta Financial Services Authority’ for a modification of the licence to reflect the new circumstances of the</p>

Directive 2009/110/EC	National Implementing Measures		Conformity Assessment
<p>be prohibited, in accordance with Article 10, from issuing electronic money.</p>	<p><b>to Para. 33</b></p>	<p>Provided further that where a company as referred to in the preceding proviso has not sought for the modification of the licence within such period, it shall be prohibited from issuing electronic money in accordance with this Act.</p> <p><b>Provisos to Para. 33 of FIR/03/2011</b></p> <p>Provided that where the conditions laid down in paragraph 26 are no longer met, the company shall, within thirty calendar days of the notification referred to in point (a) of this paragraph, apply to the authority for a modification of its licence to reflect the new circumstances of the company.</p> <p>Provided further that where a company as referred to in the preceding proviso has not applied for the modification of its licence within such period, it shall be prohibited from issuing electronic money.</p>	<p>company. Such application is required to be carried out within 30 calendar days.</p> <p>Likewise, the first proviso to Paragraph 33 of FIR/03/2011 requires a company to apply to the authority for a modification of its licence to reflect the new circumstances of the company, in the event that the conditions laid down in paragraph 26 are no longer met. Furthermore, such notification is required to take place within 30 calendar days of the notification referred to in point (a) of Paragraph 33 of FIR/03/2011.</p> <p>It should be noted that Article 3(7) of the ‘Financial Institutions Act’ transposes the first subparagraph of Article 9(1) of the Directive. However, the first proviso to Article 3(10) of the ‘Financial Institutions Act’ does not refer to the national provisions which transpose Article 9(2) and (4) of the Directive, which are referred to in the Directive provision. A reference to the provision which corresponds to Article 3 of the Directive, referred to in the Directive provision, is likewise not made.</p> <p>In relation to the references which are present in the first proviso to Paragraph 33 of FIR/03/2011, Paragraph 26 of FIR/03/2011 transposes the first, second and third subparagraphs of Article 9(1) of the Directive. This is in accordance with the reference to “paragraph 1”, which is present in the Directive provision. However, in this instance too, reference is not made to the national provisions which transpose Article 9(2) and (4) of the Directive. Reference to point (a) of Paragraph 33 of FIR/03/2011, which transposes Article 9(5)(a) of the Directive is also made. Such a reference does not appear to be present within the Directive provision.</p> <p>In relation to the transposition of the second sentence of the Directive provision, the second proviso to Article 3(10) of the ‘Financial Institutions Act’ prohibits a company which has not sought for the modification of the licence within such period, from issuing electronic money in accordance with the ‘Financial Institutions Act’. Furthermore, the second proviso to Paragraph 33 of FIR/03/2011 likewise prohibits a company which has not applied for the modification of its licence within the required period from issuing electronic money. Both provisos are in accordance with the second sentence of the Directive provision, despite that they do not contain a reference to the national provisions which transpose Article 10 of the</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>Directive, referred to in the Directive provision.</p> <p>However, partial conformity is being observed, since the transposing provisions do not seem to refer to the provisions which transpose paragraphs 2 and 4 of Article 9 of the Directive, referred to in the first sentence of the Directive provision.</p>
<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.	<b>FIA Art. 3(12) &amp; Art. 13(1), 1<sup>st</sup> sentence</b>	<p><b>Art. 3(12) of the FIA</b></p> <p>(12) For the better carrying out of the provisions of this article on the granting of waivers, the competent authority may, from time to time, publish Financial Institutions Rules which shall be binding on licence holders as specified therein.</p> <p><b>Art. 13(1), 1<sup>st</sup> sentence of the FIA</b></p> <p>13. (1) It shall be the duty of the competent authority to carry out the functions assigned to it by this Act and to ensure that financial institutions carrying on business in Malta comply with this Act, regulations, directives and Rules issued under this Act and with the conditions of their licences. [...]</p>	<p><b>CONFORM</b></p> <p>Article 3(12) and the first sentence of Article 13(1) of the ‘Financial Institutions Act’ transpose Article 9(7) of the Directive.</p> <p>Article 3(12) of the mentioned Act empowers the ‘Malta Financial Services Authority’ to publish Financial Institutions Rules, from time to time, which shall be binding on licence holders as specified therein, for the better carrying out of the provisions of Article 3 thereof on the granting of waivers.</p> <p>Moreover, the first sentence of Article 13(1) of the ‘Financial Institutions Act’ sets out a general obligation upon the competent authority to carry out the functions assigned to it by the ‘Financial Institutions Act’ and it is required to ensure that financial institutions carrying on business in Malta comply with the mentioned Act, regulations, directives and Rules issued under it, as well as with the conditions of their licences.</p> <p>Thus, the ‘Malta Financial Services Authority’ is sufficiently empowered to verify the continued compliance with the requirements laid down in the provisions which correspond to Article 9 of the Directive.</p> <p>Please insert a conclusion regarding conformity</p>
<b>Art. 9(8)</b>	8. This Article shall not apply in respect of the provisions of Directive 2005/60/EC or national anti-money-laundering provisions.	<b>FIA Art. 3(13)</b>	<p><b>Art. 3(13) of the FIA</b></p> <p>(13) Notwithstanding anything provided for in this article, the application of the provisions of the Prevention of Money Laundering Act shall not be waived.</p>	<p><b>CONFORM</b></p> <p>Article 3(13) of the ‘Financial Institutions Act’ transposes Article 9(8) of the Directive.</p> <p>In compliance with the Directive provision, the Maltese transposing provision sets out that notwithstanding anything provided for in Article 3 of the ‘Financial Institutions Act’, the application of the provisions of the Prevention of Money Laundering Act, which is the principal national</p>



Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>implementing measure for Directive 2005/60/EC, shall not be waived.</p> <p>The Maltese transposing provision makes reference to the ‘Prevention of Money Laundering Act’. This Act was sourced from the official website of the Ministry for Justice and Home Affairs, which provides for the official updated legislation currently in force in Malta:</p> <p><a href="http://justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=373">http://justiceservices.gov.mt/LOM.aspx?pageid=27&amp;mode=chrono&amp;gotoID=373</a></p> <p>Since the Maltese transposing provision includes the requirements which are set out in the Directive provision, conformity is observed.</p>
<b>Art. 9(9)</b>	<p>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.</p>	N/A	N/A	<p><b>CONFORM</b></p> <p>Article 9(9) of the Directive sets out an obligation upon Member States which avail themselves of the waiver provided for in paragraph 1 of Article 9 of the Directive to notify the Commission accordingly by 30 April 2011. In this regard, it cannot be determined whether Malta in fact complied with this obligation. Moreover, based on the legislation consulted there is no national provision which ensures that Malta complied or is complying with the requirements set out in the second sentence of the Directive provision. Thus, it is suggested that clarification is sought from the relative competent national authorities in this regard.</p>
<b>Art. 10</b>	<p style="text-align: center;"><b>TITLE III</b> <b>ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY</b></p> <p style="text-align: center;"><i>Article 10</i> <b>Prohibition from issuing electronic money</b></p> <p>Without prejudice to Article 18, Member States shall prohibit natural or</p>	N/A	N/A	<p><b>CONFORM</b></p> <p>Following a screening of the national legislation which transposes Directive 2009/110/EC, it appears that an explicit provision which would correspond to the requirements which are set out in the Directive provision was not located.</p> <p>However, conformity is still being observed, in particular since there do not seem to be any provisions contained within the transposing legislation, which would suggest that natural or legal persons, who are not electronic</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	legal persons who are not electronic money issuers from issuing electronic money.			money issuers, are permitted from issuing electronic money.
<b>Art. 11(1)</b>	<p style="text-align: center;"><i>Article 11</i></p> <p style="text-align: center;"><b>Issuance and redeemability</b></p> <p>1. Member States shall ensure that electronic money issuers issue electronic money at par value on the receipt of funds.</p>	<p><b>FIA Art. 8F(1)</b></p> <p><b>FIR/03/2011 Para. 44, 1<sup>st</sup> sentence</b></p>	<p><b>Art. 8F(1) of the FIA</b></p> <p>8F. (1) Financial institutions authorised to issue electronic money shall issue electronic money at par value on the receipt of funds.</p> <p><b>Para. 44, 1<sup>st</sup> sentence of FIR/03/2011 ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY</b></p> <p>44. An electronic money institution is required to issue electronic money at par value on receipt of funds. [...]</p>	<p><b>CONFORM</b></p> <p>Article 8F(1) of the ‘Financial Institutions Act’ and the first sentence of Paragraph 44 of FIR/03/2011 transpose Article 11(1) of the Directive. Very similar wording was used in this regard.</p> <p>In compliance with the Directive provision, Article 8F(1) of the ‘Financial Institutions Act’ requires financial institutions authorised to issue electronic money, to issue electronic money at par value on the receipt of funds. Likewise, the first sentence of Paragraph 44 of FIR/03/2011 requires an electronic money institution, to issue electronic money at par value on receipt of funds.</p> <p>In addition to the above, it should also be pointed out that the Maltese transposing provision complies with the principles set out in recital 18 of the Directive.</p> <p>Both national transposing provisions are in accordance with the requirements which are set out in the Directive provision. Thus, conformity is observed.</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 electronic money held.	<p><b>FIA Art. 8F(2)</b></p> <p><b>FIR/03/2011 Para. 44, 2<sup>nd</sup> sentence</b></p>	<p><b>Art. 8F(2) of the FIA</b></p> <p>(2) A financial institution authorised to issue electronic money shall ensure that, at any moment, upon request by the holder thereof, it is in a position to redeem the monetary value of any electronic money held, at par value and without delay.</p> <p><b>Para. 44, 2<sup>nd</sup> sentence of FIR/03/2011</b></p> <p>[...] Furthermore, the electronic money institution shall ensure that, at</p>	<p><b>CONFORM</b></p> <p>Article 8F(2) of the ‘Financial Institutions Act’ and the second sentence of Paragraph 44 of FIR/03/2011 transpose Article 11(2) of the Directive. Very similar wording was used in this regard.</p> <p>Article 8F(2) of the ‘Financial Institutions Act’ requires a financial institution authorised to issue electronic money shall ensure that, at any moment, upon request by the holder thereof, it is in a position to redeem the monetary value of any electronic money held, at par value. Additionally, the mentioned Maltese transposing provision adds another requirement, namely, “without delay”. This requirement does not seem to be included within the Directive provision. It is unsure whether such an additional requirement hampers the proper transposition or otherwise of the Directive provision.</p> <p>Likewise, the second sentence of Paragraph 44 of FIR/03/2011 also requires</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			any moment, upon request by the electronic money holder, it is in a position to redeem the monetary value of the electronic money held, at par value and without delay.	an electronic money institution to ensure that at any moment, upon request by the electronic money holder, it is in a position to redeem the monetary value of the electronic money held, at par value. As was mentioned above, the second sentence of Paragraph 44 of FIR/03/2011 also adds the requirement “without delay”. Additionally, it should also be pointed out that whereas the Directive provision makes reference to “electronic money issuers”, Paragraph 44 of FIR/03/2011 makes reference to an “electronic money institution”.  Notwithstanding this, conformity is still being observed.
<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 conditions before being bound by any contract or offer.	<b>FIR/03/2011</b> <b>Para. 45</b>	<b>Para. 45 of FIR/03/2011</b> 45. The contract between the electronic money institution 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 conditions before being bound by any contract or offer.	<b>CONFORM</b>  Paragraph 45 of FIR/03/2011 almost literally transposes Article 11(3) of the Directive.  In full compliance with the Directive provision, the Maltese transposing provision requires the contract between the electronic money institution and the electronic money holder to clearly and prominently state: <ul style="list-style-type: none"> <li>- the conditions of redemption,</li> <li>- including any fees relating thereto, and</li> <li>- it also requires the electronic money holder to be informed of those conditions before being bound by any contract or offer.</li> </ul> It should be pointed out that the Maltese transposing provision makes reference to the contract between the “electronic money institution” and the electronic money holder, as opposed to the contract between the “electronic money issuer” and the electronic money holder. However, this difference does not appear to have a negative impact upon the level of conformity.  Thus, owing to the correct transposition of the Directive provision into Maltese legislation, conformity is observed.  It should be pointed out that the ‘Financial Institutions Act’ does not contain a provision which corresponds to Article 11(3) of the Directive. However, as set out in Article 8F(3) of the mentioned Act, for the better carrying out of the provisions of Article 8F thereof and to better transpose the provisions of the Directive on issuance and redeemability of electronic money, the

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				competent authority may, from time to time, publish Financial Institutions Rules which shall be binding on financial institutions authorised to issue electronic money as specified therein. Thus, the additional requirements relating to the issuance and redeemability of electronic money have been transposed into FIR/03/2011.
<b>Art. 11(4) 1<sup>st</sup> subpara. 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:	<b>FIR/03/2011</b> <b>Para. 46, intr. wording</b>	<b>Para. 46, intr. wording of FIR/03/2011</b> 46. Redemption should, in general, be granted free of charge. However, redemption may be subject to a fee, [...] only if stated in the contract in accordance with paragraph 45 and only in any of the following cases:	<b>CONFORM</b> The introductory wording of Paragraph 46 of FIR/03/2011 transposes the introductory wording of the first subparagraph of Article 11(4) of the Directive. In this regard, the mentioned Maltese transposing provision sets out that, as a rule, redemption should, in general, be granted free of charge. However, redemption may be subject to a fee, only if stated in the contract in accordance with paragraph 45 of FIR/03/2011 and only in any of the cases set out in the forthcoming provisions, which will be addressed in more detail below. The reference to Paragraph 45 of FIR/03/2011 complies with the reference to Paragraph 3 of Article 11 of the Directive, which is referred to in the Directive provision. Owing to the correct transposition of the Directive provision into Maltese legislation, conformity is observed.
<b>Art.11 (4) 1<sup>st</sup> subpara. (a)</b>	(a) where redemption is requested before the termination of the contract;	<b>FIR/03/2011</b> <b>Para. 46(a)</b>	<b>Para. 46(a) of FIR/03/2011</b> (a) where redemption is requested before the termination of the contract;	<b>CONFORM</b> Paragraph 46(a) of FIR/03/2011 literally transposes Article 11(4)(a) of the Directive.
<b>Art. 11(4) 1<sup>st</sup> subpara. (b)</b>	(b) where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or	<b>FIR/03/2011</b> <b>Para. 46(b)</b>	<b>Para. 46(b) of FIR/03/2011</b> (b) where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or	<b>CONFORM</b> Paragraph 46(b) of FIR/03/2011 literally transposes Article 11(4)(b) of the Directive.

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
<b>Art. 11(4) 1<sup>st</sup> subpara. (c)</b>	(c) where redemption is requested more than one year after the date of termination of the contract.	<b>FIR/03/2011 Para. 46(c)</b>	<b>Para. 46(c) of FIR/03/2011</b> (c) where redemption is requested more than one year after the date of termination of the contract.	<b>CONFORM</b> Paragraph 46(c) of FIR/03/2011 literally transposes Article 11(4)(c) of the Directive.
<b>Art. 11(4) 2<sup>nd</sup> subpara.</b>	Any such fee shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer.	<b>FIR/03/2011 Para. 46, 2<sup>nd</sup> sentence</b>	<b>Para. 46, 2<sup>nd</sup> sentence of FIR/03/2011</b> 46. [...] However, redemption may be subject to a fee, which shall be proportionate and commensurate with the actual costs incurred by the electronic money institution, [...]	<b>CONFORM</b> The second sentence of Paragraph 46 of FIR/03/2011 transposes the second subparagraph of Article 11(4) of the Directive. In accordance with the Directive provision, the Maltese transposing provision requires the fee relative to redemption to be proportionate and commensurate with the actual costs incurred by the electronic money institution. Conformity is observed owing to the proper transposition of the requirements set out in the Directive provision.
<b>Art. 11(5)</b>	5. Where redemption is requested before the termination of the contract, the electronic money holder may request redemption of the electronic money in whole or in part.	<b>FIR/03/2011 Para. 47</b>	<b>Para. 47 of FIR/03/2011</b> 47. Where redemption is requested before the termination of the contract, the electronic money holder may request redemption of the electronic money in whole or in part.	<b>CONFORM</b> Paragraph 47 of FIR/03/2011 literally transposes Article 11(5) of the Directive.
<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:	<b>FIR/03/2011 Para. 48, intr. wording</b>	<b>Para. 48, intr. wording of FIR/03/2011</b> 48. Where redemption is requested by the electronic money holder on or up to one year after the date of the termination of the contract:	<b>CONFORM</b> The introductory wording of Paragraph 48 of FIR/03/2011 literally transposes the introductory wording of Article 11(6) of the Directive.
<b>Art. 11(6)(a)</b>	a) the total monetary value of the electronic money held shall be redeemed; or	<b>FIR/03/2011 Para. 48(a)</b>	<b>Para. 48(a) of FIR/03/2011</b> (a) the total monetary value of the electronic money held shall be redeemed; or	<b>CONFORM</b> Paragraph 48(a) of FIR/03/2011 literally transposes Article 11(6)(a) of the Directive.

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
<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.	<b>FIR/03/2011 Para. 48(b)</b>	<b>Para. 48(b) of FIR/03/2011</b>  (b) where the electronic money institution carries out one or more business activities falling under point (e) of paragraph 9 of this Rule and it is unknown in advance what portion of the funds is to be used as electronic money, all funds requested by the electronic money holder shall be redeemed.	<b>CONFORM</b>  Paragraph 48(b) of FIR/03/2011 literally transposes Article 11(6)(b) of the Directive.  The reference to Paragraph 9(e) of FIR/03/2011 which is present in the Maltese transposing provision, corresponds to and reflects the content of Article 6(1)(e) of the Directive, referred to in the Directive provision.  Conformity is observed, owing to the correct transposition of the Directive provision by Paragraph 48(b) of FIR/03/2011.
<b>Art. 11(7)</b>	7. Notwithstanding paragraphs 4, 5 and 6, redemption rights of a person, other than a consumer, who accepts electronic money shall be subject to the contractual agreement between the electronic money issuer and that person.	<b>FIR/03/2011 Para. 49</b>	<b>Para. 49 of FIR/03/2011</b>  49. Notwithstanding paragraphs 46 to 48, redemption rights of a person, other than a consumer who accepts electronic money, shall be subject to the contractual agreement between the electronic money institution and that person.	<b>CONFORM</b>  Paragraph 49 of FIR/03/2011 literally transposes Article 11(7) of the Directive.  The reference to Paragraphs 46, 47 and 48 of FIR/03/2011, referred to in the Maltese transposing provision, corresponds to and fully reflects the content of paragraphs 4, 5 and 6 of Article 11, respectively, referred to in the Directive provision. Conformity is thereby observed.
<b>Art. 12</b>	<i>Article 12</i> <b>Prohibition of interest</b>  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.	<b>FIA Art. 10A &amp; FIR/03/2011 Para. 50</b>	<b>Art. 10A of the FIA</b>  10A. The granting of interest or of any other benefit related to the length of time during which a financial institution providing the services listed in the Third Schedule holds electronic money shall be prohibited.  <b>Para. 50 of FIR/03/2011</b> <b>PROHIBITION OF INTEREST</b>  50. An electronic money institution shall not be allowed to grant interest or any other benefit unless such benefits are not related to the length during	<b>PARTIALLY CONFORM</b>  Article 10A of the 'Financial Institutions Act', as well as Paragraph 50 of FIR/03/2011, transpose Article 12 of the Directive.  Article 10A of the 'Financial Institutions Act' complies with the requirements which are set out in the Directive provision and prohibits the granting of interest or of any other benefit related to the length of time during which a financial institution provides the services listed in the Third Schedule to the mentioned Act holds electronic money. In this regard, the Third Schedule to the mentioned Act, which is referred to in Article 10A of the 'Financial Institutions Act', transposes and reflects the content of Article 6(1) of the Directive, that is, it sets out the activities that may be undertaken by financial institutions that issue electronic money in terms of the 'Financial Institutions Act'. This additional reference does not hamper the proper transposition of the Directive provision into Maltese legislation,

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			<p>which the electronic money is held. In this respect, offering rewards to customers such as anniversary gifts are not permissible whereas the offering of discount vouchers for use when purchasing particular products for customers who for instance hold electronic money above a particular minimum threshold or who undertake a set number of transactions, is allowable.</p>	<p>rather, it makes it makes it more specific and complete.</p> <p>However, despite that Article 10A of the ‘Financial Institutions Act’ complies with the requirements which are set out in the Directive provision, it may be considered that Paragraph 50 of FIR/03/2011 does not fully comply with the requirements set out therein. In this regard, the mentioned transposing provision provides that an electronic money institution shall not be allowed to grant interest or any other benefit, unless such benefits are not related to the length during which the electronic money is held. This complies with the Directive provision. However, the second sentence of the mentioned transposing provision further provides that, in this respect, offering rewards to customers such as anniversary gifts are not permissible, whereas the offering of discount vouchers for use when purchasing particular products for customers who for instance hold electronic money above a particular minimum threshold or who undertake a set number of transactions, is allowable. Thus, the second sentence of Paragraph 50 of FIR/03/2011 appears to hamper the proper transposition of the prohibition set out in the Directive provision, since it provides for an exception.</p> <p>Finally, it should be added that the requirements set out in the Maltese transposing provisions, partly comply with the principles set out in recital 13 of the Directive, specifically, with the principles set out in the third sentence thereof.</p> <p>Thus, due to this situation, partial conformity is being observed.</p>
<b>Art. 13</b>	<p><i>Article 13</i>  <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 <i>mutatis mutandis</i> to electronic money issuers in respect of their duties arising from this Title.</p>	<p><b>FIA</b>  <b>Art. 26</b>  <b>&amp;</b>  <b>FIR/03/2011</b>  <b>Para. 59</b></p>	<p><b>Art. 26 of the FIA</b>  <b>CONSUMER COMPLAINTS</b></p> <p>26.(1)(a) Without prejudice to the generality of article 20 of the Malta Financial Services Authority Act, the Consumer Complaints Manager shall also have the function of investigating complaints from a payment service user and a holder of electronic money arising out of, or in connection with, any alleged infringement by a financial institution of the provisions of this Act</p>	<p><b>CONFORM</b></p> <p>Article 26 of the ‘Financial Institutions Act’, as well as Paragraph 59 of FIR/03/2011, transpose Article 13 of the Directive.</p> <p>Article 26 of the ‘Financial Institutions Act’ deals with ‘Investigation of complaints by the Consumer Complaints Manager’.</p> <p>Article 26(1)(a) of the mentioned Act sets out that, without prejudice to the generality of Article 20 of the ‘Malta Financial Services Authority Act’, referred to therein which deals with ‘Appointment of the Consumer Complaints Manager’, the Consumer Complaints Manager shall also have the function of investigating complaints from a payment service user and a</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
	<p>implementing the Payment Services Directive and the Electronic Money Directive.</p> <p>(b) The provisions of article 20 of the Malta Financial Services Authority Act shall, <i>mutatis mutandis</i>, apply to complaints made under this article.</p> <p>(c) Complaints as described in sub-article (1) may include complaints from interested parties, within the meaning of the Payment Services Directive and the Electronic Money Directive, as well as complaints from registered consumer associations as defined in the Consumer Affairs Act.</p> <p>(2) (a) A dispute between a payment service user or a holder of electronic money and a financial institution may, at the discretion of the payment service user or a holder of electronic money, or if agreed between the parties involved in the dispute, whether by written agreement or otherwise, be referred to arbitration in accordance with the Arbitration Act. The appointing authority and administrator shall be the Malta Arbitration Centre, and only one arbitrator shall be appointed in such disputes.</p> <p>(b) Reference of a dispute to arbitration in accordance with</p>	<p>holder of electronic money arising out of, or in connection with, any alleged infringement by a financial institution of the provisions of the ‘Financial Institutions Act’, implementing the Payment Services Directive and the Electronic Money Directive.</p> <p>Furthermore, Article 26(1)(b) of the ‘Financial Institutions Act’ provides that the provisions of Article 20 of the ‘Malta Financial Services Authority Act’ shall, <i>mutatis mutandis</i>, apply to complaints made under this article. In this regard, Article 20 of the mentioned Act, referred to in Article 26(1)(b) of the ‘Financial Institutions Act’, provides that the ‘Malta Financial Services Authority is required to appoint a Consumer Complaints Manager, whose function shall be to investigate complaints from private consumers arising out of or in connection with any financial services transaction, and to refer such cases as may be necessary or appropriate to the Supervisory Council for its consideration. Furthermore, the Consumer Complaints Manager, or any other duly authorised officer of the mentioned Authority, may communicate to a consumer, whose complaint may have been investigated by the Authority, information concerning any matter which may have come to his cognisance in the course or as a result of the investigation.</p> <p>Moreover, in furtherance of the Consumer Complaints Manager under Article 20 of the ‘Malta Financial Services Authority Act’, the Consumer Complaints Manager shall, whenever the circumstances of a complaint so warrant, encourage the parties to the dispute, to reach an out-of-court settlement of the consumer dispute. In addition, the Consumer Complaints Manager shall, to the extent possible, assist and cooperate with bodies responsible for out-of-court settlement of consumer disputes in Malta and in other Member States and European Economic Area States in the resolution of local and cross border consumer disputes concerning financial services.</p> <p>Thus, the above-mentioned provision, that is, Article 20 of the ‘Malta Financial Services Authority Act’, applies to complaints made under Article 26 of the ‘Financial Institutions Act’.</p> <p>Coming back to the Maltese transposing provision, Article 26(1)(c) of the ‘Financial Institutions Act’ sets out that complaints, as described in sub-article (1) of Article 26 thereof, may include complaints from interested parties, within the meaning of the Payment Services Directive and the</p>



Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
	<p>paragraph (a) shall be one of the conditions of a licence of persons licensed under this Act.</p> <p>(c) The Consumer Complaints Manager shall, when replying to a complaint, inform the complainant of the possibility of having the dispute settled through arbitration proceedings in terms of this article.</p> <p><b>Para. 59 of FIR/03/2011</b></p> <p>59. Reference of a dispute between a holder of electronic money and an electronic money institution to arbitration, in accordance with the Arbitration Act, shall be undertaken in line with the relevant provisions of Article 26(2) of the Act. This is without prejudice to the function of the Consumer Complaints Manager, appointed under Article 20 of the Malta Financial Services Authority Act (Cap 330).</p>	<p>Electronic Money Directive, as well as complaints from registered consumer associations as defined in the ‘Consumer Affairs Act’. The ‘Consumers Affairs Act’, which is referred to in Article 26(1)(c) of the ‘Financial Institutions Act’, is the principal chapter of Law (Chapter 378 of the Laws of Malta), which provides for the powers of the Director General (Consumer Affairs), for the establishment and functions of a Consumer Affairs Council and for the establishment and jurisdiction of the Consumer Claims Tribunal and for other matters ancillary or consequent thereto. In this regard, Article 2 of the ‘Consumers Affairs Act’, defines the term “registered consumer association” as “a consumer association registered in accordance with Part IV of this Act”. In this regard, Part IV of the mentioned Act deals with ‘Consumer Associations’.</p> <p>Article 26(2)(a) of the ‘Financial Institutions Act’ furthermore sets out that a dispute between a payment service user or a holder of electronic money and a financial institution may, at the discretion of the payment service user or a holder of electronic money, or if agreed between the parties involved in the dispute, whether by written agreement or otherwise, be referred to arbitration in accordance with the ‘Arbitration Act’. The appointing authority and administrator shall be the ‘Malta Arbitration Centre’, and only one arbitrator shall be appointed in such disputes. In this regard, Article 26(2)(b) of the ‘Financial Institutions Act’, requires reference to a dispute to arbitration (in accordance with Article 26(2)(a) thereof), to be one of the conditions of a licence of persons licensed under the ‘Financial Institutions Act’. For the purposes of clarity, the ‘Malta Arbitration Act’, which is referred to in the Article 26(2)(a) of the ‘Financial Institutions Act’, is the principal chapter of law (Chapter 387 of the Laws of Malta), which encourages and facilitates the settlement of disputes through arbitration in Malta. It also establishes the Malta Arbitration Centre as a centre for domestic arbitration and international commercial arbitration and makes provisions regulating the conduct of arbitration proceedings and the recognition and enforcement of certain arbitral awards.</p> <p>On the basis of Article 26(2)(c) of the ‘Financial Institutions Act’, when replying to a complaint, the Consumer Complaints Manager is required to inform the complainant of the possibility of having the dispute settled through arbitration proceedings.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				<p>Thus, the above requirements which are set out in Article 26 of the ‘Financial Institutions Act’, complies with the requirements concerning out-of-court settlement, which are set out in Article 13 of the Directive.</p> <p>Paragraph 59 of FIR/03/2011 was also considered to transpose Article 13 of the Directive.</p> <p>In this regard, the mentioned transposing provision sets out that reference of a dispute between a holder of electronic money and an electronic money institution to arbitration, in accordance with the ‘Arbitration Act’, shall be undertaken in line with the relevant provisions of Article 26(2) of the ‘Financial Institutions Act’. This is without prejudice to the function of the Consumer Complaints Manager, appointed under Article 20 of the ‘Malta Financial Services Authority Act’, referred to in the mentioned Maltese transposing provision.</p> <p>Article 26(2) of the ‘Financial Institutions Act’, which is referred to in Paragraph 59 of FIR/03/2011, was dealt with and addressed in more detail above. Moreover, the functions of the Consumer Complaints Manager, appointed under Article 20 of the ‘Malta Financial Services Authority Act’, were also dealt with and addressed in more detail above.</p> <p>Thus, Paragraph 59 of FIR/03/2011 appears to reiterate and reaffirm the requirements set out in Article 26 of the ‘Financial Institutions Act’.</p> <p>Furthermore, the requirements set out in Chapter 5 of Title IV of Directive 2007/64/EC, which are required to apply <i>mutatis mutandis</i> to electronic money issuers in respect of their duties arising from Title III of the Directive (referred to in the Directive provision), are adequately covered by the quoted national provisions. Thus, the said requirement, set out in the Directive provision, is satisfied by the Maltese transposing provisions. Furthermore, the principles set out in recital 19 of the Directive are likewise satisfied.</p> <p>Thus, on the basis of the above, conformity is thereby observed.</p>
<b>Art. 16(1)</b>	<b>TITLE IV FINAL PROVISIONS AND IMPLEMENTING MEASURES</b>	<b>N/A</b>	<b>N/A</b>	<p><b>CONFORM</b></p> <p>Following the present Conformity Assessment, it may be concluded that Malta does not appear to have maintained or introduced provisions other</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	<p><i>Article 16</i> <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>than those laid down in the Directive.</p> <p>Thus, owing to this, conformity is thereby observed.</p>
<b>Art. 16(2)</b>	<p>2. Member States shall ensure that an electronic money issuer does not derogate, to the detriment of an electronic money holder, from the provisions of national law implementing or corresponding to provisions of this Directive except where explicitly provided for therein.</p>	<p><b>FIR/03/2011</b> <b>Para. 4, 3<sup>rd</sup> &amp; 4<sup>th</sup> sentence</b></p> <p><b>FIA</b> <b>Art. 13(1), 1<sup>st</sup> sentence &amp; Art. 15(1)</b></p>	<p><b>Para. 4, 3<sup>rd</sup> &amp; 4<sup>th</sup> sentences of FIR/03/2011</b></p> <p>4. [...] The responsibility of observing the law rests on the financial institution itself, its Board of Directors and its management. Therefore all parties concerned should be fully conversant with the provisions of the Act and the Rules affecting the prudent management of financial institutions and seek legal and/or technical advice as necessary. [...]</p> <p><b>Art. 13(1), 1<sup>st</sup> sentence of the FIA</b></p> <p>13. (1) It shall be the duty of the competent authority to carry out the functions assigned to it by this Act and to ensure that financial institutions carrying on business in Malta comply with this Act, regulations, directives and Rules issued under this Act and with the conditions of their licences.</p>	<p><b>CONFORM</b></p> <p>An explicit national provision corresponding to Article 16(2) of the Directive was not located within the NIMs. The third and fourth sentences of Paragraph 4 of FIR/03/2011 were quoted simply for the purposes of emphasising that the financial institution itself, its Board of Directors and its management, are obliged to observe and adhere to the rules set out in the relative applicable legislation, namely, the ‘Financial Institutions Act’ as well as the relevant Rules made thereunder.</p> <p>In this regard, as stated in Paragraph 3 of FIR/03/2011, the Rule is modelled on the requisites of Directive 2009/110/EC. Furthermore, as stated in Article 27 of the ‘Financial Institutions Act’, the objective of the Act is, in part, to implement the provisions of Directive 2009/110/EC.</p> <p>Furthermore, apart from the above, the first sentence of Article 13(1), as well as, Article 15(1) of the ‘Financial Institutions Act’ were quoted. The mentioned provisions deal with some of the powers of the competent authority, that is, of the ‘Malta Financial Services Authority’. In this regard, the first sentence of Article 13(1) of the ‘Financial Institutions Act’ sets out an obligation upon the competent authority, which is required to carry out the functions assigned to it by the said Act and is required to ensure that financial institutions carrying on business in Malta comply with ‘Financial Institutions Act’, regulations, directives and Rules issued under the said Act and with the conditions of their licences. Thus, the ‘Malta Financial Services Authority’ is required to ensure that financial institutions comply with the</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			<p>[...]</p> <p><b>Art. 15(1) of the FIA</b></p> <p>15. (1) The competent authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of a financial institution.</p>	<p>national rules concerning such financial institutions, including but not limited to, compliance with the national provisions which transpose the relative provisions of the Directive. The first sentence of Article 13(1) of the ‘Financial Institutions Act’ is of a general nature. However, it appears to correctly satisfy the requirements which are set out in the Directive provision.</p> <p>Moreover, on the basis of Article 15(1) of the ‘Financial Institutions Act’, the competent authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of a financial institution.</p> <p>In this regard, from the quoted provisions, it does not appear that electronic money issuers are permitted from derogating from the provisions of national law implementing or corresponding to the provisions of the Directive, save the cases where explicitly provided therein.</p> <p>Thus, owing to this, conformity is observed.</p>
<b>Art. 18(1) 1<sup>st</sup> subpara.</b>	<p><i>Article 18</i></p> <p><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</p>	N/A	N/A	<p><b>NOT CONFORM</b></p> <p>Following a screening of the national implementing measures which transpose the Directive, a provision which would correspond to the first subparagraph of Article 18(1) of the Directive was not located.</p> <p>It should be pointed out that the principal implementing measures relative to Directive 2009/110/EC entered into force after 30 April 2011, specifically, the relative transposing provisions of the ‘Financial Institutions Act’ entered into force on 24 June 2011, by Act X of 2011. Moreover, FIR/03/2011 appears to have been published on a date which is anterior to 30 April 2011.</p> <p>Owing to the apparent non-transposition of the requirements set out in the Directive provision, non-conformity is being observed. In this respect, it is suggested that clarification be sought from the competent national authorities.</p> <p>Finally, it should be pointed out that the principles set out in recital 23 of the Directive are not complied with.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	Title II of this Directive.			
<b>Art. 18(1) 2<sup>nd</sup> subpara.</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.	N/A	N/A	<p><b>NOT CONFORM</b></p> <p>Following a screening of the national implementing measures which transpose the Directive, a provision which would correspond to the second subparagraph of Article 18(1) of the Directive was not located.</p> <p>It should be pointed out that, both the ‘Financial Institutions Act’ as well as FIR/03/2011 contain a provision (Article 14(1) and Paragraph 52 respectively), which deal with the power of the competent authority to require the submission of information by a financial institution. However, there does not appear to be any requirement relating to the fact that such information should be submitted by 30 October 2011, as set out in the Directive provision. Thus, owing to this, the mentioned national provisions were not quoted in the adjacent column, since they were not considered to transpose the Directive provision.</p> <p>Thus, since the NIMs do not seem to contain any provisions which would satisfy the requirements set out in the Directive provision, non-conformity is being observed. In this respect, it is suggested that clarification be sought from the competent national authorities.</p>
<b>Art. 18(1) 3<sup>rd</sup> subpara.</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.	N/A	N/A	<p><b>NOT CONFORM</b></p> <p>Following a screening of the national implementing measures which transpose the Directive, a provision which would correspond to the third subparagraph of Article 18(1) of the Directive was not located.</p> <p>Thus, since the NIMs do not seem to contain any provisions which would satisfy the requirements set out in the Directive provision, non-conformity is being observed. In this respect, it is suggested that clarification be sought from the competent national authorities.</p>
<b>Art. 18(2)</b>	2. Member States may provide for an electronic money institution to be automatically granted authorisation	N/A	N/A	Article 18(2) of the Directive sets out an option. Concerning this option, Malta did not choose to apply it within its relative national legislation.

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	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.			
<b>Art. 18(3)</b>	3. Member States shall allow electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Article 8 of Directive 2000/46/EC, to continue those activities within the Member State concerned in accordance with Directive 2000/46/EC until 30 April 2012, without being required to seek authorisation under Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive. Electronic money institutions which, during that period, have been neither authorised nor waived within the meaning of Article 9 of this Directive, shall be prohibited from issuing electronic money.	N/A	N/A	<p><b>NOT CONFORM</b></p> <p>Following a screening of the national implementing measures which transpose the Directive, a provision which would correspond to Article 18(3) of the Directive was not located.</p> <p>Thus, since the NIMs do not seem to contain any provisions which would satisfy the requirements set out in the Directive provision, non-conformity is being observed. In this respect, it is suggested that clarification be sought from the competent national authorities.</p>