

Brussels, 3rd July 2008

Dear Sirs,

We write to present proposals for improving the legal and regulatory environment for electronic invoicing (e-Invoicing) between trading entities within Member States of the European Union.

On 31 October 2007 the European Commission decided to establish an Expert Group on e-Invoicing, tasked to propose a European e-Invoicing Framework (EEI Framework). This Framework is expected to recommend “a common conceptual structure, including business requirements and standard(s), and propose solutions supporting the provision of e-Invoicing services in an open and interoperable manner across Europe”. This work will be undertaken over the period 2008-9.

Given the imminence of a Commission review¹ of the relevant VAT legislation, however, it is timely to bring forward the proposals set out in this letter at an early stage in the Expert Group’s work programme and in advance of its Framework proposal.

The Expert Group believes that the adoption of these present proposals, coupled with a programme of general encouragement, will measurably improve the climate for the widespread adoption of e-Invoicing and e-business, consistent with the objectives of the Lisbon Strategy for Jobs and Growth. A recent European Commission sponsored study estimates that the wide adoption of e-Invoicing could deliver cumulative savings to society of EUR 238 billion over six years.²

This letter makes a proposal to adopt a new European e-Invoicing Recommendation, a draft of which is annexed to this letter. The need for steps to ensure that the legal framework is applied consistently and with a greater degree of harmonisation across all Member States is also stressed. Such measures should lead over time to a uniform application of the proposed Recommendation, which would replace the options outlined in Article 233 of the VAT Directive 2006/112/EC.

The current legal environment for e-Invoicing

The current legal framework for e-Invoicing is referred to (in the context of Value-Added Tax) in EU Council Directive 2001/115/EC (the Invoicing Directive), the provisions of which have now been incorporated into the Council Directive on the Common System of Value Added Tax (2006/112/EC). The Directive on the Common System of Value Added Tax has been transposed into the laws of all 27 Member States. The Directive recognizes the validity of electronic invoicing for VAT purposes

¹ Article 237 of the Directive on the Common System of Value Added Tax (2006/112/EC) requires “The Commission to present, at the latest on 31st December, 2008, a report and, if appropriate, a proposal amending the conditions applicable to electronic invoicing”. A study intended to contribute to this result is currently being conducted on behalf of the Commission Directorate General on Taxation and Customs Union (DG/TAXUD).

² SEPA: potential benefits at stake, Chapter 6 on E-invoicing prepared by Cap Gemini

Relevant articles in these Directives provide an environment in which e-Invoicing can be adopted by mutual consent between trading entities, even though a number of practical hurdles (see later comments). They also permit the outsourcing of e-Invoicing to third parties and the use of self-billing, whereby invoices are issued by the buyer of goods and services on behalf of the seller.

Article 233 of the Directive states that invoices sent or made available by electronic means shall be accepted by Member States provided that the authenticity of the origin and the integrity of their content are guaranteed by one of the following methods:

1. by means of an advanced electronic signature within the meaning of point (2) of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures
2. by means of electronic data interchange (EDI), as defined in Article 2 of Commission Recommendation 1994/820/EC of 19 October 1994³ relating to the legal aspects of electronic data interchange, provided that the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data.

Invoices may, however, be sent or made available by other electronic means, subject to acceptance by the Member States concerned.

Article 233 (2) allows Member States to provide that advanced electronic signature should be based on a qualified certificate and created by a secure-signature-creation device, within the meaning of points (6) and (10) of Article 2 of Directive 1999/93/EC.

Paragraph 3 allows Member States to require an additional summary paper document to be delivered when using the EDI method.

Aside from the above, there are a number of other legal provisions, unrelated to VAT, contained in Member State law concerning accounting, contract law, competition law and professional practice. These areas will be reviewed by the Expert Group in due course and are not the subject of recommendations at this stage.

Advantages and disadvantages in the current legal environment

The current legal provisions have encouraged adoption and tax authorities have been able to support implementation by companies particularly in those Member States, which have taken a liberal stance towards rules on authenticity and integrity. The provisions for the use of service providers and self-billing have been very useful and the mandated data elements are well accepted and widely embedded in systems.

³ The EDI recommendation (Commission Recommendation 1994/820/EC of 19 December 1994 relating to the legal aspects of electronic data interchange) is in essence a model agreement that can be applied to any computer to computer processable exchange based on structured data as agreed between the trading partners. The observance of these provisions together with the rules covering invoicing in general, including the use of the required data elements, support VAT compliance by trading entities.

The current work being undertaken to promote good practice and facilitate implementation is proving very useful. Several EU projects have been recently investigating the national implementation of the relevant Directives and have identified obstacles and major issues from a legal perspective; in addition the CEN/ISSS workshop on e-Invoices and compliance, in response to a mandate of the EU Commission, is addressing the legal issues concerning the implementation of e-Invoices for VAT purposes in a technical context across national borders.

Member State tax administrations are also collaborating within the Commission sponsored FISCALIS programme to facilitate cooperation in the field of electronic VAT invoice auditing and compliance.

However, having said all this, the overall market penetration of e-invoicing across the EU is still low. E-Invoicing is complicated by widely different transpositions of the VAT Directive into Member State law and the options which the VAT Directive permits Member States to select. The three methods for the guarantee of the authenticity and integrity of data, allow Member States to create substantial variations in their local application of the permitted options, leading to them being applied differently in practice from one Member State to another.

Taking each of the specified methods in turn:

1/ Electronic Signatures:

The current implementation of advanced electronic signatures exemplifies the frustrating inconsistency of application between Member States of e-business relevant EU legislation. Although this technology has many positive features, as implemented today, many have the perception that electronic signatures are not viable, particularly for intra- community transactions, and also within Member States with demanding requirements for authenticity and integrity.

As described above, Article 233 (2) allows Member State to stipulate that an advanced electronic signature must be based on a qualified certificate and created by a secure-signature-creation device. As examples, a number of Member States “protect” their own Certification Authorities and have procedures in place that make it difficult for companies from abroad to acquire electronic signatures. In general, electronic signature rules are difficult to implement in practice.

2/ Electronic Data Interchange (EDI)

At first sight the most consistently transposed and implemented option for guaranteeing authenticity and integrity is that of EDI (as covered by the 1994 EDI Recommendation) even though in practice some Member States apply different interpretation of the EDI Recommendation

In addition, Article 233 (2) of the Directive on the Common System of Value Added Tax permits Member States to require the provision of additional paper summaries. This option has only been taken up in national VAT legislation by seven Member States.

3/ Other Electronic Means

The option for the use of Other Electronic Means has been taken up in national VAT legislation by only eleven⁴ Member States. As practice shows these are mainly the countries where e-invoicing is most developed, clearly indicating that if appropriate control processes are in place within and between trading parties, technologically neutral solutions are possible and are of considerable value to the market.

The unintended consequences of the current situation are many and include a lack of harmonised practices, legal uncertainty, high cost and complexity, barriers to EU-wide electronic commerce and disincentives to innovation among all players in the value-chain, i.e. users, service providers, and tax authorities. In particular:

- Enterprises involved in cross-border trade and enterprises established in multiple Member States must comply with the strictest of all requirements to guarantee authenticity and integrity of e-invoices;
- Enterprises implementing centralised invoicing through shared service centres find particular challenges with multiple implementations. For enterprises as a whole, compliance is a complex issue involving technology challenges, the need for costly external advice and a perception of risk;
- Enterprises offering electronic invoice solutions need to adapt their solution to 27 different national VAT legislations, requiring the development and customisation of each service offering;
- In the conduct of e-Invoicing audits, tax administrations are required to adapt their auditing approach to take into account 27 different VAT practices and the various rules which apply to electronic invoicing in different jurisdictions.

Of course it is recognised that there are other forces at work outside the legal framework. These include the challenges of creating the necessary appetite for change among enterprise managements, the making of the business case, and the execution of the necessary re-engineering of internal processes in both private and public organisations.

However the legal difficulties are often cited as one of the key reasons for not acting, particularly among SME's.

An alternative approach

In reviewing the current legal framework, it is widely felt that there is too much emphasis on the processes and technology required to support the secure transmission (and storage) of e-Invoices.

The overall process control framework within and between trading entities is the crucial element, as it addresses the overall context in which invoicing takes place. Such process controls deal with the genuineness of transactions, proper reconciliation and audit trails,

⁴ Czech Republic, Denmark, Estonia, Finland, Ireland, Lithuania, Luxembourg, Netherlands, Sweden, Slovenia, United Kingdom

checks on the integrity of data and physical controls such as delivery notifications, and separation of duties.

These controls within the business itself, together with appropriate and proportionate controls in the process of exchanging invoices, are the best available guarantee that not only the invoices accepted are authentic, but also actually reflect products and services that have been delivered and should be paid for. The consistent application of business controls should become the most important reassurance to tax authorities that VAT processes are correct and appropriate. In practice tax auditors should not have a different audit approach⁵ for paper-based solutions or e-invoice solutions.

The Expert Group proposal

As a starting point, the following principles are proposed for adoption by all stakeholders:

1. Acknowledgement that e-invoices should not be treated differently from paper invoices.
2. Uniform implementation of legal provisions across the EU with acceptance by all tax authorities on the basis of full harmonisation in support of the Single Market.
3. Maximum legal certainty for all parties through commonly agreed mechanisms.
4. A non-prescriptive and neutral approach to technology, standards and business models.
5. No essential distinction between public and private sector requirements to ensure no separate processes and additional costs for suppliers.
6. Simple, cost effective processes, capable of easy integration into the whole trade process from order to payment.
7. Where possible, protection of today's legacy investments without compromising the other principles above.

The Expert Group proposes that a new **European E-Invoicing Recommendation** (EEI Recommendation) is agreed and adopted by the Commission, and that Art. 233 section 1 a) and b) should be deleted⁶ and replaced by a reference to the EEI Recommendation. In a way analogous to the EDI Recommendation referred to above, the new Recommendation should be referenced in relevant VAT legislation. A draft text of the Recommendation is attached containing the key dispositions, which form the basis of the approach.

All Member States should apply the principles defined in the EEI Recommendation in order to ensure legal certainty of the solutions developed and a full harmonisation of the process in the Member States. Therefore we strongly recommend that the Commission adopts the EEI Recommendation by adjusting existing legislation and makes a firm statement that Member States should adopt the EEI Recommendation on a uniform and harmonised basis.

⁵ The audit approach is developed by the Fiscalis Project Group on E-audit and endorsed by all the Member States. The audit approach is in general the same. Of course tax auditors will need specific knowledge about e-invoicing environments. CEN (CEN/ISSS workshop on e-invoicing 2) and the Fiscalis Project Group (activity audit of e-invoicing) are working together on specific guidance papers for auditing companies who use e-invoice solutions. The Fiscalis Project Group is co-ordinated by the Commission (DG TAXUD).

⁶ As a consequence Art. 233 Section 2 and Section 3 should be revised accordingly.

As a further element of the required solutions to existing uncertainties in the environment for e-Invoicing, we propose that the provisions for the use of electronic signatures in relation to VAT compliance in particular and for their use in general, enjoy a much greater and preferably full harmonisation across the EU, including mutual recognition between Member States.

It is further proposed that this action be taken into account by the already ongoing discussions in the Commission of the Action Plan on Electronic Signatures, so as to avoid electronic invoicing being hindered by bureaucratic and disharmonious national electronic signature legislation

It is clearly recognised that the modality and timeframe for the implementation of the action plan, if accepted, is a matter for the Commission and not for the Expert Group.

In the opinion of the Expert Group, the key advantages of the approach would be as follows:

1. Electronic invoicing would be based on a firm contractual agreement utilising a harmonised Model Agreement, providing both a clear structure and the necessary degree of freedom.
2. Compliant (legacy) systems and embedded practices can be used, and indeed the business control framework inherent in supply chain processes becomes the critical factor.
3. Security practices could include electronic signatures as a component. .
4. Other proven security practices can be employed
5. It will provide end to end control based on secure messaging
6. It will be capable of being inspected for integrity through clear audit trails and transaction sample testing
7. Structured messaging will be employed based on standards agreed between the parties, and allowing the use of free format fields, where required.
8. It would have the benefit of being supported by an EU Recommendation, accepted by all Member States.

The clarity required to be reflected in the proposed Recommendation will be of a high order and require a highly collaborative and flexible approach to be taken by tax authorities and governments, but this effort is likely to deliver major benefits to all stakeholders.

We stand ready to explain and discuss these proposals in more detail. The Expert Group is working to provide the EEI Model Agreement by beginning of September 2008.

Yours sincerely

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