

European Multistakeholder Forum on Electronic Invoicing

**INTERIM REPORT**

ACTIVITY 3

“Solutions for Remaining Cross-Border Issues”

v04  
26-09-2012

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## A. Executive Summary

Evaluating the raised questions on cross-border issues and the implementation of the new VAT Directive Activity 3 has concluded:

1. There has not been a specific legal or regulatory issue identified by National eInvoice Fora which stops or blocks cross-border electronic invoicing, i.e. intra-community invoicing.
2. The issues identified by National eInvoice Fora express that different legal systems in the different European Member States, in particular as regards archiving and accounting, data protection and electronic signatures bring additional complexity into electronic invoicing and the related business processes.
3. Electronic invoicing must be embedded in the broad concept of digital business and document processes; accounting and bookkeeping is an area, which needs to be looked at in more detail.
4. Initiatives which have already been started e.g. in the area of data protection and electronic signatures and electronic identity by the EU Commission and the Member States should integrate the perspective of electronic invoicing as part of general electronic business processes.
5. The VAT implementation is not advanced enough in order to give a final or preliminary conclusion yet; monitoring by the Forum Activity 3 should continue.

## B. Work Plan Activity 3

### 1. Definition

Following the suggestions of the work plan of the EU Forum Activity 3 should identify, analyse and recommend policy options and initiatives to solve remaining **cross-border** barriers to the exchange of e-invoices.

Suggestions of specific topics should be addressed:

- Difficulties in the transposition of the revised VAT Directive. The Forum's representatives should raise issues identified by their National Fora and business community; and
- Other legal or regulatory obstacles (outside VAT), which prevent the uptake of eInvoicing.

Recommendations for the resolution of the identified issues should be delivered in September 2012.

### 2. Challenges

Although Activity 3 looks like a simple data collection process, this activity had to face two major challenges:

- Other legal issues which prevent the uptake of eInvoicing have been difficult to be identified in the past, mainly because electronic invoicing processes have not been used widely enough in order to get visibility of legal issues; and
- A meaningful data collection on the transposition of the new VAT rules can only happen in 2013, when the new Directive is expected to come into effect in all of the EU member states.

### 3. Tasks

Taking into account the above mentioned challenges the following main tasks were identified:

- a) Identify legal and regulatory issues that prevent the uptake of electronic invoicing in and between the Member States, if any. The Group will distribute a consultation document to identify the remaining legal issues (outside VAT). The consultation document will be sent to all members of the MSF representing national Fora or European user associations.<sup>1</sup>

Additionally and on an on-going base, the identified contacts (and user associations in particular) will have the possibility to raise their concerns and identify issues as regards other legal barriers that prevent the uptake of electronic invoicing.

- b) Monitor status of VAT legislation in the Member States:

The following 3 categories can be distinguished:

- a. Member States which have already implemented the rules for e-invoicing under the current VAT Directive which are consistent with the rules as from 2013, e.g. Poland and Germany;
- b. Member States which have legislation which will require little change as from 2013, e.g. Finland; and

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<sup>1</sup> See Annex 1

- c. Member States which can be expected to start their national discussions and legislative processes during 2012.

In a first step, the members of the MSF representing national Fora classified their resp. Member State in terms of the above three categories.

In a second step, a questionnaire was prepared, targeting the Member States in the first two categories and European user associations, enquiring on the new national VAT legislation and how these rules have been or are to be transposed (Member State perspective) and implemented (user perspective).

Additionally and on an on-going base, the identified contacts (and user associations in particular) have the possibility to raise their concerns and identify issues as regards the new rules on VAT.

#### **4. Project planning and milestones**

A first discussion on the identified problems (VAT issues and other legal barriers) took place during the second meeting of the EU Forum (6<sup>th</sup> March 2012). Recommendations for the resolution of these issues should be delivered on 25<sup>th</sup> September 2012.

In order to reach these target dates the following steps were taken:

- November/December 2011: kick off and first round of collecting information;
- January/February 2012: second round of collecting information;
- 6<sup>th</sup> March 2012: first assessment on legal and regulatory issues;
- May/June 2012: in depth discussion and on-going data collection;
- July/August: preparation of interim recommendation and more comprehensive overview on legal issues;
- 26<sup>th</sup> September 2012: First Interim Report to MSF

## C. Interim Report

### 1. Overview

Results of Activity 3 have been captured via the Activity 3 Survey<sup>2</sup> – both as regards remaining cross order issues with electronic invoicing as well as with the implementation of the new VAT Directive on invoicing, Directive 2010/45.<sup>3</sup>

The members of Activity 3 and National Fora for Electronic Invoicing supported the collection of information via the Survey:

- As regards the collection of remaining cross-border issues, Activity 3 has received responses from 18 Member States and has collected them in a detailed overview. This overview is attached to this Interim Report as Annex 3.
- As regards the status of the implementation of the VAT Directive on Invoicing, Activity 3 has received responses from 18 Member States outlining the status of their national implementations. An overview is attached to this Interim Report as Annex 3.

Activity 3 has also received detailed documentation from Sweden and Spain, which was taken into account in the evaluation of the issues at stake.<sup>4</sup> Activity 3 took into due consideration the Explanatory Notes of DG Taxud<sup>5</sup> and the information in the preparatory study of the EU Commission in 2009<sup>6</sup> on legal obstacles on the old VAT Directive.

The Final Report of the EU Expert Group on Electronic Invoicing listed already a list of questions<sup>7</sup>. The Expert Group has examined other legal and regulatory issues relating to e-Invoicing beyond VAT and has stated that<sup>8</sup>

“...in terms of legal reality, the invoice whether on paper or in electronic format, is an important document in a set of documents related to a transaction. It holds references relating to the customer, products and services delivered; it must be archived together with other supporting documentation (contracts, purchase order, shipping document etc.) and presented to auditors to support balance sheet entries and provides an internal record of transactions. The invoice is integrated in business operations and the underlying processes.”

Taking this broader perspective of the legal relevance of the invoice, the Expert Group has considered in particular archiving, accounting, legal evidence of invoices and customs regulations in the European Union and listed examples of existing issues:

- Different archiving rules based on local accounting, commercial and general tax laws (archiving methods and accessibility requirements, place of storage, time of storage), lead to additional complexity for cross-border business.
- Local accounting and commercial law lead to different requirements for invoice content in different Member States.

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<sup>2</sup> See Annex 1 and 4

<sup>3</sup> [http://ec.europa.eu/taxation\\_customs/taxation/vat/traders/invoicing\\_rules/index\\_en.htm#second](http://ec.europa.eu/taxation_customs/taxation/vat/traders/invoicing_rules/index_en.htm#second)

<sup>4</sup> See Annex 4 for a list of documents.

<sup>5</sup> [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/traders/invoicing\\_rules/explanatory\\_notes\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/traders/invoicing_rules/explanatory_notes_en.pdf)

<sup>6</sup> [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/traders/invoicing\\_rules/phase\\_4\\_final\\_report\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/traders/invoicing_rules/phase_4_final_report_en.pdf)

<sup>7</sup> [http://ec.europa.eu/internal\\_market/consultations/docs/2009/e-invoicing/report\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2009/e-invoicing/report_en.pdf)

<sup>8</sup> Report E-Invoice Expert Group, p. 34; see also: [http://ec.europa.eu/enterprise/sectors/ict/e-invoicing/benefits/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/ict/e-invoicing/benefits/index_en.htm)

- Differing accounting requirements making it difficult to maintain the same accounting system for enterprises established in multiple Member States leading to unnecessary administrative burden.
- Different audit practices by tax administration across the EU lead to national adaptations of audit processes in enterprises established in different Member States.
- Customs regulation: paper invoices must accompany imports of goods; therefore electronic invoices are not accepted.
- Legal evidence of invoices in court procedures may require paper invoices or in case of electronic invoices may require electronic signatures.

## 2. Detailed list of issues identified by National eInvoicing Fora

The following issues have been mentioned by National eInvoice Fora to Activity 3; the list does not give any preference to any of the issues, but follows the order of the responses, details can be found in Annex 3:

- Uncertainty regarding archiving of electronic documents;
- Lack of regulation or rules of digital signature for encryption used in public area;
- Rules on storage of data outside national borders, e.g. The Act on Processing and storage of Personal Data;
- Archiving practices and requirements in other EU countries;
- Adapting to accounting rules in other MS;
- Different requirements on electronic signatures on E-invoices;
- Different E-invoices storage requirements;
- Missing mechanisms for tax authorities suitable to allow them to access E-invoices data bases in other countries;
- EU-wide implementation of the ETSI developed REM (TS 102 640)<sup>9</sup> that would ensure integrity and authenticity of the exchanged invoices;
- The business controls should be appropriate to the size, activity and type of taxable person and should take account of the number and value of transactions as well as the number and type of suppliers and customers;
- Possibility that two business partners implement different business controls span is very high, in particular when Large Enterprises make business with SMEs;
- There are still some issues relating to archiving that must be taken into consideration, e.g. what information shall be archived and by what party?
- If the invoice in a four corner model is converted into new formats: will the receiver get the same information as was sent?
- If an invoice contains personal identifiable information data protection regulations must be taken into account;
- If the invoice will be "opened" and converted by a third party provider: how can we protect the personal identifiable information?
- When implementing an invoice portal, the regulation regarding cookies, stipulating a requirement of informed consent, must be taken into account;
- Business entities exchanging e-invoices must comply with both fiscal and accounting legislation;
- Directive 2010/45/EU Article 233 refers to "any business controls" as a way of ensuring the authenticity of origin, the integrity of content and legibility of e-invoices but the legislation regarding business controls is still national;

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<sup>9</sup> ETSI TS 102 640-4: Electronic Signatures and Infrastructure:  
[http://www.etsi.org/deliver/etsi\\_ts/102600\\_102699/10264004/02.01.01\\_60/ts\\_10264004v020101p.pdf](http://www.etsi.org/deliver/etsi_ts/102600_102699/10264004/02.01.01_60/ts_10264004v020101p.pdf)

- the fact that an e-invoice is tax compliant does not necessarily imply that the e-invoice is compliant to national accounting legislation;
- as long as the legislation is not harmonized from both an accounting and a fiscal perspective there is a risk that the member states will diverge in their view of e-invoicing;
- Although using electronic signatures is not mandatory by law there will probably be companies using it; cross border might cause a problem when a party does not have the knowledge about the required signature;
- Uncertainty about the responsibility between business parties and regarding cross border: what law is applicable is not always clear;
- Legal definition and approach to e-signature, data archiving, data protection or compatibility of relevant document formats.

### 3. Evaluation of cross-border issues

Activity 3 has attempted to evaluate and classify the above listed responses, taking into account additional documentation provided by National eInvoice Fora<sup>10</sup>.

Although not all National Fora provided responses and not all responses have been detailed enough in order to assess them adequately<sup>11</sup>, four main specific areas of concern have been addressed explicitly in most of the responses received: archiving and accounting, personal data protection, electronic signatures and definition of “business controls” for VAT invoices.

#### 3.1. Archiving and Accounting

The responses have indicated that the rules on storage of data outside national borders differ, that archiving practices and accounting rules in other EU Member States are not transparent and that there is legal uncertainty on archiving and what rules apply in a multi-jurisdiction business. This is in line with the observations of the Expert Group.

One of the main reported issues of archiving and accounting is e.g. the requirement to retain a copy of all relevant bookkeeping records (invoices, reconciliations, bank statements and other entries including the complete audit trails) in the member state of establishment. Member States require the companies to retain a copy of all the relevant bookkeeping records in their own member state due to the fact, that the national authorities investigating fraud are not able to perform the investigation in another Member State and that the procedures in place to enable cooperation between the authorities are not appropriate.

Another reported issue for larger businesses is – in order to remain competitive - to centralize bookkeeping departments, for instance by specializing in handling all the invoice flow for a European business in one, European shared service centre in one location.

It is clear that these issues go well beyond the scope of electronic invoicing as such, but they point to a set of questions where invoicing as such is embedded in, such as:

- What national rules on bookkeeping need to be followed?
- Are these rules embedded in tax legislation and/or in other legislations?
- Are there specific rules on electronic document handling in a business?

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<sup>10</sup> See Annex 3.

<sup>11</sup> Activity 3 continues to collect more details, and the survey is still open.



- Is there any principle on electronic handling of business documents?
- Which jurisdiction is dominating in case of multiple business locations?
- Where and how will audits and controls be executed?

It is also clear that this issue does not refer to “accounting” in a strict sense being the international accepted set of accounting or annual business reporting rules, e.g. in the European Union<sup>12</sup>, but rather to the recording, reporting and analysis of business transactions, in order to document and assess all day-to-day business activities, in short all day-to-day processes which leads to a document-management in every company.

Whereas each International Accounting Standard (IAS) and International Financial Reporting Standard (IFRS) as well as related interpretations (SIC/IFRIC) are adopted by the EU in the form of regulations<sup>13</sup>, there is no set of European wide accepted bookkeeping principles. All principles and rules are based on national legislation (tax, archiving rules, or business document handling etc.) or administrative guidance on a national level. Some of them are written down<sup>14</sup>, but many are not written down at all.

In the normal course of business, a document is produced each time a transaction occurs; sales and purchases usually have invoices or receipts; deposit slips are produced when lodgements (deposits) are made to a bank account; cheques are written to pay money out of the account. Bookkeeping involves, first of all, recording the details of all of these source documents into multi-column journals (also known as a books of first entry or daybooks). For example, all credit sales are recorded in the sales journal; all cash payments are recorded in the cash payments journal. Each column in a journal normally corresponds to an account. In the single entry system, each transaction is recorded only once. Most individuals who balance their chequebook each month are using such a system, and most personal finance software follows this approach. It is assumed that still part of the bookkeeping is based on paper documents rather than electronic documents.

Taking into account that bookkeeping rules are mandatory in all EU Member States the information and compliance to these rules is vital for all companies in Europe and has a highly practical influence on all business, be it large businesses or SME.

There is one additional aspect which needs to be looked at: More and more electronic formats and documents are to be handled and managed in businesses, and in some processes the paper format is not used any more at all:

- Accounting rules demand in most of the EU Members States annual electronic accounts in a specific format (e.g. XBRL); and
- More and more businesses have started to move to electronic document handling (via scanning paper, sending and/or receiving electronic invoices etc.).

The more businesses are moving into the digital document management the more common rules on business document handling are required, in order to avoid that national rules e.g. on document management, archiving etc. lead to a divergent business environment in the EU.

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<sup>12</sup> Information on IAS accounting principles: [http://ec.europa.eu/internal\\_market/accounting/legal\\_framework/index\\_en.htm](http://ec.europa.eu/internal_market/accounting/legal_framework/index_en.htm)

<sup>13</sup> e.g. Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council

<sup>14</sup> E.g. Germany “Grundsätze ordnungsgemäßer Buchführung”

**Recommendations:**

**Activity 3 recommends to Member States that accounting and bookkeeping rules must be adapted to the requirements of a digital economy in Europe.**

**Activity 3 recommends to the European Commission that accounting and bookkeeping be addressed as key areas where administrative burdens for companies within the Union must be further reduced in order to allow a simple and European wide acceptable process.**

**Activity 3 recommends to Member States and the European Commission that this can be done by improving the transparency of bookkeeping rules in the EU Member States and recommends to the Member States and the European Commission to define a common set of bookkeeping principles for electronic business transactions.**

### 3.2. Protection of Personal Data

The responses from the Activity 3 Survey have indicated that there is a need to look at the protection of personal data in case electronic invoices are exchanged and contain personal data; this relates e.g. to the usage of cookies and web-portals for electronic invoices as well as to the involvement of service providers; the responses also indicate that a planned change of the European data protection Directive could lead to more obligations of the remitters of electronic invoices.

If an electronic invoice contains personal data as defined in the Data Protection Directive and the national legislations on data protection<sup>15</sup>, e.g. by stating the name, address or personal identity number of a natural person, the requirements on processing of personal data set out in the Directive must be taken into consideration. This can also be relevant in case service provider for electronic invoicing are used on the sender or the receiver side. The Model interoperability Agreement developed by CEN<sup>16</sup> and accepted by the European E-Invoice Service Provider Association<sup>17</sup> is referencing the data protection directive.

The processing of personal data is only allowed if the registered person has given his/her consent to the processing, or if the processing is necessary in order

- to enable the performance of a contract with the registered person or to enable measures that the registered person has requested to be taken before a contract is entered into;
  - that the data controller should be able to comply with a legal obligation;
  - that the vital interests of the registered person should be protected;
  - that a work task of public interest should be performed;
  - that the controller of personal data or a third party to whom the personal data is provided should be able to perform a work task in conjunction with the exercise of official authority;
- or
- that a purpose that concerns a legitimate interest of the controller of personal data or of such a third party to whom personal data is provided should be able to be satisfied, if this

<sup>15</sup> [http://ec.europa.eu/justice/data-protection/law/index\\_en.htm](http://ec.europa.eu/justice/data-protection/law/index_en.htm)

<sup>16</sup> <ftp://ftp.cen.eu/cen/Sectors/List/ICT/CWAs/eInv3CWA1.pdf>

<sup>17</sup> [http://www.eespa.eu/sites/default/files/EESPA-Information%20Release%202020120608\\_0.pdf](http://www.eespa.eu/sites/default/files/EESPA-Information%20Release%202020120608_0.pdf)

interest is of greater weight than the interest of the registered person in protection against violation of personal integrity.

Accordingly, electronic invoices may only contain personal data provided that the registered person has given his/her consent, or that a condition mentioned in the sections above is fulfilled.

This may constitute a challenge in relation to certain use of electronic invoicing. For example, in a B2B-situation in which the invoice remitter details a physical person as reference person on the invoices to its customer company, the invoice remitter has not entered into an agreement with the reference person itself but with the customer company, and will therefore either have to attain the registered person's individual consent to register and use his/her name before doing so, or be able to prove that its legitimate interest is of greater weight than the interest of the registered person in protection against violation of personal integrity.

In January 2012, the EU Commission proposed a comprehensive reform of the EU 1995 data protection rules serving as a basis of current national data protection rules in the EU Member States<sup>18</sup>. The proposed regulation sharpens the demands on data processing entities in a number of ways, thereby potentially increasing the burden on any remitter of electronic invoices containing personal data.

As a few examples, the following additional rights of the data subject, and demands on data processing entities, can be mentioned:

- Additional requirements on the information which shall automatically be provided to the data subject (cf. Article 14 of the draft regulation);
- Additional requirements on the information which upon request shall be provided to the data subject (cf. Article 15 of the draft regulation);
- A right for the data subject to be forgotten and to erasure (cf. Article 17 in conjunction with Article 19 of the draft regulation).
- An obligation of the data controller to implement measures which, by default, ensure that only those personal data are processed which are necessary for each specific purpose of the processing and in particular are not collected or retained beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage (cf. Article 23 of the draft regulation);
- An obligation of every data controller and data processor employing more than 250 persons to maintain documentation of all processing operations under its responsibilities, including minimum standards on such documentation and an obligation to make such documentation available to the supervisory authority upon request (cf. Article 28 of the draft regulation);
- Obligations of the data controller to notify personal data breaches to the supervisory authority and to the data subjects (cf. Articles 31-32 of the draft regulation); and
- Of particular interest for electronic invoicing is the right for the data subject to be forgotten and to erasure under Article 17 in the draft regulation.

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<sup>18</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM(2012) 11 final); [http://ec.europa.eu/justice/data-protection/document/review2012/com\\_2012\\_11\\_en.pdf](http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf)

The proposed regulation may create obligations for the processing of electronic invoices to the extent that a remitter of electronic invoices would need to keep sufficient routines in place to be able to establish that the data are no longer necessary with regards to the purpose for which they were.

**Recommendations:**

**Activity 3 recommends to the Member States and the European Commission that the protection of personal data must be guaranteed at any stage of electronic invoicing. If necessary there should be clarifications published as regards the processing of personal data in electronic invoicing processes.**

**Activity 3 recommends to the Member States that they should provide appropriate solutions to be integrated into the new proposed Regulation on Protection of Personal Data in order not to restrict electronic invoicing.**

**Activity 3 recommends to CEN and the European Association of e-invoicing service providers (EESPA) that the Model Interoperability Agreement as developed by CEN and EESPA should deal with the specific aspects of protection of personal data in more detail.**

### 3.3. Electronic signatures

The responses have indicated that the use of electronic signatures should be harmonized in EU and that the transparency on accepted electronic signatures must be progressed through EU actions.

In its communication from 2 December 2010 COM (2010)712 final<sup>19</sup> the European Commission summarizes that some e-invoicing solutions make use of electronic signatures, and that the diversity of legal requirements among EUROPEAN Member States have led to cross-border interoperability problems which contributed to slow down the uptake of cross-border e-invoicing solutions insofar they make use of electronic signature solutions. The Commission demands for a more coordinated and comprehensive approach and therefore suggested – in the framework of the Digital Agenda - to revise the current Directive 1999/93/EC.

This activity has already started and the European Commission made some progress by issuing the “Trusted Lists” and by initiating a revision of the Directive 1999/93/EC.

On 16 October 2009 the European Commission adopted a Decision setting out measures facilitating the use of procedures by electronic means through the ‘points of single contact’ under the Services Directive. One of the measures adopted by the Decision consisted in the obligation for Member States to establish and publish by 28. 12.2009 their Trusted List of supervised/accredited certification service providers issuing qualified certificates to the public. The objective of this obligation is to enhance cross-border use of electronic signatures by increasing trust in electronic signatures originating from other Member States. The Decision was updated several times since 16.10.2009; the last amendment was made on 28.7.2010. The consolidated version is available for information.<sup>20</sup>

The “EU Trusted Lists” benefits above all to the verification of advanced e-signatures supported by qualified certificates in the meaning of the e-signature directive (1999/93/EC) as far as they have to

<sup>19</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0712:EN:NOT>

<sup>20</sup> [https://ec.europa.eu/information\\_society/policy/esignature/trusted-list/tl-hr.pdf](https://ec.europa.eu/information_society/policy/esignature/trusted-list/tl-hr.pdf)

include at least certification service providers issuing qualified certificates. Member States can however include in their Trusted Lists also other certification service providers.

In order to validate advanced e-signatures supported by qualified certificates, a receiving party would first need to check their trustworthiness. This means that the receiving party has to be able to verify whether the signature is an advanced electronic signature supported by a qualified certificate issued by a supervised certification service provider as required by Article 3.3 of the e-signatures directive. The receiving party may also need to verify whether a secure signature creation device supports the signature.

Although the information necessary to verify these signatures should in principle be retrievable from the signature itself and from the content of the qualified certificate supporting it, this process can be rather difficult due to the differences in the use of existing standards and practices. The publicly available Trusted Lists makes it much easier for signature recipients to verify the e-signatures by complementing the data that can be retrieved from the e-signature and the qualified certificate and by providing also information on the supervised/ accredited status of Member States' certification service providers and their services.

Member States had to establish and publish their "Trusted Lists" by 28.12.2009 at least in a "human readable" form but were free to produce also a "machine processable" form which allowed for automated information retrieval. The "Trusted Lists" had to be made available by all Member States, including those who have no certification service providers issuing qualified certificates; the fact that a national "Trusted List" is empty will then indicate the absence of certification service providers issuing qualified certificates.

In order to allow access to the trusted lists of all Member States in an easy manner, the European Commission has published a central list with links to national "Trusted Lists". The Directorate General for Informatics under the IDABC-programme has created this central list in close collaboration with Directorates-General Internal Market and Services and Information Society and Media.

Furthermore the Commission has initiated a revision of the Electronic Signature Directive from 1999.

The proposal for a Regulation "on electronic identification and trust services for electronic transactions in the internal market" was adopted by the Commission on 4th June 2012. The proposal will now go through the ordinary legislative procedure for its adoption by co-decision of the European Parliament and the Council.<sup>21</sup>

The new framework for electronic identification and electronic trust services will ensure mutual recognition and acceptance of electronic identification across borders, and give legal effect and mutual recognition to trust services including enhancing current rules on e-signatures and providing a legal framework for electronic seals, electronic time stamping, electronic documents, qualified electronic delivery service and website authentication.

This proposal represents the first milestone in the implementation of the objectives of the Legislation Team (eIDAS) Task Force set up by the Commission in order to deliver a predictable regulatory environment for electronic identification and trust services for electronic transactions in the internal market to boost the user convenience, trust and confidence in the digital world.

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<sup>21</sup> [http://ec.europa.eu/information\\_society/policy/esignature/eu\\_legislation/regulation/index\\_en.htm](http://ec.europa.eu/information_society/policy/esignature/eu_legislation/regulation/index_en.htm)

**Recommendations**

**Activity 3 recommends that the European Commission should integrate electronic business processes like electronic invoicing into their initiatives on “Trusted Lists” and the revision of the Directive 1999/93.**

**Activity 3 recommends to the European Commission and the Member States in particular integrating the issue of interoperability of public eIDs into the on-going activities with a view to make public authentication system in the EU Member States accessible for all businesses.**

**Activity 3 recommends to the European Commission and national e-invoicing Fora that this information should be made easily accessible, e.g. on the relevant e-invoicing websites on the European level and the national eInvoice Fora level.**

**3.4. Definition of “Business controls”**

The responses have indicated that national legislation will clarify what business controls will mean.

One of the key definitions is certainly “Business controls” in Article 233 (1), second subparagraph:

“Each taxable person shall determine the way to ensure the authenticity of the origin, the integrity of the content and the legibility of the invoice. This may be achieved by any business controls which create a reliable audit trail between an invoice and a supply of goods or services.”

The Explanatory Notes of DG Taxud<sup>22</sup> have been drafted as practical and informal guidance how the Invoicing Directive as EU Law is to be applied on the basis of the views of DG TAXUD. They do not represent the views of the Commission nor is the Commission bound by any of the views expressed. Nevertheless they can give some guidance insofar as e.g. key definitions of the Invoicing Directive can be understood.

From a legal perspective, the national legislation will give more details as how the concept will be implemented in national tax legislation. Apart from the legal text it will be more important how this concept is translated in tax reality, e.g. via administrative guidance or technical notes of the tax administrations.

Only one guidance document has been published until now (Germany).<sup>23</sup> On page 3 it reads:

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<sup>22</sup> [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/traders/invoicing\\_rules/explanatory\\_notes\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/traders/invoicing_rules/explanatory_notes_en.pdf)

<sup>23</sup> Published on 2<sup>nd</sup> July 2012, only in available in German language

Ein innerbetriebliches Kontrollverfahren erfüllt die Anforderungen des § 14 Absatz 1 UStG n. F., wenn es einen verlässlichen Prüfpfad gibt, durch den ein Zusammenhang zwischen der Rechnung und der zugrunde liegenden Leistung hergestellt werden kann. Dies kann im Rahmen eines entsprechend eingerichteten Rechnungswesens erfolgen, aber z. B. auch durch einen manuellen Abgleich der Rechnung mit vorhandenen geschäftlichen Unterlagen (z. B. Kopie der Bestellung, Auftrag, Kaufvertrag, Lieferschein, Überweisungs- oder Zahlungsbeleg). Es werden keine technischen Verfahren vorgegeben, die die Unternehmen verwenden müssen. Das innerbetriebliche Kontrollverfahren unterliegt keiner gesonderten Dokumentationspflicht. Allerdings ist der Steuerpflichtige nach wie vor verpflichtet, die Voraussetzungen des geltend gemachten Vorsteuerabzugs nachzuweisen.

It will be important to collect further documentation on administrative guidance and tax practice in the next few months in order to see if these are matching or divergent guidance.

The Forum itself should do this but in the mid-term there should be an accessible database in Europe.

#### **4. Evaluation of raised VAT legislation**

The second Directive on VAT invoicing (“Invoicing Directive”) was adopted on 13 July 2010 and Member States as from 1 January 2013 shall apply its provisions. It aims to promote and further simplify invoicing rules by removing existing burdens and barriers. It establishes equal treatment between paper and electronic invoices without increasing the administrative burden on paper invoices and has the aim to promote the uptake of electronic invoicing by allowing freedom of choice regarding the invoicing method.

For a clear understanding of the main VAT invoicing rule changes as from 1 January 2013 a set of Explanatory Notes has been written in 21 languages.

It is expected that in the next few months the other Member States will follow and implement the second Directive on VAT invoicing. It can be expected that by beginning of 2013 the new VAT invoicing legislation will be in place and offer the same rules for electronic invoicing in all EU Member States.

At the time of drafting this interim report, three Member States (Germany, The Netherlands and Poland) had implemented the new VAT rules; a few Members States have started to review their national tax legislation (e. France, Italy, Spain and UK).

It will be important to collect further documentation on the legislation in in the next few months in order to see if these are matching or divergent to the Invoicing Directive.

The Forum itself should do this but in the mid-term there should be an accessible database in Europe.<sup>24</sup>

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<sup>24</sup> See also above Section 3.4.

## D. Summary of Recommendations

As regards possible solutions Activity 3 also considered the existing documents, in particular from DG Taxud and from a few national tax authorities as far as available:

- More clarity is needed on EU level and national level; e.g. websites and guidance documents;
- Not only on VAT issues but also on legislations as regards archiving and accounting
- The use of the explanatory notes provided by DG TAXUD should be encouraged by national Fora and national associations as guidance;
- Continue to monitor VAT legislation and continue to monitor issues identified; simplify access to legal information;
- There should be a European wide network of national websites, supported by National Fora; and
- Create a “European Knowledge Base on Electronic Invoicing” in Europe (e.g. similar to the CEN e-invoicing Gateway<sup>25</sup>).

In summary Activity 3 has concluded the following recommendations:

1. Activity 3 recommends to Member States that accounting and bookkeeping rules must be adapted to the requirements of a digital economy in Europe.
2. Activity 3 recommends to the European Commission that accounting and bookkeeping are addressed as key areas where administrative burdens for companies within the Union must be further reduced in order to allow a simple and European wide acceptable process.
3. Activity 3 recommends to Member States and the European Commission that this can be done by improving the transparency of bookkeeping rules in the EU Member States and recommends to the Member States and the European Commission to define a common set of bookkeeping principles for electronic business transactions.
4. Activity 3 recommends to the Member States and the European Commission that the protection of personal data must be guaranteed at any stage of electronic invoicing. If necessary there should be clarifications published as regards the processing of personal data in electronic invoicing processes.
5. Activity 3 recommends to the Member States that they should provide appropriate solutions to be integrated into the new proposed Regulation on Protection of Personal Data in order not to restrict electronic invoicing.
6. Activity 3 recommends to CEN and the European Association of e-invoicing service providers (EESPA) that the Model Interoperability Agreement as developed by CEN and EESPA should deal with the specific aspects of protection of personal data in more detail.
7. Activity 3 recommends that the European Commission should integrate electronic business processes like electronic invoicing into their initiatives on “Trusted Lists” and the revision of the Directive 1999/93.
8. Activity 3 recommends to the European Commission and the Member States in particular integrating the issue of interoperability of public eIDs into the on-going activities with a view to make public authentication system in the EU Member States accessible for all businesses.

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<sup>25</sup> <http://www.e-invoice-gateway.net/>



9. Activity 3 recommends to the European Commission and national e-invoicing Fora that this information should be made easily accessible, e.g. on the relevant eInvoicing websites on the European level and the national eInvoice Fora level.
10. Activity 3 recommends to the European Commission to create a “European Knowledge Base on Electronic Invoicing” in Europe (e.g. similar to the CEN e-invoicing Gateway).

**E. ANNEXES****1. Activity 3 Survey****Question 1:**

Have you or your national forum identified any legal issues outside VAT which hinder electronic invoices, in particular across borders?

- No
- Yes (Please list the specific issues identified and describe them in very concise terms)
- Are you aware of any report or communication of the business community (irrespective of whether it identifies those issues)?
- No
- Yes (Please point us to those reports/communications)

**Question 2:**

In which category do you classify your country as regards the transposition of the new rules?

- Member State which has already implemented new rules for e-invoicing under the new Directive, and has identified any legal issues outside VAT which hinder (or has issued draft legislation), which are consistent with the Directive as from 2013;
- Member State with existing legislation which will require no or little change as regards the transposition of the new rules;
- Member State which will start transposition and legislative processes in 2012

## **2. Team Members**

(Present list of members of Activity 3 - see Website of EU Multistakeholderforum)

### **3. List of Reports and Documents Provided**

- Sweden: "eInvoicing in cross-border trade", Komerskollegium/National Board of Trade, 2010
- Spain: "Consultation Response to the Final Report of the EU Expert Group on Electronic Invoicing", Centro de Cooperacion Interbancaria, 2010
- Sweden: Memo on data protection issues with electronic invoices
- Spain: Memo on data protection issues with electronic invoices
- Germany: Administrative Guidance on Electronic Invoicing 2012
- Spain: Standard architecture of receipt of electronic invoices in general administration



#### **4. Overview on Responses Received**

RESULTS OF ACTIVITY 3 – EU MSF 2012

RESPONSES RECEIVED AS OF 14<sup>th</sup> SEPTEMBER 2012:

1. BELGIUM
2. GERMANY
3. POLAND
4. SPAIN
5. UNITED KINGDOM
6. DENMARK
7. ESTONIA
8. LUXEMBURG
9. SLOVAK REPUBLIC
10. SLOVENIA
11. CROATIA
12. AUSTRIA
13. ROMANIA
14. ITALY
15. NETHERLANDS
16. SWEDEN
17. BULGARIA
18. CZECH REPUBLIC
19. ...
20. ...

QUESTION 1		ISSUES OUTSIDE VAT		ISSUES IDENTIFIED / COMMENTS
		YES	NO	
1	AUSTRIA			-
2	BELGIUM			Still in progress to study several areas
3	CROATIA			There is still certain legal uncertainty regarding the implementation of the e-Document Act and e-Archiving e-signature There is a legal uncertainty regarding archiving of electronic documents.
4	DENMARK			Digital signature used in NEMHANDEL in public area; interoperability in Europe; digital certificates as in "encryption during transport of the document/invoice; the signature used is based on the Danish NemID. To obtain a NemID signature you must be registered as a Danish Company (have a Danish VAT number). We have a lot of companies from eg Sweden that would like to join NemHandel but cannot do so, because they can't obtain NemID; <a href="http://www.youtube.com/watch?v=w7lx62l8ktg">http://www.youtube.com/watch?v=w7lx62l8ktg</a> ; Rules on storage of data outside national borders, eg The Act on Processing and storage of Personal Data.
5	ESTONIA			
6	GERMANY			- Archiving practices and requirements in other EU countries; - Adapting to accounting rules in other MS; - data protection
7	LUXEMBURG			- data protection - usage of certificates if required on voluntary base
8	POLAND			(Note that these comments relate to the VAT regulation, and perhaps should be taken into account during the subsequent work in Activity 3, which will concern the transposition of the revised VAT Directive.) 1. Lack of a precise definition of e-invoice "authenticity of origin and integrity of the content" is now a big challenge for those companies who would like to use different approach than e-signature or EDI. It causes those conditions for e-invoicing are more restrictive than for paper invoices. 2. Different implementation and interpretation of VAT Directive in member countries makes trans-border e-invoicing difficult and lowers business sense of such method. E-Invoice issuer from country A sending his e-Invoice to company in country B must follow country B e-invoice form or exchange method rules. At the same time e-Invoice issuer may not fulfil the rules of his country A. For multi-national market players it makes the need for keeping separate e-Invoice forms and exchange methods for nearly each European country. But such situation makes e-Invoicing costly and company is losing its interest in such invoicing method. 3. Different, non-compatible with other EU countries types of documents used, e.g. polish correction invoice document. Companies from other countries use correction notes, which are of other form, much simpler. This causes a serious problem to send correction form effectively in electronic form.

9	SPAIN			See 2 separate documents with detailed responses   CCI CONSULTATION Activity 3 MSF- DOCUMENT ON EG EI Consultation e-mail- S
10	SLOVAK REPUBLIC			
11	SLOVENIA			
12	UNITED KINGDOM			
13	ROMANIA			
14	ITALY			<p>1. Different requirements on electronic signatures on E-invoices. Example: in Germany and Italy E-invoices are required to be signed with a QES, while in other EUMS, e.g. in France, an AdES suffice. Hence, possible rejection of E-invoices created in France from other countries. This depends on the existence of a EU-wide Trust List to ascertain a Qualified CA throughout the entire EU, this does not exist for non-qualified certificate issuers. It is proposed to implement EU-wide a Trust List for CAs issuing signature certificates to be used with E-invoices.</p> <p>2. Up to 6/12/2012 even “juridical persons” were to be dealt with according to the Italian Privacy law, which added further hindrance in handling invoices that held Personal data, since they referred to a Juridical Person. Since 6/12/2011 only data related to physical persons are addressed by the Italian privacy law. It is to be verified if any EUMS adopts privacy laws similar to the previous Italian one, since protecting electronic personal data may require more sophisticated methods than in case of paper documents.</p> <p>3. Potential hindrances may derive from different E-invoices storage requirements. For example the mechanism required in Germany to assure Integrity to the stored E-invoices (based on the Merkle tree) is different from the Italian one, based on a different structure of the stored items digests, that is to be signed with a QES. This digests structure is described in Italian Standard UNI 11386. It is proposed that each EUMS Tax Authority makes available to all other Tax Authorities, mechanisms suitable to allow them access E-invoices data bases in their country.</p> <p>4. In order to simplify X-border exchanges it is wished a EU-wide implementation of the ETSI developed REM (TS 102 640) that would ensure integrity and authenticity of the exchanged invoices.</p> <p>5.As highlighted in TAXUD Explanatory Notes, Doc A-8, “The business controls should be appropriate to the size, activity and type of taxable person and should take account of the number and value of transactions as well as the number and type of suppliers and customers.” Hence, the possibility that two business partners implement different business controls span is very high, in particular when Large Enterprises make business with SMEs.</p>
15	NETHERLANDS			Check different scenarios as regards archiving requirements in the member states
16	SWEDEN			Archiving: There are still some issues relating to archiving that must be taken into consideration. What information shall be archived? In Sweden the same information that was sent shall be archived, but this means that all information has to be delivered and shown for the receiver. This is an issue especially since there sometimes are several actors in the e-invoicing procedure. If the invoice in a four corner model is converted into new

			<p>formats: will the receiver get the same information as was sent?</p> <p>Data protection:</p> <p>If an invoice contains personal identifiable information the law (The Swedish Personal Data Act) must be taken into account. And if the invoice will be “opened” and converted by a third party provider: how can we protect the personal identifiable information? By agreements probably, but the best way could be to, when it is possible, send an invoice in an envelope that will not be opened, only forwarded.</p> <p>Cookies:</p> <p>When implementing an invoice portal, the regulation regarding cookies, stipulating a requirement of informed consent, must be taken into account.</p> <p>Accounting legislation:</p> <p>Business entities exchanging e-invoices must comply with both fiscal and accounting legislation. Directive 2010/45/EU article 233, refers to "any business controls" as a way of ensuring the authenticity of origin, the integrity of content and legibility of e-invoices but the legislation regarding business controls is still national. The fact that an e-invoice is tax compliant does not necessarily imply that the e-invoice is compliant to national accounting legislation. As long as the legislation is not harmonized from both an accounting and a fiscal perspective there is a risk that the member states will diverge in their view of e-invoicing.</p> <p>Electronic signatures: Even if using electronic signatures not can be mandatory by law there will probably be many using it. Cross border this might cause problem when a party does not have the knowledge about the required signature. The Trusted list will be of most importance and maybe more information efforts.</p> <p>Unclarity about responsibilities and applicable law:</p> <p>There might be some unclarity about the responsibility between business parties and regarding crossborder: what law that is applicable is not always clear.</p> <p>Reports:</p> <p>The Swedish National Board of Trade has published a report in February, 2011.</p> <p><a href="http://www.kommers.se/upload/Analysarkiv/Publikationer/Report%20e-invoicing.pdf">http://www.kommers.se/upload/Analysarkiv/Publikationer/Report%20e-invoicing.pdf</a></p>
17	BULGARIA		



18	CZECH REPUBLIC			<p>Outside the VAT e-invoice is used especially in retail sphere in Czech Republic.</p> <p>As a legal issues outside VAT which hinder the exchange of electronic invoices we see, problematic legal definition and approach to the e-signature, data archiving, data protection or compatibility of relevant document formats.</p>
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QUESTION 2		A IMPLEME NTED ALREADY	B LITTLE CHANGES	C NEW IN 2012	COMMENTS/PROGRESS
1	AUSTRIA				
2	BELGIUM				Belgium has changed its rules in the beginning of 2010 in anticipation of the adoption of the new directive. These rules are consistent with the new VAT directive. However, the wording of the VAT-law will be changed to incorporate that of the new directive. In practice little will change. The formal transposition process is being prepared by the VAT administration. Draft legislation is not yet publicly available (probably not until March 2012).
3	CROATIA				The new VAT Ordinance has fully implemented the new rules, however there is a question of implementation, because provisions on implementing business controls may not be enforceable.
4	DENMARK				The new VAT Ordinance has fully implemented the new rules; however there is a question of implementation, because provisions on implementing business controls may not be enforceable.
5	ESTONIA				
6	GERMANY				Tax reform on 1 <sup>st</sup> July 2011; Administrative guidance published on 1 <sup>st</sup> July 2012, <a href="http://www.ferd-net.de">www.ferd-net.de</a>
7	LUXEMBURG				
8	POLAND				the rules on e-invoicing are provided for within the regulation of the Minister of Finance concerning the sending of invoices in the electronic form, terms of storage and the procedure of their disclosure to a tax body or tax inspection body of 17 December 2010 (Journal of Laws 2010, No 249, item 1661). The above-mentioned regulation entered into force on 1st of January 2011 and it is the implementation of the rules for e-invoicing under the current VAT Directive which are consistent with the rules as from 2013. Also I would like to clarify that due to the planned amendment of the Polish VAT legislation, probably part of the provisions of that regulation will be transferred to the act.
9	SPAIN				
10	SLOVAK REPUBLIC				

11	SLOVENIA				
12	UNITED KINGDOM				<p>EU Guidance and associated communication introduces confusion around the area of use of business controls as a method of ensuring integrity and authenticity. HMRC may therefore choose to issue its own guidance on this topic. There remains a significant responsibility on the part of a UK vat registered person to deal with the integrity and authenticity of inbound and outbound eInvoices. It would be of great benefit if Commission communications were based on fact, with detailed helpful and constructive guidance on how to deal with this, rather than vague political statements about freedom of choice and unnecessary use of technology.</p> <p>Update: HMRC V HMRC VAT - Proposed Changes to VAT invoice rules 2012.pdf; technical note, Publication date: 31 May 2012, Closing date for comments: 12 July 2012:</p> <p><a href="http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_032093">http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_032093</a></p>
13	ROMANIA				<p>Directive 2010/45 was translated recently into our national legislation.</p> <p>Respectively the Fiscal Code was modified through the Government Ordinance no. 15/23.08.2012 (document available only in Romanian language), and it will enter into force on January 1, 2013.</p> <p>Also, through the Government Ordinance no. 16/23.08.2012, the application of the provisions of Law no. 148/23.07.2012 regarding the recording of commercial operations by electronic means (entered into force on July 27, 2012), was suspended until January 1, 2013. I am attaching my previous message with a summary regarding this law.</p>
14	ITALY				It will be necessary administrative guidance to clarify provisions on implementing business controls
15	NETHERLANDS				<p>In the Netherlands the process of implementation of the new Directive on VAT invoicing is underway. An implementation bill was presented to Parliament in September 2011. The Dutch House of Representatives is about to approve the bill (presumably in January 2012). Then the Senate has to approve the bill.</p> <p>In anticipation of the new Directive on VAT invoicing, the Netherlands introduced in 2009 a policy of equal treatment of paper and e-invoices. Since then for e-invoices additional requirements no longer exist. This means that the implementation of the new Directive on VAT invoicing will not lead to a change of the</p>

					existing policy with regard to e-invoicing.  Legislation was passed end of March 2012:  <a href="http://www.eerstekamer.nl/wetsvoorstel/32877_implementationrichtlijn">http://www.eerstekamer.nl/wetsvoorstel/32877_implementationrichtlijn</a>
16	SWEDEN				There is a draft from the Ministry of Finance regarding how to implement the new directive that will require no or little changes from 2013, and it has been for public review, but the final proposal is not published yet. The parliament will take the decision regarding the new regulation this spring or at the latest this autumn.
17	BULGARIA				
18	CZECH REPUBLIC				Czech Republic has issued draft legislation for e-invoicing which are consistent with the rules as from 2013.