

EU Commission Proposes New Rules Streamlining Use of Electronic Invoices in Europe

By: Phillip Schmandt

Overview

On 28 January 2009 the Commission of the European Union proposed an overhaul of the 2006 EU Directive on Invoicing (Directive 2006/112/EC).¹ If approved, this new Directive will fundamentally change how electronic invoicing is conducted in Europe and will affect all companies doing business in Europe. Interested parties are invited to submit comments to these proposed changes no later than 13 March 2009.

The proposed new Directive would make electronic invoices equivalent in all respects to paper ones. It would introduce at least two major changes to existing e-Invoice practices: first, it would eliminate the requirement that advanced electronic signatures be used in electronic invoices. Second, it would eliminate the requirement that the recipient of the invoice consent to receive invoices in electronic form.²

Timing

The Commission's goal is to have new legislation implemented by the member states by 1 January 2013.

One day before the EU Commission made this announcement, the EU's "Expert Group" on e-Invoicing issued its Mid Term Report on e-Invoicing (27 January, 2009).³ The Expert Group on e-Invoicing was established by the European Commission on 31 October 2007. Its task is to issue a final report on establishing a European Electronic Invoicing Framework by the end of 2009.

The Mid Term Report points out that individual member states are already implementing measures to accelerate adoption of electronic invoices in those states: In Spain, all suppliers of

the government, regardless of size or turnover, must submit electronic invoices to the Public Administration by November 2010. The Finnish Government has announced that it will accept only e-Invoices from 1 January 2010. And in Italy, e-Invoicing for the supply of goods and services to the public sector has started to become mandatory under a phased timetable.

The Mid Term Report estimates that currently only 3 % to 12 % of invoices in Europe are transmitted electronically.

Advanced Electronic Signatures No Longer Required

The Expert Group based its recommendations on its finding that it is the member states' disparate requirements for advanced electronic signatures that has created significant obstacles to the adoption of electronic invoices. The Expert Group observed that the requirement for advanced electronic signatures, while well intentioned, has resulted in an anachronistic requirement for a "seal"⁴ for an original electronic document, much like the former wax seals of paper documents. Not only is a "seal" uniquely required for electronic invoices, but the requirements for that seal vary among the member states, resulting in great practical difficulties in cross border invoicing. The Commission now wishes to harmonize member state requirements for electronic invoices by, among other things, abolishing the need for invoices to include advanced electronic signatures.

In the original 2006/112/EC Directive on VAT Invoicing, Title XI, Chapter 3, Section 5 governed the use of electronic invoices.

Article 232 of the original directive allowed enterprises to use electronic invoices only if the recipient consented to receive electronic invoices.

Article 233 required electronic invoices to assure integrity of content and authenticity of origin by means of either an advanced electronic signature, EDI or “other electronic means allowed by the Member States.”

The proposed new Directive would amend Article 232 to say that invoices can always be sent by paper or “made available” electronically, thus deleting the requirement of recipient consent. The new directive would delete Article 233 and the requirement to use advanced electronic signatures entirely.⁵

In adopting this proposed new Directive, the Commission announced:

“The proposal aims to end any legal barriers to e-invoicing contained in the VAT Directive by treating the transmission of an invoice, whether by paper or by electronic means, equally. Thus, references to the fact that the e-Invoice should be by advance signature or by EDI are removed.

“At the same time it is important that best practices develop so that standards, business requirements and all legal requirements converge towards a common approach. In this sense the VAT Directive can only play a part in helping to remove the obstacles that currently exist in terms of VAT legislation and here work of the Expert Group on E-invoicing will be useful.”⁶

Goal: A Pan European Framework of Interoperability

The Mid Term Report suggests that the Expert Group will recommend adoption of a pan European “overarching framework for interoperability, in which trading parties and their service providers could interoperate with each other across Europe in an open and standardised way”.⁷

The recommend “framework” would include, among other things:

1. Full harmonization of national/tax requirements among EU Member states regarding e-Invoices⁸;
2. A single “semantic data model” for e-Invoice content standards (as opposed to recommendation of a single content standard), with a recommendation that UN/CEFACT and ISO be the two global standards organizations that should collaborate to develop an e-Invoice content standard that satisfies the overall Business Requirements identified by the Expert Group. This would constitute the core reference semantic model for the European e-Invoicing Framework⁹;
3. A business requirement of reducing manual work for the sender/receiver, while remaining technology neutral and accessible to all trading partners with or without ERP systems.¹⁰ This aspect of the framework could have significant implications if it is interpreted to prohibit the practice of large buyers or suppliers requiring all of their trading partners to manually enter data onto a unique web based system;
4. A method of ensuring “trustworthiness and data protection.” While invoices do not typically include personally identifiable information of individuals, the Expert Group emphasized that commercial data is nonetheless worthy of protection: “Privacy and data protection should be ensured at all levels in the end-to-end process. Invoice data is critical to any enterprise and important information about the trading parties and their supply chains are an integral part of the transmitted data.”¹¹; and
5. Replacing digital signatures for ensuring authenticity of origin and integrity of content with auditable internal business control processes.¹² While not fully formulated, these internal business processes might involve a Code of Practices along the lines of the Good Practice Guidelines developed by the CEN Workshop on Electronic Invoicing available at the following URL: <http://www.e-invoice-gateway.net/knowledgebase/eInvoiceBestPractice>. Those best practices may be enforced through audit guidelines issued at a pan European level or through bilateral agreements among trading partners or with service providers, with the understanding that in the final analysis each trading partner is responsible for the integrity of its own control systems.

Practical Considerations

Practitioners should note that the devil will be in the detail of the “auditable internal business control processes.” Under current legislation, both the integrity of the invoice (assurance that the content has not been modified) and its authentication (assurance of identity of the sender) is assured by the use of an advanced electronic signature. Under the proposed new regime, an electronic signature would only provide authentication and possibly a much lower level of authentication than provided by advanced electronic signatures. Precisely how the integrity of the document and equivalent protection of authentication will be ensured through auditable business processes will of course be of interest to all enterprises in Europe.

If the proposed new directive is adopted, trading partners will have the right, but not the obligation, to use advanced electronic signatures. Trading partners choosing to forego the security of advanced electronic signatures for the ease of transmission, will need to consider the effect of Directive 1999/93/EC on a Community Framework for Electronic Signatures and national legislation issued pursuant thereto by the member states. Under Article 5(1) of that Directive, advanced electronic signatures based on a qualified certificate and which are created a secure signature device are required to be afforded the same treatment as a handwritten signature and must be admissible as evidence in legal proceedings. Electronic signatures without such an advanced electronic signature fall under Article 5(2) of that Directive, which provides the weaker level of protection of not being denied legal effectiveness “solely on the grounds” that they are in electronic form or not based on a similar advanced electronic signature.

¹ The proposed new Directive (and a link to the original Directive) is available at the following URL:

http://ec.europa.eu/taxation_customs/taxation/vat/traders/invoicing_rules/index_en.htm

² See Proposal for a New Directive amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing” at Paragraphs 24 and 25.

³ The Mid Term Report of the European Commission Expert Group on e-Invoicing is available at the following URL:

<http://www.epractice.eu/document/5425>

⁴ See Mid Term Report of the European Commission Expert Group on e-Invoicing at Page 12, Section 3.0.

⁵ See Proposal for a New Directive amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing” at Paragraphs 24 and 25.

⁶ See Proposal for a New Directive amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing” at Page 9.

⁷ See Mid Term Report of the European Commission Expert Group on e-Invoicing at Page 22, Section 4.4.

⁸ See Mid Term Report of the European Commission Expert Group on e-Invoicing at Page 9, Section 2.3.

⁹ See Mid Term Report of the European Commission Expert Group on e-Invoicing at Pages 25-26, Section 5.3.

¹⁰ See Mid Term Report of the European Commission Expert Group on e-Invoicing at Page 8, Section 2.2.

¹¹ See Mid Term Report of the European Commission Expert Group on e-Invoicing at Page 11, Section 2.6

¹² See Mid Term Report of the European Commission Expert Group on e-Invoicing at Page 13, Section 3.1.

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