

Opinion of the European Economic and Social Committee on the Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing

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On 27 February 2009 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the

'Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing'

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 28 May 2009. The rapporteur was Mr BURANI.

At its 454th plenary session, held on 10-11 June 2009 (meeting of 10 June), the European Economic and Social Committee adopted the following opinion by 114 votes, nem. con. with one abstention.

1. Conclusions and recommendations

1.1 The Commission document is presented as a response to the requirement for the Commission to report to the Council by 31 December 2008 on **technological developments in e-invoicing** and to present proposals if appropriate. The relevant provisions of the VAT Directive (2006/112/EC) did not fully meet their stated objectives; moreover, their revision led to further reflection, and **other shortcomings** were identified. The proposal is intended to contribute to the policy of simplification, reducing burdens for operators, particularly SMEs, and — indirectly but effectively — tackling fraud.

1.2 The proposals on invoicing are detailed and extremely technical, all contributing to the achievement of the above objectives; special mention should be made of the explicit recognition of the principle of **equal treatment of electronic and paper invoices**. The EESC **endorses the proposed measures**, which are streamlined and in line with the principles of good administration, but it has serious reservations regarding the **excessive freedom given to Member States** to decide whether or not to adopt a number of provisions. The EESC is aware of the difficulties encountered by the Commission in drafting binding rules which are to be valid throughout the EU, but Member States' reluctance to adopt these rules could be due to differences in levels of sophistication of administrative procedures or legislative inflexibility. In any case, the result of this situation is **flexibility in implementing the legislation, slowing down progress towards harmonisation** as well as increased red tape for business.

1.3 The EESC has serious reservations on just one point: the proposal to **give other Member States' authorities access to the invoices stored electronically by operators**. This goes

well beyond the principles of administrative cooperation and is not legally tenable, especially given that the provision stating that data may only be used 'for control purposes' is being deleted at the same time.

2. Background

2.1 The VAT invoicing rules, which, in a nutshell, are the legal and regulatory basis for collecting VAT and, indirectly, for combating tax evasion, are laid down in Directive 2001/115/EC and now incorporated into the VAT Directive (2006/112/EC). Article 237 of the latter requires the Commission to present a report and, if appropriate, a proposal amending the conditions applicable to **e-invoicing** in order to take account of technological developments in that field. In the proposal being discussed here, the Commission notes that the original provisions have not fully met their stated objectives: it is therefore taking the opportunity to widen the scope of the proposals in order to remedy the shortcomings identified in this area.

2.2 The set of new rules has four key aspects: simplifying rules to reduce administrative burdens on businesses; promoting SMEs; increasing the use of e-invoicing and, lastly, helping to tackle fraud: this is by no means a simple matter but the Commission is taking excellent steps to address it. The results will, however, depend on the goodwill and efficiency of national administrations in implementing the Directive's provisions.

2.3 The Commission committed to **cutting red tape** when it adopted the 2007 Action Programme. With the current proposal, by including **e-invoicing** in a package of 'better regulation' measures to lighten the bureaucratic load on businesses, the Commission aims to kill two birds with one stone: ensuring

acceptance by tax authorities of electronic invoices as having the same probative value as paper invoices, and creating a set of harmonised rules reducing the options currently open to Member States, particularly when it comes to self-certification.

2.4 As regards SMEs, two measures are particularly welcome: extension of the scope for using **simplified invoices** and the opportunity to **account for VAT on a cash basis**. This should cut costs, simplify procedures and, indirectly, encourage SMEs to extend and/or resume their activities abroad.

2.5 The proposal is in line with the Lisbon Strategy for growth and jobs, and is of great political importance in that it enables the single market to be further consolidated. In this context, promoting **increased use and storage of electronic invoices** will help make commercial transactions smoother, enabling businesses to take new opportunities and benefit from new technologies in terms of cutting costs and greater productivity, particularly by redeploying the resources used to receive, record and store data.

2.6 As a contribution to **tackling fraud**, the Commission proposal, while attempting to remove legal barriers to e-invoicing, particularly cross-border invoicing, seeks to tighten up the rules on the role of the invoice in VAT deduction and bring about speedier exchange of information on intra-Community supplies.

2.7 The EESC believes that the set of rules is in keeping with the principles underpinning the proposal and, in general, endorses them, although it would like to make some comments and proposals, which, if accepted, would lead to more effective practical implementation of the rules.

3. Principal measures proposed and comments

3.1 As regards **statements of account or subsequent payments** (Article 64(2)), the new rules state that **continuous supplies of goods** over a period of more than one calendar month, which are supplied or transferred **VAT-exempt**, are to be regarded as being completed on expiry of each calendar month; **supplies of services for which VAT is payable** over a continuous period of more than one year are to be regarded as being completed on expiry of each calendar year. Member States have the option of applying the conventional timeframe of a year to supplies of goods and services 'in certain cases' other than these two categories.

3.1.1 The simplification introduced with these rules is to be welcomed, not least because it allows better control of continuous trade. However, the EESC has some reservations regarding the option given to Member States of applying the conventional timeframe of a year in cases other than those laid down in the Directive: harmonisation is watered down and the unduly vague wording could lead to confusion, not to say disputes.

3.2 Article 167a states that where the deductible tax becomes chargeable upon receipt of payment (cash accounting), Member States *may* provide that the right of deduction is to arise when the goods or services are supplied or at the time the invoice is issued. These options are possible only if the taxable person operates a cash accounting system and if their annual turnover does not exceed EUR 2 million.

3.2.1 These provisions make things much simpler for SMEs operating a cash accounting system and for those businesses which carry out reverse charge transactions but do not hold an invoice. However, Member States are **given the right, rather than required, to adopt them**: again, this waters down harmonisation and, to some extent, distorts the level playing field. In the explanatory memorandum the Commission proposes to extend the optional measures to all Member States, but the text of the article ('may') is ambiguous as regards the stated intention.

3.3 Article 1(9) of the proposal makes a number of changes to points a), c) and f) of Article 178 of Directive 2006/112/EC. Basically, for deductions to be applied invoices have to be drafted in accordance with the requirements of Title XI, chapter 3 of the VAT Directive; essentially, where the supplier operates a cash accounting system Member States *may* authorise the recipient to claim an immediate right of deduction. The provision introduces a principle that will make transactions smoother but, once again, allowing Member States to decide whether or not to apply it does nothing to further the desired harmonisation.

3.4 A number of measures (deletion of Articles 181 and 182, new Articles 218a and 219a) should solve the problems of **Business to Business supplies**, where businesses have at present — in principle, although difficulties of interpretation often arise — to comply with the **invoicing rules** in force in the customer's Member State. A set of harmonised proposals are introduced for both electronic and paper invoices making them valid throughout the EU; this is also the case for **Business to Consumer supplies**, although they continue to be subject to the rules in force in the place of taxation.

3.4.1 There are new rules concerning **simplified invoices**, which *may be permitted* in certain cases, mainly where the taxable amount is less than EUR 200 and where the supply is exempt without deductibility; this right becomes an obligation which Member States '*may impose*' in respect of the supply of goods or services '*within their territory*'.

3.4.2 The distinction between a 'full' invoice and a simplified invoice is their different potential uses: the former helps to exercise the right of deduction while the latter does not have this function in principle, except in the permitted cases and then only within the Member State in question. The changes introduced are in line with the Commission's aim of streamlining procedures and reducing burdens on businesses, but the different options available to Member States once again conflict with the harmonisation principle: this is a clear sign of ongoing resistance from Member States to adopting uniform administrative procedures and systems. With regard to the provisions concerning simplified invoices, a binding provision would be preferable to the current optional version provided for in the proposed directive to avoid additional administrative costs for businesses operational in several Member States, who would have to apply a variety of different rules.

3.5 Member States may impose time limits on taxable persons for the issue of invoices when supplying goods or services in their territory. In this proposed directive, the time limit provided for in Article 222 of Directive 2006/112/EC is to be reduced, the invoice having to be issued no later than the 15th day of the month following that in which the chargeable event occurs. The Committee is of the view that many sectors, for example, the construction industry, may find this period too short, and suggests either deleting this amendment, thereby leaving the original Article 222 unchanged, or extending the period for issuing an invoice to at least two months.

3.6 A number of new provisions relate to the **procedures for recording and storage** (including by electronic means) of taxable and non-taxable transactions and related **accounting**. The EESC has no particular comments to make in this regard,

except when it comes to Member States' option of requiring **particular invoices to be translated into their official languages**: this requirement already exists in some countries but it nevertheless constitutes a not inconsiderable burden on businesses.

3.7 A major change is introduced by the new Article 249 on **controls**: the original provision granted access to invoices stored electronically only to the authorities of the country in which the operator is established, while the new text proposes that **access be extended to the authorities of another Member State** in which VAT is due. The present restriction, to the effect that *national* authorities have the right to access invoices 'in so far as those authorities require for control purposes', is removed at the same time.

3.7.1 The EESC believes that extending the right of access to the authorities of another Member State, without restrictions, is **granting a right which goes beyond the rules on administrative cooperation**. To date, there is no provision allowing a foreign administration, with or without authorisation from the judicial authority of the relevant country, to question a citizen or search their property; the new provision introduces a **concept equivalent to an electronic search**. Moreover, it is difficult to imagine how it might be possible to access electronic invoices stored and only notice the data being searched for, remaining unaware of data which are not relevant to the search.

3.8 To sum up, the EESC congratulates the Commission on giving fresh impetus to its endeavours to simplify procedures, reduce administrative and accounting burdens and tighten up rules on fraud; it is concerned at the poor progress made towards harmonisation of rules, although it acknowledges the difficulties caused by Member States' resistance; and it has strong reservations about both the legality and the principle of the new rules on access to invoices stored by electronic means.

Brussels, 10 June 2009.

The President
of the European Economic and Social Committee
Mario SEPI
