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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on electronic invoicing in public procurement

In view of the Working party on public procurement on 9 October 2013, delegations will find in the Annex a Presidency compromise text of the above proposal. Additions to the text of the initial proposal are underlined, deletions are marked [...].

2013/0213 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on electronic invoicing in public procurement

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) Several global, national, regional and proprietary standards on electronic invoices exist and are currently used in Member States. None of these standards prevails, and most of them are not interoperable.
- (2) In the absence of a common standard, Member States decide, when promoting the use of electronic invoices in public procurement or making it mandatory, to develop their own technical solutions based on separate national standards. Hence, the number of different standards coexisting across Member States is increasing and is likely to continue increasing in the future.
- (3) The multiplicity of non-interoperable standards results in excessive complexity, legal uncertainty and additional operating costs for economic operators using electronic invoices across Member States. Economic operators wishing to carry out cross-border procurement activities are often required to comply with a new e-invoicing standard each time they access a new market. By discouraging economic operators from undertaking cross-border procurement activities, the divergent legal and technical requirements concerning electronic invoices constitute market access barriers in cross-border public procurement and obstacles to trade. They obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market.
- (4) Those obstacles to intra-Union trade are likely to increase in the future as more non-interoperable national and proprietary standards are developed and as the use of electronic invoices in public procurement becomes more widespread or is made mandatory in Member States.

(5) Obstacles to trade deriving from the co-existence of several legal requirements and technical standards on electronic invoices and from the lack of interoperability should be removed or reduced. In order to achieve this objective, a common European standard for [...] an electronic invoice should be developed.

(5a) *[moved from rec 11]* The goal of interoperability is to allow information to be presented and processed in a consistent manner between business systems, regardless of their technology, application or platform. Full interoperability includes the ability to interoperate on three distinct levels: in terms of the content of the invoice (semantics), the format or language used (syntax), and the method of transmission. Semantic interoperability implies that the electronic invoice contains a certain amount of required information, and that the precise meaning of the exchanged information is preserved and [...] understood in an unambiguous manner, independently of the way in which it is physically represented or transmitted. Syntactic interoperability implies that the data elements of an electronic invoice are presented in a format which can be exchanged between the sender and recipient. Syntactic interoperability can be ensured in one of two ways, namely through the use of a common format or by means of mapping between different formats.

(5b) A large number of syntaxes exist on the market. More and more, syntactic interoperability is ensured by means of mapping. This method is effective as long the invoice contains all the required data elements at the semantic level and if their meaning is unambiguous. Since currently this is frequently not the case, action is therefore required to ensure interoperability at semantic level. In order to further simplify the use of e-invoicing and reduce costs, the long-term objective should be to limit the number of syntaxes used preferably by recognizing only the most commonly used ones.

(5c) Invoices issued in different economic sectors may require the inclusion of information specific to those sectors. Nevertheless, a limited number of common standard elements should be included in all invoices. The presence of these elements is indispensable for verification of whether the invoice properly reflects the underlying business transaction and to ensure that it is legally valid. An list of such elements required for VAT purposes is provided by Directive 2006/112/EC. The European Standard for an electronic invoice should therefore reflect a similar core set of invoice information.

(6) The Commission should apply the relevant provisions of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation³ to request the relevant European standardisation organisation to draft a European standard for the semantic data model for the core section of an electronic invoice. Under Article 10(2) and 22(3) of Regulation 1025/2012, the Commission's decision laying down such a request is subject to Article 5 (examination procedure) of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁴. In its request to the relevant European standardisation organisation, the Commission should require that such an European standard is technologically neutral in order to avoid any distortion of competition, and that it should not adversely affect the provisions of Council Directive 2006/112/EC. Since electronic invoices may contain personal data, the Commission should also require that such an European standard has regard to personal data protection, in accordance with Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁵. In addition to these minimum requirements, the Commission should determine, in its request to the relevant European standardisation organisation, further requirements as to the content of such European standard and a deadline for its adoption.

³ OJ L 316, 14.11.2012, p. 12.

⁴ OJ L 55, 28.2.2011, p. 13.

⁵ OJ L 281, 23.11.1995, p. 31.

- (7) The European standard for the semantic data model for the core section of an electronic invoice should build on existing specifications, including in particular those developed by European or international organisations such as CEN (CWA 16356 and CWA 16562), ISO (Financial Invoice based on the ISO 20022 methodology), and UN/CEFACT (CII v. 2.0), as well as on the results of any relevant work carried out within the framework of the Commission's Large-Scale Pilot Projects and any other bodies and organisations recognised by EU law. In order to maintain compliance with the objectives of Directive 2006/112/EC, the European standard should not contain a requirement for electronic signatures. Such European standard should define semantic data elements referring to, in particular, complementary seller and buyer data, process identifiers, invoice attributes, invoice item details, delivery information, payment details and terms. It should also be compatible with the existing standards for payments in order to allow for automatic processing of payments.
- (8) Where the European standard drawn up by the relevant European standardisation organisation satisfies the requirements contained in the Commission's request, the references of such European standard should be published in the Official Journal of the European Union.
- (8a) In order to avoid excessive costs and burden for the contracting authorities and contracting entities, the relevant European standardisation organisation should be asked to identify a list of technical formats (syntaxes) based on European or other international standards which comply with the European standard for the semantic data model. The European standardisation organisation should also be invited to make informal recommendations on transmission interoperability to facilitate use of the European standard at semantic level. These recommendations should not be obligatory on contracting authorities and contracting entities.

- (8b) In order to ensure the full and on-going interoperability of the semantic data model, the Commission shall recognize the use of specific technical formats, provided that these have been thoroughly tested and have proved their usefulness in practice. In doing so, the Commission should take into account a list of technical formats identified by the relevant European standardisation organisation, the results of the Commission's Large-Scale Pilot Projects and solutions widely implemented by the business community.
- (9) Provided that electronic invoices correctly reflect all details of the business transaction for which they are issued, contracting authorities and contracting entities should not refuse to process electronic invoices which comply with the common European standard on the grounds of non-compliance with other technical requirements (for example national or sector specific requirements) and which comply with technical formats (syntaxes) identified by the relevant European standardisation body and approved by the Commission.

- (10) This Directive should apply to electronic invoices received by contracting authorities and contracting entities and issued as a result of the performance of contracts awarded in accordance with and insofar as these contracts are covered by Directive [replacing Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts⁶], Directive [replacing Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors⁷], Directive [on the award of concession contracts], or Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC⁸. Only electronic invoices issued by the economic operator to whom the public contract has been awarded (main contractor) are covered by this Directive. However, when Member States, pursuant to Art 71 of [Directive replacing Directive 18] and Art 81 of [Directive replacing Directive 17] provide for direct payment to subcontractors , the arrangement to be determined in the procurement documents should include provisions concerning the use or not of electronic invoicing in the payments to the subcontractors.

[...] *[moved to rec. 5a]*

- (12) By ensuring semantic interoperability and improving legal certainty, this Directive will also promote the uptake of electronic invoicing in public procurement, thereby allowing Member States, contracting authorities, contracting entities, and economic operators to gain significant benefits in terms of savings, environmental impact, and reduction of administrative burdens.

⁶ OJ L 134, 30.4.2004, p. 114.

⁷ OJ L 134, 30.4.2004, p. 1.

⁸ OJ L 216, 20.8.2009, p. 76.

- (13) The European Council, in its conclusions of 28 and 29 June 2012, stated that priority should be given to measures aimed at further developing cross-border online trade, including by facilitating the transition to electronic invoicing.
- (14) The European Parliament in its resolution of 20 April 2012 pointed at market fragmentation resulting from national rules on electronic invoicing, underlined the substantial benefits offered by electronic invoicing, and stressed the importance of legal certainty, a clear technical environment and open and interoperable electronic invoicing solutions based on common legal requirements, business processes and technical standards. For these reasons, the European Parliament called on making electronic invoicing in public procurement mandatory by 2016.
- (15) The European Multi-stakeholder Forum on Electronic Invoicing (e-invoicing) set up by Commission Decision of 2 November 2010⁹ adopted a Recommendation on interoperability for electronic invoicing by the use of a semantic data model in [month] 2013.
- (16) Since contracting authorities and contracting entities will be able to accept electronic invoices which comply with standards other than the common European standard, as well as paper invoices unless otherwise provided in national legislation, this Directive does not place any additional costs or burden on enterprises, including micro, small and medium-sized enterprises in the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹⁰.

⁹ OJ C 326, 3.12.2010, p. 13.

¹⁰ OJ L 124, 20.5.2003, p. 36.

- (17) Rules on electronic invoicing are already contained in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹¹. This Directive does not affect the provisions on the use of electronic invoices for VAT purposes contained in Council Directive 2006/112/EC.
- (18) In order to allow contracting authorities and contracting entities to take the technical measures that, following the establishment of the European standard, are necessary to comply with the provisions of this Directive, a transposition deadline of [24] months following the publication of the reference to the European standard in the Official Journal of the European Union is justified.
- (19) Since the objectives of removing market barriers and obstacles to trade deriving from the existence of different national rules and standards and of ensuring interoperability cannot sufficiently be achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

[...]

HAVE ADOPTED THIS DIRECTIVE:

¹¹ OJ L 347, 11.12.2006, p. 1.

Article 1

Scope

This Directive shall apply to electronic invoices issued as a result of the performance of contracts covered by Directive [replacing Directive 2004/18/EC], Directive [replacing Directive 2004/17/EC], Directive [on the award of concession contracts], or Directive 2009/81/EC.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) ‘electronic invoice’ means an invoice that has been issued, transmitted, and received in any structured electronic format;
- (3) ‘core section of an electronic invoice’ means a subset of information contained in an electronic invoice that is essential to enable cross-border interoperability, including the necessary information to ensure legal compliance;
- (3a) ‘semantic data model’ means a structured and logically interrelated set of terms and their meanings that specify the content [...]of an electronic invoice;
- (4) ‘contracting authorities’ means contracting authorities as defined in Article [2] of Directive [replacing Directive 2004/18/EC], Article 1(17) of Directive 2009/81/EC, and Article [3] of Directive [on the award of concession contracts];

- (5) ‘contracting entities’ means contracting entities as defined in Article [4] of Directive [replacing Directive 2004/17/EC], Article 1(17) of Directive 2009/81/EC, and Article [4] of Directive [on the award of concession contracts];
- (6) ‘European standard’ means a European standard as defined in Article 2(1) of Regulation (EU) No 1025/2012.

Article 3

Establishment of a European standard

1. The Commission shall request the relevant European standardisation organisation to draw up a European standard for the semantic data model for the core section of an electronic invoice.

The Commission shall require that the European standard for the semantic data model for the core section of an electronic invoice should at least comply with the following criteria:

- be technologically neutral;
- have regard to the need for personal data protection in accordance with Directive 95/46/EC;
- does not affect the provisions of Directive 2006/112/EC.

The Commission shall invite the relevant European standardisation organisation to offer a list of technical formats (syntaxes) which comply with the European standard for the semantic data model and recommendations (not comprising a draft standard) on transmission interoperability to facilitate use of the semantic data standard.

The request shall be adopted in accordance with the procedure laid down in Article 10(1) to (5) of Regulation (EU) No 1025/2012. It shall contain a deadline for delivering the requested European standard within a period not exceeding [3] years.

2. Where the European standard drawn up following the request referred to in paragraph 1 satisfies the requirements contained therein, the Commission shall publish the reference to such European standard in the Official Journal of the European Union.

Article 4

Electronic invoices complying with the European standard

1. Member States shall ensure that contracting authorities and contracting entities do not refuse to process electronic invoices which comply with the European standard whose reference has been published pursuant to Article 3(2) and which comply with technical formats (syntaxes) identified separately by the relevant European standardisation body and approved by the Commission.
2. The Commission shall, by means of implementing acts, approve specific technical formats (syntaxes) that comply with the European standard whose reference has been published pursuant to article 3(2).

Article 5

Use of electronic invoices for VAT purposes

This Directive is without prejudice to the provisions of Council Directive 2006/112/EC.

Article 6

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24] months following the publication of the reference to the European standard in the Official Journal of the European Union pursuant to Article 3(2). They shall forthwith communicate to the Commission the text of those provisions.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 7

Review

The Commission shall review the effects of this Directive on the internal market and on the uptake of electronic invoicing in public procurement and report thereon to the European Parliament and the Council by 30 June 2023. Where appropriate, the report shall be accompanied by a legislative proposal.

Article 8

Entry into force

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

Article 9

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
