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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on electronic invoicing in public procurement

(Text with EEA relevance)

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{SWD(2013) 223 final}

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Policy context

A shift towards paperless public administration, particularly in its cross-border dimension, is an important objective for the European Union and the Member States. E-invoicing is a particularly promising area to help achieve this objective.

The widely-acknowledged benefits of e-invoicing have led several EU Member States (Denmark, Austria, Sweden and Finland) to require the submission of e-invoices in public procurement in all or part of the public sector. However, these bottom-up initiatives are for the most part based on national standards, most of which are not interoperable. As such, they lead to an increase in complexity and costs for firms wishing to participate in cross-border procurement, and thereby generate market access barriers. The overall result is that the adoption of e-invoicing in Europe is still very limited, accounting for 4 to 15% of all invoices exchanged. An initiative in the area of e-invoicing in public procurement would prevent the further fragmentation of the internal market and facilitate the uptake of e-invoicing. Considering the fact that public procurement covered by the Public Procurement Directives represents roughly 3.7% of EU GDP, the implementation of an initiative aimed at eliminating market access barriers in e-invoicing in public procurement would make the public sector a 'lead market' in this area and spearhead its wider use in the economy.

Over the last couple of years, a significant number of actors have called for action at the European level to stimulate the e-invoicing market across the EU, especially with regards to the exchange of invoices by governments. In the Communication "Reaping the benefits of e-invoicing for Europe", COM(2010) 712, the Commission has called for e-invoicing to become the predominant invoicing mode in the EU by 2020. In a resolution in April 2012, the European Parliament called for making e-invoicing compulsory in public procurement by 2016, while Member States have called for measures to promote e-invoicing at the Informal Competitiveness Council of February 2012 and in the European Council Conclusions of June 2012. The occasion therefore seems ripe to undertake the proposed initiative on e-invoicing in public procurement and effectively remove the market access barriers caused by insufficient e-invoicing interoperability.

A proposal in this area would also complement the on-going modernisation of EU public procurement rules, a key action under the "Single Market Act I", in particular with regard to the proposals on a full transition to e-procurement. Finally, action on promoting the uptake of e-invoicing in public procurement is seen by the Commission as a priority. This is reflected in the inclusion of an initiative on e-invoicing in public procurement in the "Single Market Act II" as one of its Key Actions.

• Links with standardisation issues

The proposal foresees that a new European e-invoicing standard will be drawn by the relevant European standard-setting body, in this case the European Committee for Standardisation (CEN). This will be done on the basis of a mandate by the European Commission which will be prepared at a later stage. The mandate will include a list of minimum requirements which the standard will have to incorporate. The work will then be carried out in line with the provisions of Regulation (EU) No 1025/2012.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

• Consultations with the interested parties

The content of this proposal builds on extensive consultations with stakeholders. Two meetings of the European Multi Stakeholder Forum (EMSF) on e-invoicing were held in Brussels (on 26 September 2012 and 7 March 2013) and provided an important forum for discussing the building blocks of the potential EU initiative on e-invoicing in public procurement. The discussion papers of four Activity Groups of the EMSF provided practical feedback from the representatives of national multi-stakeholder forums and practitioners, such as service providers and firms. Additionally, a questionnaire was circulated among the members of the EMSF which attempted to gather data on existing e-invoicing systems, and their effectiveness, costs and benefits. The 20 replies which were received (19 from national fora and one from a standards-setting body) were also extensively used in the Impact Assessment.

The content of the initiative was presented and discussed with the Advisory Committee for Public Contracts (ACPC), comprising of Member State representatives, during a meeting on 19 September 2012. More informal bilateral meetings also took place with representatives of various industry associations, including the European E-invoicing Service Providers Association (EESPA), Business Europe and the European Association of Craft, Small and Medium-sized Enterprises (UEAPME).

Finally, an on-line consultation via the Interactive Policy Making tool (IPM) was held between 22 October 2012 and 14 January 2013 to gather information on current usage of e-invoicing and opinions concerning a potential EU initiative in this area. The public response to the consultation was very positive, with more than 700 replies submitted.

The various consultations with stakeholders provided the Commission with a good cross-section of the views held by the different stakeholders.

• Impact Assessment

The Impact Assessment was submitted to the Impact Assessment Board (IAB) in February 2013. During the meeting of 20 March 2013, the IAB raised a number of issues which in the board's opinion would need to be addressed further, and requested a resubmission of the Impact Assessment.

The revised Impact Assessment was resubmitted to the IAB on 19 April 2013. The main modifications in response to the opinion of the IAB concerned the strengthening of the problem definition and the subsidiarity and proportionality analysis, the improvement of the impacts analysis and better presentation of stakeholder views.

On the 8th of May 2013, the IAB issued a positive opinion.

After having analysed five different options, the Impact Assessment concluded that the most appropriate solution is to impose on contracting authorities and contracting entities an obligation to accept the reception of electronic invoices complying with a new common European invoicing standard as of a particular date. This would help to overcome the fragmentation inherent in the current patchwork of national e-invoicing systems and guarantee the integrity of the internal market. The chosen approach would combine the strong stimulus of an obligation to ensure interoperability in e-invoicing in public procurement with a more flexible approach as to the most appropriate means of ensuring the use of e-invoicing as such.

The final Impact Assessment report and its executive summary are published with this proposal.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Legal basis**

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU). By providing for the establishment of a common European standard and obliging Member States to ensure that contracting authorities and contracting entities do not refuse the reception of electronic invoices complying with such European standard, this proposal will remove market access barriers in cross-border public procurement and obstacles to trade. It will therefore improve the conditions for the functioning of the internal market.

- **Subsidiarity principle**

According to the principle of subsidiarity, the Union can act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can be better achieved at EU level. For the reasons detailed below, EU action is needed to remove market barriers and obstacles to trade deriving from the existence of different national rules and standards as well as to ensure interoperability. Hence, the proposal complies with the subsidiarity principle. The number of existing standards, requirements, and solutions remains very large and e-invoicing networks appear to be growing more, not less, entrenched along national boundaries. The bottom-up initiatives from Member States have aggravated the interoperability problem, as more e-invoicing standards have emerged on the market, further increasing the costs and complexity of ensuring interoperability. As a consequence, actions undertaken by Member States are not sufficient to ensure e-invoicing interoperability in cross-border procurement.

The rationale for an EU action stems from the transnational nature of the problem of insufficient interoperability between national (and proprietary) e-invoicing systems. Given the cross-border nature of public procurement transactions covered by the Public Procurement Directives and the lack of meaningful results of some Member States' efforts to resolve the interoperability issues, an EU action on e-invoicing in public procurement seems to be the only solution available to co-ordinate their actions and to prevent further fragmentation of the internal market. Furthermore, only the EU can act as an unbiased arbiter in the discussion on interoperability and objectively recommend the best approach to eliminating market barriers.

There is little indication that, without EU action, the current situation concerning e-invoicing in public procurement will change or improve in the foreseeable future.

- **Proportionality principle**

The proposal complies with the proportionality principle since it does not go beyond what is necessary in order to achieve the objective of ensuring the proper functioning of the internal market.

Different policy options have been assessed in the Impact Assessment, leading to the conclusion that the preferred option is also optimal in terms of proportionality - the chosen approach would combine the strong stimulus of an obligation to ensure interoperability in e-invoicing in public procurement with a more flexible approach as to the most appropriate means of ensuring the use of e-invoicing as such.

- **Choice of instruments**

The choice of legal form for the Commission's legislative proposal is determined both by the chosen legal basis and by the content of the proposal. As mentioned previously, Article 114 TFEU is the appropriate legal basis for this proposal. In principle, this article leaves open the choice of either a directive or a regulation as the legal form of a proposal. However, since the objective of the proposal can sufficiently be achieved by imposing on the Member States an

obligation of result while leaving them the choice of form and methods, the choice of a directive is the most appropriate.

- **Transposition measures and explanatory documents**

National measures at different levels (legislative, regulatory, administrative and technical) are likely to be needed in order to transpose this Directive and to concretely enable contracting authorities and contracting entities to apply it. Only Member States can explain how these different measures transpose the Directive and how they interact each with the others. Hence, the notification of transposition measures needs to be accompanied by such explanatory documents.

4. BUDGETARY IMPLICATION

All budgetary implications linked to the development of a European standard by the appropriate European standardisation organisation are already covered by the provisions of Regulation (EU) No 1025/2012. This proposal has no additional financial impact over and beyond the resources already allocated to the standardisation actions in the current and the future Multiannual Financial Framework.

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,

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.

¹ OJ C , , p. .

² OJ C , , p. .

- (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 the semantic data model of the core electronic invoice should be developed.
- (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 of the core electronic invoice. In its request to the relevant European standardisation organisation, the Commission should require that such European standard is technologically neutral, in order to avoid any distortion of competition. Since electronic invoices may contain personal data, the Commission should also require that such European standard guarantees 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 data⁴. 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.
- (7) The European standard for the semantic data model of the core 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). It should not require 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
- (9) Contracting authorities and contracting entities should not refuse the reception of electronic invoices which comply with such common European standard on the grounds of non-compliance with other technical requirements (for example national or sector specific requirements).
- (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 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 contracts⁵], 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 sectors⁶], or Directive

³ OJ L 316, 14.11.2012, p. 12.

⁴ OJ L 281, 23.11.1995, p. 31.

⁵ OJ L 134, 30.4.2004, p. 114.

⁶ OJ L 134, 30.4.2004, p. 1.

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/EC⁷.

- (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 in terms of content (semantic), format (syntax), and transmission. Semantic interoperability implies that the precise meaning of the exchanged information is preserved and well understood in an unambiguous manner, independently of the way in which it is physically represented or transmitted.
- (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.
- (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 2010⁸ 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 enterprises⁹.
- (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 tax¹⁰. It should be ensured that the conditions for issuing and accepting electronic invoices for VAT purposes remain unaffected by any provisions in this Directive.
- (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

⁷ OJ L 216, 20.8.2009, p. 76.

⁸ OJ C 326, 3.12.2010, p. 13.

⁹ OJ L 124, 20.5.2003, p. 36.

¹⁰ OJ L 347, 11.12.2006, p. 1.

comply with the provisions of this Directive, a transposition deadline of 48 months 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.
- (20) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents¹¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Scope

This Directive shall apply to electronic invoices issued as a result of the performance of contracts awarded in accordance with Directive [replacing Directive 2004/18/EC], Directive [replacing Directive 2004/17/EC], 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 and received in any electronic format;
- (2) ‘semantic data model’ means a structured and logically interrelated set of terms and meanings that specify the content exchanged in electronic invoices;
- (3) ‘core 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;
- (4) ‘contracting authorities’ means contracting authorities as defined in Article [2] of Directive [replacing Directive 2004/18/EC];
- (5) ‘contracting entities’ means contracting entities as defined in Article [4] of Directive [replacing Directive 2004/17/EC];
- (6) ‘European standard’ means a European standard as defined in Article 2(1) of Regulation (EU) No 1025/2012.

¹¹ OJ C 369, 17.12.2011, p. 14.

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 of the core electronic invoice.

The Commission shall require that the European standard for the semantic data model of the core electronic invoice be technologically neutral, and guarantee personal data protection in accordance with Directive 95/46/EC.

The request shall be adopted in accordance with the procedure laid down in Article 10(1) to (5) of Regulation (EU) No 1025/2012.

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

Member States shall ensure that contracting authorities and contracting entities do not refuse to receive electronic invoices which comply with the European standard whose reference has been published pursuant to Article 3(2).

Article 5
Directive 2006/112/EC

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 48 months following the entry into force at the latest. 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