

19 September 2008

BUSINESSEUROPE'S REPLY TO THE COMMISSION CONSULTATION PAPER 'REVIEW OF EXISTING LEGISLATION ON VAT INVOICING' OF JULY 2008

BUSINESSEUROPE welcomes the opportunity to comment on the review of the EU's invoicing rules. For a more in-depth analysis of the obstacles to the use of e-invoicing in the EU, we refer to the attached position paper of 29 July 2008.

Part 1: General Questions

There is no uniform interpretation, implementation and/or application of the EU Invoicing Directive's provisions across the EU in practice. Particularly in cross-border situations, difficulties arise with regard to which Member States' invoicing rules need to be applied. Whose invoicing rules count - the ones of the jurisdiction of establishment of the supplier or the ones of the jurisdiction of the customer? Member States have different views on this and have in addition executed different options (particularly on data integrity and authenticity) offered to them by the EU Invoicing Directive.

The 3rd way mentioned in the EU Invoicing Directive - any other means to prove authenticity and data integrity+ - as an option, has been implemented in some Member States, e.g. in the UK, Netherlands, Finland, Sweden, Denmark, Spain, Czech Republic, Ireland, Lithuania, Estonia, Slovakia, Greece, Cyprus and Malta. It is important that further harmonization of rules will not imply that the 3rd way disappears but rather that the 3rd way is more uniformly applied across the EU, so that cross-border e-invoicing is better facilitated in practice through this approach.

1.1 Provisions in case countries with which no legal instrument relating to mutual assistance exists are involved should be abolished

BUSINESSEUROPE supports this recommendation as these provisions can hinder business centralization and affect the neutrality of VAT treatment.

1.2 The requirement to issue an invoice for supplies as referred to in article 33 of Directive 2006/112/EC should be abolished

This recommendation is supported by BUSINESSEUROPE. Yet, the supply should be certified for accounting purposes using other documents, such as receipts.

1.3 The option allowing Member States to require issuing an invoice to private individuals should be abolished for the same reasons.

This recommendation is supported.

1.4 A harmonised time limit for issuing invoices should be implemented, requirement to issue invoices no later than the 15th day of the month following the month in which the taxable event took place.

While it could facilitate cross-border activity, there is a risk that this recommendation imposes additional costs on domestic business . in particular in Member States where no statutory time limits exist for issuing invoices at domestic level. A longer time limit would allow both domestic and cross-border business to comply with this proposal for harmonization.

1.5 The option currently provided for in article 223 allowing Member States to impose specific conditions in case of a summary invoice should be abolished, and the general rules with respect to single invoices should be applicable.

BUSINESSEUROPE supports abolishing the option for summary invoices with a view to reach harmonized and uniform rules for both single and summary invoices.

1.7 The requirement to have a prior agreement in case of self-billing should be abolished

BUSINESSEUROPE agrees with this recommendation if this refers to prior agreement with tax authorities and not between supplier and customer. As the issuer of the invoice creates a VAT liability for the supplier, the supplier should beforehand agree on the self-billing procedure, in particular if the acceptance of the invoice should only be implicit.

1.8 The acceptance procedure in case of self-billing should only be implicit or silent

BUSINESSEUROPE agrees with this recommendation. Member States should accept both implicit and voluntary explicit agreements.

1.9 In order to inform the national authorities and the supplier that a self-bill invoice has been issued, the word 'self-bill' should be clearly stated and two boxes could be added on the VAT return

BUSINESSEUROPE is not convinced that these recommendations would reduce red tape and facilitate invoicing. Rather, the additional two boxes will add administrative costs as manual intervention might be required for companies that use both self-bill invoicing and regular invoicing for sales and purchases. Also it is not clear how this will translate into benefits for national authorities or suppliers.

1.10 A clear definition of 'sequential numbering' should be provided in order to avoid different interpretations. All other requirements mentioned in article 226 of Directive 2006/112/EC should not be changed.

BUSINESSEUROPE agrees with this recommendation provided that this does not restrict the use of current practices (e.g. self-billing) and as far as it only touches on definitions and does not require a specific numbering. It should be clarified that the "sequential number" is to be understood per supplier and EU-wide, i.e. no separate sets of sequential numbers for separate Member States. There is an additional request to explicitly indicate whether the sequential number should restart at the beginning of every calendar year or not.

1.11 Abolish the option to require for paper invoices to be stored in the Member State...

BUSINESSEUROPE strongly agrees with this recommendation as this could considerably cut red tape and would reduce compliance costs for cross-border activity. There should however be recognition by the Tax Authority that "without undue delay" does not mean "immediate", e.g. on the day of audit.

1.12 The option provided to Member States not to allow converting paper invoices into electronically archived invoices should be abolished.

BUSINESSEUROPE strongly agrees with this recommendation. We would like to add that Member States should not be allowed to demand the storage of the original paper invoices for electronically archived paper invoices.

1.13 A harmonised storage period for invoices, i.e. 7 years ...should be imposed

BUSINESSEUROPE strongly agrees with this recommendation if the storage period is not longer than the EU average and if it could be ensured that the same storage period is also applied for all other documents that are required to be stored for tax and/or account purposes. Furthermore, this period has to apply for both e-and paper invoices. Finally, a shorter period would be preferable as it would result in an incentive for Member States to conduct VAT audits in a timely manner.

**1.14 In case it is not possible to eliminate all national options for invoicing:
a) the rules of the country where the supplier is established should prevail; with the exception of self-billing where the rules of the country of establishment of the customer (issuing the self-bills) should prevail;
b) if a supplier or for self-billing the customer is not established in one of the EU Member States he has to comply with the rules of the Member States that has granted him a VAT identification number under which he makes his supply of goods or services or issues the selfbills.**

While BUSINESSEUROPE agrees with the general idea expressed under (a), there are a number of scenarios where clarification might be needed. We are happy to discuss these with the Commission further. In particular, it has to be ensured that such

a rule would have no impact on input VAT deduction in the Member State of the customer. For input VAT deduction in B2B transactions, the country of the customer has to accept the supplier invoice as valid VAT invoice.

It is not clear why a difference is made between suppliers established in and outside the EU. Why no equal treatment in such a way that the regulation "rules of the country where the supplier is established should prevail" is also applicable to non EU suppliers? Moreover the linking to the Member State that has granted the non EU supplier a VAT id number does not seem obvious (e.g. no VAT id number in case of reverse charge).

1.15 In case it is not possible to eliminate all national options for archiving:

- a) the rules of the country where the supplier or the customer is established should prevail for their respective archiving obligations;**
- b) if a supplier or a customer is not established in one of the Member States he has to comply with the rules of the Member States that has granted him a VAT identification number under which he makes his supply of goods or services.**

BUSINESSEUROPE supports point (a) of this recommendation if it means that Member States cannot impose national archiving requirements on invoices archived in other Member States. The same comments arise as under 1.14.

Part 2: E-Invoicing

2.1 Equality of treatment between paper and e-invoices

BUSINESSEUROPE strongly agrees with this recommendation. E-Invoices should be treated in the same way as paper invoices, as they have the same function in business practice. Just like paper invoices, they sit on top of other legally binding documents (e.g. contracts, purchase orders, etc.) and are used by suppliers to request payment from their customers for the transactions they supply to them on the basis of underlying contractual agreements. In addition to the payment function, e-invoices, just like paper invoices, have an evidence function to play for accounting and tax purposes.

2.2 Guaranteeing the authenticity of origin and the integrity of content of an e-invoice should remain as a general principle to be observed

BUSINESSEUROPE disagrees if this means that the way the authenticity and integrity of e-invoices has to be guaranteed, is more demanding than for paper invoices. The question rises if the general principle is compatible with the concept of equal treatment as mentioned under a. More room should be provided to enterprises to prove that these requirements are controlled through internal processes. The obligation for electronic signature should be abolished.

2.3 An agreement, either implicit or explicit, between the supplier and customer.

BUSINESSEUROPE agrees with this recommendation. While we believe that no (additional) formal requirements should be asked for the use of e-invoicing, supplier and customer should agree on measures to ensure the correctness of e-invoices, e.g. order-to-cash procedures etc.

We support the work of the Expert Group on the option of an ~~EEI~~ Model Agreement. Such an agreement between two trading parties (also SME's) should be accepted in every Member State for VAT purposes (also regarding "authenticity" and "integrity"). Although the EEI Model Agreement has yet to be drafted, it could be a major step forward and could lead to an improvement in the use of e-invoicing within a shorter time than the revision of the Invoicing Directive.

Part 3: Further Recommendations

These recommendations are based on the attached position paper of 29 July 2008 and were extended during the consultation.

In the short term, BUSINESSEUROPE recommends the following steps to encourage the use of e-invoicing, which can bring substantial savings in administrative handling both for tax administrations and for business:

- Review and clarification of the various options in the Directive and their practical consequences when striving to assure authenticity and integrity of the e-invoice. For example, why does a closed inter-company invoicing system (which is only used for billing between affiliated parties) require an electronic signature or a monthly summary paper invoice?
- Start to drive change of negative mind-set towards e-invoicing which authorities and administrations across Europe very often have. In particular, remove the wrong perception that e-invoicing will create more fraud than paper invoicing. Some tax authorities have no or little experience with the concept of e-invoicing and are therefore reluctant to give their approval. Exchange of knowledge and experience between local tax authorities is crucial in this respect.
- Share best practices, e.g. further promote the 3rd way. If there is trust between the parties doing business and appropriate internal control systems in place, the authorities should, after having reviewed the e-invoicing process of the supplier and customer, let them do business their way if data integrity and authenticity is met. Uniform application of the 3rd way across the EU is key, especially to facilitate cross-border e-invoicing.
- Standardization of the format of the electronic signature as such, enabling technical interoperability without the need for a large network of middle-men.
- Mutual recognition of Certification Authorities (CA) across the EU, making it possible to use certificates from only one CA for all e-invoices within the EU.
- A better and more widely understood definition of EDI needs to be ensured across the EU. EDI has a wider definition and does not just mean Edifact (the industry standard) but includes any such closed system. Therefore e.g. Intercompany Billing Systems which Multinationals often use to bill their affiliates (closed

systems) are also covered by the EDI definition and this needs to be recognized as such especially by those Member States which only allow the electronic signature and EDI as options but not the third way.

- Acceptance of "paper"-invoices sent via e-mail (e.g. in pdf-format) without electronic signature. The simplicity thereof would especially cater for SME's.
- Standardization of the archiving rules and process across the EU.
- Data-base owned and managed by the Commission, where anyone interested can find detailed and up-to-date information about the different e-invoicing related rules in all the EU Member states and their application in practice.
- The supplier should always be allowed to issue a rectifying invoice (facture rectificative) even in case of self-billing. It should not be allowed to refuse VAT refunds retroactively because of formal invoicing mistakes if the timely payment of VAT can be proven and the invoices be corrected or completed ex-post.
- E-invoices should be accepted for refunding VAT according to 8th and 13th VAT Directive.
- Invoice requirements between associated enterprises should be further simplified.
- The requirements of a revised Art. 226 Directive 2006/112/EC shall define the maximum requirements, i.e. Member States shall not be allowed to ask for more requirements, in particular no expression of the VAT amounts in words. Furthermore, Member States shall accept invoices in English, regardless of their national language.
- Introduce a uniform reference on the invoice in case of e.g. reverse charge and exemption (Art. 226, Directive 2006/112/EC)

In the long term, the objective of the revision should be to put e-invoicing and paper invoicing on an equal footing. The strict requirements on e-invoicing regarding authenticity and data integrity need to be eased, given that business internal control procedures are in place and it can be demonstrated that data integrity and authenticity is met through internal processes and processes between the parties who use e-invoicing (supplier and customer). This is the only way to create a level playing field between e-invoices and paper invoices across Europe and to allow for substantial compliance savings.