

**Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax**

(2001/C 96 E/07)

COM(2000) 650 final — 2000/0289(CNS)

*(Submitted by the Commission on 17 November 2000)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas:

(1) The current conditions laid down for invoicing and listed under Article 22(3), in the version given in Article 28h, of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment<sup>(1)</sup>, as last amended by Directive 2000/17/EC<sup>(2)</sup>, are relatively few in number, thus leaving the Member States to define the most important such conditions. At the same time, the conditions are no longer appropriate given the development of new invoicing technologies and methods.

(2) The Commission report on the second phase of the SLIM exercise (Simpler Legislation for the Single Market)<sup>(3)</sup> recommends that a study be carried out to determine which statements should be required for VAT purposes when drawing up an invoice and what the legal and technical requirements are as regards electronic invoicing.

(3) The conclusions of the Ecofin Council of June 1998 underlined the fact that the development of electronic commerce has made it necessary to establish a legal framework for the use of electronic invoicing to enable tax administrations to continue to perform their controls.

(4) It is therefore necessary, in order to ensure the proper functioning of the internal market, to lay down at Community level a harmonised list of statements required on invoices for VAT purposes and to establish a number of common arrangements governing the use of electronic invoicing and the electronic storage of invoices, as well as for self-billing and the outsourcing of invoicing

operations. The authenticity of the origin of such electronic invoicing must be guaranteed by an advanced electronic signature, within the meaning of Article 2(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<sup>(4)</sup>.

(5) It should be provided that the Member States may no longer require their traders to submit their invoices, or a summary of their invoices, on paper, if traders send the invoices in electronic form.

(6) Lastly, the storing of invoices should comply with the conditions laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(5)</sup>.

(7) Directive 77/388/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

At Article 28h of Directive 77/388/EEC, Article 22 is amended as follows:

1. Paragraph 3 is replaced by the following:

'3. (a) Every taxable person shall ensure that an invoice, or other document serving as invoice, is issued, either by himself or by a third party, in his name and on his behalf, in respect of goods and services which he has supplied or rendered to another taxable person or to a non-taxable legal person. Every taxable person shall also ensure that an invoice, or other document serving as invoice, is issued, either by himself or by a third party, in his name and on his behalf, in respect of the supplies of goods referred to in Article 28b(B)(1) and in respect of goods supplied under the conditions laid down in Article 28c(A).

<sup>(1)</sup> OJ L 145, 13.6.1977, p. 1.

<sup>(2)</sup> OJ L 84, 5.4.2000, p. 24.

<sup>(3)</sup> COM(97) 618 final of 24 November 1997.

<sup>(4)</sup> OJ L 13, 19.1.2000, p. 12.

<sup>(5)</sup> OJ L 281, 23.11.1995, p. 31.

Every taxable person shall likewise ensure that an invoice, or other document serving as invoice, is issued, either by himself or by a third party, in his name and on his behalf, in respect of any payment on account made to him before any supplies of goods referred to in the first subparagraph and in respect of any payment on account made to him by another taxable person or by a non-taxable legal person before the provision of services is completed.

All credit and debit notes are to be treated as invoices and must comply with the same conditions.

Summary invoices may be drawn up, on condition that this is done at least once a month.

Invoices may be drawn up in the name of a taxable person by a third party or by his customer, on condition that there is at the outset an explicit agreement between the two parties, which may be referred to if the tax administration so requests, and on condition that an arrangement exists for the explicit or implicit acceptance of each invoice by the taxable person performing the operation.

Subject to notification of the Commission in advance, Member States may impose further conditions on taxable persons carrying out transactions on their territory regarding the issuing of invoices in their name and on their behalf by their customers. Such conditions must always be the same whatever the place in which the customer is established.

Subject to notification of the Commission in advance, additional conditions may also be laid down in cases where the third party, or the customer, who issues invoices in the name and on behalf of the taxable person is established in a country with which there is no agreement organising mutual assistance similar to that which exists within the Community.

(b) Without prejudice to the specific arrangements laid down by this Directive, only the following statements are required for VAT purposes on invoices issued under point (a):

- date of issue;
- a specific number;
- where necessary, the VAT identification number referred to in paragraph 1(c) of the taxable person and his customer;
- full name and address of the taxable person and his customer;

- description of the goods or services;
- quantity of goods supplied or, if necessary, of services rendered;
- date of supply of goods or rendering of services;
- place of supply of goods or rendering of services;
- taxable amount per rate;
- VAT rate;
- VAT amount payable;
- total amount payable;
- where an exemption is involved, reference to the provision of this Directive which justifies the exemption;
- where the supply of new means of transport is involved, the particulars specified in Article 28a(2);
- where the margin scheme is applied, reference to Article 26 or 26a;
- where the provisions of Article 28c(E)(3) are applied, an explicit reference to that provision as well as the identification number for value added tax purposes under which the taxable person has carried out the intra-Community acquisition and the subsequent supply of goods and the number by which the person to whom this supply is made is identified for value added tax purposes.

Subject to notification of the Commission in advance, Member States may, however, in certain cases which they shall determine, dispense with some of the compulsory statements set out in the first subparagraph for invoices for smaller amounts.

Member States accept that when batches containing several invoices are sent simultaneously to the same recipient, the statements which are common to the various invoices may be mentioned only once.

Without prejudice to the provisions of point (c), they shall lay down no conditions as to the signing of invoices.

They accept that the amounts which appear on the invoice may be indicated in any currency, on condition that the amount of tax to be paid is converted into the national currency.

Subject to notification of the Commission in advance, additional conditions may be laid down concerning the language to be used in drawing up invoices by or on behalf of taxable persons carrying out transactions on their territory.

- (c) Invoices issued pursuant to point (a) may be sent either on paper or, subject to the notification of the customer in advance of the transaction, by electronic means.

The authenticity of the origin and integrity of the contents of invoices sent by electronic means must be guaranteed by means of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council <sup>(1)</sup>.

Member States may not impose on taxable persons carrying out transactions on their territory any other obligations or formalities relating to the transmission of invoices by electronic means. However, they may provide, until 31 December 2005, that the use of such a system is subject to prior notification, without suspensive effect. They shall inform the Commission when they no longer impose this compulsory notification.

Subject to notification of the Commission in advance, additional conditions may be laid down where taxable persons carrying out operations on their territory issue invoices from a country with which there is no agreement organising mutual assistance similar to that which exists within the Community.

- (d) Every taxable person shall ensure the storage of the invoices issued by himself or by a third party, in his name and on his behalf, along with that of all the invoices which he has received.

The Member States shall determine the period for which taxable persons carrying out operations on their territories are subject to this obligation to store, and shall inform the Commission thereof.

Storage may be carried out at any place and on any medium, on the sole condition that the taxable person can access all the information stored at any time and without delay and that the integrity and readability of the data is guaranteed throughout the

storage period. Every invoice transmitted by electronic means shall also be stored, together with its advanced electronic signature, by electronic means.

Subject to notification of the Commission in advance, Member States can impose additional conditions regarding the storage by taxable persons carrying out transactions on their territories of their invoices in a country with which there is no agreement organising mutual assistance similar to that which exists within the Community.

- (e) For the purposes of points (c) and (d), transmission and storage of invoices "by electronic means" shall mean transmission and storage using electronic equipment for processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means.

<sup>(1)</sup> OJ L 13, 19.1.2000, p. 12.'

2. The following subparagraph is added to paragraph 8:

'The faculty laid down in the first subparagraph can not be used to impose additional obligations over and above those laid down in paragraph 3'.

#### Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 2001. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

#### Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

#### Article 4

This Directive is addressed to the Member States.