

Initial appraisal of a European Commission Impact Assessment

Directive on electronic invoicing in public procurement

Impact Assessment (SWD (2013) 223, SWD (2013) 222 (summary)) for a Commission Proposal for a Directive of the European Parliament and of the Council on electronic invoicing in public procurement (COM (2013) 449)

- **Synopsis**

This note seeks to provide an initial analysis of the European Commission's Impact Assessment (IA) accompanying the above proposal, which was submitted by the Commission in June 2013. Once the proposal enters into force, the Commission would request the relevant European standardisation organisation (CEN - the Committee for European Standardization) to draw up a European standard for electronic invoicing, which market operators would be free to adopt and contracting authorities would be obliged to accept.

This is an Impact Assessment of generally good quality, which complies with Commission's stated standards. However, the IA does not analyse in depth some elements, including 'the semantic data model of the core invoice', which arguably is an essential component of the proposal. This note ends with suggestions for follow-up for the Parliament's IMCO Committee and other relevant committees.

In a Resolution adopted in April 2012, the EP welcomed 'the eInvoicing Initiative, which aims to make eInvoicing the predominant method of invoicing in the EU by 2020'; and called for eInvoicing 'to be made mandatory for all public procurement by 2016'¹.

- **Identification of the issue at stake**

The IA clearly identifies the problem in need of possible EU action: there are several proprietary e-invoicing standards across the EU, but they are not interoperable. This means that different business systems cannot consistently present and process electronic invoicing information. As a result of these national 'e-invoicing islands', firms willing to issue invoices to another Member State face complexity, legal uncertainty and higher costs. Companies may ultimately refrain from doing business across the national borders, reducing competition and impairing the functioning of the Single market.

This problem is placed into a wider context. According to the evidence presented by the Commission, national solutions to the problem have exacerbated the lack of inter-operability. However, this initiative does not aim to deal with legitimate national intervention directly, but rather indirectly, by trying to provide a solution to the lack of inter-operability.

¹ 2011/2178(INI).

It is worth recalling some key facts and data provided in the IA.

- The initiative covers high-value procurement only (i.e. contracts falling above certain monetary thresholds), as provided in three Public Procurement Directives. This includes utilities markets and security procurement. Low value contracts and, *inter alia*, contracts requiring special security measures, secret contracts or service concessions are excluded.
- Public procurement in the scope of the proposal accounts for approximately 3.7 per cent of EU GDP. This is roughly 1/5 of the total public expenditure covered by the Directives, which amounts to 19.7 per cent of EU GDP.
- Direct cross-border procurement - i.e. contracts awarded to firms from another Member State - accounts for 1.6 per cent of contract awards or 3.5 per cent of their total value (2006-09 data).
- Indirect cross-border procurement - i.e. firms bidding through affiliates or subsidiaries - is larger and accounts for 11.4 per cent of awards and 13.4 per cent by value (2006-09 data).

The IA provides evidence and data for the problem at stake, as well as some details regarding existing national e-invoicing standards. The size of cross-border procurement is relatively limited. However, the IA argues that this low level is due to the existing barriers, including on e-invoicing.

• Objectives of the legislative proposal

The objectives of the Commission's proposal correspond to the problems identified. At an *operational* level, the objective is to '[c]reate conditions for the emergence of (a) technical solution(s) for e-invoicing in public procurement which would ensure cross-border interoperability'. This, in turn, would contribute to achieving the *specific* objectives, i.e. reducing complexity, improving clarity and legal certainty, and lowering operating costs for economic operators. The primary, more *general* objective, is 'to improve the functioning of the Internal Market by introducing mechanisms that would diminish market access barriers in cross-border public procurement'.

• Range of options considered

The IA identifies the main options for addressing the problem, within the boundaries of the problem definition above. The options considered take into account some variables, notably:

- the need to propose an EU standard and its relationship with national standards;
- the optional nature of the EU standard for firms;
- the obligation for contracting authorities to accept the EU standard.

As a result, five options are analysed. The preferred option following the Commission analysis, the fourth option, is quoted *verbatim*.

1. No new EU action.
2. Free-choice approach: the acceptance of e-invoices in the European standard would be left at the discretion of each Member State and/or contracting authority.
3. Selective conversion to e-invoicing: only Member States mandating e-invoicing in public procurement would be required to accept the new European standard.

4. 'Obligatory acceptance: the EU would propose a European invoicing standard to the market; the acceptance of invoices submitted in this standard would be obligatory for all contacting authorities; exchanging e-invoices in other standards would still be allowed if both parties of the transaction so agree.' (IA, p. 33)
5. Full harmonisation: the EU standard would become the only one. Other standards would not be allowed. Standardisation would also address the syntax, i.e. the machine-readable format used to represent the data elements. This would go some way toward the 'complete elimination of the need for human intervention during the entire invoicing process', which 'would be the key to maximising the returns on an investment in e-invoicing' (IA, p. 67). This initiative does not pursue these objectives.

It is worth noting that, according to the definition of the preferred option 4 above, once the EU standard enters into force, other national standards would still be allowed. However, the CEN standardisation process, summarised in the Annexes to the IA, mentions an obligation for member countries to withdraw conflicting national standards: 'After its publication, a European Standard must be given the status of national standard in all CEN member countries, which also have the obligation to withdraw any national standards that would conflict with it.' (Annexes, p. 77)

• Coherence between the Commission's legislative proposal and IA

The IA is rather reticent about some essential elements of the proposed initiative, arguing that '[t]he exact scope of the [European Standard] should be left to the relevant European Standardisation organisation', i.e. - as it is clarified elsewhere in the IA - CEN. The CEN standardisation process has some features in common with Commission procedures, such as openness, transparency and consultation (Annexes to the IA, pp. 76-77), which will prove useful.

The 'core electronic invoice' (Commission proposal, Article 2), is not mentioned explicitly in the IA. This concept was partly clarified by a useful document which the Commission provided to the EP Rapporteur. According to this document, an e-invoice is made up of:

- the 'core electronic invoice', comprising: a common section of commonly used and accepted data elements; and a legal section;
- a sector-specific section;
- a country-specific section.

The latter two elements do not seem to be mentioned in the IA or in the proposal. Therefore, one wonders what the Commission proposes to do with them.

Second, the IA contains only some brief references to semantic and concludes that the future European standard should focus on semantic alignment. The proposal is more informative and explains that "semantic data model" means a structured and logically interrelated set of terms and meanings that specify the content exchanged in electronic invoices'. It clarifies that '[f]ull interoperability includes the ability to interoperate in terms of content (semantic), format (syntax), and transmission'. Finally, recital 7 of the Commission proposal indicates that the future European standard should define 'semantic data elements referring to, in particular, complementary seller and buyer data, process identifiers, invoice attributes, invoice item detail, delivery information, payment details and terms'. This list does not seem to be the result of an analysis carried out in the IA.

To sum up, the 'semantic data model of the core electronic invoice' is arguably the content of a possible future standard and should feature more prominently in an Impact Assessment.

- **Scope of the Impact Assessment**

Overall, the IA argues that overall benefits would 'significantly exceed' economic, social and environmental costs.

The IA assesses satisfactorily all options for their more direct impacts, especially the economic ones. It argues that the net positive benefits apply to firms of all sizes.

Social impacts are analysed less in depth than economic ones. These are the most relevant quotes:

'The social impacts are expected to be neutral – they may involve some reassignments or redundancies in selected sectors (e.g. public administration, postal services, paper production) but these should be marginal and would most likely be counterbalanced by job creation due to the identified savings.' (IA, p. 41).

'The main social benefits at enterprise/public authority level will be the potential for employees currently engaged in low value-added, repetitive tasks to be redirected into more productive and more rewarding work. In a broader sense (i.e. in terms of the secondary impacts), society as a whole will benefit from a reduced potential tax evasion by market operators, through better control of invoices (less possibility of data tampering) and improved auditability. This will result in an improved financial situation of the Member States.' (Annexes to the IA, p. 65)

Some evidence of redundancies in countries which have introduced national e-invoicing standards would be useful.

A proportionate analysis is made of positive environmental impacts, consisting mainly in reducing paper use and CO2 emissions.

- **Budgetary or public finance implications**

According to the Commission's analysis, benefits would outstrip costs also 'generally for contracting authorities'. The initiative is supposed to produce first of all operational savings. For example, a quoted pilot project carried out in Belgium at federal level had implementation costs of 370,000 euro and estimated yearly savings in excess of 3 million euro.

The Commission's Implementation Plan accompanying the Directive provides more details on the compliance challenges for authorities. According to this plan:

'The most significant challenges that could be envisaged at this stage are the difficulties in the actual introduction of electronic invoicing by the contracting authorities and entities which never used this system before and in particular by those which are smaller in size. However, it should be noted that the services related to electronic invoicing can be outsourced to an external service provider. To facilitate the take up of electronic invoicing, some support actions could be put in place, especially at national level.' (Implementation Plan, (SWD(2013) 225), p. 3.)

It is therefore possible that the impacts for contracting authorities - positive at an aggregate level - may reveal a more nuanced picture at the local level. Should evidence be available, a more granular analysis of territorial impacts would therefore prove useful.

The IA does not provide any detailed information about possible implications for the EU budget.

- **SME test / Competitiveness**

The IA includes an analysis of SMEs, including micro-enterprises. It argues convincingly that the European standard would be an opportunity that companies would be free to take advantage of, rather than a burden.

- **Simplification and other regulatory implications**

Options are assessed also taking into account their coherence with other EU policies and pieces of legislation, notably the Commission proposal on the revision of public procurement rules, the late payment Directive (2011/7/EU), and the Commission's Digital Agenda. The Single European Payment Area (SEPA) is also mentioned.

- **Relations with third countries**

The IA mentions global initiatives to try and develop an international standard, such as the United Nations' CEFACCT CII, which is so far not operational. It worth noting that Members of CEN include not only the 28 European Member States, but also Iceland, Norway, Switzerland, the Former Yugoslav Republic of Macedonia and Turkey.

- **Monitoring and evaluation**

The IA clearly identifies monitoring indicators and specifies who should collect which data and for what purpose (IA, p. 58). The Commission indicates that these indicators would draw on existing sources, to avoid putting additional burden on public authorities and firms. This would be complemented by a study carried out by the Commission.

- **Subsidiarity / proportionality**

The IA defines the problem bearing in mind the subsidiarity issue. It decides coherently to focus the problem identification on inter-operability, rather than on the slow response of public authorities and the divergent national replies to the problem. These context issues would be tackled indirectly by proposing an EU standard.

The proposal is based on Article 114 TFEU. At the moment of publishing this appraisal, 12 national parliaments from 10 Member States had scrutinised - or were in the process of scrutinising - this proposal. None of them has so far issued reasoned opinions raising problems with regards to the subsidiarity issue.

Finally, the IA checks the regulatory options in the light of the principle of proportionality. It therefore suggests a Directive, rather than a Regulation. It also argues that the initiative is limited to those aspects that Member States cannot satisfactorily achieve on their own.

- **Commission Impact Assessment Board**

Subsidiarity and proportionality issues were raised by the Commission Impact Assessment Board, which analysed this IA twice. The second time, the Board issued a positive opinion², stating: '[the IA] should also better justify the proportionality of the envisaged measures given that a significant number of Member States have already developed their own standards, indicated a preference for a voluntary approach and will now have to develop the capacity of also handling the new proposed EU standard'. The Commission argues, *inter alia*, that Member States have not solved the problem. A more in-depth analysis of subsidiarity and proportionality issues is beyond the limited scope of this initial appraisal.

The Commission's quality assurance body also asked DG MARKT to demonstrate a clear demand by stakeholders and to make 'a better attempt to quantify the cost of the initiative given that the revised preferred option could potentially lead to greater costs for contracting authorities.'

The IA provides an overview of stakeholders' opinions and seems to answer other remarks made by the Board. The analysis provides a ball-park indication of the costs of similar national initiatives to contracting authorities. An attempt to quantify the cost of this proposal would probably be highly speculative, also because the European standard does not exist yet.

- **Quality of data, research and analysis**

The assessment is reasonable and is based on sound research and analysis, with some caveats highlighted above. The analysis is mainly qualitative, with some quantitative data.

- **Stakeholder consultation**

The IA identifies the stakeholders affected by the problem and analyses the impact on these constituencies. These include Member States and contracting authorities, firms, including SMEs, as well as e-invoicing service-providers. There are approximately 400 e-invoicing service providers in the EU. The Commission also consulted other stakeholders, such as associations of regional or local governments, business associations and IT service providers. An open public consultation, carried out between October 2012 and January 2013, gathered approximately 700 responses, summarised in the IA Annexes.

- **Committee follow-up**

The IMCO Committee could potentially ask the European Commission to share the following data and evidence, if available.

1. A theoretical description understandable to a non-expert reader of the interaction between content (semantic), format (syntax) and transmission in an electronic invoice.
2. This could be complemented by a description of some of the most widely-used e-invoicing initiatives. This should specify which terms and meanings are used for the

² Full text: http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2013/sec_2013_0365_en.pdf

semantic part, possibly taking as a benchmark the elements listed in the recital (7) of the Commission's proposal: complementary seller and buyer data, process identifiers, invoice attributes, invoice item detail, delivery information, payment details and terms. This should also specify how this core electronic invoice differs in real-life from the sector- and country-specific elements. The aim of this description would be to see whether at first sight a minimum common denominator may be found between these e-invoicing initiatives; or whether a minimum common denominator would necessarily conflict with existing standards.

3. An indication of the percentage of contracting authorities and entities which have never used electronic invoicing before, split by Member State, complemented possibly by data at regional and local level. This would provide a territorial analysis of contracting authorities which may have to bear higher costs. Should these data not be available, the Commission could be asked to provide some more anecdotal evidence.³
4. An order of magnitude of the costs borne by contracting authorities for outsourcing e-invoicing services to external providers.
5. For social impacts: evidence of redundancies in the public and private sector due to the introduction of e-invoicing standards.

³ This would usefully complement information provided in the IA from a company perspective at national level (IA, figure 3, p. 16). Taking the example of Belgium, where 24 per cent of enterprises exchanged electronic invoices with public authorities - were these authorities national, regional or local authorities?

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This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Internal Market and Consumer Protection (IMCO), analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

This document is also available on the internet at:

<http://www.europarl.europa.eu/activities/committees/studies.html>

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