

**Preliminary UNICE reaction to the directive on conditions for invoicing
Council Directive 2001/115/EC**

Introduction

UNICE welcomes the directive regarding the conditions for invoicing in respect to value added tax (Council Directive 2001/115/EC of 20 December 2001, amending Directive 7713881 EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect to value added tax). The following features of the directive will make things easier for business:

- Harmonisation, at a European Union level, of obligatory details for VAT purposes on invoices;
- Introduction of European legislation regarding the sending of invoices by electronic means;
- Introduction of the possibility that invoices may be drawn up by a third party or the customer.

Harmonisation of rules

UNICE recalls its position papers of 1996 and 2001 regarding simplification of respectively invoicing and VAT. UNICE has stated in the past that there should be a minimum scope for variation of the rules by the individual Member States. However, the Directive of 20 December 2001 allows Member States (at national level) amongst other things, to:

- Impose obligations regarding when and within what time limit an invoice must be issued;
- Impose conditions regarding summary invoices;
- Determine the terms and conditions of the agreement regarding self billing;
- Determine the acceptance procedures of invoices with self billing;
- Require that in case of self billing, invoices must be issued in the name and on behalf of the taxable person;
- Require that the VAT identification number of the customer must be mentioned on the invoice;
- Require translation of invoices;
- Impose conditions regarding archiving / storing of invoices; and
- May ask that the advanced electronic signature be based on a qualified certificate and created by a secure-signature-creation device.

The scope for variation of the rules on the above matters by individual Member States implies that it is most likely that the actual benefit of the harmonisation of invoicing rules will be lost. For example, it will not be practical to produce a comprehensive computer-invoicing package to deal with all the differing requirements of the Member States. Therefore UNICE ask Member States **not** to make use of, or to use as little as possible, all the possible derogations. Besides this, UNICE asks the Commission to extend the evaluation report on electronic invoicing to invoicing in general. Furthermore, UNICE asks the Commission to evaluate this directive at the latest by 31 December 2006, in order to be able to adjust this directive to market developments and business needs.

Detailed observations on the Directive

In the “new” business models (e.g. call-off stocks at the premises of the customer) self-billing and e-invoicing are important tools of supply chain management. UNICE has studied the Council Directive with great interest. However certain paragraphs have raised some questions.

According to paragraph 3a, an invoice can be issued by a third party (the outsourcing of invoicing), however, this must be done in the name and on behalf of the taxable person (the supplier). The question arises whether this third party is obliged to use the invoice paper and or invoice format of the taxable person (supplier). If this is the case, the advantage of outsourcing is likely to disappear as a third party must have various sorts of paper and or formats of other taxable persons (suppliers). Furthermore, the question arises whether the third party should use its own sequential numbering or the sequential numbering of the taxable person (supplier(s)). If the third party is obliged to use the sequential numbering of the taxable person (supplier(s)), again the advantage of outsourcing is likely to disappear.

According to the same paragraph 3a, invoices may also be drawn up by the customer of a taxable person (self billing). Again the question arises whether the customer should use its own sequential numbering or the sequential numbering of the taxable person (supplier). In case of self billing, Member States may also require that such invoices are issued in the name and on behalf of the taxable person. Again the question arises which paper, format and sequential numbering must be used. If Member States do make use of this possibility, the feature of self billing becomes redundant and its advantages disappear.

In paragraph 3b it is mentioned that where an exemption is involved or where the customer is liable to pay the tax, reference must be made to the appropriate provision of the directive, to the corresponding national provision, or to any indication that the supply is exempt or subject to the reverse charge procedure. UNICE would like to raise the question whether a taxable person is allowed to choose between referring to the Sixth Directive or corresponding national provisions, or any indication of whether Member States are allowed to regulate this. Furthermore, UNICE assumes that in situations in which the place of supply is outside the European Union and/or outside the scope of VAT, no reference has to be made to the appropriate provision of the directive, to the corresponding national provision, or to any indication.

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