

Conformity Assessment of Directive 2009/110/EC BELGIUM

Draft Final Report
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NATIONAL IMPLEMENTING MEASURES

List of the national implementing measures notified to the European Commission

General observations

27 NOVEMBRE 2012 - Loi modifiant la loi du 21 décembre 2009 relative au statut des établissements de paiement, à l'accès à l'activité de prestataire de services de paiement et à l'accès aux systèmes de paiement et d'autres législations dans la mesure où elles sont relatives au statut des établissements de paiement et des établissements de monnaie électronique et des associations de crédit du réseau du Crédit professionnel

Law of 27 November 2012 amending Law of 21 December 2009 on the Legal Status of Payment Institutions, Access to the Activity of Payment Service Provider and Access to Payment Systems and other Laws insofar as they are related to the Status of Payment Institutions and Electronic Money Institutions and the Credit Associations of the Professional Credit Network.

(hereinafter referred to as “ Law of 27 November 2012”)

Law of 27 November 2012 amending Law of 21 December 2009 on the Legal Status of Payment Institutions, Access to the Activity of Payment Service Provider and Access to Payment Systems and other Laws insofar as they are related to the Status of Payment Institutions and Electronic Money Institutions and the Credit Associations of the Professional Credit Network (hereinafter referred to as “Law of 27 November 2012) transposes almost all of the Directive 2009/110/EC (hereinafter referred to as “the Directive”) provisions. Some Directive provisions that relate to the National Bank of Belgium have instead been transposed in Law of 27 November 2012 amending Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium.

It is an amending law and it amends Law of 21 December 2009 and various other laws to the extent that they are related to the legal status of the payment and electronic money institutions and credit associations of the professional credit network.

This law will be used in the report only with regard to the transposition of the subject matter and the transitional provisions of the Directive. As regards the transposition of all the other Directive provisions, the provisions incorporated in the main legislations will be used for the sake of clarity.

Law of 27 November 2012 was adopted on 27 November 2012, published on 30 November 2012 and entered into force on the date of its publication. It shall be noted that Belgium has not respected the deadline for the transposition of the Directive.

Law of 27 November 2012 is available in French at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2012112703

NATIONAL IMPLEMENTING MEASURES

<p>27 NOVEMBRE 2012 - Loi modifiant la loi du 22 février 1998 fixant le statut organique de la Banque Nationale de Belgique</p> <p>Law of 27 November 2012 amending Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium</p> <p>(hereinafter referred to as "Law of 27 November 2012 amending the LNBB")</p>	<p>Law of 27 November 2012 amending Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium (hereinafter referred to as "Law of 27 November 2012 amending the LNBB") is an amending law. It amends several provisions of the LNBB in conformity with the Directive.</p> <p>It will not be used as such throughout the report. The LNBB will be used instead.</p> <p>It was adopted on 27 November 2012, published on 30 November 2012 and entered into force on the date of its publication.</p> <p>Law of 27 November amending the LNBB is available in French at http://www.ejustice.just.fgov.be/cgi/api2.pl?lg=fr&pd=2012-11-30&numac=2012003355</p>
<p>21 DECEMBRE 2009 - Loi relative au statut des établissements de paiement et des établissements de monnaie électronique, à l'accès à l'activité de prestataire de services de paiement, à l'activité d'émission de monnaie électronique et à l'accès aux systèmes de paiement</p> <p>Law of 21 December 2009 on the Legal Status of Payment and Electronic Money Institutions, Access to the Activity of Payment Service Provider, Access to the Activity of Issuance of Electronic Money and Access to Payment Systems.</p> <p>(hereinafter referred to as "Law of 21 December 2009")</p>	<p>Law of 21 December 2009 on the Legal Status of Payment and Electronic Money Institutions, Access to the Activity of Payment Service Provider, Access to the Activity of Issuance of Electronic Money and Access to Payment Systems (hereinafter referred to as "Law of 21 December 2009") is a primary law and as amended by Law of 27 November 2012, it transposes most of the Directive provisions, mainly in its Book 3.</p> <p>Its Book 1 includes provisions regarding its subject matter, scope and the definitions, while Book 2 transposes Titles 1 and 2 and Articles 83, 86 (1) and (2), 88, 92 and 94 of Directive 2007/64/CE of the Parliament and of the Council of 13 November 2007 on Payment Services in the Internal Market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (hereinafter referred to as "Directive 2007/64/EC").</p> <p>It thus regulates the activity of payment services providers, the legal status of the payment institutions and access to payment systems and the supervision of compliance with the provisions of this Law and the implementing decrees and regulations. As amended by Law of 27 November 2012, it regulates the activity of issuance of electronic money, the legal status of electronic money institutions and the supervision of compliance with the provisions of this Law and the implementing decrees and regulations.</p> <p>As already mentioned, the provisions of Law of 21 December 2009 will be used throughout the report instead of the provisions of the amending law.</p> <p>Law of 21 December 2009 was adopted on 21 December 2009, published on 19 January 2010 and entered into force retroactively on 1 November 2009.</p> <p>Its consolidated version is available in French at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2009122118</p>

NATIONAL IMPLEMENTING MEASURES

22 FEVRIER 1998 - Loi fixant le statut organique de la Banque Nationale de Belgique

Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium

(hereinafter referred to as “LNBB”)

Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium (hereinafter referred to as “LNBB”) transposes several provisions of Directive 2007/64/EC such as cross-referred to in Article 3(1) of the Directive. It is a primary law and it has been amended by Law of 27 November 2012 amending the LNBB. Its provisions will be used as such in the report.

The LNBB regulates the tasks and transactions of the National Bank of Belgium (hereinafter referred to as the “NBB”), its composition, organs and conflicts of duties of its officials lays down financial provisions and provisions relating to the revision of its statutes as well as regarding the supervision of financial, clearing and settlement institutions and those equivalent to settlement institutions.

The LNBB was adopted on 22 February 1998 and published on 28 March 1998. The date of entry into force of its provisions (and of the repeal of some of them for different reasons, for instance at the introduction of the euro) was to be decided by the King by Royal Decrees. Two Royal Decrees were adopted in this regard, the Royal Decree of 13 May 1998 and the Royal Decree of 26 October 1998.

Its unofficial consolidated version in French is available at

http://www.nbb.be/doc/ts/Enterprise/juridisch/F/loi_organique.pdf and also available in English at http://www.bnb.be/doc/ts/Enterprise/juridisch/E/organic_act.pdf

NATIONAL IMPLEMENTING MEASURES

10 DECEMBRE 2009 - Loi relative aux services de paiement

Law of 10 December 2009 on Payment Services
(hereinafter referred to as “Law of 10 December 2009”)

Law of 10 December 2009 on Payment Services (hereinafter referred to as “Law of 10 December 2009”) is a primary law and as amended by Law of 27 November 2012 it transposes Articles 11 to 13 of the Directive.

Law of 10 December 2009 applies to payment services insofar as the payment service providers of the payer and of the beneficiary, or the unique payment service provider of both the payer and the beneficiary are located in the European Union and the payment services are offered in Belgium. It applies to payment services provided in euro or in the currency of a Member State which is not in the Euro zone, with the exception of situations of unauthorised payments where the concerned provisions apply to any currency. As amended by Law of 27 November 2012, it applies to the issuance and redemption of electronic money by electronic money issuers.

As mentioned above, the provisions of Law of 10 December 2009 will be used in the report instead of the provisions of the amending law.

Law of 10 December 2009 was adopted on 10 December 2009, published on 15 January 2010 and entered into force on 1 April 2010.

Its consolidated version is available in French at
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2009121039&table_name=loi

NATIONAL IMPLEMENTING MEASURES

11 JANVIER 1993 - Loi relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux et du financement du terrorisme

Law of 11 January 1993 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Financing of Terrorism

(hereinafter referred to as “Law of 11 January 1993”)

Law of 11 January 1993 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Financing of Terrorism (hereinafter referred to as “Law of 11 January 1993”) transposes Article 19 and partially Article 24 of Directive 2007/64/EC as cross-referred to in Article 3(1) of the Directive. More precisely, it has been amended to include the electronic money institutions in its scope. Its provisions are used as such in the report.

It shall be noted that all amendments by Law of 27 November 2012 of this law may not be seen in the report, but all are conform to the Directive.

Law of 11 January 1993 transposes Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing and Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of ‘politically exposed person’ and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

It was adopted on 11 January 1993, published on 9 February 1993 and entered into force on 1 December 1993.

Its consolidated version is available in French at

http://www.ejustice.just.fgov.be/cgi_loi/loi_a.pl?language=fr&caller=list&cn=1993011141&la=f&fromtab=loi&sql=dt='loi'&tri=dd+as+rank&rech=1&numero=1

NATIONAL IMPLEMENTING MEASURES

22 MARS 1993 - Loi relative au statut et au contrôle des établissements de crédit.

Law of 22 March 1993 on the Legal Status and Supervision of Credit Institutions

(hereinafter referred to as “Law of 22 March 1993”)

Law of 22 March 1993 on the Legal Status and Supervision of Credit Institutions (hereinafter referred to as "Law of 22 March 1993) does not transpose any Directive provision as such but is relevant as it transposes some provisions to which the Directive provisions cross-refer to. As a consequence, not all its amendments by Law of 27 November 2012 may be seen in the report, but all are conform to the Directive.

Law of 22 March 1993 is a primary law and regulates,, the establishment, the activities and the supervision of credit institutions operating in Belgium, in order to ensure protection of public savings and the good functioning of the credit system.

It was adopted on 22 March 1993, published on 19 April 1993 and entered into force on the date of its publication.

The consolidated version of Law of 22 March 1993 is available in French at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1993032234&table_name=loi

It shall be noted that in the consolidated version of the law there are some inconsistencies probably due to the subsequent amendments. Those that have been found in the context of the transposition of Article 1(1) of the Directive will be explained in more details in the summary.

Indeed, the amendment of the second subparagraph of Article 1 of Law of 22 March 1993 by Law of 27 November 2012, which lays down the definition of what is meant by a credit institution, in conformity with point 1 of Article 4 of Directive 2006/48/EC seems not to have been incorporated in the coordinated version of the law. Actually, in the coordinated version of the law, the second subparagraph of Article 1 of Law of 22 March 1993 seems to have been repealed, which might lead to confusion.

Further, as regards the transposition of the second paragraph of Article 38 of Directive 2006/48/EC, it seems to be partially transposed in point 2 bis of Article 79 of Law of 22 March 1993, which cross-refers to Article 14(1) of Law of 22 March 1993 and seems to specify that the latter provides for the notification to the European Commission of authorisations granted to branches of credit institutions governed by the law of non-EEA countries. The problem is that Article 14(1) of Law of 22 March 1993 to which point 2 bis of Article 79 of Law of 22 March 1993 refers, has been repealed by Article 5 of amending Law of 15 May 2007.

Finally, there are also some issues with the scope of the Titles in this law. Its Article 65 regarding access to activity of branches of credit institutions governed by the law of other EEA countries is to be found under a Title which concerns branches of credit institutions governed by the law of other EC Member States. Likewise, Article 79 of Law of 21 March 1993 regarding the branches of credit institutions of non-EEA countries is to be found under a Title regarding the branches of credit institutions of non-EC Members States. The term "European Community" might also need to be updated throughout the law.

NATIONAL IMPLEMENTING MEASURES

List of additional national implementing measures referred to in the conformity assessment	General observations
<p>8 DECEMBRE 1992 - Loi relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel.</p> <p>Law of 8 December 1992 on the Protection of Individual Privacy with respect to the Processing of Personal Data</p> <p>(hereinafter referred to as "LPIP")</p>	<p>Law of 8 December 1992 on the Protection of Individual Privacy with respect to the Processing of Personal Data (hereinafter referred to as "LPIP") transposes partially Article 24 of Directive 2007/64/EC as cross-referred to in Article 3(1) of the Directive. It has not been amended by Law of 27 November 2012.</p> <p>Without prejudice to some exceptions, Law of 8 December 1992 applies to all processing of personal data partially or totally in electronic form and all manual processing if the information is, or is meant to be, a part of a file.</p> <p>It was adopted on 8 December 1992, published on 18 March 1993 and its various provisions entered into force between 1 April 1993 and 1 September 1994.</p> <p>Its consolidated version is available in French at http://www.ejustice.just.fgov.be/cgi_loi/loi_a.pl?language=fr&caller=list&cn=1992120832&la=f&fromtab=loi&sql=dt='loi'&tri=dd+as+rank&rech=1&numero=1</p>
<p>22 DECEMBRE 2009 - Loi modifiant la loi du 2 août 2002 relative à la surveillance du secteur financier et aux services financiers et instaurant l'action en cessation des infractions à la loi du 10 décembre 2009 relative aux services de paiement</p> <p>Law of 22 December 2009 amending Law of 2 August 2002 on the Supervision of the Financial Sector and on Financial Services and introducing an order to cessation of infringements of Law on Payment Services</p> <p>(hereinafter referred to as "Law of 22 December 2009")</p>	<p>Law of 22 December 2009 amending Law of 2 August 2002 on the Supervision of the Financial Sector and on Financial Services and introducing an order to cessation of infringements of Law on Payment Services (hereinafter referred to as "Law of 22 December 2009") is only relevant in this report, as it partially transposes Article 21 of Directive 2007/64/EC. It has not been amended by Law of 27 November 2012.</p> <p>Law of 22 December 2009 partially transposes Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.</p> <p>It was adopted on 22 December 2009, published on 19 January 2010 and entered into force retroactively on 1 November 2009.</p> <p>It is available in French at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2009122227&table_name=loi</p>

SUMMARY

1. Executive summary

The Directive provisions and Directive 2007/64/EC provisions as cross-referred to in Article 3(1) of the Directive have mainly been transposed by two amending laws; Law of 27 November 2012 and Law of 27 November 2012 amending the LNBB. It shall be noted that Belgium has not respected the deadline for the transposition of the Directive and the transposing provisions entered into force only on 30 November 2012.

The amended provisions of the main legislations are used throughout the report for the sake of clarity.

Law of 27 November 2012 has also amended a few less relevant laws that have not been inserted in the above section, in order to ensure conformity with the Directive and overall consistency of Belgian law. Moreover, three provisions of two additional laws (which have not been amended by Law of 27 November 2012 and thus not notified) are used in the report as regards the transposition of a few Directive 2007/64/EC provisions in the context of electronic money institutions.

Most of the Directive provisions have been transposed into Law of 21 December 2009 through the introduction of a new Book 3, relating to the access and exercise of activity of issuing electronic money and the supervision of electronic money institutions. The LNBB and Law of 10 December 2009 are also among the most relevant laws as regards the transposition of this Directive.

The Directive has been transposed in a partially conform manner in Belgian law, which is partly due to the fact that Law of 21 December 2009 requires the NBB to adopt a regulation in order to complete the transposition of some of the provisions of Articles 5 and 7 of the Directive and this regulation has not yet been adopted. It shall be noted that the list, on which should be registered the exempted electronic money institutions and branches of electronic money governed by the law of non-EEA countries, is not even yet available on the website of the NBB. As a consequence of the partial transposition of those Directive provisions, Article 16(1) of the Directive has also been transposed partially. Furthermore, it shall be noted that most of the transitional provisions under Article 18 of the Directive have not been transposed in Belgian law, which is due to the late transposition of the Directive.

All the other Directive provisions have been transposed in a conform manner and many of them in a literal way, including the provisions of Directive 2007/64/EC, as cross-referred to in Article 3(1) of the Directive.

The NBB is one of the two supervisory authorities in Belgium and it is competent authority as regards the supervision of electronic money institutions. More generally, it is competent for the supervision of financial, clearing and settlement institutions and those equivalent to settlement institutions.

2. The implementation of Directive 2009/110/EC

2.1. Scope

There are no issues as regards the scope of application of the Directive. The scope of application of the main transposing measure, Book 3 under Law of 21 December corresponds to the scope of the Directive. All the other implementing measures have been amended in order to include the electronic money institutions in their scope of application and they usually refer to "electronic money institutions under Law of 21 December 2009".

2.2. Terminology

There are no particular issues regarding the terminology used in the national implementing measures compared to the terminology of 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 has been transposed in a conform manner into Belgian law. As may be seen below, some of the Directive provisions under this Title have been literally transposed.

2.4.1.1. Article 1 – Subject

Article 1 of the Directive regarding the subject matter and scope has been transposed in a conform manner into Belgian law.

As regards points (c), (d) and (e) of Article 1(1) of the Directive, they have been transposed in a partially conform manner. This is due to the fact that these provisions do not include in the categories of electronic money issuers the office giro institutions, the central banks and the regional and local authorities that are entitled to issue electronic money under national laws of other EEA countries.

The option under Article 1(3) of the Directive has not been applied in Belgian law.

2.4.1.2. Article. 2 – Definitions

Article 2 of the Directive, which lays down definitions, has been transposed in a conform manner into Belgian law.

The option under Article 2 point 3 of the Directive has been applied by Belgium and the definition of an electronic money issuer has been literally transposed in point 32 of Article 4 of Law of 21 December 2009.

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

Title II of the Directive has been transposed in a partially conform manner. In fact, some provisions under Articles 5, 7, 8 and 9 of the Directive are either partially transposed or not transposed at all. As regards Articles 5 and 7, the issue of conformity arises because the regulation that the NBB shall adopt according to Law of 21 December 2009, in order to complete the transposition has not yet been adopted. Under Articles 8 and 9 of the Directive, the provisions concerning the notification of relevant information to the Commission have not been explicitly transposed into Belgian law.

2.4.2.1. Article 3 – General prudential rules

Article 3 of the Directive providing for requirements as regards the taking up, pursuit and prudential supervision of the business of electronic money institutions, has been transposed in a conform manner.

The Belgian legislator has not transposed Article 3(1) of the Directive in a similar national provision, referring to national provisions transposing Directive 2007/64/EC provisions, as cross-referred to in Article 3(1) of the Directive. Instead, new provisions relating to electronic money institutions have been introduced in Law of 21 December 2009, most of which copy and paste the national provisions relating to payment institutions. The other laws relevant for the transposition of Article 3(1) of the Directive have been amended in order to include the electronic money institutions in their scope. It shall be noted that since the assessment of conformity of Directive 2007/64/EC, a few national provisions transposing the relevant Directive 2007/64/EC provisions have been amended or repealed (some have been amended and repealed also by Law of 27 November 2012 itself) in order to ensure conformity with European law.

The transposition of the fourth subparagraph of Article 3(3) of the Directive into Belgian law is only partially conform, as the sanctions included in the national provision seem to concern only the persons who acquired the qualifying holding and not the persons who disposed of their qualifying holding, in the event where they do not observe the obligation of prior notification to the NBB ; the NBB can take towards them the same measures as mentioned above and can also request the president of the commercial court under the jurisdiction of which are the headquarters of the electronic money institution, to declare, as in summary proceedings, the cancellation of all or part of the votes cast. .

It shall be noted that the option set out in the sixth paragraph of Article 3(3) of the Directive has not been applied.

2.4.2.2. Article 4 – Initial capital

Article 4 of the Directive regarding the initial capital that needs to be held by electronic money institutions at the time of authorisation, has been transposed in a conform manner into Belgian law.

2.4.2.3. Article 5 – Own funds

Article 5 of the Directive regarding requirements in relation to electronic money institutions' own funds, has been transposed in a partially conform manner into Belgian law.

Article 5(1) of the Directive has been transposed in a partially conform manner in Article 72(1) of Law of 21 December 2009. In fact, the transposing Article does only provide that the

own funds of an electronic money institution shall, at no time, fall below the amount required under Article 66 of Law of 21 December 2009 (initial capital). It does not refer to amounts corresponding to paragraphs 2 to 5 of Article 5 of the Directive, as cross-referred to in Article 5(1) of the Directive.

Article 5(2) first subparagraph of the Directive has also been transposed in a partially conform manner. Article 72(2) first subparagraph of Law of 21 December 2009 provides that the NBB shall adopt a regulation which shall, in accordance with the Directive, lay down the solvency requirements for all categories of electronic money institutions as regards their activities under Article 77(2) point 1 of Law of 21 December 2009 (transposing Article 6(1)(a) of the Directive) not linked to the activity of issuing of electronic money. The regulation shall determine various methods and the NBB may decide which method shall apply to a specific electronic money institution or a category of electronic money institutions. The issue of conformity is due to the fact that the NBB has not yet adopted the regulation referred to in the transposing provision.

Article 5(2) second subparagraph of the Directive has also been transposed by Article 72(2) first subparagraph of Law of 21 December 2009 and the regulation of the NBB shall complete this transposition. Non-conformity is observed in this case, as the national provision does not mention method D for calculating solvency requirements of the electronic money institutions as regards their activities of issuing of electronic money. Article 5(2) third subparagraph of the Directive has not been transposed at all and this is also the case as regards Articles 5(3) and (4) of the Directive. Those provisions will probably be inserted in the regulation of the NBB, but for the time being their transposition is not conform to the Directive.

The options set out in the fifth and seventh paragraphs of Article 5 of the Directive have not been applied by Belgium.

2.4.2.1. Article 6 – Activities

Article 6 of the Directive, regarding activities other than issuing electronic money, in which the electronic money institutions may engage, has been transposed in a conform manner in Article 77 of Law of 21 December 2009.

2.4.2.2. Article 7 – Safeguarding requirements

Article 7 of the Directive regarding the safeguarding of electronic money institutions' funds, has been transposed into Belgian law in a partially conform manner.

Article 7(2) of the Directive has been transposed in a partially conform manner. In fact Article 78(1) of Law of 21 December provides that the NBB shall define the secure, liquid and low-risks assets through a regulation in accordance with Article 7(2) of the Directive. However, this regulation has not yet been adopted.

The option under Article 7(4) of the Directive has not been applied in Belgian law.

2.4.2.3. Article 8 – Relations with third countries

Article 8 of the Directive regarding the treatment of branches of electronic money institutions governed by the law of non-EEA countries, has been transposed in a partially conform manner into Belgian law.

Article 8(1) of the Directive has been complied with although it has not been transposed in a similar national provision. The Belgian legislator has introduced several provisions relating to the taking up and the pursuit of activities of branches of electronic money institutions governed by the law of a non-EEA country and their supervision, in Law of 21 December 2009. Almost all of them refer to provisions applying to electronic money institutions governed by Belgian law and specify additional requirements in each case. Those provisions are not more favourable than those applying to electronic money institutions governed by the law of another EEA country. Moreover the branches of electronic money institutions, which have their head office outside the EEA, do not benefit from neither the freedom of establishment under Article 43 of the Treaty nor the freedom to provide services under the second paragraph of Article 49 of the Treaty in Belgian law.

Article 8(2) of the Directive has not been explicitly transposed into Belgian law, which leads to partial conformity.

2.4.2.4. Article 9 – Optional exemptions

The Belgian legislator has chosen to apply the option under Article 9 of the Directive regarding the waiver of the application of certain Directive requirements for small electronic money institutions. Article 9 of the Directive has been transposed in Article 105 of Law of 21 December 2009 in a partially conform manner.

Articles 9(1) to (8) of the Directive have been transposed in a conform manner, often in a literal way. All of the options have been applied, except for the option under Article 9(1) third subparagraph of the Directive.

Article 105 of Law of 21 December 2009 specifies that the NBB cannot waive the application of Articles 77 and 78 of Law of 21 December, which set out rules concerning other activities of the electronic money institutions and the safeguarding requirements of the funds received in exchange of electronic money. National Articles corresponding to Articles 20, 22, 23 and 24 of Directive 2007/64/EC are excluded from the exemption, as prescribed by the Directive provision. The legal persons exempted shall be registered. However, no such register is available yet on the website of the NBB.

Under Belgian law, the King can provide that a legal person exempted may engage only in some of the activities listed under the Articles 77(1) to (3) of Law of 21 December 2009, in conformity with the Directive. In Belgium, where the King is empowered to adopt provisions implementing the law, he does so by a Royal Decree. In practice, it is a federal governmental decree, which is adopted by a member of the government and signed by the King. A Royal Decree usually enters into force on the date of its publication on the "Moniteur Belge", which is the Belgian official journal.

Article 9(9) of the Directive has not been transposed in Belgian law, which results in partial conformity.

2.4.3. Title III – Issuance and redeemability of electronic money

Title III of the Directive has been transposed in a conform manner into Belgian law. It shall be noted that almost all of the provisions under Articles 11 and 12 of the Directive have been transposed in a literal way.

2.4.3.1. Article 10 – Prohibition from issuing electronic money

Article 10 of the Directive regarding the prohibition of natural or legal persons who are not electronic money issuers from issuing electronic money has been transposed in a conform manner into Belgian law.

2.4.3.2. Article 11 - Issuance and redeemability

Article 11 of the Directive regarding the issuance and redeemability of electronic money has been transposed in a conform manner in Belgian Law. It shall be noted that almost all of the provisions under Article 11 of the Directive have been transposed in a literal way.

Article 58/2 of Law of 10 December 2009 stipulates that electronic money issuers shall redeem, at any moment and at par value, the monetary value of the electronic money held. In Belgian law, redemption may be subject to a fee only if stated in the contract between the electronic money issuer and the electronic money holder and in the cases referred to in Article 58/2 of Law of 10 December 2009 (which transposes Article 11(4) of the Directive) and shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer. The King can establish the criteria for determining actual costs incurred by the electronic money issuer.

2.4.3.3. Article 12 – Prohibition of interest

Article 12 of the Directive regarding the prohibition of granting interest has been transposed in a conform manner into Belgian law.

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

Article 13 of the Directive regarding the requirement of out-of-court complaint and redress procedures for the settlement of disputes has been transposed in a conform manner into Belgian law.

2.4.4. Title IV – Final provisions and implementing measures

Title IV of the Directive has been transposed in a partially conform manner as the duty of full harmonisation under Article 16(1) of the Directive has not been respected and most of the transitional provisions have not been transposed at all into Belgian law.

2.4.4.1. Article 16 – Full harmonization

Article 16 of the Directive regarding the duty of full harmonisation has been transposed in a partially conform manner into Belgian law.

Article 16(1) of the Directive which sets out a full harmonisation duty has been transposed in partial conformity. In fact, as explained in more detail above, some Directive provisions have been transposed in a partially conformed manner or not transposed at all due to the fact that the NBB has not yet adopted a regulation that shall deal with the matters under the concerned Directive provisions, as prescribed in Law of 21 December 2009.

As regards Article 16(2) of the Directive, no similar provision exists in Belgian law. Nonetheless, conformity is observed as Article 81 of Law of 21 December 2009 lays down the competencies of the NBB that refer to the ability of controlling the electronic money institutions in order to check the compatibility of their activity with the legislation and the implementing regulations and decrees.

2.4.4.2. Article 18 – Transitional provisions

Article 18 of the Directive regarding the transitional provisions has been transposed in a partially conform manner into Belgian law.

Belgium did not apply the option contained in Article 18(2) of the Directive.

The third subparagraph of Article 18(1) of the Directive and Article 18(3) of the Directive have not been transposed at all into Belgian law. It shall be noted that this omission is a consequence of the late transposition of the Directive by the Belgian legislator.

3. Conclusions on conformity

3.1. Cases of partial conformity

Articles 1(1)(c), (d) and (e) of the Directive regarding different categories of electronic money issuers: partial conformity is due to the fact that office giro institutions, the central banks and the regional and local authorities entitled to issue electronic money in other EEA countries are not included in the Belgian provisions.

Article 3(3) fourth subparagraph of the Directive regarding the sanctions towards natural or legal persons who did not observe the obligation of prior information required under Article 3(3) first and second subparagraphs: partial conformity arises from the fact that sanctions under national law only regard the acquirers who did not observe the obligation of prior information and there seem to be no sanctions towards the legal or natural persons who disposed of the qualifying holding.

Article 5(1) of the Directive regarding the minimum amount of the electronic money institutions' own funds: partial conformity arises from the fact that Article 72(1) of Law of 21 December 2009 does only provide that the electronic money institution's own funds shall at no time fall below the amount of capital required under Article 66 of Law of 21 December 2009 and does not provide for the alternative referred to under paragraphs 2 to 5 of Article 5 of the Directive where the latter amount would be higher. It shall be noted that this might be corrected in the future through secondary regulation, as the NBB shall adopt a regulation according to Article 72(2) of Law of 21 December 2009.

Article 5(2) first subparagraph of the Directive regarding the application of methods A, B and C in respect of electronic money institutions which engage in activities not linked to the issuance of electronic money: this provision has been only partially transposed as the NBB has not yet adopted the regulation according to Article 72(2) first subparagraph of Law of 21 December 2009 in order to determine the solvency requirements applying to electronic money institutions as regards their activity of payment services.

Article 7(2) of the Directive regarding the definition of "secure, low-risk assets": this provision has only been partially transposed as the NBB has not yet adopted the regulation according to Article 78(1)(b)(ii) of Law of 21 December 2009 which shall define what is meant by the secure, liquid and low-risk assets in Belgian law.

Article 8(2) of the Directive regarding the requirement to notify the Commission of all authorisations for branches of electronic money institutions having their head office outside the Community: partial conformity arises from the fact that Belgium has not transposed this provision at all. For the time being, the register under Article 64 of Law of 21 December 2009 is not even yet available on the website of the NBB.

Article 9(9) of the Directive regarding the requirement to notify the Commission of the intention to apply the waiver under Article 9 of the Directive and to inform it of the number of legal persons exempted and of the total amount of outstanding electronic money issued: partial conformity arises because Belgium has not notified the Commission of the fact that it was intending to apply the option under Article 9 of the Directive before the deadline prescribed by the Directive. This is due to the late transposition of the Directive as the transposing measure was adopted only on 27 November 2012. The requirement concerning the notification to the Commission of the number of legal persons exempted under this Directive provision and of the total amount of outstanding electronic money on an annual basis has not been transposed into Belgian law. The same remark as above applies as regards the register under Article 64 of Law of 21 December 2009. Nonetheless, a register may be found on the website of the FSMA, the other Belgian supervisory authority, which is apparently based on the national provisions transposing the previous Directive on electronic money institutions.

Article 16(1) of the Directive regarding full harmonisation duty: partial conformity arises because because the office giro institutions, the central banks and the regional and local authorities entitled to issue electronic money under the laws of other EEA countries are not included in Belgian law, as well as Article 3(3) fourth subparagraph of the Directive has also been transposed in a partially conform manner and Articles 5(1) and 5(2) first subparagraph of the Directive and Articles 5(2) second and third subparagraphs, 5(3) and 5(4) have not been transposed at all. Also Article 7(2) has only been partially transposed. Moreover, the requirements of notification to the Commission under Articles 8(2) and 9(9) of the Directive have not been transposed. Also, as already mentioned, the register of exempted electronic money institutions and branches of electronic money institutions governed by the law of non-EEA countries is not even yet available on the website of the NBB.

Article 18(1) second subparagraph of the Directive regarding the requirement to notify the NBB of all relevant information to assess the compliance with the Directive provisions: partial conformity arises from the fact that the transposing provision only stipulates that the electronic money institutions shall, without delay, notify the NBB of activities under Article 77(2) of Law of 21 December 2009 in which they intend to engage. The national provision does not refer to an assessment of compliance with the national provisions transposing the Directive, neither does it mention any measures that shall be taken in case of non-compliance.

3.2. Cases of non-conformity

Article 5(2) second subparagraph of the Directive regarding the use of method D for calculating own funds requirements in relation to activities of issuing electronic money: non conformity arises from the fact, that, although the national provision provides for the obligation of the NBB to adopt a regulation determining the solvency requirements applying in this regard, and, although it seems to require that the methods for calculating own funds requirements in relation to activities of issuing electronic money shall be different from the methods for calculating own funds requirements in relation to activities of payment services, it does not refer to method D, as provided by the Directive provision.

Article 5(2) third subparagraph, Article 5(3) and Article 5(4) of the Directive regarding, respectively, the amount of own funds that shall be held by electronic money institutions at all times, the "D" method and the calculation of own funds requirements in cases where the electronic money institution also engages in other activities than issuing of electronic money and the amount of outstanding electronic money is unknown in advance: these provisions have not been transposed at all into Belgian law, but this might be corrected through secondary legislation in the future.

Article 18(1) third subparagraph and 18(3) of the Directive regarding, respectively, the registration of electronic money institutions complying with the Directive provisions and the prohibition from issuing electronic money for those not complying not complying with the provisions of the Directive: these provisions have not been transposed into Belgian law, which is due to the late transposition of the Directive.

3.3. Option ('May' clause)

3.3.1. Options that Belgium has chosen to apply

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

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

Article 9(1) first subparagraph introductory wording of the Directive: regarding the competency of the NBB to exempt small electronic money institutions from the application of certain requirements normally applicable to electronic money institutions.

Article 9(1) third subparagraph of the Directive: regarding the possibility of establishing a maximum storage amount of the electronic money on the payment instrument or account of the consumer.

Article 9(4) of the Directive: regarding the limitation of activities in which legal persons exempted under Article 9(1) of the Directive may engage.

3.3.1. Options that Belgium has not chosen to apply

Article 1(3) of the Directive: regarding the waiver of application of a part or of the totality of the provisions of Title II of the Directive to certain institutions referred to in Article 2 of Directive 2006/48/EC.

Article 3(3) sixth subparagraph of the Directive: regarding the waiver of application of a part or of the totality of the requirements of Article 3(3) of the Directive in respect of electronic money institutions that carry out the activities referred to in Article 6(1)(e) of the Directive.

Article 5(5) of the Directive: regarding the competency of the NBB to allow electronic money institutions to draw away from the established method for calculating own funds

requirements pursuant to a risk evaluation process.

Article 5(7) of the Directive: regarding the competency of the NBB to exempt electronic money institutions, which are included in the consolidated supervision of the parent credit institutions referred to in Directive 2006/48/EC, from the application of paragraphs 2 and 3 of Article 5 of the Directive.

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

Article 7(4) of the Directive: regarding the competency of the NBB to determine the appropriate method to be applied for safeguarding of funds.

Article 18(2) of the Directive: regarding the possibility of automatically granting authorisation to electronic money institutions that comply with the necessary requirements pursuant to evidence known to the NBB.

4. List of acronyms

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;

Directive 2006/48/EC: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;

Directive 2007/64/EC: Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC;

Law of 11 January 1993: Law of 11 January 1993 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Financing of Terrorism;

Law of 22 March 1993: Law of 22 March 1993 on the Legal Status and Supervision of Credit Institutions;

Law of 10 December 2009: Law of 10 December 2009 on Payment Services;

Law of 21 December 2009: Law of 21 December 2009 on the Legal Status of Payment and Electronic Money Institutions, Access to the Activity of Payment Service Provider, Access to the Activity of Issuance of Electronic Money and Access to Payment Systems;

Law of 22 December 2009: Law of 22 December 2009 amending Law of 2 August 2002 on the Supervision of the Financial Sector and on Financial Services and introducing an order to cessation of infringements of Law on Payment Services ;

Law of 27 November 2012: Law of 27 November 2012 amending Law of 21 December 2009 on the Legal Status of Payment Institutions, Access to the Activity of Payment Service Provider and Access to Payment Systems and other Laws insofar as they are related to the Status of Payment Institutions and Electronic Money Institutions and the Credit Associations of the Professional Credit Network;

Law of 27 November 2012 amending the LNBB: Law of 27 November 2012 amending Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium;

LNBB: Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium;

LPIP: Law of 8 December 1992 on the Protection of Individual Privacy with respect to the Processing of Personal Data;

NBB: National Bank of Belgium.

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
Article No.	BE	Act, Article No.	BE	Observations
Art. 1(1) intr. wording	<p>TITRE I CHAMP D'APPLICATION ET DÉFINITIONS</p> <p><i>Article premier</i></p> <p>Objet et champ d'application</p> <p>1. La présente directive fixe les règles concernant l'exercice de l'activité d'émission de monnaie électronique, aux fins desquelles les États membres distinguent les catégories suivantes d'émetteurs de monnaie électronique:</p>	<p>Law of 21 December 2009, Book 3, 1st Title, Art.59, intr. wording</p>	<p>Law of 21 December 2009,</p> <p>Livre 3 - Accès à l'activité d'émission de monnaie électronique et statut des établissements de monnaie électronique,</p> <p>Titre 1er - Emetteurs de monnaie électronique,</p> <p>Article 59 introductory wording</p> <p>Sans préjudice des dispositions régissant le statut des établissements ou autorités énoncés ci-après, seuls peuvent exercer l'activité d'émission de monnaie électronique en Belgique :</p>	<p>CONFORM</p> <p>Article 59 introductory wording of Law of 21 December 2009 transposes Article 1(1) introductory wording of the Directive.</p> <p>Although worded differently, Article 59 introductory wording has a purpose similar to that of Article 1(1) introductory wording of the Directive; to introduce different categories of electronic money issuers.</p> <p>It states that without prejudice to provisions governing the legal status of the institutions or authorities mentioned further in the law, only the following institutions may engage in the activity of issuing electronic money in Belgium, which is conform to the Directive. The categories of electronic money issuers that shall be recognised in Belgian law and that are listed under Article 59 of Law of 21 December 2009 are, as may be seen further in the report, also conform to Directive provisions. As a consequence, the scope of the Directive has been duly complied with.</p> <p>Based on the above findings, Article 1(1) introductory wording of the Directive has been transposed in a conform manner.</p>
Art. 1(1)(a)	<p>a) les établissements de crédit au sens de l'article 4, point 1), de la directive 2006/48/CE, y compris, conformément au droit national, une succursale, au sens de l'article 4, point 3), de ladite directive, établie dans la Communauté, d'un établissement de crédit ayant son siège en dehors de la Communauté, conformément à l'article 38 de ladite</p>	<p>Law of 21 December 2009, Art.59, paragraph 1;</p>	<p>Law of 21 December 2009,</p> <p>Article 59 point 1</p> <p>Les établissements de crédit de droit belge, les établissements de crédit relevant du droit d'un autre Etat membre de l'EEE, autorisés à émettre de la monnaie électronique</p>	<p>CONFORM</p> <p>Article 59 point 1 of Law of 21 December 2009 transposes Article 1(1)(a) of the Directive.</p> <p>Article 59 point 1 of Law of 21 December 2009 introduces the first category of electronic money issuers.</p> <p>First of all, it includes in this category the credit institutions governed by</p>

Directive 2009/110/EC	National Implementing Measures	Conformity Assessment
directive;	dans leur Etat d'origine et opérant en Belgique en vertu des articles 65 ou 66 de la loi bancaire, les succursales d'établissements de crédit relevant du droit d'un Etat non membre de l'EEE, établies en Belgique conformément à l'article 79 de la loi bancaire;	<p>Belgian law. It shall be noted that the transposing provision does not provide for cross-references similar to that of the Directive provision. As regards point 1 of Article 4 of Directive 2006/48/CE, it is transposed in Article 1 of Law of 22 March 1993, which almost literally transposes it. Article 1 of Law of 22 March 1993 also adds that the definition of credit institutions includes credit institutions governed by Belgian or foreign law, which does not seem to affect the correct transposition of the Directive requirement.</p> <p>The transposing provision further adds credit institutions governed by the law of other EEA countries, which are authorised to issue electronic money in their country of origin and which pursue their activity in Belgium according to Articles 65 and 66 of the Banking Law (which, according to point 22 of Article 4 of Law of 21 December 2009 is a reference to Law of 22 March 1993), in conformity with the Directive.</p> <p>Finally, it refers to branches of credit institutions governed by the law of non-EEA countries, which are established in Belgium in accordance with Article 79 of Law of 22 March 1993.</p> <p>The definition of a “branch” laid down in point 3 of Article 4 of Directive 2006/48/EC such as cross-referred to in the Directive is literally transposed by the first part of point 6 of Article 3 of Law of 22 March 1993. However, national law also adds that any number of places of business set up in the same State by a credit institution with headquarters in another State shall be regarded as a single branch. This further specification does not seem to raise any issues of conformity with Directive 2006/48/EC.</p> <p>It shall be noted that the first paragraph of Article 38 of Directive 2006/48/EC which is cross-referred to in Article 1(1)(a) of the Directive is complied with by Article 83(4) of Law of 22 March 1993. Its second paragraph has not been complied with as Belgium has not yet transposed Directive 2010/78/EC and consequently its Article 9(12) which amends Article 38(2) of Directive 2006/48/EC. Nonetheless, this situation, which will probably be corrected soon, does not jeopardise the correct transposition of the Directive provision as such.</p> <p>Based on the above findings, Article 1(1)(a) of the Directive has been</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				transposed in a conform manner.
Art. 1(1)(b)	b) les établissements de monnaie électronique au sens de l'article 2, point 1), de la présente directive, y compris, conformément à l'article 8 de la présente directive et au droit national, une succursale établie dans la Communauté d'un établissement de monnaie électronique ayant son siège en dehors de la Communauté;	Law of 21 December 2009, Art.59, pt (2)	Law of 21 December 2009, Article 59 point 2 les établissements de monnaie électronique de droit belge, les établissements de monnaie électronique relevant du droit d'un autre Etat membre de l'EEE et opérant en Belgique en vertu de l'article 91, les succursales d'établissements de monnaie électronique relevant du droit d'un Etat non membre de l'EEE, établies en Belgique en application du Livre 3, Titre 2, Chapitre 3, ainsi que les personnes morales bénéficiant d'une exemption, conformément à l'article 105;	<p>CONFORM</p> <p>Article 59 point 2 of Law of 21 December 2009 transposes Article 1(1)(b) of the Directive.</p> <p>The transposing Article provides for the second category of electronic money issuers.</p> <p>It includes first of all the electronic money institutions governed by Belgian law and the electronic money institutions governed by the law of other EEA countries. The latter may start their activities in Belgium in accordance with Article 91 of Law of 21 December 2009, either through branches or under the Freedom of Services, in conformity with the Directive.</p> <p>It shall be noted that the transposing provision does not cross-refer to a national provision corresponding to Article 2 point 1 of the Directive. Nonetheless, this Directive Article has been transposed in a conform manner into Belgian law and thus the meaning of the term "electronic money institution" is the same in Belgian law as compared to the Directive.</p> <p>Furthermore, the transposing provision includes the branches of electronic money institutions governed by the law of non-EEA countries, which are established in Belgium in accordance with Book 3, Title 2, Chapter 3 of Law of 21 December 2009. Chapter 3 includes rules relating to the taking up of the business, the conditions of exercise of activities, the supervision of the branches and the penalties and it corresponds to the first paragraph of Article 8 of the Directive.</p> <p>Finally, the transposing provision adds the electronic money institutions which have been exempted according to Article 105 of Law of 21 December 2009, which transposes in conformity the option included in Article 9 of the Directive. This addition is conform to the Directive.</p> <p>Based on the above findings, Article 1(1)(b) of the Directive has been</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
				transposed in a conform manner.
Art. 1(1)(c)	c) les offices de chèques postaux qui sont habilités en droit national à émettre de la monnaie électronique;	Law of 21 Decemb er 2009, Art.59, pt (3)	Law of 21 December 2009, Article 59 point 3 la société anonyme de droit public bpost;	PARTIALLY CONFORM Article 59 point 3 of Law of 21 December 2009 transposes Article 1(1)(c) of the Directive. Bpost, the national post office, organised in the form of a limited liability company under public law is included in the third category of electronic money issuers. It shall be noted that the national provision does not include the office giro institutions that are entitled to issue electronic money under national laws of other EEA countries, which leads to partial conformity. Based on the above findings, Article 1(1)(c) of the Directive has been transposed in a partially conform manner
Art. 1(1)(d)	d) la Banque centrale européenne et les banques centrales nationales lorsqu'elles n'agissent pas en qualité d'autorités monétaires ou autres autorités publiques;	Law of 21 Decemb er 2009, Art.59, pt (4)	Law of 21 December 2009, Article 59 point 4 la Banque Nationale de Belgique et la Banque centrale européenne, lorsqu'elles n'agissent pas en qualité d'autorité monétaire ou autre autorité publique;	PARTIALLY CONFORM Article 59 point 4 of Law of 21 December 2009 transposes Article 1(1)(d) of the Directive. The National Bank of Belgium is also competent for the supervision of electronic money institutions in Belgium. The website of the NBB is available in French at http://www.nbb.be/pub/home.htm?l=fr . Some information is also available in English, but information concerning the prudential supervision may only be found in French or Dutch. It shall be noted that the transposing provision does not include the central banks of other EEA countries, which leads to partial conformity. Based on the above findings, Article 1(1)(d) of the Directive has been transposed in a partially conform manner.
Art.	e) les États membres ou leurs autorités régionales ou locales lorsqu'ils	Law of 21	Law of 21 December 2009,	PARTIALLY CONFORM

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
1(1)(e)	agissent en qualité d'autorités publiques.	Decemb er 2009, Art.59, pt (5)	<p>Article 59 point 5</p> <p>les autorités fédérales, régionales, communautaires et locales belges, lorsqu'elles agissent en qualité d'autorité publique.</p>	<p>Article 59 point 5 of Law of 21 December 2009 transposes Article 1(1)(e) of the Directive.</p> <p>The transposing provision adds community authorities, as compared to the Directive provision, as it reflects the Belgian specific public authorities' organisation.</p> <p>It shall be noted that the transposing provision does not include the authorities of other EEA countries, which leads to partial conformity.</p> <p>Based on the above findings, Article 1(1)(d) of the Directive has been transposed in a partially conform manner.</p>
Art. 1(2)	2. Le titre II de la présente directive fixe les règles concernant l'accès à l'activité des établissements de monnaie électronique et son exercice ainsi que la surveillance prudentielle de ces établissements.	<p>Law of 27 Novemb er 2012, Art.2;</p> <p>Law of 21 Decemb er 2009, Book 3, Title 2, Chap. 1, Sect. 1 to 4, Chap.2, Chap.3, Sect. 1 to 3</p>	<p>Law of 27 November 2012, Article 2</p> <p>La présente loi transpose la Directive 2009/110/CE du Parlement européen et du Conseil du 16 septembre 2009 concernant l'accès à l'activité des établissements de monnaie électronique et son exercice ainsi que la surveillance prudentielle de ces établissements, modifiant les Directives 2005/60/CE et 2006/48/CE et abrogeant la Directive 2000/46/CE.</p> <p>Law of 21 December 2009, Livre 3 - Accès à l'activité d'émission de monnaie électronique et statut des établissements de monnaie électronique, Titre 2 - Les établissements de</p>	<p>CONFORM</p> <p>Article 2 of Law of 27 November 2012 transposes Article 1(2) of the Directive.</p> <p>As already mentioned, Law of 27 November 2012 transposes only the Directive and thus its subject matter is exactly the same as the Directive subject matter, with the exception of a few Directive provisions concerning the supervision of the electronic money institutions, which have been transposed in Law of 27 November 2012 amending the LNBB.</p> <p>Law of 21 December 2009 provisions -as amended by Law of 27 November 2012 -transposing the rules relating to the subject matter included in Article 1(2) of the Directive are to be found under its Book 3.</p> <p>As regards the rules for the taking up of the business of electronic money institutions, they can be found under Book 3 Title 2 of Law of 21 December 2009.</p> <p>Chapter 1 Sections 1 and 2 apply to the electronic money institutions governed by Belgian law; Chapter 2, Article 91 applies to electronic money institutions governed by the law of other EEA countries and Chapter 3 Section 1 applies to branches of electronic money institutions governed by</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			<p>monnaie électronique,</p> <p>Chapitre 1er - Les établissements de monnaie électronique de droit belge</p> <p>Section 1re - Exigence d'un agrément</p> <p>Section 2 - Conditions d'agrément</p> <p>Section 3 - Conditions d'exercice de l'activité</p> <p>Section 4 - Contrôle des établissements de monnaie électronique</p> <p>Chapitre 2 - Succursales et activités de prestation de services en Belgique des établissements de monnaie électronique relevant du droit d'un autre Etat membre de l'EEE</p> <p>Chapitre 3 - Succursales en Belgique des établissements de monnaie électronique relevant du droit d'Etats qui ne sont pas membres de l'EEE</p> <p>Section 1re - Accès à l'activité</p> <p>Section 2 - Exercice de l'activité</p> <p>Section 3 – Contrôle</p>	<p>the law of non-EEA countries.</p> <p>Rules concerning the pursuit of the business are also to be found under Title 2 of Book 3 of Law of 21 December 2009.</p> <p>Chapter 1 Section 3 applies to electronic money institutions governed by Belgian law; Chapter 2, Articles 92 and 93 apply to electronic money institutions governed by the law of other EEA countries and Chapter 3 Section 2 applies to the branches of electronic money institutions governed by the law of non-EEA countries.</p> <p>Finally, provisions relating to the prudential supervision of the abovementioned institutions can also be found under Title 2 of Book 3 of Law of 21 December 2009.</p> <p>In the same order of institutions as above, Chapter 1 Section 4; Chapter 2 Articles 94 to 97 and Chapter 3 Section 3 apply.</p> <p>Based on the above findings, Article 1(2) of the Directive has been transposed in a conform manner.</p>
Art. 1(3)	3. Les États membres peuvent exempter de l'application de	N/A	N/A	Article 1(3) of the Directive sets out an option. Owing to this option, Belgium has not chosen to apply it. In this regard, no corresponding

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
	l'ensemble ou d'une partie des dispositions du titre II de la présente directive les établissements visés à l'article 2 de la directive 2006/48/CE, à l'exception de ceux visés au premier et au deuxième tirets dudit article.			provision could be located in the Belgian legislation either.
Art. 1(4)	4. La présente directive ne s'applique pas à la valeur monétaire stockée sur des instruments exclus en vertu de l'article 3, point k), de la directive 2007/64/CE.	Law of 21 December 2009, Art. 60(1)	<p>Law of 21 December 2009, Article 60(1)</p> <p>La présente loi ne s'applique pas à la valeur monétaire stockée sur des instruments qui ne peuvent être utilisés, pour l'acquisition de biens ou de services, que dans les locaux utilisés par l'émetteur ou, dans le cadre d'un accord commercial avec l'émetteur, à l'intérieur d'un réseau limité de prestataires de services ou pour un éventail limité de biens ou de services.</p>	<p>CONFORM</p> <p>Article 60(1) of Law of 21 December 2009 literally transposes Article 1(4) of the Directive.</p> <p>It shall be noted that the transposing provision does not provide for a cross-reference similar to that of the Directive provision. Instead it incorporates the text of Article 3(k) of Directive 2007/64/EC such as cross-referred to in the Directive provision.</p>
Art. 1(5)	5. La présente directive ne s'applique pas à la valeur monétaire utilisée pour effectuer des opérations de paiement exclues en vertu de l'article 3, point l), de la directive 2007/64/CE.	Law of 21 December 2009, Art. 60(2)	<p>Law of 21 December 2009, Article 60(2)</p> <p>La présente loi ne s'applique pas à la valeur monétaire utilisée pour effectuer des opérations de paiement exécutées au moyen d'un appareil de télécommunication ou d'un autre dispositif numérique ou informatique, lorsque les biens ou les services achetés sont livrés et doivent être utilisés au moyen d'un appareil de télécommunication ou d'un dispositif</p>	<p>CONFORM</p> <p>Article 60(2) of Law of 21 December 2009 literally transposes Article 1(5) of the Directive.</p> <p>It shall be noted that the transposing provision does not provide for a cross-reference similar to that of the Directive provision. Instead it incorporates the text of Article 3(1) of Directive 2007/64/EC such as cross-referred to in the Directive provision.</p>

Directive 2009/110/EC		National Implementing Measures		Conformity Assessment
			numérique ou informatique, à condition que l'opérateur du système de télécommunication, numérique ou informatique n'agisse pas uniquement en qualité d'intermédiaire entre le détenteur de monnaie électronique et le fournisseur des biens ou services.	
Art. 2 intr. wording	<p><i>Article 2 Définitions</i></p> <p>Aux fins de la présente directive, on entend par:</p>	Law of 21 December 2009, Art.4, intr. wording	<p>Law of 21 December 2009, Livre 1^{er} - Objet - Champ d'application - Définitions, Article 4 introductory wording</p> <p>Pour l'application de la présente loi, il y a lieu d'entendre par:</p>	<p>CONFORM</p> <p>Article 4 introductory wording of Law of 21 December 2009 literally transposes Article 2 introductory wording of the Directive.</p>
Art. 2 pt (1)	1) «établissement de monnaie électronique»: une personne morale qui a obtenu, en vertu du titre II, un agrément l'autorisant à émettre de la monnaie électronique;	Law of 21 December 2009, Art.4 pt (31);	<p>Law of 21 December 2009, Article 4 pt 31</p> <p>établissement de monnaie électronique : un émetteur de monnaie électronique visé au Livre 3, Titre 2;</p>	<p>CONFORM</p> <p>Article 4 point 31 of Law of 21 December 2009 transposes Article 2 point 1 of the Directive.</p> <p>Article 4 point 31 of Law of 21 December 2009 defines an electronic money institution as an issuer of electronic money under Book 3, Title 2 of Law of 21 December 2009. The definition under Belgian law does thus not refer to the granting of authorisation as such.</p> <p>Nonetheless, as explained supra, Title 2 of Book 3 of Law of 21 December 2009 includes rules relating to the taking up of the activity by an electronic money institution.</p> <p>More precisely, Article 61(1) of Law of 21 December 2009 specifies that any legal person governed by Belgian law that intends to issue electronic money in Belgium as an electronic money institution, is required to be granted an authorisation by the NBB before starting its activities,</p>

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				<p>irrespective of the location of other places of its business.</p> <p>The definition of what is meant by an "electronic money institution" in Belgian law ensures that electronic money institutions are not considered to be credit institutions as prescribed by recital 25 of the Directive.</p> <p>Based on the above findings, Article 2 point 1 of the Directive has been transposed in a conform manner.</p>
Art. 2 pt (2)	2) «monnaie électronique»: une valeur monétaire qui est stockée sous une forme électronique, y compris magnétique, représentant une créance sur l'émetteur, qui est émise contre la remise de fonds aux fins d'opérations de paiement telles que définies à l'article 4, point 5), de la directive 2007/64/CE et qui est acceptée par une personne physique ou morale autre que l'émetteur de monnaie électronique;	Law of 21 December 2009, Art.4 pt (33);	<p>Law of 21 December 2009, Article 4 point 33</p> <p>monnaie électronique : une valeur monétaire qui est stockée sous une forme électronique, y compris magnétique, représentant une créance sur l'émetteur, qui est émise contre la remise de fonds aux fins d'opérations de paiement au sens de l'article 4, 2° de la présente loi et qui est acceptée par une personne physique ou morale autre que l'émetteur de monnaie électronique;</p>	<p>CONFORM</p> <p>Article 4 points 2 and 33 of Law of 21 December 2009 literally transpose Article 2 point 2 of the Directive.</p> <p>It shall be noted that point 2 of Article 4 of Law of 21 December 2009, which is cross-referred to in point 33 of the same Article corresponds to point 5 of Article 4 of Directive 2007/64/EC, as cross-referred to in the Directive provision.</p> <p>The definition of what is meant by electronic money in Belgian law is wide enough to avoid hampering technological innovation and is thus conform to Recitals 7 and 8 of the Directive.</p>
Art. 2 pt (3)	3) «émetteur de monnaie électronique»: les entités visées à l'article 1 er , paragraphe 1, les établissements qui bénéficient de l'exemption au titre de l'article 1 er , paragraphe 3, et les personnes morales qui bénéficient d'une exemption au titre de l'article 9;	Law of 21 December 2009, Art.4 pt (32)	<p>Law of 21 December 2009, Article 4 point 32</p> <p>émetteurs de monnaie électronique : les établissements et autres entités visés à l'article 59, dont l'activité consiste à émettre de la monnaie électronique, ainsi que les personnes morales qui bénéficient d'une exemption au titre de l'article 105;</p>	<p>CONFORM</p> <p>Article 2 point 3 of the Directive sets out an option, which Belgium has chosen to apply.</p> <p>Article 4 point 32 of Law of 21 December 2009 literally transposes it.</p> <p>It shall be noted that Article 59 of Law of 21 December which is cross-referred to in the transposing provision corresponds to Article 1(1) of the Directive, as cross-referred to in the Directive provision.</p> <p>The transposing provision does not provide for a cross-reference similar to</p>

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				<p>Article 1(3) of the Directive. However, this does not affect conformity since Article 1(3) of the Directive is an option and Belgium did not choose to apply it.</p> <p>Finally, Article 105 of Law of 21 December 2009, which is cross-referred to in the national provision corresponds to Article 9 of the Directive, as cross-referred to in the Directive provision.</p> <p>Based on the above findings, Article 2 point 3 of the Directive has been transposed in a conform manner.</p>
Art. 2 pt (4)	4) «moyenne de la monnaie électronique en circulation»: la moyenne du montant total des engagements financiers liés à la monnaie électronique émise à la fin de chaque jour calendaire pour les six mois calendaires précédents, calculée sur le premier jour calendaire de chaque mois calendaire et appliquée pour le mois calendaire en question.	Law of 21 December 2009, Art.4 pt (35)	<p>Law of 21 December 2009, Article 4 point 35</p> <p>moyenne de la monnaie électronique en circulation: la moyenne du montant total des engagements financiers liés à la monnaie électronique émise à la fin de chaque jour calendaire pour les six mois calendaires précédents, calculée sur le premier jour calendaire de chaque mois calendaire et appliquée pour le mois calendaire en question;</p>	<p>CONFORM</p> <p>Article 4 point 35 of Law of 21 December 2009 literally transposes Article 2 point 4 of the Directive.</p>
Art. 3(1)	<p>TITRE II</p> <p>CONDITIONS DE L'ACCÈS À L'ACTIVITÉ DES ÉTABLISSEMENTS DE MONNAIE ÉLECTRONIQUE ET DE SON EXERCICE AINSI QUE DE LA SURVEILLANCE PRUDENTIELLE DE CES ÉTABLISSEMENTS</p> <p><i>Article 3</i></p> <p>Règles prudentielles générales</p>	N/A	N/A	<p>CONFORM</p> <p>The Belgian legislation does not contain a provision which would explicitly correspond to Article 3(1) of the Directive.</p> <p>In Belgian law, the provisions relating to electronic money institutions and transposing <i>mutatis mutandis</i> the relevant Directive 2007/64/EC provisions are new provisions mainly introduced in Law of 21 December 2009. Most of them have been copied and pasted from provisions concerning the payment services and adjusted to fit the context of electronic money issuance. The LNBB and the other relevant laws have been amended to include the</p>

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<p>1. Sans préjudice de la présente directive, les articles 5 et 10 à 15, l'article 17, paragraphe 7, et les articles 18 à 25 de la directive 2007/64/CE s'appliquent mutatis mutandis aux établissements de monnaie électronique.</p>		<p>electronic money institutions in their scope.</p> <p>Articles 61(1) and 62(1) of Law of 21 December 2009 transpose in conformity Article 5 of Directive 2007/64/EC.</p> <p>Articles 61, 62(2), 63, 65, 67, 69(1) to (3) and (7), Article 70, Article 72(2) third subparagraph, Article 75 first subparagraph and Article 77 second and third subparagraphs of Law of 21 December 2009 transpose in conformity Article 10 of Directive 2007/64/EC.</p> <p>Article 63 second subparagraph of Law of 21 December 2009 transposes in conformity Article 11 of Directive 2007/64/EC.</p> <p>Articles 86 and Article 87(1) first subparagraph, second subparagraph point 5 and last subparagraph and (2) of Law of 21 December 2009 transpose in conformity Article 12 of Directive 2007/64/EC.</p> <p>Article 64 of Law of 21 December 2009 transposes in conformity Article 13 of Directive 2007/64/EC.</p> <p>Article 71 second subparagraph of Law of 21 December 2009 transposes in conformity Article 14 of Directive 2007/64/EC.</p> <p>Articles 80, 84 and Article 85 points 1 to 4 of Law of 21 December 2009 transpose Article 15 of Directive 2007/64/EC.</p> <p>It shall be noted that Article 84 of Law of 21 December 2009 provides that Articles 28 to 32 of Law of 21 December 2009 apply to the electronic money institutions. Articles 28 to 32 regard the auditors, and more particularly Article 28 first and fourth subparagraphs transpose in conformity the second and third paragraph of Article 15 of Directive 2007/64/EC.</p> <p>Article 4 points 17, 18 and 36, Article 76 and 79 of Law of 21 December 2009 transpose in conformity Article 17(7) of Directive 2007/64/EC.</p> <p>Article 76 and 79 of Law of 21 December 2009 transpose in conformity</p>

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				<p>Article 18 of Directive 2007/64/EC.</p> <p>Article 15 of Law of 11 January 1993 transposes in conformity Article 19 of Directive 2007/64/EC.</p> <p>Article 61(1) and 81 of Law of 21 December 2009, Article 12 first subparagraph second sentence and Article 36/2 first subparagraph of the LNBB transpose in conformity Article 20 of Directive 2007/64/EC.</p> <p>Article 81(1) and (2), 86(1), Article 87(1) points 2 to 5, Article 72(2) third and fourth subparagraphs, Article 106(1) to (3) of Law of 21 December 2009 and Articles 12bis(2), 19 point 3 and Article 36/9(1) first subparagraph of the LNBB and Article 4 of Law of 22 December 2009 transpose in conformity Article 21 of Directive 2007/64/EC.</p> <p>Articles 35, 36/13, 36/14, 36/15, 36/16 and Article 36/17(1) point 3 of the LNBB and Article 104(1) of Law of 21 December 2009 transpose in conformity Article 22 of Directive 2007/64/EC.</p> <p>Points 32 to 34 of Article 36/22 of the LNBB transpose in conformity Article 23 of Directive 2007/64/EC.</p> <p>Article 36/16(1), Article 36/14 introductory wording points 1 and 2 of the LNBN, Article 104(2) of Law of 21 December 2009, Article 21 of the LPIP and Article 22(1) and (2) of Law of 11 January 1993 transpose in conformity Article 24 of Directive 2007/64/EC.</p> <p>It shall be noted that Article 22(2) of Law of 11 January 1993 cross-refers to many Articles of the same law; Articles 2(1), 3 and 4 relate to electronic money issuers (among others), Articles 20, 23, 28 concern situations where the electronic money issuers know or suspect that a transaction is related to money laundering or financing of terrorism and shall inform the Financial Intelligence Processing Unit (hereinafter referred to as the FIPU) thereof, Article 39 relates to the supervisory authority of the electronic money institutions and Article 31 provides that the supervisory authority needs to inform the FIPU of any transaction in breach of Law of 11 January 1993.</p>

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				<p>Article 75 first, second and fifth subparagraphs, as well as Articles 83, 88 and 89 transpose in conformity Article 25 of Directive 2007/64/EC.</p> <p>The general principle set out in Recital 9 of the Directive, providing that the relevant provisions of Directive 2007/64/EC should apply <i>mutatis mutandis</i> to electronic money institutions without prejudice to the provisions of this Directive has been duly complied with in Belgian law.</p> <p>Based on the above findings, Article 3(1) of the Directive has been transposed in a conform manner.</p>
Art. 3(2)	2. Les établissements de monnaie électronique informent à l'avance les autorités compétentes de tout changement significatif affectant les mesures prises pour protéger les fonds qui ont été reçus en échange de la monnaie électronique émise.	Law of 21 December 2009, Art.78(5)	<p>Law of 21 December 2009, Article 78(5)</p> <p>Les établissements de monnaie électronique informent la Banque à l'avance de tout changement significatif affectant les mesures prises en exécution du § 1er.</p>	<p>CONFORM</p> <p>Article 78(5) of Law of 21 December 2009 literally transposes Article 3(2) of the Directive. The national provision thus also complies with Recital 14 of the Directive, which stresses on the crucial importance of safeguarding and as a consequence, on the need to inform the competent authorities in advance of any material change in the measures taken for safeguarding funds received in exchange for electronic money issued.</p>
Art. 3(3) 1st subpara.	3. Toute personne physique ou morale qui a pris la décision d'acquérir ou de céder, directement ou indirectement, une participation qualifiée au sens de l'article 4, point 11), de la directive 2006/48/CE dans un établissement de monnaie électronique, ou d'augmenter ou de réduire, directement ou indirectement, cette participation qualifiée avec pour conséquence que la proportion de parts de capital ou de droits de vote détenue atteindrait, dépasserait ou deviendrait inférieure aux seuils de 20 %, 30 % ou 50 % ou que l'établissement de monnaie électronique deviendrait sa filiale ou	Law of 21 December 2009, Art.73(1)	<p>Law of 21 December 2009, Article 73(1)</p> <p>Sans préjudice de l'article 67 et de la loi du 2 mai 2007 relative à la publicité des participations importantes, toute personne physique et morale qui a pris la décision, soit d'acquérir ou de céder, directement ou indirectement, une participation qualifiée au sens de l'article 3, § 1er, 3° de la loi bancaire dans un établissement de monnaie électronique de droit belge, soit d'augmenter ou de réduire, directement ou indirectement,</p>	<p>CONFORM</p> <p>Article 73(1) of Law of 21 December 2009 almost literally transposes Article 3(3) first subparagraph of the Directive.</p> <p>It shall be noted that the transposing provision stresses on the fact that Article 67 of Law 21 December 2009, which corresponds to Article 10(6) of Directive 2007/64/EC and Law of 2 May 2007 on Disclosure of Major Holdings in Issuers whose Shares are admitted to Trading on a regulated Market (...) (hereinafter referred to as "Law of 2 May 2007"), shall not be disregarded in the context of this provision. This addition is conform to the Directive.</p> <p>The first sentence of Article 3(1) point 3 of Law of 22 March 1993 which is cross-referred to in the transposing provision literally transposes Article 4 point 11 of Directive 2006/48/EC, as cross-referred to in the Directive</p>

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	cesserait de l'être, informe à l'avance les autorités compétentes de son intention de procéder à une telle acquisition, cession, augmentation ou réduction.		cette participation qualifiée de telle façon que la proportion de parts de capital ou de droits de vote détenue atteindrait, dépasserait ou deviendrait inférieure aux seuils de 20 %, 30 % ou 50 % ou que l'établissement de monnaie électronique deviendrait sa filiale ou cesserait de l'être, est tenue d'en informer à l'avance la Banque, [...]	<p>provision.</p> <p>The proportion of voting rights chosen by Belgian law is the same as the proportion of voting rights included in the Directive provision; reaching, exceeding or falling below 20%, 30% or 50%.</p> <p>Based on the above findings, Article 3(3) first subparagraph of the Directive has been transposed in a conform manner.</p>
Art. 3(3) 2nd subpara.	L'acquéreur potentiel fournit à l'autorité compétente les informations précisant le montant de la participation envisagée et les informations pertinentes visées à l'article 19 <i>bis</i> , paragraphe 4, de la directive 2006/48/CE.	Law of 21 December 2009, Art.73(1)	<p>Law of 21 December 2009, Article 73(1)</p> <p>[...] et de lui notifier par écrit au préalable le montant de la participation envisagée et les informations pertinentes visées à l'article 24, § 3, alinéa 3 de la loi bancaire.</p>	<p>CONFORM</p> <p>Article 73(1) of Law of 21 December 2009 literally transposes Article 3(3) second subparagraph of the Directive.</p> <p>Article 24(3) third subparagraph of Law of 22 March 1993, which is cross-referred to in the transposing provision corresponds to Article 19a(4) of Directive 2006/48/EC, as cross-referred to in the Directive provision.</p>
Art. 3(3) 3rd subpara.	Au cas où l'influence exercée par les personnes visées au deuxième alinéa est susceptible de se faire au détriment d'une gestion prudente et saine de l'établissement, les autorités compétentes expriment leur opposition ou prennent d'autres mesures appropriées pour mettre fin à cette situation. Ces mesures peuvent comprendre des injonctions, des sanctions à l'égard des dirigeants ou des responsables de la gestion, ou la suspension de l'exercice des droits de vote attachés aux actions ou parts détenues par les actionnaires ou	Law of 21 December 2009, Art.73(2), 1st sentence, Art. 73(3), Art.73(4), intr. wording, points (1) and (2), Art.	<p>Law of 21 December 2009, Article 73(2) first sentence</p> <p>La Banque évalue si l'influence exercée par les personnes visées au § 1er est susceptible de se faire au détriment d'une gestion saine et prudente de l'établissement.</p> <p>Article 73(3)</p> <p>Lorsque, sur la base de l'évaluation visée au § 2, la Banque a des raisons de considérer que l'influence exercée par les personnes visées</p>	<p>CONFORM</p> <p>Articles 73(2) first sentence, 73(3), 73(4) introductory wording points 1 and 2 and Article 73(5) of Law of 21 December 2009 transpose Article 3(3) third subparagraph of the Directive.</p> <p>Article 73(2) first sentence of Law of 21 December 2009 states that the NBB assesses whether the influence exercised by the persons under Article 73(1) of Law of 21 December 2009 is likely to operate to the detriment of the sound and prudent management of the institution.</p> <p>It shall be noted that Article 73(1) of Law of 21 December 2009, which is cross-referred to in the first sentence of Article 73(2) of Law of 21 December 2009, corresponds to Article 3(3) second paragraph of the Directive, as cross-referred to in the Directive provision.</p>

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associés en question.	<p>73(5)</p> <p>au § 1er est de nature à compromettre la gestion saine et prudente de l'établissement, elle peut s'opposer à la réalisation de l'opération envisagée. La décision de la Banque est notifiée à l'établissement de monnaie électronique par lettre recommandée ou avec accusé de réception au plus tard deux mois après la réception de la notification visée au § 1er.</p> <p style="text-align: center;">Article 73(5)</p> <p>Lorsque la Banque a des raisons de considérer que l'influence exercée par une personne physique ou morale détenant, directement ou indirectement, une participation qualifiée dans un établissement de monnaie électronique est de nature à compromettre sa gestion saine et prudente, et sans préjudice des autres mesures prévues par la présente loi, elle peut prendre les mesures visées au § 4, 1° et 2°.</p> <p style="text-align: center;">Article 73(4)</p> <p>(...) la Banque peut:</p> <p>1° suspendre l'exercice des droits de vote attachés aux actions ou parts détenues par l'actionnaire ou l'associé en question; elle peut, à la demande de tout intéressé, accorder la levée des mesures ordonnées par elle; sa décision est notifiée de la manière la</p>	<p>Article 73(3) of Law of 21 December 2009 states that where, after the assessment under Article 73(2) of Law of 21 December 2009, the NBB has good reason to consider that the influence exercised by the persons referred to in Article 73(1) of Law of 21 December is likely to operate to the detriment of the sound and prudent management of the institution, it can express its opposition to the proposed operation.</p> <p>Article 73(2) of Law of 21 December 2009, which is cross-referred to in Article 73(3) of Law of 21 December 2009, describes the procedure that shall be followed by the NBB for the assessment and the criteria on which the assessment shall be based.</p> <p>Article 73(5) of Law of 21 December 2009 provides that the NBB can also, without prejudice to other measures provided by this law, take measures included in points 1 and 2 of Article 73(4) of Law of 21 December 2009 towards the persons, who have, in a direct or indirect way, qualifying holdings within an electronic money institution and whose influence is likely to threaten the sound and prudent management of this institution.</p> <p>Point 1 of Article 73(4) of Law of 21 December 2009 entitles the NBB to suspend the exercise of the voting rights attached to the shares held by the shareholder or the partner in question. . The NBB can, at the request of any interested individual lift the measures that it prescribed. It has to notify the shareholder or the partner concerned in an adequate manner and its decision is enforceable as soon as it has been notified. It may also make its decision public.</p> <p>Point 2 of Article 73(4) of Law of 21 December 2009 entitles the NBB to order the shareholder or the partner in question to transfer their rights within the time limit that it sets. Where the rights have not been transferred within the time limit set, the NBB may order a receivership of those rights with an institution that it determines. The receiver shall act in the interest of a sound and prudent management of the electronic money institution and in the interest of the holder of the rights which are subject to the receivership. He shall exercise all the rights attached to the shares and shall give the amounts collected to the holder of the rights only after this holder has complied with</p>

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		<p>plus appropriée à l'actionnaire ou à l'associé en cause; sa décision est exécutoire dès qu'elle a été notifiée; la Banque peut rendre sa décision publique;</p> <p>2° donner injonction à l'actionnaire ou à l'associé en cause de céder, dans le délai qu'elle fixe, les droits d'associé qu'il détient.</p> <p>A défaut de cession dans le délai fixé, la Banque peut ordonner la mise sous séquestre des droits d'associés auprès de telle institution ou personne qu'elle détermine. Le séquestre en donne connaissance à l'établissement de monnaie électronique qui modifie en conséquence le registre des actions ou parts d'associés nominatives et qui n'accepte l'exercice des droits qui y sont attachés que par le seul séquestre. Celui-ci agit dans l'intérêt d'une gestion saine et prudente de l'établissement de monnaie électronique et dans celui du détenteur des droits d'associés ayant fait l'objet du séquestre. Il exerce tous les droits attachés aux actions ou parts d'associés. Les sommes encaissées par lui au titre de dividende ou à un autre titre ne sont remises par lui au détenteur précité que si celui-ci a satisfait à l'injonction visée à l'alinéa 1er, 2°. La souscription à des augmentations de capital ou à d'autres titres conférant ou non le droit de vote, l'option en matière de dividende</p>	<p>the order to transfer the rights . Certain operations are subject to approval by the holder of the rights , but all rights acquired as a result of those operations are subject to measures of receivership. If voting rights have been exercised by the holder of the rights or any other person than the receiver, the NBB may request the court to declare the deliberations null and void, where, without the rights illegally exercised, the attendance or majority quorum would not have been met.</p> <p>Based on the above findings, Article 3(3) third subparagraph of the Directive has been transposed in a conform manner.</p>

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		<p>payable en titres de la société, la réponse à des offres publiques d'acquisition ou d'échange et la libération de titres non entièrement libérés sont subordonnés à l'accord du détenteur précité. Les droits d'associés acquis en vertu de ces opérations font, de plein droit, l'objet du séquestre prévu ci-dessus. [...]</p> <p>Lorsque des droits de vote ont été exercés par le détenteur originaire ou par une personne, autre que le séquestre, agissant pour le compte de ce détenteur après l'échéance du délai fixé conformément à l'alinéa 1er, 2°, première phrase, nonobstant une suspension de leur exercice prononcée conformément à l'alinéa 1er, 1°, le tribunal de commerce dans le ressort duquel la société a son siège peut, sur requête de la Banque, prononcer la nullité de tout ou partie des délibérations de l'assemblée générale si, sans les droits de vote illégalement exercés, les quorums de présence ou de majorité requis par lesdites délibérations n'auraient pas été réunis;</p> <p>[...]</p>	

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Art. 3(3) 4th subpara.	Des mesures similaires s'appliquent aux personnes physiques ou morales qui ne respectent pas l'obligation d'information préalable prévue au présent paragraphe.	Law of 21 December 2009, Art.73(4)	<p>Law of 21 December 2009, Article 73(4)</p> <p>En cas d'abstention de procéder à la notification préalable prescrite au § 1er, (...) la Banque peut :</p> <p>1° suspendre l'exercice des droits de vote attachés aux actions ou parts détenues par l'actionnaire ou l'associé en question; [...]</p> <p>2° donner injonction à l'actionnaire ou à l'associé en cause de céder, dans le délai qu'elle fixe, les droits d'associé</p>	<p>PARTIALLY CONFORM</p> <p>Article 73(4) of Law of 21 December 2009 transposes Article 3(3) fourth subparagraph of the Directive.</p> <p>It shall be noted that Article 73(4) of Law of 21 December 2009 refers to the notification prescribed in the first paragraph of Article 73 of Law of 21 December 2009, which transposes the first and the second subparagraph of Article 3(3) of the Directive.</p> <p>Article 73(4) of Law of 21 December 2009 also transposes the fifth subparagraph of Article 3(3) of the Directive and as may be seen above partially transposes the third subparagraph of the same Directive Article. The transposing Article provides that the NBB can take various measures in case of omission to notify.. Its points 1 and 2 entitling the NBB to suspend the exercise of the voting rights attached to the shares held by the shareholder or</p>

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			<p>qu'il détient. [...]</p> <p>3° demander au président du tribunal de commerce dans le ressort duquel l'établissement de monnaie électronique a son siège, statuant comme en référé, de prononcer l'annulation de tout ou partie des votes émis par l'acquéreur ou l'actionnaire ou associé concerné. La procédure est engagée par citation émanant de la Banque. [...]</p>	<p>partner in question or to order the shareholder or partner concerned to transfer their rights , have already been commented in the observations relating to the transposition of the third subparagraph of Article 3(3) of the Directive.</p> <p>Point 3 of Article 73(4) of Law of 21 December 2009 also entitles the NBB to request the president of the commercial court under the jurisdiction of which are the headquarters of the electronic money institution, to declare, as in summary proceedings, the cancellation of all or part of the votes cast by the acquirer or the shareholder or partner concerned.</p> <p>It shall be noted that the sanctions mentioned above only apply to natural or legal persons who acquired the qualifying holding as referred to in Article 3(3) first subparagraph of the Directive and who did not respect the obligation to provide prior information to the NBB. There seems to be no sanctions under Belgian law applying to the legal or natural persons who disposed of their qualifying holding and who did not provide prior information to the NBB, which leads to partial conformity.</p> <p>Based on the above findings, Article 3(3) fourth subparagraph of the Directive has been transposed in a partially conform manner.</p>
Art. 3(3) 5th subpara.	Lorsqu'une participation est acquise en dépit de l'opposition des autorités compétentes, celles-ci, indépendamment d'autres sanctions à adopter, prévoient soit la suspension de l'exercice des droits de vote de l'acquéreur, soit la nullité des votes émis ou la possibilité de les annuler.	Law of 21 December 2009, Art.73(4)	<p>Law of 21 December 2009, Article 73(4)</p> <p>[...] en cas d'acquisition, d'accroissement ou de cession d'une participation en dépit de l'opposition de la Banque visée au § 3, la Banque peut :</p> <p>1° suspendre l'exercice des droits de vote attachés aux actions ou parts détenues par l'actionnaire ou l'associé en question; [...]</p>	<p>CONFORM</p> <p>Article 73(4) of Law of 21 December 2009 transposes Article 3(3) fifth subparagraph of the Directive.</p> <p>As has already been pointed out, Article 73(4) of 21 December 2009 transposes the fourth paragraph of Article 3(3) of the Directive and partially transposes the third subparagraph of Article 3 of the Directive. Its whole text, as well as more developed observations concerning the measures that the NBB can take, may be found above.</p> <p>If the holding is acquired despite the opposition of the NBB, Article 73(4) of Law of 21 December 2009 entitles the NBB to suspend the exercise of the voting rights of the acquirer concerned in its point 1 and sets out the possibility to request annulment by the court of the votes cast, in its point 3</p>

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			<p>2° donner injonction à l'actionnaire ou à l'associé en cause de céder, dans le délai qu'elle fixe, les droits d'associé qu'il détient. (...)</p> <p>3° demander au président du tribunal de commerce dans le ressort duquel l'établissement de monnaie électronique a son siège, statuant comme en référé, de prononcer l'annulation de tout ou partie des votes émis par l'acquéreur ou l'actionnaire ou associé concerné. (...)</p>	<p>in conformity with the requirements of the Directive provision.</p> <p>In addition to the Directive requirements, point 2 of this Article entitles the NBB to order the acquirer to transfer their rights within the time limit set. This does not affect conformity with the Directive, as the sanctions listed in Article 3(3) of the Directive are merely examples and Member States are allowed to introduce other types of sanctions.</p> <p>Based on the above findings, Article 3(3) fifth subparagraph of the Directive has been transposed in a conform manner.</p>
Art. 3(3) 6th subpara.	Les États membres peuvent exempter ou autoriser leurs autorités compétentes à exempter totalement ou partiellement des obligations en vertu du présent paragraphe les établissements de monnaie électronique qui effectuent une ou plusieurs des activités énumérées à l'article 6, paragraphe 1, point e).	N/A	N/A	Article 3(3) sixth subparagraph of the Directive sets out an option. Owing to this option, the Belgian legislator has not chosen to apply it. In this regard, no corresponding provision could be located in the Belgian legislation either.
Art. 3(4)	4. Les États membres autorisent les établissements de monnaie électronique à distribuer et à rembourser de la monnaie électronique par l'intermédiaire de personnes physiques ou morales qui agissent pour leur compte. Les procédures prévues à l'article 25 de la directive 2007/64/CE s'appliquent lorsqu'un établissement de monnaie électronique souhaite distribuer de la monnaie	Law of 21 December 2009, Art.76(1), (2) and (4)	<p>Law of 21 December 2009, Article 76</p> <p>(1) Sans préjudice de l'article 63, alinéa 3, les établissements de monnaie électronique sont autorisés à distribuer et à rembourser de la monnaie électronique par l'intermédiaire de distributeurs.</p>	<p>CONFORM</p> <p>Article 76(1), (2) and (4) of Law of 21 December 2009 transposes Article 3(4) of the Directive.</p> <p>The first paragraph of Article 76 of Law of 21 December 2009 authorises electronic money institutions to distribute and redeem electronic money through distributors, in conformity with Recital 10 of the Directive. The first subparagraph of Article 63 of Law of 21 December 2009, to which it cross-refers, provides that the NBB can, in view of the need to ensure sound and prudent management of the institution, require additional conditions to be</p>

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<p>électronique dans un autre État membre en ayant recours à une telle personne physique ou morale.</p>	<p>(2) Lorsqu'un établissement de monnaie électronique souhaite distribuer de la monnaie électronique dans un autre Etat membre de l'EEE, par l'intermédiaire d'un distributeur établi dans ledit Etat, l'article 75 s'applique par analogie.</p> <p>(4) Les établissements de monnaie électronique sont entièrement responsables des actes posés par leurs distributeurs (...).</p>	<p>respected as regards the exercise of some of the activities that the electronic money institution intends to engage in.</p> <p>The term "distributor" is defined under point 36 of Article 4 of Law of 21 December 2009. It provides that it is a legal or natural person distributing and/or redeeming electronic money on behalf of an electronic money institution in accordance with Article 76 of Law of 21 December 2009.</p> <p>The second paragraph of Article 76 of Law of 21 December 2009 states that Article 75 of the same law applies <i>mutatis mutandis</i> when an electronic money institution intends to distribute electronic money in another EEA member state through a distributor located in that EEA member state.</p> <p>It shall be noted that Article 75, as cross-referred to in the transposing provision and also Articles 83 and 89 of Law of 21 December 2009 transpose in conformity Article 25 of Directive 2007/64/EC in the context of the use of distributors.</p> <p>Article 75 of Law of 21 December 2009 relates to the procedure which shall be followed by an electronic money institution located on the territory of another EEA country, which intends to engage in activities in Belgium through a branch or without establishing a branch (notification and programme of activities to be submitted to the NBB, notification of decision by the NBB, etc.)</p> <p>Article 83 of Law of 21 December 2009 enables for inspections referred to in Article 25(3) of Directive 2007/46/EC, of branches of electronic money institutions, agents, distributors and services providers under outsourcing arrangements subject to prior information of the supervisory authorities of the concerned State.</p> <p>Article 89 of Law of 21 December 2009 provides that the NBB shall inform without delay the supervisory authorities of electronic money institutions from other EEA countries in which an electronic money institution governed by Belgian law exercises activities under the Freedom of Services of all decisions it has taken under Article 86, 87 and 89 of Law of 21 December 2009. It shall also inform those authorities of the follow-up in case of</p>

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				<p>challenge of its decisions.</p> <p>The requirement of the Directive provision as regards the application of Article 25 of Directive 2007/64/EC in this context has thus been fully complied with in Belgian law.</p> <p>The fourth paragraph of Article 76 of Law of 21 December 2009 provides that the electronic money institutions are liable for the actions of their distributors.</p> <p>The requirement included in point (g) of Article 5 of Directive 2007/46/EC has been literally transposed in point 7 of Article 62 of Law of 21 December 2009. It states that the information that needs to be submitted to the NBB for the authorisation has to include a description of the intended use of agents and branches and a description of outsourcing arrangements.</p> <p>Based on the above findings, Article 3(4) of the Directive has been transposed in a conform manner.</p>
Art. 3(5)	5. Nonobstant le paragraphe 4, les établissements de monnaie électronique n'émettent pas de monnaie électronique par l'intermédiaire d'agents. Ils ne sont habilités à fournir les services de paiement visés à l'article 6, paragraphe 1, point a), par l'intermédiaire d'agents que si les conditions énoncées à l'article 17 de la directive 2007/64/CE sont remplies	Law of 21 December 2009, Art.76(3) and (4)	<p>Law of 21 December 2009, Article 76</p> <p>(3) Les établissements de monnaie électronique sont autorisés à fournir les services de paiement visés à l'article 77, § 2, 1°, par l'intermédiaire d'agents. Dans ce cas, l'article 20 s'applique par analogie. Les établissements de monnaie électronique ne sont pas autorisés à émettre de la monnaie électronique par l'intermédiaire d'agents.</p> <p>(4) Les établissements de monnaie électronique sont entièrement responsables des actes posés par leurs</p>	<p>CONFORM</p> <p>Article 76(3) and (4) of Law of 21 December 2009 transpose Article 3(5) of the Directive.</p> <p>The third paragraph of Article 76 of Law of 21 December 2009 states that the electronic money institutions are allowed to provide payments services through agents, but are not allowed to use agents for issuing electronic money , in conformity with Recital 10 of the Directive.</p> <p>An agent is defined in Belgian law in Article 4 point 15 of Law of 21 December 2009, which literally transposes Article 4 point 22 of Directive 2007/64/EC.</p> <p>As regards compliance with the conditions of Article 17 of Directive 2007/64/EC, Article 20 which is cross-referred to in the national provision almost entirely transposes it. It describes all the information that needs to be provided by the electronic money institution to the NBB concerning the</p>

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			[...] agents.	<p>agent and provides that agents need to be registered and that the electronic money institutions are legally liable for their actions. It stipulates that the electronic money institutions need to ensure that the agents inform the clients that they are acting on their behalf and need to inform the NBB of any changes to the initial information provided. In case of intention to provide services through agents located in other EEA countries, the electronic money institutions need to inform the NBB thereof and the same procedure as in Article 75 of Law of 21 December 2009 applies. The latter has been explained above.</p> <p>It shall be also noted that Articles 79 and 88 of Law of 21 December 2009 transpose in conformity the seventh and sixth paragraphs of Article 17 of Directive 2007/64/EC respectively.</p> <p>Based on the above findings, Article 3(5) of the Directive has been transposed in a conform manner.</p>
Art. 4	<p><i>Article 4</i> Capital initial</p> <p>Les États membres exigent des établissements de monnaie électronique qu'ils détiennent, au moment de l'agrément, un capital initial, comprenant les éléments énoncés à l'article 57, points a) et b), de la directive 2006/48/CE, qui n'est pas inférieur à 350 000 EUR.</p>	Law of 21 December 2009, Art.66	<p>Law of 21 December 2009, Article 66</p> <p>Tout établissement de monnaie électronique doit, au moment de l'agrément, disposer d'un capital de 350.000 euros au moins. Pour le calcul du capital initial visé à l'alinéa 1er, les éléments suivants sont pris en compte : le capital libéré, les primes d'émission, les réserves et le résultat reporté, à l'exclusion le cas échéant des actions préférentielles et des réserves de réévaluation, et après déduction des pertes reportées et du goodwill</p>	<p>CONFORM</p> <p>Article 66 of Law of 21 December 2009 transposes Article 4 of the Directive.</p> <p>The requirement concerning the amount of initial capital that shall be held at the time of authorisation has been transposed in conformity with the Directive. It shall be noted that the transposing provision gives a list of the items of which the capital needs to be comprised. This list is conform to the items set out in Article 57(a) and (b) of Directive 2006/48/EC, as cross-referred to in the Directive provision.</p> <p>The requirement of initial capital as set out in Belgian law ensures an appropriate level of consumer protection and the sound and prudent operation of electronic money institutions, in conformity with Recital 11 of the Directive.</p> <p>Based on above findings, Article 4 of the Directive has been transposed in a conform manner.</p>

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Art. 5(1)	<p><i>Article 5</i></p> <p>Fonds propres</p> <p>1. Les fonds propres d'un établissement de monnaie électronique, tels que définis aux articles 57 à 61, 63, 64 et 66 de la directive 2006/48/CE, ne peuvent devenir inférieurs au plus élevé des montants exigés au titre des paragraphes 2 à 5 du présent article ou de l'article 4 de la présente directive.</p>	<p>Law of 21 Decemb er 2009, Art.72(1)</p>	<p>Law of 21 December 2009, Article 72(1)</p> <p>Les fonds propres d'un établissement de monnaie électronique ne peuvent à aucun moment devenir inférieurs au montant du capital requis en application de l'article 66.</p>	<p>PARTIALLY CONFORM</p> <p>Article 72(1) of Law of 21 December 2009 transposes Article 5(1) of the Directive.</p> <p>It provides that the electronic money institution's own funds shall at no time fall below the amount of capital required under Article 66 of Law of 21 December 2009.</p> <p>The national provision does not cross-refer to national Articles transposing paragraphs 2 to 5 of Article 5 of the Directive as the Directive provision does. It shall be noted that the provisions under paragraphs 2 and 3 of Article 5 of the Directive have either been transposed in a partially conform manner or not transposed at all in Belgian law. This might be corrected in the future when the NBB adopts the regulation referred to in Article 72(2) first subparagraph of Law of 21 December 2009 (see observations concerning the transposition of the following Directive provisions).</p> <p>Recital 11 of the Directive, providing for a need for a regime for ongoing capital, has thus been only partially complied with.</p> <p>Based on the above findings, Article 5(1) has been transposed in a partially conform manner.</p>
Art. 5(2) 1st subpara.	<p>2. En ce qui concerne les activités visées à l'article 6, paragraphe 1, point a), qui ne sont pas liées à l'émission de monnaie électronique, les fonds propres requis d'un établissement de monnaie électronique sont calculés conformément à l'une des trois méthodes (A, B ou C) énoncées à l'article 8, paragraphes 1 et 2, de la directive 2007/64/CE. Les autorités compétentes déterminent quelle méthode est appropriée conformément</p>	<p>Law of 21 Decemb er 2009, Art. 72(2) 1st subpara.</p>	<p>Law of 21 December 2009, Article 72(2) first subparagraph</p> <p>La Banque détermine, conformément aux dispositions de la Directive 2009/110/CE, par voie de règlement, les obligations en matière de solvabilité qui doivent être respectées par tous les établissements de monnaie électronique ou par catégorie d'établissements de</p>	<p>PARTIALLY CONFORM</p> <p>Article 72(2) first subparagraph of Law of 21 December 2009 transposes Article 5(2) first subparagraph of the Directive.</p> <p>The transposing provision states that the NBB shall determine, in accordance with the Directive provision and through a regulation, the solvency requirements, which shall be respected by all electronic money institutions or by categories of electronic money institutions concerning their activities under Article 77(2) point 1 of Law of 21 December 2009 that are not linked to the issuance of electronic money.</p>

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	à la législation nationale.		monnaie électronique [...] en ce qui concerne leurs activités visées à l'article 77, § 2, 1°, qui ne sont pas liées à l'émission de monnaie électronique. En ce qui concerne ces activités, le règlement peut prévoir différentes méthodes pour calculer les obligations à respecter en matière de solvabilité et la Banque est autorisée à préciser quelle méthode est applicable à un ou plusieurs établissements de monnaie électronique ou à une ou plusieurs catégories d'établissements de monnaie électronique.	<p>Article 77(2) point 1 of Law of 21 December 2009 which is cross-referred to in the transposing provision corresponds to Article 6(1)(a) of the Directive, as cross-referred to in the Directive provision.</p> <p>The transposing provision further specifies that the regulation may provide for different methods to calculate the solvency requirements and that the NBB shall be authorised to decide which method shall apply to one or more electronic money institutions or to one or more categories of electronic money institutions.</p> <p>This is in conformity with Recital 11 of the Directive, which provides that the same risks shall be treated in the same way for all payment service providers and that the method of calculation shall encompass the specific business situation of a given electronic money institution.</p> <p>The transposing provision does not refer to the different methods of calculation of own funds requirements set out in Article 8(1) and (2) of Directive 2007/64/EC. Since the NBB has not yet adopted its regulation it is not yet known which method will be applied within the context of this Directive provision.</p> <p>Based on the above findings, Belgian law only partially conforms to Article 5(2) first subparagraph of the Directive.</p>
Art. 5(2) 2nd subpara.	En ce qui concerne l'activité d'émission de monnaie électronique, les fonds propres requis d'un établissement de monnaie électronique sont calculés conformément à la méthode D exposée au paragraphe 3.	Law of 21 December 2009, Art.72(2) 1st subpara.	<p>Law of 21 December 2009, Article 72(2) first subparagraph</p> <p>La Banque détermine, conformément aux dispositions de la Directive 2009/110/CE, par voie de règlement, les obligations en matière de solvabilité qui doivent être respectées par tous les établissements de monnaie électronique ou par catégorie d'établissements de monnaie</p>	<p>NOT CONFORM</p> <p>Article 72(2) first subparagraph of Law of 21 December 2009 transposes Article 5(2) second subparagraph of the Directive.</p> <p>Although, this provision seems not contrary, it cannot be said to be conform to the Directive. It does not refer to method D set out in Article 5(3) of the Directive and Article 5(3) of the Directive itself has not been transposed as the NBB has not yet adopted its regulation and thus the way this Directive provision will be transposed may not be known yet. .</p> <p>Based on the above findings, non conformity is observed.</p>

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			<p>électronique tant en ce qui concerne leur activité d'émission de monnaie électronique qu'en ce qui concerne leurs activités visées à l'article 77, § 2, 1°, qui ne sont pas liées à l'émission de monnaie électronique.</p> <p>En ce qui concerne ces activités, le règlement peut prévoir différentes méthodes pour calculer les obligations à respecter en matière de solvabilité et la Banque est autorisée à préciser quelle méthode est applicable à un ou plusieurs établissements de monnaie électronique ou à une ou plusieurs catégories d'établissements de monnaie électronique.</p>	
Art. 5(2) 3rd subpara.	Les établissements de monnaie électronique détiennent à tout moment des fonds propres qui sont supérieurs ou égaux à la somme des montants requis visés aux premier et deuxième alinéas.	N/A	N/A	<p>NOT CONFORM</p> <p>Belgium has not transposed Article 5(2) third subparagraph of the Directive. The corresponding national provision could not be located either.</p> <p>Nonetheless, it shall be noted that this situation might be corrected by the regulation adopted by the NBB in the future in accordance with Article 72(2) first subparagraph of Law of 21 December 2009 (thus by secondary law).</p>
Art. 5(3)	3. Méthode D: les fonds propres d'un établissement de monnaie électronique pour l'activité d'émission de monnaie électronique s'élèvent à 2 % au minimum de la moyenne de la monnaie électronique en circulation.	N/A	N/A	<p>NOT CONFORM</p> <p>Belgium has not transposed Article 5(3) of the Directive. The corresponding national provision could not be located either.</p> <p>Nonetheless, as already mentioned, this situation will probably be corrected in the future by secondary legislation.</p>
Art. 5(4)	4. Lorsqu'un établissement de monnaie électronique exerce des	N/A	N/A	<p>NOT CONFORM</p>

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	<p>activités visées à l'article 6, paragraphe 1, point a), qui ne sont pas liées à l'émission de monnaie électronique ou des activités visées à l'article 6, paragraphe 1, points b) à e), et que le montant de la monnaie électronique en circulation ne peut être déterminé à l'avance, les autorités compétentes autorisent cet établissement de monnaie électronique à calculer ses fonds propres requis sur la base d'une partie représentative des fonds qui est présumée utilisée dans le cadre de l'émission de monnaie électronique, à condition que, sur la base de données historiques, il soit raisonnablement possible d'estimer cette partie représentative d'une manière jugée satisfaisante par les autorités compétentes. Lorsqu'un établissement de monnaie électronique n'a pas accompli une période d'activité suffisante, ses fonds propres requis sont calculés sur la base de l'estimation de la monnaie électronique en circulation résultant de son plan d'entreprise et sous réserve d'un éventuel ajustement de ce plan exigé par les autorités compétentes.</p>			<p>The Belgian legislator has not transposed Article 5(4) of the Directive. The corresponding national provision could not be located either.</p> <p>As previously explained, this might be corrected in the future by secondary legislation.</p>
Art. 5(5)	<p>5. Les autorités compétentes peuvent, sur la base d'une évaluation des processus de gestion des risques, des bases de données concernant les risques de pertes et des dispositifs de contrôle interne de l'établissement de monnaie électronique, exiger que</p>	N/A	N/A	<p>Article 5(5) of the Directive sets out an option. Owing to this option, Belgium has not chosen to apply it. In this regard, no corresponding provision could be located in the Belgian legislation either.</p> <p>Nonetheless, it shall be noted that as the NBB has not yet issued its regulation in accordance with Article 72(2) first subparagraph of Law of 21 December 2009, it cannot be excluded that the option will be applied in the</p>

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	l'établissement de monnaie électronique détienne un montant de fonds propres pouvant être jusqu'à 20 % supérieur au montant qui résulterait de l'application de la méthode appropriée conformément au paragraphe 2, ou autoriser l'établissement de monnaie électronique à détenir un montant de fonds propres pouvant être jusqu'à 20 % inférieur au montant qui résulterait de l'application de la méthode appropriée conformément au paragraphe 2.			future.
Art. 5(6) intr. wording	6. Les États membres prennent les mesures nécessaires aux fins d'empêcher l'utilisation multiple d'éléments éligibles pour le calcul des fonds propres:	Law of 21 December 2009, Art. 72(2), 2nd subpara.	<p>Law of 21 December 2009, Article 72(2) second subparagraph</p> <p>Lorsqu'un établissement de monnaie électronique fait partie d'un groupe avec d'autres établissements de monnaie électronique, établissements de paiement ou entreprises réglementées, la Banque prend des mesures pour éviter toute double utilisation de fonds propres au sein du groupe. La Banque peut préciser selon quelles méthodes il convient de calculer l'utilisation multiple de fonds propres.</p> <p>Le présent alinéa s'applique par analogie lorsqu'un établissement de monnaie électronique exerce directement ou indirectement d'autres activités que l'émission de monnaie</p>	<p>CONFORM</p> <p>The structure of the Belgian law differs from the Directive provision and therefore does not contain an equivalent introductory wording.</p> <p>The prohibition of multiple use of own funds as well as the obligation of the NBB to take measures to prevent the same, as set out in Article 5(6) of the Directive, has been correctly transposed through Article 72(2) of Law of 21 December 2009.</p>

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			électronique, visées à l'article 77.	
Art. 5(6)(a)	a) lorsque l'établissement de monnaie électronique appartient au même groupe qu'un autre établissement de monnaie électronique, un établissement de crédit, un établissement de paiement, une entreprise d'investissement, une société de gestion de portefeuille ou une entreprise d'assurance ou de réassurance;	Law of 21 December 2009, Art. 72(2), 2nd subpara. , 1st sentence	<p>Law of 21 December 2009, Article 72(2) second subparagraph first sentence</p> <p>Lorsqu'un établissement de monnaie électronique fait partie d'un groupe avec d'autres établissements de monnaie électronique, établissements de paiement ou entreprises réglementées, la Banque prend des mesures pour éviter toute double utilisation de fonds propres au sein du groupe.</p>	<p>CONFORM</p> <p>Article 72(2) second subparagraph first sentence of Law of 21 December 2009 transposes Article 5(6)(a) of the Directive.</p> <p>It shall be noted that the transposing provision does not refer to all of the institutions, firms, or undertakings to which the Directive provision refers. It solely refers to electronic money institutions and payment institutions and encompasses the others by referring to "regulated companies" In fact, point 19 of Article 4 of Law of 21 December 2009 defines "a regulated company" by referring to Article 1 point 7 of Royal Decree of 21 November 2005, which provides that this term encompasses credit institutions, insurance and reinsurance undertakings, investment firms and management companies of collective investment schemes. It does thus not raise any issue of conformity..</p> <p>Based on the above findings, Article 5(6)(a) of the Directive has been transposed in a conform manner.</p>
Art. 5(6)(b)	b) lorsqu'un établissement de monnaie électronique exerce des activités autres que l'émission de monnaie électronique.	Law of 21 December 2009, Art. 78(2), 2nd subpara. , 3rd sentence	<p>Law of 21 December 2009, Article 72(2), second subparagraph, third sentence</p> <p>Le présent alinéa s'applique par analogie lorsqu'un établissement de monnaie électronique exerce directement ou indirectement d'autres activités que l'émission de monnaie électronique, visées à l'article 77.</p>	<p>CONFORM</p> <p>Article 72(2) second subparagraph third sentence almost literally transposes Article 5(6)(b) of the Directive.</p> <p>It states that this subparagraph (<i>i.e.</i> the first and second sentences of Article 72(2), referred to in the analysis of Article 5(6)(a) of the Directive above) applies <i>mutatis mutandis</i> where an electronic money institution engages directly or indirectly in other activities than the issuance of electronic money under Article 77 of Law of 21 December 2009. Article 77 of Law of 21 December 2009 which is cross-referred to in the transposing provision corresponds to Article 6 of the Directive. This cross-reference is thus conform to the Directive provision.</p> <p>Based on the above findings, Article 5(6)(b) of the Directive has been</p>

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				transposed in a conform manner.
Art. 5(7)	7. Si les conditions énoncées à l'article 69 de la directive 2006/48/CE sont remplies, les États membres ou leurs autorités compétentes peuvent choisir de ne pas appliquer les paragraphes 2 et 3 du présent article aux établissements de monnaie électronique qui sont intégrés dans la surveillance consolidée des établissements de crédit mères conformément à la directive 2006/48/CE.	N/A	N/A	<p>Article 5(7) of the Directive sets out an option. Owing to this option, Belgium has not chosen to apply it. In this regard, no corresponding provision could be located in the Belgian legislation either.</p> <p>Nonetheless, it shall be noted that as the NBB has not yet adopted the regulation in accordance with Article 72(2) first subparagraph of Law of 21 December 2009, it cannot be excluded that the option will be applied in the future..</p>
Art. 6(1) 1st subpara.	<p><i>Article 6</i> Activités</p> <p>1. Outre l'émission de monnaie électronique, les établissements de monnaie électronique sont habilités à exercer chacune des activités suivantes:</p>	Law of 21 December 2009, Art. 77(2), intr. wording	<p>Law of 21 December 2009, Article 77(2)</p> <p>Par dérogation au § 1er, alinéa 1er, et sans préjudice de l'article 72, § 2, alinéa 3, les établissements de monnaie électronique sont habilités à exercer également les activités suivantes :</p>	<p>CONFORM</p> <p>Article 77(2) introductory wording transposes Article 6(1) first subparagraph.</p> <p>Although worded differently, the transposing provision has the same purpose as the Directive provision.</p> <p>It states that by way of derogation from Article 77(1) first subparagraph and without prejudice to Article 72(2) third subparagraph of Law of 21 December 2009, the electronic money institutions shall be also entitled to engage in the following activities.</p> <p>Article 77(1) first subparagraph of Law of 21 December 2009 provides that electronic money institutions wanting to engage in other activities than the issuance of electronic money shall first receive authorisation from the NBB.</p> <p>Article 72(2) third subparagraph of Law of 21 December 2009 states that the NBB may take additional measures where an electronic money institution engages in activities under Article 77 of Law of 21 December 2009 and where these activities impair or are likely to impair the financial soundness</p>

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				of the electronic money institution. Based on the above findings, Article 6(1) first subparagraph of the Directive has been transposed in a conform manner.
Art. 6(1) 1st subpara. (a)	a) la prestation des services de paiement énumérés en annexe de la directive 2007/64/CE;	Law of 21 December 2009, Art.77(2), pt (1)	Law of 21 December 2009, Article 77(2) point 1 la prestation des services de paiement énumérés à l'annexe Ire de la présente loi;	CONFORM Article 77(2) point 1 of Law of 21 December 2009 literally transposes Article 6(1) first subparagraph (a) of the Directive. The first Annex of Law of 21 December 2009 which is cross-referred to in the transposing provision literally transposes the Annex to Directive 2007/64/EC, as cross-referred to in the Directive provision.
Art. 6(1) 1st subpara. (b)	b) l'octroi de crédits liés aux services de paiement visés aux points 4, 5 ou 7 de l'annexe de la directive 2007/64/CE, pour autant que les conditions prévues à l'article 16, paragraphes 3 et 5, de ladite directive soient remplies;	Law of 21 December 2009, Art.77 (3), 1st subpara.	Law of 21 December 2009, Article 77(3) first subparagraph Les établissements de monnaie électronique ne peuvent octroyer un crédit lié aux services de paiement visés aux points 4, 5 ou 7 de l'annexe Ire de la présente loi qu'aux conditions visées à l'article 21, § 3.	CONFORM Article 77(3) first subparagraph literally transposes Article 6(1) first subparagraph (b). Points 4, 5 and 7 of the first Annex of Law of 21 December 2009, which are cross-referred to in the transposing provision, literally transpose points 4, 5 and 7 of the Annex to Directive 2007/64/EC, as cross-referred to in the Directive provision. Furthermore, Article 21(3) of Law of 21 December 2009 which is also cross-referred to in the transposing provision literally transposes Article 16(3) and (5) of the Directive.
Art. 6(1) 1st subpara. (c)	c) la prestation de services opérationnels et de services auxiliaires étroitement liés à l'émission de monnaie électronique ou à la prestation de services de paiement visés au point a);	Law of 21 December 2009, Art.77(2), pt (2)	Law of 21 December 2009, Article 77(2) point 2 la prestation de services opérationnels et de services auxiliaires étroitement liés à l'émission de monnaie électronique ou à la prestation de	CONFORM Article 77(2) point 2 of Law of 21 December 2009 literally transposes Article 6(1) first subparagraph (c) of the Directive. Point 1 of Article 77(2) of Law of 21 December, which is cross-referred to in the transposing provision, literally transposes point (a) of Article 6(1) first

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			services de paiement visés au point 1°;	subparagraph of the Directive, as cross-referred to in the Directive provision.
Art. 6(1) 1st subpara. (d)	d) la gestion de systèmes de paiement tels que définis à l'article 4, point 6), de la directive 2007/64/CE et sans préjudice de l'article 28 de ladite directive;	Law of 21 December 2009, Art.77(2), pt (3)	Law of 21 December 2009, Article 77(2) point 3 la gestion de systèmes de paiement, sans préjudice de l'article 49;	CONFORM Article 77(2) point 3 of Law of 21 December 2009 literally transposes Article 6(1) first subparagraph (d) of the Directive. It shall be noted that the transposing provision does not cross-refer to a national provision corresponding to point 6 of Article 4 of Directive 2007/64/EC. Nonetheless, as the definition of payment systems set out in this Directive provision is literally transposed in point 5 of Article 4 of Law of 21 December 2009, conformity is not affected. As regards Article 49 of Law of 21 December 2009, which is cross-referred to in the transposing Article, it transposes in conformity Article 28 of Directive 2007/64/EC, as cross-referred to in the Directive provision.
Art. 6(1) 1st subpara. (e)	e) les activités commerciales autres que l'émission de monnaie électronique, dans le respect du droit communautaire et du droit national applicables.	Law of 21 December 2009, Art.77(1)	Law of 21 December 2009, Article 77(1) Les établissements de monnaie électronique sont habilités à exercer des activités autres que l'émission de monnaie électronique, moyennant l'autorisation préalable de la Banque. Sans préjudice de l'article 81, § 3, si la Banque autorise un établissement de monnaie électronique à exercer des activités autres que l'émission de monnaie électronique, elle peut, en vue d'une gestion saine et prudente et d'une maîtrise des risques appropriée par l'établissement de monnaie électronique, ou pour les besoins d'un	CONFORM Article 77(1) of Law of 21 December 2009 transposes Article 6(1) first subparagraph (e) of the Directive. The first subparagraph of the transposing provision states that the electronic money institutions are entitled to engage in other activities than the issuance of electronic money subject to prior authorisation of the NBB, which is conform to the Directive provision requirement. It further specifies that without prejudice to Article 81(3) of Law of 21 December 2009 regarding the NBB's supervisory powers and their limits, if the NBB authorises an electronic money institution to engage in activities other than issuance of electronic money, it may subject the exercise of those activities or the exercise of activities under the second paragraph of Article 77 of Law of 21 December 2009 (transposing points (a), (c) and (d) of Article 6(1) first subparagraph of the Directive) to additional conditions in two circumstances. The NBB may do so either where it is necessary to

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			<p>contrôle prudentiel adapté dudit établissement, subordonner à certaines conditions complémentaires l'exercice d'activités autres que l'émission de monnaie électronique ou les activités visées au § 2.</p> <p>En outre, la Banque peut exiger que l'exercice de l'activité d'émission de monnaie électronique et, le cas échéant, de services de paiement, soit logée dans une entité juridique distincte de l'entité exerçant d'autres activités.</p>	<p>ensure a sound and prudent management and an adequate control of risks within the electronic money institution, or where it is necessary for an adequate prudential supervision of the electronic money institution. This provision does not affect conformity with the Directive.</p> <p>Finally, the transposing provision adds that the NBB may require that activities of issuance of electronic money, and where applicable, activities of payment services be located in a separate legal entity than the entity where other activities are exercised, which is also conform to the Directive.</p> <p>It shall be noted that, as compared to the Directive provision, the transposing provision does not explicitly refer to the applicable Community and national law. Nonetheless, taking into consideration the whole transposing provision, it seems logical to assume that Community and national law shall be respected in the context where electronic money institutions engage in other activities than the issuance of electronic money.</p> <p>Based on the above findings, Article 6(1) first subparagraph (e) has been transposed in a conform manner.</p>
Art. 6(1) 2nd subpara.	Les crédits visés au premier alinéa, point b), ne sont pas octroyés sur la base des fonds reçus en contrepartie de monnaie électronique et détenus conformément à l'article 7, paragraphe 1.	Law of 21 December 2009, Art. 77(3), 2nd subpara.	<p>Law of 21 December 2009, Article 77(3) second subparagraph</p> <p>Les crédits visés à l'alinéa 1er ne peuvent être octroyés sur la base des fonds reçus en contrepartie de monnaie électronique et détenus conformément à l'article 78, § 1er.</p>	<p>CONFORM</p> <p>Article 77(3) second paragraph of Law of 21 December 2009 literally transposes Article 6(1) second subparagraph of the Directive.</p> <p>Recital 13 of the Directive, according to which electronic money institutions should not be allowed to grant credit from the funds received or held for the purpose of issuing electronic money, has thus been duly complied with.</p> <p>It shall be noted that the first paragraph of Article 77 of Law of 21 December 2009, which is cross-referred to in the transposing provision, corresponds to point (b) of Article 6(1) first subparagraph, as cross-referred to by the Directive provision.</p> <p>Also, Article 78(1) of Law of 21 December 2009, which is cross-referred to in the transposing provision, corresponds to Article 7(1) of the Directive, as</p>

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				cross-referred to by the Directive provision.
Art. 6(2)	2. Les établissements de monnaie électronique ne peuvent pas recevoir du public des dépôts ou d'autres fonds remboursables au sens de l'article 5 de la directive 2006/48/CE.	Law of 21 December 2009, Art. 77(4)	<p>Law of 21 December 2009, Article 77(4)</p> <p>Les établissements de monnaie électronique ne sont pas autorisés à exercer l'activité de réception de dépôts d'argent ou d'autres fonds remboursables au sens de l'article 1er de la loi bancaire.</p>	<p>CONFORM</p> <p>Article 77(4) of Law of 21 December 2009 literally transposes Article 6(2) of the Directive.</p> <p>Article 1 of Law of 22 March 1993, which is cross-referred to in the transposing provision, corresponds to Article 5 of Directive 2006/48/EC, as cross-referred to in the Directive provision. According to Belgian law, the issuance of electronic money shall not constitute a deposit-taking activity, in conformity with Recital 13 of the Directive.</p>
Art. 6(3)	3. Les fonds reçus par les établissements de monnaie électronique des détenteurs de monnaie électronique sont échangés sans délai contre de la monnaie électronique. Ces fonds ne constituent pas des dépôts ou d'autres fonds remboursables reçus du public au sens de l'article 5 de la directive 2006/48/CE.	Law of 21 December 2009, Art. 77(5)	<p>Law of 21 December 2009, Article 77(5)</p> <p>Les fonds reçus des détenteurs de monnaie électronique par des établissements de monnaie électronique sont échangés sans délai contre de la monnaie électronique. Ces fonds ne constituent pas des dépôts ou d'autres fonds remboursables au sens de l'article 1er de la loi bancaire, à condition que l'obligation visée à l'alinéa précédent soit respectée. A défaut de respecter l'obligation visée à l'alinéa 1er, la réception de ces fonds est assimilée à une réception de dépôts d'argent ou d'autres fonds remboursables illicite en violation du § 4 et de l'article 68bis de la loi du 16 juin 2006 relative aux offres publiques d'instruments de placement et aux admissions d'instruments de placement</p>	<p>CONFORM</p> <p>Article 77(5) of Law of 21 December 2009 transposes Article 6(3) of the Directive.</p> <p>The first subparagraph of Article 77(5) of Law of 21 December 2009 states that the funds received by electronic money institutions from electronic money holders shall be exchanged for electronic money without delay, transposing in a literal way the first sentence of Article 6(3) of the Directive.</p> <p>Furthermore, it specifies that such funds shall not constitute either deposits or other repayable funds within the meaning of Article 1 of Law of 22 March 1993, provided that the requirement referred to in the first subparagraph of Article 77(5) of law of 21 December 2009 is complied with.</p> <p>This requirement is conform to Recital 13 of the Directive, providing that the issuance of electronic money does not constitute a deposit-taking activity in view of its specific character as an electronic surrogate for coins and banknotes, which is to be used for making payments and not as means of saving..</p> <p>It shall be noted that Article 1 of Law of 21 March 1993, which is cross-referred to in the second subparagraph of Article 77(5) of Law of 21</p>

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			à la négociation sur des marchés réglementés.	<p>December 2009, corresponds to Article 5 of Directive 2006/48/EC, as cross-referred to in the Directive provision.</p> <p>The transposing provision adds in its third subparagraph that if the requirement referred to in the first subparagraph is not complied with, the deposit-taking shall be deemed as an illegal taking of deposits of money or other repayable funds in breach of the fourth paragraph of Article 77 of Law of 21 December 2009 (commented above) and of Article 68bis of Law of 16 June 2006 on Public Offers of Investment Instruments and Admission of Investment Instruments for Trading on Regulated Markets.</p> <p>Based on the above findings, Article 6(3) of the Directive has been transposed in a conform manner.</p>
Art. 6(4)	4. L'article 16, paragraphes 2 et 4, de la directive 2007/64/CE s'applique aux fonds reçus au titre des activités visées au paragraphe 1, point a), du présent article, qui ne sont pas liées à l'activité d'émission de monnaie électronique.	Law of 21 December 2009, Art.77(6)	<p>Law of 21 December 2009, Article 77(6)</p> <p>L'article 21, §§ 4 et 5 s'applique aux fonds reçus dans le cadre des activités visées au § 2, 1°, qui ne sont pas liées à l'activité d'émission de monnaie électronique.</p>	<p>CONFORM</p> <p>Article 77(6) of Law of 21 December 2009 literally transposes Article 6(4) of the Directive.</p> <p>Paragraphs (4) and (5) of Article 21, which are cross-referred to in the transposing provision, correspond to paragraphs (2) and (4) of Article 16 of Directive 2007/64/EC, as cross-referred to in the Directive provision.</p> <p>Likewise, Article 77(2) point 1, which is cross-referred to in the transposing provision, corresponds to Article 6(1)(a) of the Directive, as cross-referred to by the Directive provision.</p>
Art. 7(1)	<p><i>Article 7</i></p> <p>Obligations de protection des fonds</p> <p>1. Les États membres exigent qu'un établissement de monnaie électronique protège, conformément à l'article 9, paragraphes 1 et 2, de la directive 2007/64/CE, les fonds qui ont été reçus en échange de la monnaie électronique émise. Les fonds reçus</p>	Law of 21 December 2009, Art.78(1) and (2)	<p>Law of 21 December 2009, Article 78</p> <p>(1) Les fonds reçus par un établissement de monnaie électronique en échange de la monnaie électronique émise doivent :</p>	<p>CONFORM</p> <p>Article 78 of Law of 21 December 2009 transposes Article 7(1) of the Directive.</p> <p>The first and the second subparagraphs of the first paragraph of Article 78 of law of 21 December 2009 transpose in a conform manner the safeguarding methods prescribed by the first paragraph of Article 9 of Directive 2007/64/EC.</p>

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<p>sous forme de paiement par un instrument de paiement ne nécessitent pas d'être protégés jusqu'à ce qu'ils soient portés au crédit du compte de paiement de l'établissement de monnaie électronique ou mis par tout autre moyen à la disposition de l'établissement de monnaie électronique, le cas échéant, conformément aux dispositions relatives au délai d'exécution énoncées dans la directive 2007/64/CE. En tout état de cause, ces fonds doivent être protégés au plus tard cinq jours ouvrables, tels que définis à l'article 4, point 27), de ladite directive, après l'émission de la monnaie électronique.</p>	<p>a) pouvoir être distinctement identifiés dans sa comptabilité et n'être jamais mélangés avec d'autres fonds, et</p> <p>b) lorsque ces fonds sont encore détenus par l'établissement de monnaie électronique à la fin du jour ouvrable suivant le jour où ils ont été reçus :</p> <p>(i) être déposés sur un compte global ou individualisé distinct auprès d'une ou plusieurs entités ayant la qualité d'établissement de crédit relevant du droit d'un Etat membre de l'EEE, ou d'établissement de crédit établi dans l'EEE et relevant du droit d'un Etat non membre de l'EEE, ou</p> <p>(ii) être investis en actifs à faible risque, liquides et sûrs, tels que définis par la Banque, conformément aux dispositions de l'article 7.2. de la Directive 2009/110/CE, par voie de règlement;</p> <p>c) ou être couverts, d'une manière jugée satisfaisante par la Banque, par une assurance, une garantie ou une caution d'une entreprise d'assurances ou d'un établissement de crédit relevant du droit d'un Etat membre de l'EEE ou disposant d'un établissement dans l'EEE et relevant du droit d'un Etat non membre de l'EEE, laquelle entreprise d'assurances ou lequel établissement de crédit ne peut appartenir au même groupe que</p>	<p>The first sentence of the penultimate subparagraph of the first paragraph of Article 78 of Law of 21 December 2009 literally transposes the second sentence of Article 7(1) of the Directive. It does refer to the execution time requirements laid down in Law of 10 December 2009, which correspond to the execution time requirements under Directive 2007/64/EC, as referred to by the Directive provision.</p> <p>The second sentence of the penultimate subparagraph of the first paragraph of Article 78 of Law of 21 December 2009 almost literally transposes the third sentence of Article 7(1) of the Directive. It does not refer to the definition of "business days", as the Directive provision does. Nonetheless, the definition of a business day in point 38 of Article 4 of Law of 21 December 2009 refers to point 17 of Article 2 of Law of 10 December 2009, which literally transposes point 27 of Article 4 of Directive 2007/64/EC.</p> <p>Finally, the second paragraph of Article 78 of Law of 21 December 2009 provides that where a portion of the funds received in exchange of electronic money issued is to be used for other activities of the electronic money institution, that portion of the funds shall not be subject to the requirements under the first paragraph of Article 78 of Law of 21 December 2009. Where that portion is variable or unknown in advance, electronic money institutions may calculate this amount on the basis of a representative portion assumed to be used for issuance of electronic money, provided such a representative portion can be reasonably estimated on the basis of historical data to the satisfaction of the NBB. These provisions transpose in a conform manner the option included in the second paragraph of Article 9 of Directive 2007/64/EC as prescribed by Article 7(1) of the Directive.</p> <p>Based on the above findings, Article 7(1) of the Directive has been transposed in a conform manner.</p>

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	<p>l'établissement de monnaie électronique, pour un montant qui est égal au montant qui aurait été affecté en application du point b), et qui est payable si l'établissement de monnaie électronique n'est pas en mesure d'honorer ses obligations financières. Les entités visées à l'alinéa 1er, b), (i) ne peuvent, sur les fonds déposés sur un compte distinct, faire valoir de droit résultant de créances propres sur l'établissement de monnaie électronique qui a ouvert ce compte. De même, ces comptes et leur solde ne peuvent faire l'objet d'aucune saisie-arrêt par les créanciers de l'établissement de monnaie électronique.</p> <p>[...]</p> <p>Lorsque la monnaie électronique est acquise par le moyen d'un instrument de paiement, la protection afférente aux fonds reçus en échange de la monnaie électronique ne doit être assurée qu'à partir du moment où les fonds sont portés au crédit du compte de paiement de l'établissement de monnaie électronique ou mis par tout autre moyen à la disposition de l'établissement de monnaie électronique, le cas échéant, conformément aux dispositions relatives au délai d'exécution énoncées dans la loi du 10 décembre 2009. En tout état de cause, ces fonds doivent être protégés au plus tard cinq jours</p>	

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			<p>ouvrables après l'émission de la monnaie électronique. [...]</p> <p>(2) Lorsqu'une partie des fonds reçus en échange de la monnaie électronique émise est potentiellement destinée à être utilisée dans le cadre d'autres activités de l'établissement de monnaie électronique, cette partie des fonds ne relève pas des obligations au titre du § 1er. Si cette partie est variable ou ne peut être déterminée à l'avance, les établissements de monnaie électronique peuvent calculer ce montant en supposant qu'une partie représentative des fonds servira à l'émission de monnaie électronique, à condition que, sur la base de données historiques, il soit raisonnablement possible d'estimer cette partie représentative d'une manière jugée satisfaisante par la Banque.</p>	
Art. 7(2) 1st subpara.	2. Aux fins du paragraphe 1, des actifs à faible risque et sûrs sont des éléments d'actifs relevant de l'une des catégories figurant au tableau 1 du point 14 de l'annexe I de la directive 2006/49/CE du Parlement européen et du Conseil du 14 juin 2006 sur l'adéquation des fonds propres des entreprises d'investissement et des établissements de crédit pour lesquels l'exigence de fonds propres pour risque spécifique ne dépasse pas 1,6 %	Law of 21 December 2009, Art.78(1)(b)(ii)	<p>Law of 21 December 2009, Article 78(1)(b)(ii)</p> <p>actifs à faible risque, liquides et sûrs, tels que définis par la Banque, conformément aux dispositions de l'article 7.2. de la Directive 2009/110/CE, par voie de règlement</p>	<p>PARTIALLY CONFORM</p> <p>Article 78(1)(b)(ii) of Law of 21 December 2009 transposes Article 7(2) first subparagraph of the Directive.</p> <p>It shall be noted that the transposing provision is part of provisions transposing Article 7(1) of the Directive. It provides that the secure, liquid and low-risk assets shall be defined by the NBB through a regulation in accordance with Article 7(2) of the Directive.</p> <p>However, this regulation has not yet been adopted and thus the definition of the secure, low-risk assets in the context of Article 7(2) of the Directive does</p>

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	mais à l'exclusion d'autres éléments éligibles tels que définis au point 15 de ladite annexe.			not yet exist in Belgian law, which leads to partial conformity. Based on the above findings, Belgian law is partially conform to Article 7(2) first subparagraph of the Directive.
Art. 7(2) 2nd subpara.	Aux fins du paragraphe 1, des parts dans un organisme de placement collectif en valeurs mobilières (OPCVM) qui n'investit que dans des actifs visés au premier alinéa sont aussi des actifs à faible risque et sûrs.	Law of 21 December 2009, Art.78(1)(b)(ii)	Law of 21 December 2009, Article 78(1)(b)(ii) être investis en actifs à faible risque, liquides et sûrs, tels que définis par la Banque, conformément aux dispositions de l'article 7.2. de la Directive 2009/110/CE, par voie de règlement	PARTIALLY CONFORM Article 78(1)(b)(ii) of Law of 21 December 2009 transposes Article 7(2) second subparagraph of the Directive. As explained above, the secure and low-risk assets shall be defined by the NBB through a regulation in accordance with Article 7(2) of the Directive. As the regulation has not yet been adopted, no definition or specific examples illustrating what shall be encompassed in it, exist in Belgian law. Based on the above findings, Belgian law is thus only partially conform to Article 7(2) second subparagraph of the Directive.
Art. 7(2) 3rd subpara.	Dans des circonstances exceptionnelles et moyennant une justification adéquate, les autorités compétentes peuvent, après évaluation de la sécurité, de l'échéance, de la valeur et d'autres facteurs de risque des actifs visés aux premier et deuxième alinéas, établir lesquels de ces actifs ne constituent pas des actifs à faible risque et sûrs aux fins du paragraphe 1.	N/A	N/A	Article 7(2) third subparagraph sets out an option. Owing to this option, Belgium has not chosen to apply it. In this regard, no corresponding provision could be located in the Belgian legislation either. Nonetheless, it shall be noted that, since the regulation of the NBB referred to in Article 78(1)(b)(ii) of Law of 21 December 2009 has not been yet adopted, it may not be known whether this option will be applied or not.
Art. 7(3)	3. L'article 9 de la directive 2007/64/CE s'applique aux établissements de monnaie électronique pour les activités visées à l'article 6, paragraphe 1, point a), de la présente directive qui ne sont pas liées	Law of 21 December 2009, Art.78(3)	Law of 21 December 2009, Article 78(3) L'article 22 s'applique aux établissements de monnaie	CONFORM Article 78(3) of Law of 21 December 2009 literally transposes Article 7(3) of the Directive. However, it shall be noted that the option set out in the fourth paragraph of

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	à l'activité d'émission de monnaie électronique.		électronique pour les activités visées à l'article 77, § 2, 1° qui ne sont pas liées à l'activité d'émission de monnaie électronique.	<p>Article 9 of Directive 2007/64/EC has not been applied in Belgian law.</p> <p>Article 22 of Law of 21 December 2009, which is cross-referred to in the transposing provision, corresponds to Article 9 of Directive 2007/64/EC, as cross-referred to in the Directive provision. More precisely, the first and second paragraphs of Article 22 of Law of 21 December 2009 transpose the first to third paragraphs of Article 9 of Directive 2007/64/EC..</p> <p>Furthermore, Article 77(2) point 1 of Law of 21 December 200,9 which is cross-referred to in the transposing provision, corresponds to Article 6(1)(a) of the Directive, as cross-referred to in the Directive provision.</p> <p>Based on the above findings, Article 7(3) of the Directive has been transposed in a conform manner.</p>
Art. 7(4)	4. Aux fins des paragraphes 1 et 3, les États membres ou leurs autorités compétentes peuvent établir, conformément à la législation nationale, la méthode à utiliser par les établissements de monnaie électronique pour protéger les fonds.	N/A	N/A	Article 7(4) of the Directive sets out an option. Owing to this option, Belgium has not chosen to apply it. In this regard, no corresponding provision could be located in the Belgian legislation either.
Art. 8(1)	<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;">Relations avec les pays tiers</p> <p>1. Les États membres n'appliquent pas aux succursales d'établissements de monnaie électronique ayant leur siège hors de la Communauté, pour l'accès à leur activité et pour l'exercice de cette activité, des dispositions conduisant à un traitement plus favorable que celui auquel sont soumis les établissements de monnaie électronique ayant leur siège dans la Communauté.</p>	Law of 21 December 2009, Book 3, Title 2, Chap.3 Art.99 to 103;	Law of 21 December 2009, Book 3, Title 2, Chapter 3, Article 99; Article 100; Article 101; Article 102; Article 103.	<p>CONFORM</p> <p>The Belgian legislator has not transposed Article 8(1) of the Directive in a similar national provision.</p> <p>However, Chapter 3 of Title 2 of Book 3 of Law of 21 December 2009 which lays down rules applying to branches of electronic money institutions governed by the law of non-EEA countries does conform to the Directive provision. Most of the Articles under Chapter 3 refer to provisions under Chapter 1, which lays down rules applying to electronic money institution governed by Belgian law. It shall be noted that, in addition to references to rules under Chapter 1, Articles under Chapter 3 also specify additional requirements for the branches of electronic money institutions governed by</p>

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				<p>the law of non-EEA countries.</p> <p>Article 99 of Law of 21 December 2009 under Chapter 3 relates to the taking up of business by those branches and Article 100 of Law of 21 December 2009 concerns the exercise of their activity.</p> <p>Articles 101 to 102 of Law of 21 December 2009 lay down rules concerning their supervision and Article 103 of Law of 21 December provides for the revocation of the agreement, extraordinary measures and sanctions.</p> <p>The provisions applying to branches of electronic money institutions governed by the law of non-EEA countries are not more favourable than those for branches of electronic money institutions governed by the law of other EEA countries, in conformity with the Directive. The branches of electronic money institutions, which have their head office outside the EEA, do not benefit from neither the freedom of establishment under Article 43 of the Treaty nor the freedom to provide services under the second paragraph of Article 49 of the Treaty, as prescribed by Recital 15 of the Directive.</p> <p>Based on the above findings, Article 8(1) of the Directive has been transposed in a conform manner.</p>
Art. 8(2)	2. Les autorités compétentes notifient à la Commission tous les agréments accordés à des succursales d'établissements de monnaie électronique ayant leur siège hors de la Communauté.	N/A	N/A	<p>PARTIALLY CONFORM</p> <p>Article 8(2) of the Directive has not been transposed into Belgian law. The corresponding national provisions could not be located either.</p> <p>However, the fact that this provision has not been transposed does not prevent the NBB from being bound by the obligation to provide this information.</p> <p>As a consequence, partial conformity is observed</p>
Art. 8(3)	3. Sans préjudice du paragraphe 1, la Communauté peut, par des accords conclus avec un ou plusieurs pays tiers, convenir de l'application de	N/A	N/A	<p>CONFORM</p> <p>Article 8(3) of the Directive does not set out an obligation which rests upon the Member States. Therefore, Article 8(3) of the Directive does not require</p>

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	dispositions qui assurent aux succursales d'un établissement de monnaie électronique ayant son siège hors de la Communauté le même traitement dans l'ensemble de la Communauté.			implementation into Belgian legislation, provided no provision contradicts its content.
Art. 9(1) 1st subpara. intr. wording	<p style="text-align: center;"><i>Article 9</i> Exemptions optionnelles</p> <p>1. Les États membres peuvent exempter ou autoriser leurs autorités compétentes à exempter de l'application de tout ou partie des procédures et conditions fixées aux articles 3, 4, 5 et 7 de la présente directive, à l'exception des articles 20, 22, 23 et 24 de la directive 2007/64/CE, et autoriser des personnes morales à être inscrites dans le registre des établissements de monnaie électronique, si les deux conditions suivantes sont respectées:</p>	Law of 21 Decemb er 2009, Art. 105(1) intr. wording and (2)	<p style="text-align: center;">Law of 21 December 2009, Article 105(1) introductory wording</p> <p>La Banque peut exempter de l'application de tout ou partie des dispositions des sections 1 à 3 du chapitre Ier du Titre 2 du présent Livre et de ses arrêtés d'exécution les personnes morales :</p> <p>[...]</p> <p>La Banque ne peut exempter ces personnes morales de l'application des articles 77 et 78 de la présente loi. [...]</p> <p style="text-align: center;">Article 105(2)</p> <p>Les personnes morales visées au § 1er, qui sont exemptées, sont inscrites sur la liste visée à l'article 64. L'article 64 s'applique par analogie à ces personnes morales en ce qui concerne les informations fournies sur le site internet de la Banque et leur actualisation régulière. Le site internet mentionne que ces personnes morales bénéficient d'une exemption en</p>	<p>CONFORM</p> <p>Article 9(1) first subparagraph introductory wording of the Directive sets out an option which Belgium has chosen to apply. Article 105(1) introductory wording and (2) of Law of 21 December 2009 transpose the Directive provision.</p> <p>The transposing provision states that the NBB may exempt legal persons from the application of all or part of the provisions included in Sections 1 to 3 of Chapter 1 of Title 2 of Book 3 of Law of 21 December 2009 and of decrees implementing them. Provisions under those sections concern the requirement of authorisation, the conditions of authorisation and the conditions of exercise of the activity.</p> <p>Moreover, the application of Article 78 of Law of 21 December 2009, which concerns the safeguarding of funds received in exchange of electronic money by electronic money institutions, may not be waived in Belgian law either.</p> <p>Belgian provisions transposing Article 20, 22, 23 and 24 of Directive 2007/64/EC are excluded from the exemption, in conformity with the Directive.</p> <p>The second paragraph of Article 105 of Law of 21 December 2009 refers to the legal persons exempted, as referred to in the first paragraph of the same Article, and states that they are registered on the list under Article 64 of Law of 21 December 2009, which complies with Recital 16 of the Directive.</p> <p>It also adds that Article 64 applies to those legal persons <i>mutatis mutandis</i> as regards the information provided on the website of the NBB and its regular updating. The website of the NBB shall also mention that these legal persons</p>

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			application du présent article.	benefit from the exemption under Article 105 of Law of 21 December 2009. The list under Article 64 of Law of 21 December 2009 is not yet available on the website of the NBB. However, it shall be noted that a list of exempted electronic money institutions, which has been updated on January 2013 is available on the website of the FSMA, the other Belgian supervisory authority. Before this update, the list stated that it was based on the national provisions transposing the previous Directive on electronic money institutions. After the update, this reference has been removed. All of this might need to be clarified with Belgium. Despite this last remark, based on the findings concerning the transposing provisions, Article 9(1) first subparagraph introductory wording of the Directive has been transposed in a conform manner.
Art. 9(1) 1st subpar. (a)	a) les activités commerciales dans leur ensemble génèrent une moyenne de la monnaie électronique en circulation qui ne dépasse pas un plafond fixé par l'État membre mais qui, en tout état de cause, n'est pas supérieur à 5 000 000 EUR; et	Law of 21 December 2009, Art. 105(1), pt (1)	Law of 21 December, 2009, Article 105(1) point 1 dont les activités commerciales dans leur ensemble génèrent une moyenne de monnaie électronique en circulation qui ne dépasse pas 5.000.000 euros; et	CONFORM Article 105(1) point 1 of Law of 21 December 2009 almost literally transposes Article 9(1) first subparagraph (a) of the Directive. It shall be noted that the limit set by Belgium is the maximum amount allowed by the Directive provision. Based on this finding, Article 9(1) first subparagraph (a) of the Directive has been transposed in a conform manner.
Art. 9(1) 1st subpara. (b)	b) aucune des personnes physiques responsables de la gestion ou de l'exercice de l'activité n'a été condamnée pour des infractions liées au blanchiment de capitaux, au financement du terrorisme ou à d'autres délits financiers.	Law of 21 December 2009, Art. 105(1), pt (2)	Law of 21 December 2009, Article 105(1) point 2 dont aucune des personnes physiques responsables de la gestion ou de l'exercice de l'activité n'a été condamnée pour des infractions liées au blanchiment de capitaux, au financement du terrorisme ou visées à l'article 19, § 1er, 1° et 2° de la loi	CONFORM Article 105(1) point 2 of Law of 21 December 2009 literally transposes Article 9(1) first subparagraph (b) of the Directive. Article 19(1) points 1 and 2 of Law of 22 March 1993, which is cross-referred to in the transposing provision, relates to various financial crimes, in conformity with the Directive provision.

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Art. 9(1) 2nd subpara,	Lorsqu'un établissement de monnaie électronique exerce des activités visées à l'article 6, paragraphe 1, point a), qui ne sont pas liées à l'émission de monnaie électronique ou des activités visées à l'article 6, paragraphe 1, points b) à e), et que le montant de la monnaie électronique en circulation ne peut être déterminé à l'avance, les autorités compétentes autorisent cet établissement de monnaie électronique à appliquer le premier alinéa, point a), sur la base d'une partie représentative des fonds qui est présumée utilisée pour l'émission de monnaie électronique, à condition que, sur la base de données historiques, il soit raisonnablement possible d'estimer cette partie représentative d'une manière jugée satisfaisante par les autorités compétentes. Lorsqu'un établissement de monnaie électronique n'a pas accompli une période d'activité suffisamment longue, cette condition est évaluée sur la base de l'estimation de la monnaie électronique en circulation résultant de son plan d'entreprise et sous réserve d'un éventuel ajustement de ce plan exigé par les autorités compétentes.	Law of 21 December 2009, Art. 105(1), 5th subpara.	<p>Law of 21 December 2009, Article 105(1) fifth subparagraph</p> <p>Lorsqu'un établissement de monnaie électronique exerce des activités visées à l'article 77, § 2, 1°, qui ne sont pas liées à l'émission de monnaie électronique ou des activités visées à l'article 77, § 1er, § 2, 2° et 3°, ou § 3, et que le montant de la monnaie électronique en circulation ne peut être déterminé à l'avance, cet établissement de monnaie électronique peut bénéficier de l'application du premier alinéa, 1°, sur la base d'une partie représentative des fonds qui est présumée utilisée pour l'émission de monnaie électronique, à condition que, sur la base de données historiques, il soit raisonnablement possible d'estimer cette partie représentative d'une manière jugée satisfaisante par la Banque. Lorsqu'un établissement de monnaie électronique n'a pas accompli une période d'activité suffisamment longue, cette condition est évaluée sur la base de l'estimation de la monnaie électronique en circulation résultant de son plan d'entreprise, et sous réserve d'un éventuel ajustement de ce plan exigé par la Banque.</p>	<p>CONFORM</p> <p>Article 105(1) fifth subparagraph of Law of 21 December 2009 literally transposes Article 9(1) second subparagraph of the Directive.</p> <p>Articles 77(2) point 1, 77(1) and (2) points 2 and 3 and 77(3) and the first subparagraph of Article 105 of Law of 21 December 2009, which are cross-referred to in the transposing provision, correspond to Articles 6(1)(a) to (e) and 9(1) first subparagraph (a) of the Directive respectively such as cross-referred to in the Directive provision.</p>

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Art. 9(1) 3rd subpara.	Les États membres peuvent aussi disposer que les exemptions optionnelles au titre du présent article ne sont octroyées qu'à la condition supplémentaire que le montant chargé sur l'instrument de paiement ou sur le compte de paiement du consommateur où est chargée la monnaie électronique ne dépasse pas un plafond.	Law of 21 December 2009, Art. 105(3) pt (3)	<p>Law of 21 December 2009, Article 105(3)</p> <p>Les personnes morales bénéficiant d'une exemption accordée en vertu du paragraphe 1er :</p> <p>Article 105(3) point 3</p> <p>doivent prévoir, dans le contrat régissant l'émission de monnaie électronique, que le montant chargé sur le support électronique stockant la monnaie électronique ne peut dépasser 150 euros;</p>	<p>CONFORM</p> <p>Article 9(1) third subparagraph of the Directive sets out an option, which Belgium has chosen to apply. Article 105(3) point 3 of Law of 21 December 2009 transposes it.</p> <p>The transposing provision states that the legal persons which benefit from the exemption under Article 105(1) of Law of 21 December 2009 shall provide in the contract governing the electronic money issuance that the amount stored on the electronic money storage device may not exceed EUR150.</p> <p>Based on the above findings, Article 9(1) third subparagraph of the Directive has been transposed in a conform manner.</p>
Art. 9(1) 4th subpara.	Une personne morale enregistrée conformément au présent paragraphe ne peut fournir des services de paiement non liés à la monnaie électronique émise conformément au présent article que si les conditions énoncées à l'article 26 de la directive 2007/64/CE sont remplies.	Law of 21 December 2009, Art. 105(3) pt (4) ;	<p>Law of 21 December 2009, Article 105(3)</p> <p>Les personnes morales bénéficiant d'une exemption accordée en vertu du paragraphe 1er :</p> <p>Article 105(3) point 4</p> <p>ne peuvent fournir des services de paiement non liés à la monnaie électronique émise conformément au présent article que si les conditions énoncées à l'article 48 sont remplies;</p>	<p>CONFORM</p> <p>Article 105(3) point 4 of Law of 21 December 2009 literally transposes Article 9(1) fourth subparagraph of the Directive.</p> <p>It shall be noted that Article 48 of Law of 21 December 2009, which is cross-referred to in the transposing provision, transposes all conditions included in Article 26 of Directive 2007/64/EC, as cross-referred to in the Directive provision.</p>
Art. 9(2)	2. Une personne morale enregistrée conformément au paragraphe 1 doit avoir son siège dans l'État membre où	Law of 21 December	Law of 21 December 2009, Article 105(3) introductory wording,	<p>CONFORM</p> <p>Article 105(3) introductory wording and point 1 of Law of 21 December</p>

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	elle exerce effectivement son activité.	er 2009, Article 105(3), intr. wording and pt (1)	<p>Les personnes morales bénéficiant d'une exemption accordée en vertu du paragraphe 1er :</p> <p style="text-align: center;">Article 105(3) point 1</p> <p>doivent avoir leur siège social en Belgique, et exercer effectivement leurs activités d'émission de monnaie électronique sur le territoire belge;</p>	<p>2009 almost literally transpose Article 9(2) of the Directive.</p> <p>The transposing provision states that the legal persons, which benefit from the exemption granted under the first paragraph of Article 105 of Law of 21 December 2009, shall have their head office in Belgium and actually pursue their electronic money issuance activities on the Belgian territory.</p> <p>Based on the above findings, Article 9(2) of the Directive has been transposed in a conform manner.</p>
Art. 9(3)	3. Une personne morale enregistrée conformément au paragraphe 1 est traitée comme un établissement de monnaie électronique. Toutefois, l'article 10, paragraphe 9, et l'article 25 de la directive 2007/64/CE ne s'appliquent pas à cette personne.	Law of 21 Decemb er 2009, Art. 105(3), intr. wording and pt (2)	<p style="text-align: center;">Law of 21 December 2009, Article 105(3) introductory wording</p> <p>Les personnes morales bénéficiant d'une exemption accordée en vertu du paragraphe 1er:</p> <p style="text-align: center;">Article 105(3) point 2</p> <p>ne bénéficient pas du régime de reconnaissance mutuelle prévu par l'article 91 de la présente loi;</p>	<p>CONFORM</p> <p>Article 105(3) introductory wording and point 2 transpose Article 9(3) of the Directive.</p> <p>As regards the requirement providing that Article 10(9) and 25 of Directive 2007/64/EC shall not apply to the legal persons exempted in accordance with the first paragraph of Article 9 of the Directive, it has been duly complied with. In fact, the transposing provision states that the legal persons exempted shall not benefit from the mutual recognition arrangements under Article 91 of Law of 21 December 2009, which transposes Article 10(9) of Directive 2007/64/EC. As a direct consequence, Articles 75, 83, 88 and 89 of Law of 21 December 2009, which transpose Article 25 of Directive 2007/64/EC, shall not apply to these legal persons. Therefore the fact that the transposing provision does not mention them does affect conformity.</p> <p>It shall be noted that the requirement in the first sentence of Article 9(3) of the Directive has not been transposed as such in any Belgian provision. Nonetheless, in Belgian law, the exempted entities are included in the same provisions as the electronic money institutions in order to ensure that the same rules apply to both types of companies. As a consequence, this omission does not jeopardise the correct transposition of the Directive provision.</p> <p>Based on the above findings, Article 9(3) of the Directive has been</p>

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				transposed in a conform manner.
Art. 9(4)	4. Les États membres peuvent prévoir qu'une personne morale enregistrée conformément au paragraphe 1 ne peut exercer que certaines des activités énumérées à l'article 6, paragraphe 1.	Law of 21 December 2009, Art. 105(4)	<p>Law of 21 December 2009, Article 105(4)</p> <p>Le Roi peut prévoir qu'une personne morale bénéficiant d'une exemption accordée en vertu du § 1er ne peut exercer que certaines des activités énumérées à l'article 77, §§ 1er à 3.</p>	<p>CONFORM</p> <p>Article 9(4) of the Directive sets out an option, which Belgium has chosen to apply.</p> <p>Article 105(4) of Law of 21 December 2009 literally transposes Article 9(4) of the Directive.</p> <p>It shall be noted that in the context of this transposing provision it is the King that can provide that a legal person exempted may engage only in some of the activities listed under the Articles referred to.</p> <p>Activities under Article 77(1) to (3) of Law of 21 December 2009, which is cross-referred to in the transposing provision, correspond to the activities under Article 6(1) of the Directive, as cross-referred to in the Directive provision.</p>
Art. 9(5) intr. wording	5. Une personne morale visée au paragraphe 1:	Law of 21 December 2009, Art. 105(3), intr. wording	<p>Law of 21 December 2009, Article 105(3) introductory wording</p> <p>Les personnes morales bénéficiant d'une exemption accordée en vertu du paragraphe 1er :</p>	<p>CONFORM</p> <p>Although worded differently, Article 105(3) introductory wording of Law of 21 December 2009 reflects Article 9(5) introductory wording of the Directive.</p> <p>The transposing provision refers to legal persons which benefit of the exemption granted under the first paragraph of Article 105 of Law of 21 December 2009.</p> <p>Based on the above findings, Article 9(5) introductory wording has been transposed in a conform manner.</p>
Art. 9(5)(a)	a) informe les autorités compétentes de tout changement de sa situation ayant une incidence sur les conditions	Law of 21 December 2009,	<p>Law of 21 December 2009, Article 105(3) point 5 first sentence</p>	<p>CONFORM</p> <p>Article 105(3) point 5 first sentence literally transposes Article 9(5)(a) of the</p>

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	énoncées au paragraphe 1; et	Art. 105(3), pt (5), 1st sentence	informent la Banque de tout changement de leur situation ayant une incidence sur les conditions énoncées au § 1er [...]	Directive. The transposing provision refers to conditions specified under the first paragraph of Article 105 of Law of 21 December 2009, which correspond to the conditions specified under the first paragraph of Article 9 of the Directive, as cross-referred to by the Directive provision.
Art. 9(5)(b)	b) rend compte, au moins annuellement, à la date fixée par les autorités compétentes, de la moyenne de la monnaie électronique en circulation.	Law of 21 December 2009, Art. 105(3), pt (5)	Law of 21 December 2009, Article 105(3) point 5 (...) et rendent compte périodiquement à la Banque de la moyenne de monnaie électronique en circulation. La Banque détermine la fréquence de ce rapport;	CONFORM Article 105(3) point 5 of Law of 21 December 2009 transposes Article 9(5)(b) of the Directive. It shall be noted that the transposing provision does not state that the legal persons exempted shall report on the average outstanding electronic money at least annually. Instead it provides that they shall report periodically and that the NBB shall determine the frequency of this reporting. Nonetheless, as no national provision contradicts the Directive requirement, it shall be assumed that the NBB will follow this requirement when determining the frequency of the reporting. Based on the above findings, Article 9(5)(b) of the Directive has been transposed in a conform manner.
Art. 9(6)	6. Les États membres prennent les mesures nécessaires pour garantir que, lorsque les conditions énoncées aux paragraphes 1, 2 et 4 ne sont plus remplies, les personnes morales concernées demandent l'agrément dans un délai de trente jours calendaires conformément à l'article 3. Les personnes qui n'ont pas demandé l'agrément dans ce délai se voient interdire, conformément à l'article 10, d'émettre de la monnaie électronique.	Law of 21 December 2009, Art. 105(5)	Law of 21 December 2009, Article 105(5) Lorsque les conditions énoncées aux §§ 1er, et 3, 1°, 3°, 4° ne sont plus remplies, les établissements de monnaie électronique exemptés demandent l'agrément dans un délai de trente jours calendaires conformément aux articles 61 et suivants. Les établissements qui n'ont pas demandé l'agrément dans ce délai se voient interdire, conformément à	CONFORM Article 105(5) of Law of 21 December 2009 literally transposes Article 9(6) of the Directive. Conditions set out in the first and third paragraph points 1, 3 and 4 of Article 105 of Law of 21 December 2009, which are cross-referred to in the transposing provision, correspond to the conditions set out in the first, second and fourth paragraphs of Article 9 of the Directive, as cross-referred to in the Directive provision. As regards the cross-reference to Articles 61 and the following of Law of 21 December 2009, by the transposing provision, and more precisely to Articles 61 to 70 of Law of 21 December 2009, they relate to the conditions that shall

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			l'article 59, d'émettre de la monnaie électronique.	<p>be met in order to be granted authorisation by the NBB and thus correspond to Articles 5 and 10 of Directive 2007/64/EC such as cross-referred to in Article 3 of the Directive.</p> <p>Finally, Article 59 of Law of 21 December 2009, which is cross-referred to in the transposing provision, and mainly transposes Article 1(1) of the Directive also corresponds to Article 10 of the Directive as its introductory wording specifies that only the institutions which are listed under its points 1 to 5 are allowed to engage in the activity of issuing electronic money.</p> <p>Based on the above findings, Article 9(6) of the Directive has been transposed in a conform manner.</p>
Art. 9(7)	7. Les États membres veillent à ce que leurs autorités compétentes disposent des pouvoirs voulus pour vérifier le respect permanent des conditions énoncées au présent article.	Law of 21 December 2009, Art. 81	<p>Law of 21 December 2009, Article 81</p> <p>(1) Les établissements de monnaie électronique sont soumis au contrôle de la Banque. La Banque veille à ce que chaque établissement de monnaie électronique opère en permanence conformément aux dispositions de la présente loi et des arrêtés et règlements pris pour son exécution. Le contrôle exercé par la Banque est proportionné et adéquat, au regard de la nature, du volume et de la complexité des activités de l'établissement de monnaie électronique, ainsi que des risques y afférents.</p> <p>(2) La Banque peut se faire communiquer par les établissements de monnaie électronique toutes</p>	<p>CONFORM</p> <p>Article 81 of Law of 21 December 2009 transposes Article 9(7) of the Directive.</p> <p>It shall be noted that this Article mainly transposes Article 21 of Directive 2007/64/EC but obviously also applies in the specific case of the supervisory authority powers in the context of the exempted electronic money institutions.</p> <p>The transposing provision states that the electronic money institutions shall be subject to the NBB supervision. The NBB shall ensure that any electronic money institution operates on a permanent basis in accordance with provisions of Law of 21 December 2009 and its implementing regulations and decrees. Supervision by the NBB shall be proportionate and appropriate in light of the nature, extent and complexity of the electronic money institutions activities and the risks thereto attached.</p> <p>Article 81 further specifies the powers of the NBB in order to check compliance with Law of 21 December 2009 and the implementing decrees and regulations, in its second paragraph. The NBB can request information on the organisation, functioning, financial position and operations of the electronic money institutions from the institutions themselves and also from their agents or distributor service providers as referred to in Article 4(17) of</p>

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	<p>informations relatives à leur organisation, à leur fonctionnement, à leur situation financière et à leurs opérations. A cette fin, la Banque peut également se faire communiquer des informations par les agents ou distributeurs d'établissements de monnaie électronique, par les prestataires de services visés à l'article 4, 17° et par d'autres entités vers lesquelles des tâches sont externalisées.</p> <p>La Banque peut procéder auprès des établissements de monnaie électronique à des inspections sur place et prendre connaissance et copie, sans déplacement, de toute information détenue par l'établissement de monnaie électronique, en vue :</p> <p>1° de vérifier le respect des dispositions légales et réglementaires relatives au statut des établissements de monnaie électronique ainsi que l'exactitude et la sincérité de la comptabilité et des comptes annuels ainsi que des états et autres informations qui lui sont transmis par l'établissement de monnaie électronique;</p> <p>2° de vérifier le caractère adéquat des structures de gestion, de l'organisation administrative et comptable et du contrôle interne de l'établissement de</p>	<p>Law of 21 December 2009 and from other entities to which activities are outsourced.</p> <p>The NBB can also carry out on-site inspections at the electronic money institutions and have checks on the spot and make copies of any information at their disposal in order to verify the compliance with legal and regulatory provisions on the status of electronic money institutions and the accuracy and sincerity of the accounts, annual accounts and statements and other information transmitted by the institution. It can also verify the adequacy of the management structures, the administrative and accounting organisation and of the internal supervision of the electronic money institution. Finally, it can ensure that the management of the institutions is sound and prudent and that its situation or its operations are not likely to impair its liquidity, profitability or solvency. The NBB has the same powers with regard to agents of electronic money institutions, service providers as referred to in Article 4(17) of Law of 21 December 2009 and other entities to which activities are outsourced.</p> <p>Based on the above findings, Article 9(7) of the Directive has been transposed in a conform manner.</p>

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			<p>monnaie électronique;</p> <p>3° de s'assurer que la gestion de l'établissement de monnaie électronique est saine et prudente et que sa situation ou ses opérations ne sont pas de nature à mettre en péril sa liquidité, sa rentabilité ou sa solvabilité.</p> <p>A cette fin, la Banque peut également procéder à des inspections sur place auprès des agents ou distributeurs d'établissements de monnaie électronique, des prestataires de services visés à l'article 4, 17° et d'autres entités vers lesquelles des tâches sont externalisées, et prendre connaissance et copie, sans déplacement, de toute information détenue par ces derniers.</p>	
Art. 9(8)	8. Le présent article ne s'applique pas à l'égard des dispositions de la directive 2005/60/CE ou des dispositions nationales concernant la lutte contre le blanchiment des capitaux.	Law of 21 December 2009, Art. 105(3), intr. wording and pt (6)	<p>Law of 21 December 2009, Article 105(3) introductory wording</p> <p>Les personnes morales bénéficiant d'une exemption accordée en vertu du paragraphe 1er :</p> <p>Article 105(3) point 6</p> <p>appliquent les dispositions de la loi du 11 janvier 1993 relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux et du financement du</p>	<p>CONFORM</p> <p>Article 105 introductory wording and point 6 transposes Article 9(8) of the Directive.</p> <p>The transposing provision states that the legal persons which benefit from the exemption granted under Article 105(1) of Law of 21 December 2009 shall apply the provisions applicable to them laid down in Law of 11 January 1993 on the Prevention of Use of the Financial System for the Purpose of Money Laundering and Financing of Terrorism and the implementing decrees and regulations.</p> <p>Based on the above findings, Article 9(8) of the Directive has been transposed in a conform manner.</p>

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			terrorisme, qui sont applicables aux établissements de monnaie électronique, et des arrêtés et règlements pris pour son exécution.	
Art. 9(9)	9. Tout État membre faisant usage de la possibilité d'exemption prévue au paragraphe 1 le notifie à la Commission au plus tard le 30 avril 2011. L'État membre informe immédiatement la Commission de toute modification apportée ultérieurement. En outre, l'État membre informe la Commission du nombre de personnes morales concernées et, chaque année, lui notifie le montant total de monnaie électronique en circulation émise au 31 décembre de chaque année calendaire, visé au paragraphe 1.	N/A	N/A	<p>PARTIALLY CONFORM</p> <p>Belgium has not transposed Article 9(9) of the Directive.</p> <p>It shall be noted that Belgium has only adopted the transposing law on 27 November 2012 and thus has not informed the Commission of any information referred to in the Directive provision before the deadline.</p> <p>As regards the requirement to notify the number of legal persons concerned by the exemption and the total account of outstanding electronic money issued at 31 December of each calendar year to the Commission, no provision transposing this requirement exists in Belgium law. Nonetheless, this fact does not prevent Belgium from being bound by the obligation to provide such information.</p> <p>Based on the above findings, partial conformity is observed.</p>
Art. 10	<p style="text-align: center;">TITRE III ÉMISSION ET REMBOURSEMENT DE LA MONNAIE ÉLECTRONIQUE <i>Article 10</i></p> <p>Interdiction d'émission de monnaie électronique</p> <p>Sans préjudice de l'article 18, les États membres interdisent à toute personne physique ou morale qui n'est pas un émetteur de monnaie électronique d'émettre de la monnaie électronique.</p>	<p>Law of 21 Decemb er 2009, Art.59 ;</p> <p>Law of 21 Decemb er 2009, Art. 4 point 32</p>	<p style="text-align: center;">Law of 21 December 2009, Article 59</p> <p>Sans préjudice des dispositions régissant le statut des établissements ou autorités énoncés ci-après, seuls peuvent exercer l'activité d'émission de monnaie électronique en Belgique:</p> <p>[...]</p> <p style="text-align: center;">Article 4 introductory wording</p> <p>Pour l'application de la présente loi, il</p>	<p>CONFORM</p> <p>Articles 4 point 32 and 59 of Law of 21 December 2009 transpose Article 10 of the Directive.</p> <p>It shall be noted that the main national provision transposing Article 10 of the Directive, Article 59 of Law of 21 December 2009 is not worded as a prohibition, but has a positive scope.</p> <p>Article 59 of Law of 21 December 2009 states that only the institutions which are listed under its points, (and which transpose in conformity the categories of electronic money issuers under Article 1(1) of the Directive) may engage in the activity of issuance of electronic money. It shall be noted that legal persons exempted under Article 105 of Law of 21 December 2009</p>

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			<p>y a lieu d'entendre par :</p> <p>Article 4 point 32</p> <p>émetteurs de monnaie électronique : les établissements et autres entités visés à l'article 59, dont l'activité consiste à émettre de la monnaie électronique, ainsi que les personnes morales qui bénéficient d'une exemption au titre de l'article 105;</p>	<p>(transposing Article 9 of the Directive) are included in the list.</p> <p>Article 4 point 32 completes the transposition of Article 10 of the Directive as it encompasses all the institutions and entities under Article 59 of Law of 21 December 2009 and legal persons which benefit from an exemption in the definition of "electronic money issuers".</p> <p>As a consequence, in Belgian law, only the persons who are electronic money issuers may issue electronic money, which conforms to the Directive provision.</p> <p>Based on the above findings, Article 10 of the Directive has been transposed in a conform manner.</p>
Art. 11(1)	<p><i>Article 11</i></p> <p>Émission et remboursement</p> <p>1. Les États membres veillent à ce que les émetteurs de monnaie électronique émettent de la monnaie électronique à la valeur nominale contre la remise de fonds.</p>	<p>Law of 10 December 2009, Title III/1, Ch.1, Art.58/1 ;</p>	<p>Law of 10 December 2009,</p> <p>TITRE III/1 -Emission et remboursement de la monnaie électronique,</p> <p>Chapitre 1er - Emission et remboursement,</p> <p>Article 58/1</p> <p>Les émetteurs de monnaie électronique émettent de la monnaie électronique à la valeur nominale contre la remise de fonds.</p>	<p>CONFORM</p> <p>Article 58/1 of 10 December 2009 literally transposes Article 11(1) of the Directive. In Belgian law, as already mentioned, funds received in exchange for electronic money shall not be regarded as deposits or other repayable funds, in conformity with Recital 18 of the Directive.</p>
Art. 11(2)	<p>2. Les États membres veillent à ce que les émetteurs de monnaie électronique remboursent, à la demande du détenteur de monnaie électronique, à tout moment et à la valeur nominale, la valeur monétaire de la monnaie</p>	<p>Law of 10 December 2009, Art.58/2 (1);</p>	<p>Law of 10 December 2009,</p> <p>Article 58/2(1)</p> <p>Les émetteurs de monnaie électronique remboursent, à la demande du détenteur de monnaie électronique, à</p>	<p>CONFORM</p> <p>Article 58/2(1) of Law of 10 December 2009 literally transposes Article 11(2) of the Directive.</p> <p>The principle set out in Recital 18 has thus been complied with in Belgian law and the confidence of the electronic money holder is likely to be</p>

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	électronique détenue.		tout moment et à la valeur nominale, la valeur monétaire de la monnaie électronique détenue.	preserved.
Art. 11(3)	3. Le contrat conclu entre l'émetteur de monnaie électronique et le détenteur de monnaie électronique établit clairement et de façon bien visible les conditions de remboursement, y compris les frais éventuels y afférents, et le détenteur de monnaie électronique est informé de ces conditions avant qu'il ne soit lié par un contrat ou une offre.	Law of 10 December 2009, Art.58/2 (2)	Law of 10 December 2009, Article 58/2(2) Le contrat conclu entre l'émetteur de monnaie électronique et le détenteur de monnaie électronique établit clairement et de façon bien visible les conditions de remboursement, y compris les frais éventuels y afférents, et le détenteur de monnaie électronique est informé de ces conditions avant qu'il ne soit lié par un contrat ou une offre.	CONFORM Article 58/2(2) of the Law of 10 December 2009 literally transposes Article 11(3) of the Directive.
Art. 11(4) 1st subpara. intr. wording	4. Le remboursement ne peut donner lieu au prélèvement de frais que si le contrat le prévoit conformément au paragraphe 3 et uniquement dans un des cas suivants:	Law of 10 December 2009, Art.58/2 (3)	Law of 10 December 2009, Article 58/2(3) Le remboursement ne peut donner lieu au prélèvement de frais que si le contrat le prévoit conformément au § 2 et uniquement dans un des cas suivants :	CONFORM Article 58/2(3) introductory wording of Law of 10 December 2009 literally transposes Article 11(4) first subparagraph introductory wording of the Directive. The second paragraph of Article 58/2 of Law of 10 December 2009, which is cross-referred to in the transposing provision, corresponds to the third paragraph of Article 11 of the Directive, as cross-referred to in the Directive provision.
Art.11(4) 1st subpara. (a)	a) le remboursement est demandé avant l'expiration du contrat;	Law of 10 December 2009, Art. 58/2(3)(a)	Law of 10 December 2009, Article 58/2(3)(a) a) le remboursement est demandé avant l'expiration du contrat;	CONFORM Article 58/2(3)(a) of Law of 10 December 2009 literally transposes Article 11(4) first subparagraph (a) of the Directive.

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)		
Art. 11(4) 1st subpara. (b)	b) le contrat spécifie une date d'expiration et le détenteur de monnaie électronique a mis fin au contrat avant cette date; ou	Law of 10 December 2009, Art. 58/2(3)(b))	Law of 10 December 2009, Article 58/2(3)(b) <i>b) le contrat spécifie une date d'expiration et le détenteur de monnaie électronique a mis fin au contrat avant cette date, ou</i>	CONFORM Article 58/2(3)(b) of Law of 10 December 2009 literally transposes Article 11(4) first subparagraph (b) of the Directive.
Art. 11(4) 1st subpara. (c)	c) le remboursement est demandé plus d'un an après la date d'expiration du contrat.	Law of 10 December 2009, Art. 58/2(3)(c), 1st sentence	Law of 10 December 2009, Article 58/2(3)(c) first sentence <i>c) le remboursement est demandé plus d'un an après la date d'expiration du contrat.</i>	CONFORM Article 58/2(3)(c) first sentence of Law of 10 December 2009 literally transposes Article 11(4) first subparagraph (c) of the Directive.
Art. 11(4) 2nd subpara.	Le montant des frais doit être proportionné et en rapport avec les coûts réels supportés par l'émetteur de monnaie électronique.	Law of 10 December 2009, Art. 58/2(3)(c), 2nd and 3d sentence	Law of 10 December 2009, Article 58/2(3)(a) second and third sentence Le montant des frais doit être proportionné et en rapport avec les coûts réels supportés par l'émetteur de monnaie électronique. Le Roi peut déterminer les critères permettant d'établir les coûts réels supportés par l'émetteur de monnaie électronique.	CONFORM Article 58/2(3)(c) second and third sentence of Law of 10 December 2009 transposes Article 11(4) second subparagraph of the Directive. It shall be noted that the second sentence of Article 58/2(3)(c) of Law of 10 December 2009 literally transposes the Directive provision. The third sentence adds that the King can establish the criteria for determining the actual costs incurred by the issuer of electronic money, which is conform to the spirit of the Directive. Based on the above findings, Article 11(4) second subparagraph has been transposed in a conform manner.

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Art. 11(5)	5. Lorsque le remboursement est demandé avant l'expiration du contrat, le détenteur de monnaie électronique peut demander le remboursement de la monnaie électronique en tout ou en partie.	Law of 10 December 2009, Art.58/2(4)	Law of 10 December 2009, Article 58/2(4) Lorsque le remboursement est demandé avant l'expiration du contrat, le détenteur de monnaie électronique peut demander le remboursement de la monnaie électronique en tout ou en partie.	CONFORM Article 58/2(4) of Law of 10 December 2009 literally transposes Article 11(5) of the Directive.
Art. 11(6) intr. wording	6. Lorsque le remboursement est demandé par le détenteur de monnaie électronique à la date d'expiration du contrat ou dans un délai d'un an après celle-ci,	Law of 10 December 2009, Art.58/2(5), intr. wording	Law of 10 December 2009, Article 58/2(5) introductory wording Lorsque le remboursement est demandé par le détenteur de monnaie électronique à la date d'expiration du contrat ou dans un délai d'un an après celle-ci :	CONFORM Article 58/2(5) introductory wording of Law of 10 December 2009 literally transposes Article 11(6) introductory wording of the Directive.
Art. 11(6)(a)	a) la valeur monétaire totale de la monnaie électronique détenue est remboursée; ou	Law of 10 December 2009, Art.58/2(5)(a)	Law of 10 December 2009, Article 58/2(5)(a) a) la valeur monétaire totale de la monnaie électronique détenue est remboursée ou	CONFORM Article 58/2(5)(a) of Law of 10 December 2009 literally transposes Article 11(6)(a) of the Directive.
Art. 11(6)(b)	b) lorsque l'établissement de monnaie électronique exerce une ou plusieurs des activités énumérées à l'article 6, paragraphe 1, point e), et que la proportion des fonds qui seront utilisés sous forme de monnaie électronique n'est pas connue à l'avance, tous les	Law of 10 December 2009, Art.58/2(5)(b)	Law of 10 December 2009, Article 58/2(5)(b) b) lorsque l'établissement de monnaie électronique exerce une ou plusieurs activités conformément à l'article 77,	CONFORM Article 58/2(5)(b) of Law of 10 December 2009 literally transposes Article 11(6)(b) of the Directive. It shall be noted that that Article 77(1) of Law of 21 December 2009, which is cross-referred to in the transposing provision, corresponds to Article

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	fonds dont le remboursement est demandé par le détenteur de monnaie électronique sont remboursés.		§ 1er, de la loi du 21 décembre 2009 et que la proportion des fonds qui seront utilisés sous forme de monnaie électronique n'est pas connue à l'avance, tous les fonds dont le remboursement est demandé par le détenteur de monnaie électronique sont remboursés.	6(1)(e) of the Directive, as cross-referred to in the Directive provision.
Art. 11(7)	7. Nonobstant les paragraphes 4, 5 et 6, les droits au remboursement des personnes, autres que les consommateurs, qui acceptent de la monnaie électronique sont soumis à l'accord contractuel entre les émetteurs de monnaie électronique et ces personnes.	Law of 10 December 2009, Art.58/2 (6)	Law of 10 December 2009, Article 58/2(6) Nonobstant les §§ 3 à 5, le droit au remboursement des personnes, autres que les consommateurs, qui acceptent de la monnaie électronique est soumis à l'accord contractuel entre les émetteurs de monnaie électronique et ces personnes.	CONFORM Article 58/2(6) of Law of 10 December 2009 literally transposes Article 11(7) of the Directive. Paragraphs 3 to 5 of Article 58/2 of Law of 10 December 2009, which are cross-referred to in the transposing provision, correspond to paragraphs 4 to 6 of Article 11 of the Directive, as cross-referred to in the Directive provision.
Art. 12	<i>Article 12</i> Interdiction des intérêts Les États membres interdisent l'octroi d'intérêts ou de tout autre avantage liés à la durée pendant laquelle le détenteur de monnaie électronique détient de la monnaie électronique.	Law of 10 December 2009, Title III/1, Ch.2, Art.58/3 ;	Law of 10 December 2009, Titre III/1 - Emission et remboursement de la monnaie électronique, Chapitre 2 - Interdiction des intérêts, Article 58/3 Les émetteurs de monnaie électronique ne peuvent octroyer des intérêts ou tout autre avantage liés à la durée pendant laquelle le détenteur de monnaie électronique détient de la	CONFORM Article 58/3 of Law of 10 December 2009 literally transposes Article 12 of the Directive. The national provision thus also complies with the principle laid down in Recital 13 of the Directive providing that electronic money issuers shall not be allowed to grant interest or any other benefit unless those benefits are not related to the length of time during which the electronic money holder holds electronic money.

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	monnaie électronique.	
<p>Art. 13</p> <p><i>Article 13</i></p> <p>Procédures de réclamation et de recours extrajudiciaires en vue du règlement des litiges</p> <p>Sans préjudice de la présente directive, le titre IV, chapitre 5, de la directive 2007/64/CE s'applique mutatis mutandis aux émetteurs de monnaie électronique en ce qui concerne leurs obligations découlant du présent titre.</p>	<p>Law of 10 December 2009, Art.4, 59 and 75;</p> <p>Law of 10 December 2009, Art. 63/1, 64 point 20, 71, and 72(1)</p> <p>Article 59</p> <p>L'action en cessation, visée à l'article 4 de la loi du 22 décembre 2009 [...], est formée conformément aux règles prévues par la législation sur les pratiques du commerce en matière d'action en cessation.</p> <p>Article 4</p> <p>Le président du tribunal de commerce constate l'existence et ordonne la cessation d'un acte, même pénalement réprimé, constituant une infraction aux dispositions de la loi du 10 décembre 2009 relatif aux services de paiement ou à un de ses arrêtés d'exécution.</p> <p>Article 75</p> <p>Afin de régler les éventuels litiges découlant de la présente loi [...], relatifs aux droits et obligations entre (...) les détenteurs de monnaie électronique et (...) leurs émetteurs de monnaie électronique, ces derniers instituent une procédure adaptée de traitement de plaintes où les décisions, rendues par un organisme indépendant, peuvent être acceptées (...) par les émetteurs de monnaie électronique.</p>	<p>CONFORM</p> <p>Articles 4, 59, 63/1, 64 point 20, 71, 72(1) and 75 of Law of 10 December 2009 transpose Article 13 of the Directive.</p> <p>Articles 4, 59 and 75 of Law of 10 December 2009 comply with the requirement of out-of-court complaint and redress procedures under Title IV Chapter 5 of Directive 2007/64/EC in the context of Title III of the Directive.</p> <p>Articles 4 and 59 of Law of 19 December 2009 provide for the possibility of an action to order cessation, where provisions of Law of 10 December 2009 have not been respected.</p> <p>Article 75 of Law of 10 December 2009 only applies where the electronic money holder is a consumer. It provides that the electronic money issuers shall make an appropriate procedure of handling complaints available in order to settle disputes between electronic money holders and electronic money issuers. Such a procedure shall be provided for by an independent body whose decisions may be accepted by the electronic money issuers.</p> <p>It further states that the electronic money issuer shall either join such a complaints system or be a member of a professional association which has joined such a system. The electronic money issuer shall also contribute financially to this system.</p> <p>This Article also entitles the King to create an extrajudicial complaints system, the mission of which would be to settle disputes between the electronic money holders and issuers and any other interested party, consumer associations included, which would give advice on the subject matter or act as mediators.</p> <p>Articles 63/1, 64 point 20, 71 and 72(1) of Law of 10 December 2009 comply with the requirement of setting up penalties, according to Article</p>

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	<p>(...) l'émetteur de monnaie électronique, doit soit avoir adhéré à un tel système de traitement des plaintes, soit être membre d'une association professionnelle qui a adhéré à un tel système. Il doit contribuer au financement dudit système.</p> <p>Le Roi peut créer un système extrajudiciaire de traitement des plaintes dont la mission est de contribuer à résoudre les litiges entre (...) d'une part, (...) les émetteurs de monnaie électronique et, d'autre part, (...) les détenteurs de monnaie électronique, et d'autres parties intéressées, y compris les associations de consommateurs, en donnant des conseils en la matière ou en agissant à titre de médiateur.</p> <p>Le présent article ne s'applique que lorsque (...) le détenteur de monnaie électronique est un consommateur.</p> <p style="text-align: center;">Article 71</p> <p>Lorsque les fonctionnaires compétents visés à l'article 72, § 1er, constatent qu' (...) un émetteur de monnaie électronique ne respecte pas une ou plusieurs dispositions de la présente loi, ils communiquent ces constatations à l'autorité de contrôle qui a accordé l'agrément (...) d'émettre de la monnaie électronique. Cette autorité de contrôle examine si et dans quelle mesure des sanctions de droit</p>	<p>81(1) of Directive 2007/64/EC, which are applicable to infringements of provisions under Title III of the Directive.</p> <p>Articles 71 and 72(1) of Law of 10 December 2009 provide that the competent officials shall investigate and identify infringements referred to in Article 64 of Law of 10 December 2009. Where they note that an electronic money issuer has infringed the provisions of this law, they shall inform the NBB thereof. The NBB shall then analyse whether and to what extent administrative sanctions or other specific measures shall be taken with regard to the electronic money issuer.</p> <p>It shall be noted that Article 64 of Law of 10 December sets out a fine system for infringements of various provisions under Law of 10 December 2009. According to this Article, the breach of Articles 58/1 to 58/3 of Law of 10 December 2009, which transpose Article 11 and 12 of the Directive shall be sanctioned with fines of EUR 250 to 100 000.</p> <p>Moreover, Article 63/1 of Law of 10 December 2009 provides for civil sanctions as regards the breach by the electronic money issuer of Article 58/2 of Law of 10 December 2009 concerning the redemption of electronic money. It states that in case of breach of these provisions, the holder of the electronic money shall be automatically exempted from paying any eventual fees related to the redemption. He may also immediately terminate the contract, free of charge and without penalties as soon as he knows or should have known of the breach.</p> <p>All these provisions transpose in conformity Articles 80 to 83 of Directive 2007/64/EC, as required by the Directive provision and consequently comply with Recital 19 of the Directive. Based on the above findings, Article 13 of the Directive has been transposed in a conform manner.</p>

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	<p>administratif ou d'autres mesures particulières doivent être prises à l'encontre du prestataire de services de paiement et ce, conformément au statut spécifique de celui-ci.</p> <p style="text-align: center;">Article 72(1)</p> <p>Sans préjudice des devoirs incombant aux officiers de police judiciaire, les agents commissionnés par le ministre ayant les Affaires économiques dans ses attributions sont compétents pour rechercher et constater les infractions mentionnées aux articles 64 (...).</p> <p style="text-align: center;">Article 64 introductory wording</p> <p>Sont punis d'une amende de 250 à 100.000 euros, ceux qui commettent une infraction aux dispositions:</p> <p style="text-align: center;">Article 64 point 20</p> <p>des articles 58/1 à 58/3 relatifs à l'activité d'émission de monnaie électronique, au caractère remboursable de la monnaie électronique et à l'interdiction d'octroyer des intérêts.</p> <p style="text-align: center;">Article 63/1</p> <p>En cas de non-respect par l'émetteur de monnaie électronique des obligations qui découlent de l'article 58/2 et sans préjudice des sanctions de</p>	

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			<p>droit commun :</p> <ul style="list-style-type: none"> - le détenteur de monnaie électronique est dispensé de plein droit du paiement des frais éventuels liés au remboursement; - le détenteur de monnaie électronique peut résilier sans délai et sans frais ni pénalité, par lettre recommandée à la poste et motivée, le contrat de monnaie électronique et, le cas échéant, le contrat-cadre en matière de services de paiement, à partir du moment où il a connaissance ou aurait dû avoir connaissance du non-respect de ses obligations. 	
Art. 16(1)	<p style="text-align: center;">TITRE IV DISPOSITIONS FINALES ET MESURES D'EXÉCUTION <i>Article 16</i> Harmonisation totale</p> <p>1. Sans préjudice de l'article 1 er, paragraphe 3, de l'article 3, paragraphe 3, sixième alinéa, de l'article 5, paragraphe 7, de l'article 7, paragraphe 4, de l'article 9 et de l'article 18, paragraphe 2, dans la mesure où la présente directive contient des dispositions harmonisées, les États membres ne peuvent maintenir en vigueur ni introduire des dispositions différentes de celles contenues dans la présente directive.</p>	N/A	N/A	<p>PARTIALLY CONFORM</p> <p>Article 16(1) of the Directive sets out a full harmonisation duty. Owing to this duty and upon the analysis of the provided and additional national implementing measures, Belgium has not complied with it.</p> <p>Points (c) to (e) of Article 1(1) of the Directive have been transposed in a partially conform manner, because the office giro institutions, the central banks and the regional and local authorities entitled to issue electronic money under the laws of other EEA countries are not included in Belgian law.</p> <p>Article 3(3) fourth subparagraph of the Directive has also been transposed in a partially conform manner as the sanctions under Belgian law only regard the acquirers of the qualifying holding referred to in Article 3(3) first subparagraph of the Directive and not the legal or natural persons who disposed of this qualifying holding, in the event of omission to observe the obligation to provide prior information to the NBB.</p>

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				<p>Articles 5(1) and 5(2) first subparagraph of the Directive have been transposed in a partially conform manner and Articles 5(2) second and third subparagraphs, 5(3) and 5(4) have not been transposed at all. Also Article 7(2) has only been partially transposed. This is due to the fact that the NBB has not yet adopted a regulation that shall deal with the matters under those Directive provisions as prescribed in Law of 21 December 2009.</p> <p>Moreover, the requirements of notification to the Commission under Articles 8(2) and 9(9) of the Directive have not been transposed. Also, as already mentioned, the register of exempted electronic money institutions and branches of electronic money institutions governed by the law of non-EEA countries is not even yet available on the website of the NBB.</p> <p>Based on the above findings, Article 16(1) of the Directive has been transposed in a partially conform manner.</p>
Art. 16(2)	<p>2. Les États membres veillent à ce que les émetteurs de monnaie électronique ne dérogent pas, au détriment des détenteurs de monnaie électronique, aux dispositions de droit national qui mettent en oeuvre les dispositions de la présente directive ou qui y correspondent, sauf dans les cas où une telle dérogation est expressément autorisée par celle-ci.</p>	Law of 21 December 2009, Art.81	<p>Law of 21 December 2009, Article 81</p> <p>(1) Les établissements de monnaie électronique sont soumis au contrôle de la Banque. La Banque veille à ce que chaque établissement de monnaie électronique opère en permanence conformément aux dispositions de la présente loi et des arrêtés et règlements pris pour son exécution. Le contrôle exercé par la Banque est proportionné et adéquat, au regard de la nature, du volume et de la complexité des activités de l'établissement de monnaie électronique, ainsi que des risques y afférents.</p>	<p>CONFORM</p> <p>Article 81 of Law of 21 December 2009 transposes Article 16(2) of the Directive.</p> <p>It shall be noted that no similar provision to Article 16(2) of the Directive exists in Belgian law.</p> <p>Nonetheless, it does not affect conformity as Article 81 of Law of 21 December 2009 lays down the competencies of the NBB that refer to the ability of controlling the electronic money institutions in order to check the compatibility of their activity with the legislation and the regulations and decrees implementing it.</p> <p>The first and second paragraphs of this provision relate to the information that the NBB can require from the electronic money institutions, their branches, agents and distributors concerning their organisation, functioning, financial position and transactions as well as inspections that it can perform on their premises. Those provisions have been commented in more details in the observations concerning the transposition of Article 9(7) of the Directive.</p>

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	<p>(2) La Banque peut se faire communiquer par les établissements de monnaie électronique toutes informations relatives à leur organisation, à leur fonctionnement, à leur situation financière et à leurs opérations. A cette fin, la Banque peut également se faire communiquer des informations par les agents ou distributeurs d'établissements de monnaie électronique, par les prestataires de services visés à l'article 4, 17° et par d'autres entités vers lesquelles des tâches sont externalisées. La Banque peut procéder auprès des établissements de monnaie électronique à des inspections sur place et prendre connaissance et copie, sans déplacement, de toute information détenue par l'établissement de monnaie électronique, en vue :</p> <p>1° de vérifier le respect des dispositions légales et réglementaires relatives au statut des établissements de monnaie électronique ainsi que l'exactitude et la sincérité de la comptabilité et des comptes annuels ainsi que des états et autres informations qui lui sont transmis par l'établissement de monnaie électronique;</p> <p>2° de vérifier le caractère adéquat des structures de gestion, de l'organisation</p>	<p>As regards the third paragraph, it provides that the NBB's supervisory powers shall cover only the activities of the electronic money institution relating to the issuance of electronic money, activities under Article 77(2) points 1 and 2 of Law of 21 December 2009 and under Article 77(7) of the same law. Its supervisory powers may cover other situations only to the extent necessary for the onitoring of compliance by the electronic money institutions with this law and the implementing decrees and regulations.</p> <p>Points 1 and 2 of Article 77(2) of Law of 21 December transpose in conformity Article 6(1)(a) and (c) of the Directive and Article 77(7) of Law of 21 December 2009 relates to the holding by electronic money institutions of shares in commercial companies or companies under the form of commercial companies.</p> <p>Based on the above findings, Article 16(2) of the Directive has been transposed in a conform manner.</p>

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	<p>administrative et comptable et du contrôle interne de l'établissement de monnaie électronique;</p> <p>3° de s'assurer que la gestion de l'établissement de monnaie électronique est saine et prudente et que sa situation ou ses opérations ne sont pas de nature à mettre en péril sa liquidité, sa rentabilité ou sa solvabilité. A cette fin, la Banque peut également procéder à des inspections sur place auprès des agents ou distributeurs d'établissements de monnaie électronique, des prestataires de services visés à l'article 4, 17° et d'autres entités vers lesquelles des tâches sont externalisées, et prendre connaissance et copie, sans déplacement, de toute information détenue par ces derniers.</p> <p>(3) Le contrôle de la Banque ne porte toutefois pas sur les activités de l'établissement de monnaie électronique autres que l'activité d'émission de monnaie électronique, la prestation d'activités visées à l'article 77, § 2, 1° et 2°, et la détention de participations visée à l'article 77, § 7, sauf dans la mesure requise pour le contrôle du respect par l'établissement de monnaie électronique des dispositions de la présente loi et des arrêtés et règlements pris pour son exécution.</p>	

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Art. 18(1) 1st subpara.	<p style="text-align: center;"><i>Article 18</i> Dispositions transitoires</p> <p>1. Les États membres autorisent les établissements de monnaie électronique qui, avant le 30 avril 2011, ont commencé leurs activités conformément au droit national transposant la directive 2000/46/CE dans l'État membre où se situe leur siège, à poursuivre ces activités dans cet État membre ou dans tout autre État membre conformément aux régimes de reconnaissance mutuelle prévus par la directive 2000/46/CE sans devoir solliciter un agrément conformément à l'article 3 de la présente directive ni se conformer aux autres dispositions qui figurent ou qui sont visées au titre II de la présente directive.</p>	Law of 27 November 2012, Art. 135(1) and (2)	<p style="text-align: center;">Law of 27 November 2012, Titre 3 – Autres Dispositions, Chapitre 2 – Dispositions transitoires et entrée en vigueur, Article 135</p> <p>(1) Les établissements de monnaie électronique agréés en Belgique avant l'entrée en vigueur de la présente loi sont de plein droit agréés pour l'application des dispositions du Livre 3 de la loi du 21 décembre 2009, introduites par la présente loi. Ils sont inscrits sur la liste visée à l'article 64 de la loi du 21 décembre 2009.</p> <p>(2) Les établissements de monnaie électronique qui bénéficiaient d'une exemption avant l'entrée en vigueur de la présente loi sont exemptés de plein droit pour l'application des dispositions du Livre 3 de la loi du 21 décembre 2009, introduites par la présente loi. Ils sont inscrits sur la liste visée à l'article 64 de la loi du 21 décembre 2009.</p>	<p>CONFORM</p> <p>Article 135(1) and (2) of Law of 27 November 2012 transposes Article 18(1) first subparagraph of the Directive.</p> <p>The transposing provision states that the electronic money institutions which were granted authorisation in Belgium before the entering into force of Law of 21 December 2009, shall be automatically granted authorisation under the application of provisions of Book 3 of Law of 21 December 2009 incorporated by Law of 27 November 2012. They shall be registered on the list under Article 64 of Law of 21 December 2009.</p> <p>Likewise, the electronic money institutions which benefited of an exemption before the entering into force of this Law, shall be automatically exempted under the application of provisions of Book 3 of Law of 21 December 2009 and registered on the list under Article 64 of Law of 21 December 2009.</p> <p>This complies with the principle of legal certainty provided by Recital 23 of the Directive.</p> <p>As already pointed out, the register under Article 64 of Law of 21 December 2009 is not yet available on the website of the NBB.</p> <p>Based on the above findings, Article 18(1) first subparagraph of the Directive has been transposed in a conform manner.</p>
Art. 18(1) 2nd subpara.	<p>Les États membres exigent de ces établissements de monnaie électronique qu'ils présentent aux autorités compétentes toutes les informations pertinentes afin de permettre à ces autorités d'établir, au</p>	Law of 27 November 2012, Art. 135(3)	<p>(3) Les établissements de monnaie électronique agréés et les personnes morales exemptées visés aux §§ 1er et 2 notifiant sans délai à la Banque Nationale de Belgique les activités visées à l'article 77, § 2 de la loi du 21</p>	<p>PARTIALLY CONFORM</p> <p>Article 135(3) of Law of 27 November 2012 transposes Article 18(1) second subparagraph of the Directive.</p> <p>The transposing provision stipulates that the electronic money institutions</p>

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	plus tard le 30 octobre 2011, si lesdits établissements satisfont aux exigences fixées par la présente directive et, dans la négative, de déterminer les mesures à prendre pour assurer le respect de ces exigences ou de décider de l'opportunité d'un retrait de l'agrément.		décembre 2009, tel qu'introduit par la présente loi, qu'elles entendent exercer.	<p>and the legal persons exempted under Article 9 of the Directive, shall notify without delay to the NBB the activities under Article 77(2) of Law of 21 December 2009 (transposing Article 6 of the Directive) in which they intend to engage.</p> <p>Belgian law does not explicitly state that this information is needed for the assessment so as to know whether the electronic money institutions comply or not with the national provisions transposing the requirements of the Directive. Belgian law obviously does not either refer to a date as compared to the Directive provision, since the transposition of the Directive has taken place late.</p> <p>Furthermore, the Belgian legislation does not describe any measure that should be taken where an electronic money institution would not comply with the Directive provisions.</p> <p>Based on the above findings, Article 18(1) second subparagraph of the Directive has been transposed in a partially conform manner.</p>
Art. 18(1) 3rd subpara.	Les établissements de monnaie électronique qui satisfont aux exigences sont agréés, inscrits dans le registre et tenus de se conformer aux exigences du titre II. Les établissements de monnaie électronique qui ne satisfont pas aux exigences fixées par la présente directive au plus tard le 30 octobre 2011 se voient interdire l'émission de monnaie électronique.	N/A	N/A	<p>NOT CONFORM</p> <p>Belgium has not transposed Article 18(1) third subparagraph of the Directive. The corresponding national provision could not be located either.</p> <p>Consequently, non-conformity is observed.</p>
Art. 18(2)	2. Les États membres peuvent prévoir l'agrément et l'inscription automatiques dans le registre prévus à l'article 3 d'un établissement de monnaie électronique si les autorités compétentes ont déjà la preuve du	N/A	N/A	<p>Article 18(2) of the Directive sets out an option. Owing to this option, Belgium has not chosen to apply it. In this regard, the corresponding national provision(s) could not be located in the legislation of Belgium either.</p>

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	respect, par l'établissement de monnaie électronique concerné, des exigences fixées aux articles 3, 4 et 5. Les autorités compétentes informent les établissements de monnaie électronique concernés avant l'octroi de l'agrément.			
Art. 18(3)	3. Les États membres autorisent les établissements de monnaie électronique qui, avant le 30 avril 2011, ont commencé leurs activités conformément au droit national transposant l'article 8 de la directive 2000/46/CE, à poursuivre ces activités dans l'État membre concerné conformément à la directive 2000/46/CE jusqu'au 30 avril 2012 sans devoir solliciter un agrément conformément à l'article 3 de la présente directive ni se conformer aux autres dispositions qui figurent ou qui sont visées au titre II de la présente directive. Les établissements de monnaie électronique qui, au cours de cette période, n'ont été ni agréés ni exemptés en vertu de l'article 9 de la présente directive se voient interdire l'émission de monnaie électronique.	N/A	N/A	<p>NOT CONFORM</p> <p>Belgium has not transposed Article 18(3) of the Directive. The corresponding national provision could not be located either.</p> <p>Based on this finding, non-conformity is observed.</p>