

# News Bulletin: E-Invoicing in Europe

BY PHILLIP SCHMANDT

On 28 January, 2009 the Commission of the European Union proposed an overhaul of the 2006 EU Directive on Invoicing (Directive 2006/112/EC). If approved, this new Directive will fundamentally change how electronic invoicing is conducted in Europe and will affect all companies doing business in Europe.

The proposed new Directive would make electronic invoices equivalent in all respects to paper ones. It would eliminate the requirement that advanced electronic signatures be used in electronic invoices and would eliminate the requirement that the recipient of the invoice consent to receive it in electronic form. Observing that the Member States' disparate requirements for advanced electronic signatures have created significant obstacles to the adoption of electronic invoices, 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 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. The proposed new Directive (and a link to the original Directive) is available here:

[http://ec.europa.eu/taxation\\_customs/taxation/vat/traders/invoicing\\_rules/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/traders/invoicing_rules/index_en.htm)

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, reference to the fact that the e-invoice should be by advance esignature or by EDI are removed.



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“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.”

One day before the EU Commission made this announcement, the EU’s “Expert Group” on e-Invoicing issued its Interim Report (27 January, 2009). The Expert Group on e-Invoicing was set up by the European Commission on 31 October 2007. Its task is to establish a European Electronic Invoicing Framework by 2009.

The Mid Term Report is available here:

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

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 standardized way”.

The final report from the Expert Group is due at the end of 2009.

The expressed goal of the report is to have electronic invoicing become the norm in the EU by 2012-2015.

The recommended framework would include, among other things:

1. Full harmonization of national/tax requirements among EU Member states regarding e-invoices;
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 Framework;
3. A business requirement of reducing manual work for the sender/receiver (perhaps eliminating the practice of large buyers or suppliers requiring all of their trading partners to manually enter data onto a unique web based system?), while remaining technology neutral and accessible to all trading partners with or without ERP systems;

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4. A method of ensuring “trustworthiness and data protection” (direct quote: “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.”); and
5. Replacing digital signatures for ensuring authenticity of origin and integrity of content with auditable internal business control processes. 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 here: <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 responsibility for the integrity of its own control systems.

The Expert Group is soliciting public comments to its Mid Term Report. Comments are due by 13 March 2009 and should be submitted to:  
[markt-e-invoicing@ec.europa.eu](mailto:markt-e-invoicing@ec.europa.eu).

**Note:** *The E-Commerce Sub-Committee of the Cyberspace Law Committee of the Business Section of the American Bar Association will discuss this report and possible projects surrounding these developments at its next meeting, which will be held as part of the Spring Meeting of the ABA’s Business Section in Vancouver, BC on April 16 – 18, 2009. Interested participants are invited to attend that meeting. Also during that conference, the Cyberspace Committee will co-host with the Anti Trust Committee a panel discussion on antitrust and commercial issues arising from the aggregation of electronic data by e-market places and other service providers that handle electronic transaction data.*

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