

## **Subject: EMA response to Banco de Portugal Amendments to the EMI/PI regulatory framework**

**Date:** 21. 9. 2022

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### **General comments**

The EMA members note the effort made by the Bank of Portugal to provide clarification on the Instructions and Notices applicable to electronic money institutions (“EMIs”) and payment institutions (“PIs”).

However, the requirements of the regime are still spread across numerous documents, and it has proven to be a time-consuming and inefficient process for EMIs and PIs to gather all the applicable requirements together and determine their relevance to their businesses. This is particularly the case where the text of notices and instructions includes cross-references to other documents.

We suggest that more work could be done to make it clearer so that regulated entities can more easily identify the applicable requirements and focus on ensuring their compliance with these requirements. Unfortunately we do not think the draft guidance in its current form provides sufficient clarity regarding the applicable regulatory regime, but instead adds an extra layer of confusion for firms. We propose the Bank of Portugal review the approach of documenting requirements across various Notices and Instructions, and consider producing a single guidance document supplementing the Decree-Law No 91/2018 of 12 November 2018 on payment services instead.

### **Article 4(2): Clarificação – EMA comments**

Notices 3/2020 and 18/2020 are applicable to EMIs and PIs and require extensive reporting on an annual basis from those entities headquartered in Portugal and those with branches in Portugal.

Notice 3/2020 regulates the governance and internal control systems and defines the minimum standards on which the organizational culture of the covered entities must be based. On the other hand, Instruction 18/2020 further details the reporting duties that must be complied with by entities covered by Notice 3/2020.

Please note that the supervision of the aforesaid matters has been allocated and falls within the sphere of competence of the home supervisor. Indeed, the passporting regime must be respected, and this means that the host regulator should not undertake competences allocated by EU law to the home supervisor - this is not aligned with the EU framework and introduces a barrier for incoming EU players and to the EU single market in general.

Considering the above, it should be clarified that Notice 3/2020 and Instruction 18/2020 do not apply to branches of EMIs/PIs headquartered in the EU.