

European Multistakeholder Forum on Electronic Invoicing

**DRAFT  
FINAL REPORT**

ACTIVITY 3

“Solutions for Remaining Cross-Border Issues”

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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 VAT implementation of Directive 2010/45 is now since 1<sup>st</sup> January 2013 well advanced in most of the Members States in order to give the final conclusion, that – despite smaller differences - the provided simplifications have been translated into the national VAT legislation. However, practical experience on the application of the new legislation by the Member States and whether the EU Directive is applied in practice in a uniform way across the EU is not available at the moment due to the short time frame - the new regulations are only in place since January 1, 2013. This practical information will become available when the period after 2013 will be under audit. Therefore it is important that the application of the new legislation in practice by the Member States is further monitored to identify obstacles and best practices. The EU Commission should set up and facilitate a process where trading parties can address and share their practical challenges and best practices on the application of the 2013 e-invoicing rules across the EU.
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. The issues identified by National eInvoice Fora and by Activity 3 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.
5. Legislative initiatives which have already been started, in particular in the area of data protection and electronic signatures and electronic identity by the EU Commission and the Member States, should consider electronic invoicing as horizontal question and should integrate electronic invoicing as part of general electronic business processes.

## **B. Work Plan Activity 3**

### **1. Definition**

Following the suggestions of the work plan of the EU Forum Activity 3 has identified, analysed and recommended policy options and initiatives to solve remaining **cross-border** barriers to the exchange of e-invoices.

Suggestions of specific topics have been addressed:

- Difficulties in the transposition of the revised VAT Directive;
- The Forum's representatives have raised 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 have been delivered in September 2012 through the Interim Report.

### **2. Challenges**

Although Activity 3 looked 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 could only start in 2013, when the new Directive was 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 have been distinguished:

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<sup>1</sup> See Annex 1

- 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
- 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 have been 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

After the MSF Plenary in September 2012 approved the Interim Report, Activity 3 followed up with:

- Collected information on the transposition of the eInvoicing Directive 2010,
- Collected information on VAT best practices, and
- Discussed specific items with the EU Commission, in particular on electronic signatures and data protection.

The Final Report was prepared in July and August 2013.

## C. Final Report

### 1. Overview

Results of Activity 3 have been captured via the Activity 3 Survey<sup>2</sup> – both as regards remaining cross border 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. Activity 3 took into due consideration the Explanatory Notes of DG Taxud<sup>4</sup> and the information in the preparatory study of the EU Commission in 2009<sup>5</sup> on legal obstacles on the former VAT Directive.

The Final Report of the EU Expert Group on Electronic Invoicing listed already a list of questions<sup>6</sup>. The Expert Group has examined other legal and regulatory issues relating to e-Invoicing beyond VAT and has stated that<sup>7</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 2

<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> [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>5</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>6</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>7</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.

Based on the Interim Report of Activity 3 and the information collected in that report until September 2012, Activity 3 has also collected the most updated information on the transposition of that Directive with a second Survey. This survey in particular addressed the following questions:

- Date of national legislation transposing the EU Directive 2010/45
- URL where we can find the original text of the legislation
- Definition of "electronic invoice"
- Definition of "business controls"
- Any examples mentioned for "business controls"
- Use of technologies like electronic signatures and EDI
- Any other solutions explicitly mentioned beyond the Directive
- Any explanations or technical notes guiding tax administration and/or taxable persons
- Any best practice identified in your country for business controls.

A detailed overview on this Survey is attached to this Final Report as Annex 3.

## **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 1:

- Uncertainty regarding archiving of electronic documents;
- Lack of regulation or rules of digital signature for encryption used in public administration;
- 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>8</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;

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<sup>8</sup> ETSI TS 102 640: can be retrieved from URL <http://pda.etsi.org/queryform.asp> where all ETSI deliverables can be downloaded for free,

- 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 recipient 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;
- 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;
- Unclear 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>9</sup>.

Although not all National Fora provided responses and not all responses have been detailed enough in order to assess them adequately, 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 abroad 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

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<sup>9</sup> See Annex 2



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?
- 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>10</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 lead 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>11</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>12</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.

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<sup>10</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>11</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>12</sup> E.g. Germany “Grundsätze ordnungsgemäßer Buchführung”

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.

**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.**

**Activity 3 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.

#### 3.2.1. Data Protection Directive

If an electronic invoice contains personal data as defined in the Data Protection Directive and the national legislations on data protection<sup>13</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 providers for electronic invoicing are used on the sender or the recipient side. The Model interoperability Agreement developed by CEN<sup>14</sup> and accepted by the European E-Invoice Service Provider Association<sup>15</sup> is referencing the data protection directive.

The processing of personal data is only allowed if the data subject 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 data subject or to enable measures that the data subject 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 data subject 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 interest is of greater weight than the interest of the data subject 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 data subject'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 data subject in protection against violation of personal integrity.

#### 3.2.2. Proposed Data Protection Regulation 2012

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<sup>13</sup> [http://ec.europa.eu/justice/data-protection/law/index\\_en.htm](http://ec.europa.eu/justice/data-protection/law/index_en.htm)

<sup>14</sup> <ftp://ftp.cen.eu/cen/Sectors/List/ICT/CWAs/eInv3CWA1.pdf>

<sup>15</sup> [http://www.eespa.eu/sites/default/files/EESPA-Information%20Release%2020120608\\_0.pdf](http://www.eespa.eu/sites/default/files/EESPA-Information%20Release%2020120608_0.pdf)

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>16</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, respectively a right to object to the processing (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 on 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 on 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.

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 collected.

### 3.2.3. Issues Identified

Activity 3 has discussed in detail the complexity with regard to processing of personal data in B2B electronic invoices.

Issues related to the use of personal data in the e-invoicing context, particularly with regard to the use of data of contact persons of both the remitter and the recipient, are similar to the ones that can be found in many other sectors when a company or a public entity discloses personal data of its employees to another company or public entity for business purposes.

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<sup>16</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)

As a matter of fact, electronic invoices or “paper” invoices processed by electronic means have been used for some years by now and, as far as Activity 3 knows, there have been no specific problems or complaints related to the legality of the data processing operations involved.

However, without limiting the scope of the Regulation as such, Activity 3 finds that it would promote legal certainty and furtherance of electronic invoicing if it were made clear in the Regulation that “business card data”, i.e. basic work- or business related contact details, may be processed as part of electronic invoices without the data controller having to fulfill administrative and other requirements that are not proportionate to the nature of the processing.

Of particular interest for electronic invoicing in that respect is the right for the data subject to be forgotten and to erasure under Article 17, and the right to object under Article 19 in the draft Regulation.

The following example may illustrate some implications of the proposed Regulation on electronic invoices:

A remitter of electronic invoices includes the name of its reference person and the name of the customer company’s reference person in the electronic invoice. Although the processing of electronic invoices is to a large extent automated, it is still common to include such information in the invoice. This means that personal data of the respective reference persons will be processed by the remitter of the electronic invoice as well as by the recipient of the electronic invoice. The personal data will most likely qualify as harmless personal data, since it usually consists of the reference persons’ name only and is provided within the context of the respective reference person acting in his or her capacity as employee of the remitter or the recipient of the electronic invoice.

The following legal grounds for processing of the personal data on the electronic invoice are at hand:

- The remitter and recipient of the electronic invoice, respectively, may obtain the reference persons’ consent to use their names on the electronic invoice;
- The remitter and recipient of the electronic invoice, respectively, may be able to prove that its legitimate interest is of greater weight than the interest of the reference persons in protection against violation of their personal integrity;
- The processing of the personal data may be necessary for compliance with a legal obligation in certain national legislation, typically accounting and bookkeeping legislation, if there is a requirement to include the name of a reference person on the invoice or to keep such data if it once has been included.

Looking at these three options for legal reasons, it would be a cumbersome operation in most cases for the remitter of the electronic invoice to obtain the consent of the customer company’s reference person and, similarly, for the recipient of the electronic invoice to obtain the consent of the remitter’s reference person. Most likely, it will therefore be difficult in practice to apply consent as the *sole* legal ground for processing of the reference persons’ personal data in the electronic invoice. The specific issues involved with obtaining an employee’s consent to processing of his/her personal data in an employment relationship are not further elaborated here.

However, the data controller may use different legal grounds in combination: For example, it is

possible that the remitter of the electronic invoice processes the personal data of its reference person on the basis of his or her consent, whereas the personal data of the customer company's reference person is processed on the basis of the legitimate interest ground.

It should also be noted that the processing of personal data might be based on different legal grounds in different member states. Assuming that there is no legal obligation in the remitter's member state to include the reference persons' name on the invoice, the remitter may process the personal data on the basis of the legitimate interest ground. However, under the assumption that such legal obligation exists in the recipient's member state, e.g. according to national accounting or bookkeeping legislation, the recipient will be able to process the personal data on the basis that it is necessary in order to comply with a legal obligation.

Moreover, if the processing of personal data is based on the legitimate interest ground, the result of the weighting of interests exercise may not be the same in the different member states due to different interpretation of the legitimate interest ground.

The examples above show that it is not always clear and easy to determine whether and on what grounds personal data in an electronic invoice may be processed and, further, that the same electronic invoice may also be processed on the basis of different legal grounds. This could undermine legal certainty and may lead to fragmentation in terms of the legal basis for processing of personal data in electronic invoices throughout the member states, which in turn will be an obstacle to electronic invoicing. In addition, another possible consequence of such fragmentation is that different sets of rules in the Regulation apply depending on the legal ground upon which the processing of personal data is based.

This can be exemplified by the right to be forgotten and to erasure and the right to object: The provisions regarding the right to be forgotten and to erasure as well as the right to object in the proposed Regulation will be applied differently depending on the legal ground for processing of the personal data in the electronic invoice:

- In case the personal data on the electronic invoice is processed on the basis that it is necessary for compliance with a legal obligation under national legislation, the provisions imply that the personal data will not have to be erased from the electronic invoice and may be further stored or otherwise processed, also following a request for erasure or an objection from the reference person.
- If, on the other hand, the personal data in the electronic invoice is processed on the basis of the legitimate interest ground, the personal data will normally have to be erased and no further processing, including storage, will be permitted, unless the remitter or recipient, as applicable, following a request for erasure or an objection from the reference person, demonstrates compelling legitimate grounds for the processing which override the interests for fundamental rights and freedoms of the reference person in question.

Finally, there are a few more considerations as regards the new Data Protection regulation:

- There may be considerable implications if personal data in an electronic invoice, which has been sealed with an electronic signature, may no longer be stored. These implications involve the fact that the integrity and authenticity of the invoice would no longer be provable if the personal data in the invoice was removed after the signature was applied; which would completely defeat the purpose of using an electronic signature.
- Once it has been established that there is a legal ground for processing the personal data,

there are requirements that the data subject shall be informed about the processing. In the example of a B2B invoice that includes the trading partners' respective reference persons, while it is feasible to inform the reference person of your own organization it is more problematic to efficiently reach and inform the reference person of the trading partner company.

- The draft Regulation includes a number of detailed rules – and the possibility to further stipulate requirements by delegated acts – concerning the transfer of personal data to third countries. It can be questioned whether the analysis and measures required in order to transfer personal data contained in electronic invoices are proportionate to the harmless personal data in an electronic invoice.

#### 3.2.4. Conclusions

Activity 3 does not consider it appropriate to include specific provisions with regard to the processing of personal data in the context of B2B relations related to electronic invoicing in the draft Regulation. The Regulation is a general legal act and should not cover the special needs of each and every sector. Apart from that, the Regulation intends to be “technologically neutral”, that is, not to make references to concrete technological tools or means.

However, the possibility to include specific requisites and obligations for processing “business card personal data” in a B2B context could be integrated as long as it covers all sectors, and not only one or some of them.

In that light, Activity 3 would like to suggest the following addition to Article 6<sup>17</sup> in the proposed Regulation, which could read as follows:

*“Chapter III to V and VIII of the Regulation shall not apply to business contact information used for the performance of a contract or a sale to which the data subject is a party or carrying on its duties as employee for one of the parties involved in a contract or a sale, provided that the processing and storage of such personal data, whether done by one of the parties directly or through a third party, is going to be used solely for the performance, audit and archiving of the data and resulting documents of the said contract or sale.”*

In addition business contact information may be defined as follows:

*“Business contact information is defined as an individual’s name, position name or title, business telephone number, business address, business electronic mail address or business fax number and any other similar information about the individual, not provided by the individual solely for his personal purposes.”*

<b>Recommendations:</b>
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<sup>17</sup> See 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)

**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 and the European Commission 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 a clarification in the proposed Regulation on Data Protection as regards “business contact information” in order to provide clear legal justification for processing basic work or business related personal data.**



### 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>18</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>19</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 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

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<sup>18</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0712:EN:NOT>

<sup>19</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)

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>20</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.

### **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 eInvoicing websites on the European level and the national eInvoice Fora level.**

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<sup>20</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)

### 3.4. VAT legislation implementing Directive 2010/45

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.

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>21</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 represent the views of the Commission but they are non-binding. Nevertheless they can give some guidance insofar as e.g. key definitions of the Invoicing Directive can be understood.

The national regulations effective since 1<sup>st</sup> January 2013 do describe in more detail how the European Directive has been implemented into national tax legislation from a legal perspective.

The Survey on the Implementation of Directive 2010/45 conducted by Activity 3 has clearly shown that this legal concept has been word by word implemented in all referenced VAT legislations:

The following examples from France, Germany, Poland, Romania, Spain, Sweden and the United Kingdom may exemplify this:

#### 3.4.1. France

France has transposed Directive 2010/45 by the article 62 of the law n°1510 published on the 29th of December 2012 (loi de finances rectificative pour 2012).

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026857857&dateTexte=&categorieLien=id>

Article 289 of CGI (*Code Général des Impôts*) has been revised and defines an electronic invoice as (289 VI) : *Electronic invoices are issued and received in a electronic form, whatever it is. They are recognized as original invoices. Their transmission and provision are submitted to the acceptance of the recipient.*

With article 289 VI, *the authenticity of the origin, the integrity of the content and the legibility of the invoice must be ensured from the date it has been issued until the end of its storage period.* This article applies with no distinction for electronic and paper invoices in the respect of the "equal treatment" principle.

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<sup>21</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)

This article is completed with article 289 VII of CGI that describes only 3 ways to realize this obligation:

- A way for all invoices, paper or electronic that do not respect the 2 specific ways as below, where companies must have set up business controls that shall be documented, permanent, and that shall establish a reliable audit trail between each invoice and the underlying supply of goods or services (289 VII 1° of CGI).
- Two specific ways for electronic invoices only:
  - Advanced Digital signature, with qualified certificate and secure creation device (289 VII 2° of CGI)
  - EDI, as it was before the transposition in France, including the obligation of mandatory fields presence controls, and the archiving of a summary list and a partner list in the same conditions that the e-invoices (289 VII 3° of CGI)

Then, the "default way" is "business controls & reliable audit trail", except for electronic invoices that strictly respect the digital signature way (which has been re-enforced because it was only necessary previously to provide an advanced digital signature), and the EDI way that did not change.

In addition, France published 2 decrees:

- Decree n°2013-346 published on April 24th, 2013, relative to mandatory fields and archiving place of e-invoices  
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027351702>
- Decree n° 2013-350 published on April 25th, 2013, which modifies articles 96 of annex III of the CGI
  - Digital signature for e-invoices : 96F and 96Fbis
  - EDI : 96G and 96H
  - Audit trail and business controls for paper and electronic invoices (default way) : 96I
  - Restitution of invoices (paper or electronic) : 96Ibis

<http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027356611&categorieLien=id>

In terms of archiving, there is an obligation to archive the same "original invoice" in its form and format on both sides (issuer and recipient or their respective Service Providers). It is then not allowed for a recipient to archive a different form or format than the one he receives. As an example, a change of electronic format is not allowed (except if the "original" file received is archived, and remains the "original invoice"). A scanned paper invoice does not replace the original paper invoice received. It is then still necessary to archive the paper invoice in a scanning process on the receiving side.

The only exception is the right for the issuer to archive the electronic image of the paper invoice issued printed and transmitted, if this electronic copy is secured with a digital signature.

Regarding the "default" business controls and reliable audit trail way, all other business documents that participate to business controls and traces of business controls (within information system or written by hand or with stamps on the paper invoice or other paper business documents) must be archived in the same conditions than the underlying invoice, with a link (or archiving plan) that allows to find all other business documents and reliable audit trail traces relative to each invoice.

A guidance document from Tax Administration should be published during summer 2013 and should be precise, in particular but not only:

- Obligations on business controls and reliable audit trail, that should depend on the size of the company, its activity, the number of invoices processed, etc.
- Capability for each receiving company to demonstrate authenticity of the origin, integrity of the content and legibility in a method that is not dependant from the issuer's method. As an

example, if a recipient has implemented "business controls and reliable audit trail", does he have some specific additional obligations if he receives an EDI electronic invoice (as summary list and partner list) or a digitally signed invoice (as an obligation to check the signature and the certificate).

- Obligations for advanced digital signature, with qualified certificate and the use of a secured creation device, and in what conditions an electronic seal, with a qualified certificate, can be used for invoices (to allow an automatic signature from a server).
- Obligations on archiving, especially for other business documents that participate to business controls and reliable audit trail: is it necessary to keep the original document in its original form or just a copy, or a secured copy (for instance an electronic copy of a paper delivery note).

Additional comment on the form in which an original or copy document can be archived: as it might be difficult for companies, especially SMEs, to process a business documents' archiving system with 2 forms of documents (paper or electronic depending on how it has been transmitted), there are some discussions within the French National Forum about the possibility to archive faithful and sustainable copies of original documents (rather electronic but possibly paper), that should be strictly equivalent to original documents in law, with 2 different types for electronic copies:

- faithful and sustainable electronic copies of documents printed and transmitted in paper (instead of paper copies), to be archived by the issuer. These electronic copies are the original form before printing (as most paper documents are created by electronic means before being printed). This is allowed in France for electronic copies of paper invoices sent, archived on the issuer side, and secured by a digital signature (mainly for integrity of the content).
- faithful and sustainable electronic copies of original paper documents received. It is then necessary to define and allow some scanning processes that can guarantee the integrity of the content and the authenticity of the origin of the documents through the form's transformation (including time of reception and processing). For the moment, this is not allowed in France for paper original invoices received (but it is in some other European countries).

### 3.4.2. Germany

Germany transposed Directive 2010/45 in 2011, by revising § 14 of Germany's Federal VAT Legislation on 1st November 2011 (UStG), which is available here:

[http://www.ferd-net.de/upload/BMF-Schreiben\\_Umsatzsteuer\\_02-07-2012.pdf](http://www.ferd-net.de/upload/BMF-Schreiben_Umsatzsteuer_02-07-2012.pdf)  
<http://dejure.org/gesetze/UStG/14.html>

Article 14.4. Section 2 of the UStG defines an electronic invoice as:

"An electronic invoice within the meaning of [German VAT law] is an invoice which is issued and received in an electronic format. The invoice issuer is free to determine how he transmits an invoice - subject to approval of the invoice recipient; electronic invoices can be transmitted, for example, by e-mail (with image or text document annex) or de-mail (see de-mail Act of 28 4 2011, Federal Law Gazette I p. 666), computer fax or Fax Server, via Web download or via EDI. Standard telefax or computer fax/fax server to standard telefax is considered a paper invoice."

German law stipulates the use of business controls to guarantee authenticity of the origin and integrity of the content of an invoice. Article 14.4, Section 6 provides that “An internal control procedure meets the requirements of article 14, paragraph 1 UStG, if there is a reliable audit trail, through which a link between the invoice and the underlying performance supply can be made. This audit trail can be established, for example, through a manual or automated matching of the invoice with existing business documents (e.g. copy of the purchase order, order, purchase, delivery, transfer of payment). No technical procedures are prescribed, which companies must use on a mandatory basis. However, as for paper invoices the taxpayer is still obliged to prove that the legal obligations and requirements for tax deduction are fulfilled.

In addition German law provides that the authenticity of the origin and integrity of the content of the invoice may also be established by means of qualified electronic signature or EDI: Examples of technologies that ensure the authenticity of the origin and the integrity of the content in an electronic invoice, are a qualified electronic signature (§ 2 No. 3 SigG) or the qualified electronic signature with service provider accreditation (§ 2 No. 15 SigG), and on the other hand the electronic data interchange (EDI) according to article 2 of the recommendation 94/820/EC of 19 10 1994 about the legal aspects of electronic data interchange (OJ EC 1994, L 338 p. 98), when the use of procedures is provided in the agreement on the exchange of these data, which ensure the authenticity of the origin and integrity of data (§ 14 para 1 and 2 UStG) (Article 14.4, Section 7).

### 3.4.3. Poland

Poland transposed Directive 2010/45 by:

- 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 20 December 2012 (Journal of Laws 2012 item 1528), <http://www.dziennikustaw.gov.pl/du/2012/1528/1>;
- regulation of the Minister of Finance amending the regulation on the tax return for some taxpayers, invoicing, terms of the storage of invoices and the list of goods and services, which are not applicable exemption from taxes on goods and services of 11 December 2012 (Journal of Laws 2012 item 1428), <http://www.dziennikustaw.gov.pl/du/2012/1428/1>.

The above-mentioned regulations entered into force on 1<sup>st</sup> of January 2013.

Due to the amendment of the Polish VAT legislation, most of the provisions of that regulations will be transferred to the act. Modification in this area will come into force on 1<sup>st</sup> of January 2014 - Act of 7 December 2012 amending the Act on tax on goods and services and certain other acts (Journal of Laws 2013 item 35) <http://www.dziennikustaw.gov.pl/du/2013/35/1>. This Act will regulate comprehensively scope of invoicing.

The requirements for sending invoices in electronic form provided in the above-mentioned regulations fulfill the definition of the “electronic invoice” from Article 217 Directive 112.

The definition of an electronic invoice will be introduced (transferred) to the law consequence of Article 1 point 1, letter b Act of 7 December 2012.

The above-mentioned regulations provide that “The authenticity of the origin, the integrity of the content and legibility of the invoice can be provided by any business controls which establish a reliable audit trail between an invoice and delivery of goods or provision of services.”.

Examples of business controls are not mentioned in Polish regulation, but The Ministry of Finance of Poland prepared explanations of the rules on invoicing - Information brochure titled „Zmiany w zakresie fakturowania” (“Changes in the invoicing”). This brochure contains examples of business controls.

According to § 4 point 4 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 20 December 2012: “Except for the use business controls referred to in point 3, the invoice authenticity of origin and integrity of the content shall be ensured in particular, in the case of the use of:

- 1) a secure electronic signature as defined in art. 3 point 2 of the Electronic Signature Act of 18 September 2001 (Journal of Laws No. 130 item 1450 as amended), verified using a valid qualified certificate, or
- 2) electronic data interchange (EDI) in accordance with the agreement concerning the European model of electronic data interchange if the concluded agreement, concerning that interchange, foresees the application of procedures guaranteeing the invoice authenticity of origin and its data integrity.”

So advance electronic signatures and EDI became options which can still be used by businesses to guarantee the “authenticity of the origin” and the “integrity of the content”.

#### **3.4.4. Romania**

Romania transposed the VAT Directive by means of Government Ordinance no. 15/23.08.2012 which modified the Fiscal Code, and entered into force on January 1, 2013. Minor corrections were made to this primary legislation on the e-invoicing subject through Government Ordinances no. 8/23.01.2013 and no. 16/30.07.2013.

Also, secondary legislation was adopted, detailing the implementation rules of the modified Fiscal Code, through Government Decision no. 1071/06.11.2012. Minor corrections were made to this secondary legislation on the e-invoicing subject through Government Decision no. 84/06.03.2013.

Links to the relevant legislation (in Romanian language) can be found here:

a) Main legislation

[http://static.anaf.ro/static/10/Anaf/legislatie/OG\\_15\\_2012.pdf](http://static.anaf.ro/static/10/Anaf/legislatie/OG_15_2012.pdf)

[http://static.anaf.ro/static/10/Anaf/legislatie/OG\\_8\\_2013.pdf](http://static.anaf.ro/static/10/Anaf/legislatie/OG_8_2013.pdf)

[http://static.anaf.ro/static/10/Anaf/legislatie/OG\\_16\\_2013.pdf](http://static.anaf.ro/static/10/Anaf/legislatie/OG_16_2013.pdf)

b) Secondary legislation

[http://static.anaf.ro/static/10/Anaf/legislatie/HG\\_1071\\_2012.pdf](http://static.anaf.ro/static/10/Anaf/legislatie/HG_1071_2012.pdf)

[http://static.anaf.ro/static/10/Anaf/legislatie/HG\\_84\\_2013.pdf](http://static.anaf.ro/static/10/Anaf/legislatie/HG_84_2013.pdf)

The secondary legislation includes most of the “Explanatory Notes on VAT invoicing rules” release by the Commission.

Section 3 of Article 29 of Government Ordinance No. 15/2012 defines an electronic invoice as: “an electronic invoice is an invoice that contains the information required by the present article and was issued and received in electronic format.”

The Government Decision No. 1071/2012 amends Paragraph 76(1) of the Fiscal Code to provide that the electronic format of the invoice is to be selected by the taxpayer and that “XML” and “PDF” are examples of acceptable electronic formats. This makes Romania unique in explicitly recognizing the xml format.

The Romanian regulation recognizes the concept of business controls and introduces the recognition that the business controls required to authenticity of the origin and integrity of the content of the invoice should be “reasonable” and may vary depending on the nature of the taxpayer and the transactions:

“In the context of art. 155 para. (24) of Fiscal Code, business controls means the process by which a taxable person assures to a reasonable extent the identity of the supplier /issuer of the invoice, the integrity of the content and the legibility of the invoice from the moment of issue until the end of the storage period. The business controls should be appropriate to the size/ activity type of the taxable person and should take into consideration the number and value of transactions, as well as the number and type of suppliers/customers, and, if case may be, any other relevant factors. An example of a business control is the matching of supporting documents.”

This again makes Romania unique as it adopted the flexibility of business controls recommended by the EU Directorate.

Article 28 of the Government Decision No. 1071/2012 also recognizes advanced electronic signatures and EDI as means of authenticity of the origin and integrity of the content of the invoice.

Section 5 of Article 28 of the Government Decision No. 1071/2012 provides:

“The integrity of the content of an invoice for the purposes of art. 155 para. (24) of the Fiscal Code is to be established both by the supplier / provider and the recipient, if it is taxable. Each independently can choose the method by which to fulfill this obligation or both may



agree to ensure the integrity of their content, for example by means of a technologies such as EDI or advanced electronic signature. A taxpayer may elect to apply, for example, controls which create a reliable audit trail between an invoice and delivery / service or to use technology to ensure the integrity of the content of a specific invoice. Integrity of the content of an invoice is not related to the electronic invoice format, but the invoice format can be converted to another format other than that it was issued in order to adapt it to the recipient's own computer system or due to changes in technology that may occur over time."

### 3.4.5. Spain

Spain transposed the VAT Directive by adopting a regulation on VAT and invoicing, by Royal Decree 1619/2012, which was published in the Official State Gazette on 1 December 2012 and became effective 1 January 2013. The regulation can be found here:

[http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2012-14696](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-14696)

The Regulations also provide that taxpayers may apply for pre-approval from the tax authorities regarding alternative methods used to authenticity of the origin and integrity of the content of the invoice. *Likewise, in order stated, taxpayers may continue to notify the State Tax Administration Agency, prior to use, the means they consider to ensure the above conditions, in order to be, where appropriate, validated by thereof.*

Articles 8, 9 and 10 of the new regulations address electronic invoicing and determining the authenticity and integrity of electronic invoicing.

Article 9 defines an electronic invoice as simply an "invoice that meets the requirements of this Regulation and that has been issued and received in electronic format."

Article 8, Sub-part 3 provides that "The authenticity of the origin and integrity of the content of the invoice, whether on paper or electronic, shall be ensured by any mode of proof recognized by law." In particular, the authenticity of origin and integrity of the content of the invoice may be ensured by the usual business controls of the business or professional activities of the taxpayer. Authorities should allow business controls that create a reliable audit trail to establish the necessary connection between the invoice and the delivery of goods or services that it documents.

Article 10 provides that the authenticity of the origin and integrity of the content of the invoice may be determined by any means allowed in Subpart 8 (business controls) or by means of EDI or an advanced electronic signature. In addition, Article 10 allows for the authenticity of the origin and integrity of the content to be determined by "other means which the parties have notified the State Tax Administration Agency prior to use and which have been validated by it".

### 3.4.6. Sweden

Sweden transposed the VAT Directive by adopting new VAT legislation amending the Swedish Code of Statutes 1994:200, which became effective 1 January 2103. That legislation is available here:

[http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Mervardesskattelag-1994200\\_sfs-1994-200/?bet=1994:200](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Mervardesskattelag-1994200_sfs-1994-200/?bet=1994:200)

Chapter 1, Section 17a of Sweden's new VAT legislation defines an electronic invoice as "An electronic invoice is an invoice pursuant to this § 17 issued and received in an electronic format. Act (2012:342)."

The new VAT legislation makes no specific reference to either business controls, advanced electronic signatures or EDI. There is no definition of business controls in the new VAT legislation, but the preparatory works to the law (Prop 2011/12:94 page 80) refer to the rules in the Accounting Act and the Book-keeping Act and states that one of the purposes with the rules is to ensure that there are adequate routines to document business activities and preserve data so that financial condition and progress can be checked. The data shall be correct and unchanged and the book-keeping shall contain an audit trail so that financial position and results can be reconciled to individual business events.

Section 13 of the Prop 2011/12:94 also offers this additional guidance:

"Under the new rule, the authenticity of the origin, the integrity and legibility of an invoice, whether it be a paper invoice or an electronic invoice, must be guaranteed from the date of issue until the retention period expires. Every trader should determine for themselves how these requirements shall be ensured. Under the Directive this can be achieved by means of administrative controls creating a reliable audit trail between an invoice and a supply or services. In addition to administrative controls, electronic signatures and EDI are examples of technologies that ensure the authenticity and integrity of the content."

### **3.4.7. United Kingdom**

The United Kingdom transposed the VAT Directive by adopting Regulation 2012 No. 2951, entitled the Value Added Tax (Amendment) (No. 3) Regulation 2012, which is available here:

<http://www.legislation.gov.uk/uksi/2012/2951/regulation/2/made>

This amends the Value Added Tax Regulations of 1995, as amended in 2003 to address electronic invoicing by Regulation 2003 No. 3220, The Value Added Tax (Amendment) (No. 6) Regulations 2003, available here:

<http://www.legislation.gov.uk/uksi/2003/3220/regulation/5/made#text%3D%22electronic%20invoice%22>

The 2003 amendments had previously restricted electronic invoices to those where the authenticity of the origin and integrity of the content of the invoice were demonstrated by either an advanced electronic signature, EDI or "where the document relates to supplies of goods or services made in the

United Kingdom, such other means as may be approved by the Commissioners in any particular case.”

The 2012 amendments delete all three requirements and simply provide that: “[i]n this regulation “electronic invoice” means an invoice that contains the particulars required by regulation 14 and which has been issued and received in any electronic format.” The sole requirement is that the recipient must accept the invoice in its electronic form. This makes the UK agnostic to the selection of advanced electronic signatures, EDI or business controls as neither are specifically mentioned in the Regulation.

The UKs HM Revenue & Customs has issued a “Electronic Invoicing” Guidance, which is available here:

[http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageVAT\\_ShowContent&propertyType=document&id=HMCE\\_PROD\\_010205](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&propertyType=document&id=HMCE_PROD_010205)

The guidance document makes clear that advanced electronic signatures and EDI continue to be regarded as technological “safe havens” for guaranteed acceptability, while also making clear that reasonable business controls will be equally recognized.

The guidance is structured in FAQ style and contains the following explanation:

What other systems can I use?

We are prepared to accept electronic invoicing where the authenticity of the origin and integrity of the invoice data are guaranteed by means other than the use of electronic signatures or EDI for supplies made in the UK, as long as you are able to impose a satisfactory level of control over the authenticity and integrity of your invoice data. Examples of this control include:

- security of networks/communication links;
- access controls; and
- message transfer protocols (for example, http-s).

And it offers this assurance that business controls requirements will not not be onerous or normally involve any additional costs other than good customary business practices:

Protecting the authenticity and integrity of invoices

You must be able to ensure the authenticity and integrity of your invoice data during the transfer between trading partners.

To minimise burdens on business, we will not be over-prescriptive in specifying the detailed forms that such control may take. Where possible, we prefer instead to rely on good business practice or businesses’ own controls.

Section 4.4 of the guidance document offers this warning, however, for cross border invoices, which reveals the apparent suspicion that other member states will not be adequately transposing the VAT Directive:

Please note that some tax authorities in other Member States may not accept invoicing where the authenticity of the origin and integrity of the invoice data are guaranteed using these means. If your customers won't be able to use your invoices as evidence that you have made a taxable supply to them, they may not be willing to do business with you.

### **3.4.8. "Business controls" in practice**

According to 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 EU Commission Explanatory Notes describe the concept "business controls" in the context of Article 233 as the process by which a taxable person has created, implemented and kept up to date a reasonable level of assurance on the identity of the supplier or issuer of the invoice (authenticity of the origin), that the VAT content has not been altered (integrity of the content) and the legibility of the invoice from the moment of issue until the end of the storage period. 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. Where relevant other factors should also be taken into consideration.

An example of a business control – as mentioned in the Explanatory Notes of DG Taxud - is the matching of supporting documents. The importance attached to supporting documents should reflect factors such as the degree of independence of the issuer of the supporting documents from the taxable person and the weight attached to those documents in the accounting process. An important aspect of this type of business control is that the invoice is checked as a document within the business and accounting process and is not treated as an independent stand-alone document.

It is important to keep in mind that invoices, whether paper or electronic, are generally only one document in a set of documents (e.g. purchase order, contract, transport document, payment notice etc.) related to and documenting a transaction.

For the supplier, the invoice could be matched with a purchase order, transport documents and receipt of payment. For the customer, the invoice could be matched with the approved purchase order (purchase confirmation note), the delivery note, the payment and remittance advice. However, these are only examples of typical documents that may be available and many other documents could be matched with the invoice.

For VAT purposes an audit trail should, as stipulated in the second subparagraph of Article 233(1), provide an auditable link between an invoice and a supply of goods or services to enable the checking of whether an invoice reflects that a supply of goods or services has taken place. The means

by which a taxable person can demonstrate the link between an invoice and a supply of goods or services is left to the discretion of the taxable person. The Member State may issue guidance to help the taxable person establish a reliable audit trail but this guidance must not include any mandatory requirements. An example could be a set of different documents such a purchase order, transport documents and the invoice itself with the trace of the matching of those documents or even the mere fact that the three documents actually match. It would be helpful if EU Member States and/or the EU Commission could issue guidelines for SMEs and micro-enterprises in order to provide provides concrete examples for large enterprises as as well as for SMEs.

As with business controls, a reliable audit trail 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. Where relevant, other factors should also be taken into consideration, such as requirements for financial reporting and auditing.

It is important to note that the 'business controls' method linked to a reliable audit trail is not a derogation from the requirement to demonstrate integrity and authenticity of invoices – rather, it is a method through which this requirement can be met.

Some countries have applied „equal treatment“ of e-invoicing and paper invoicing, relying on “business controls” since almost a decade by applying the option of the “3rd way” allowed by the old EU Invoicing Directive.

The UK is one of the EU Member States that relied on business controls under the old EU Invoicing Directive by applying the “3rd way”. The following statement was published in a notice from the UK tax administration years ago (HMRC Reference: Notice 700/63, June 2007):

In order to establish the authenticity and integrity of your electronic invoicing you will need to be able to demonstrate that you have control over the:

- completeness and accuracy of the invoice data;
- timeliness of processing;
- prevention or detection of, possible corruption of data during transmission;
- prevention of duplication of processing (by the recipient); and
- prevention of the automatic processing, by the recipient, of certain types of invoice on which VAT may not be recoverable - for example, "margin scheme" invoices.
- Additionally you must: be able to demonstrate that you have a recovery plan in case of a system failure or loss of data; and maintain an audit trail between your electronic invoicing system(s) and the internal application system(s) that are used to process the electronic invoices.

The business and tax administration experience in practice has been very positive in the UK. Auditability was not a problem for the tax authorities and VAT revenues were safeguarded too. For businesses it was easy to operate in practice which is confirmed by the big uptake of e-invoicing in domestic trading scenarios in the last 10 years.

Finland, Sweden and other Member States did also follow the “3rd way” and ensured equal treatment since almost a decade:

There have been no specific requirements in the VAT Law on the term “business controls” in these Member States. The tax administration relied on business internal and commercial practices between the trading parties and on general principles available in the accounting law related to prudent and orderly book-keeping. Audibility was ensured and revenues safeguarded while meeting efficiency for the trading parties. With the new 2013 EU Invoicing Directive kicking in there was no need to make any changes on the approach in practice, only the national VAT laws where reworded to incorporate the wording of the new 2013 EU Invoicing Directive (Art. 233).

For these countries equal treatment seems to have been a major reason for the big uptake of e-invoicing in domestic trading..

Germany is one of the Member States that moved from the strictest options under the old EU Invoicing Directive asking for a qualified electronic signature to relying on “business controls” based on the 2013 EU Invoicing Directive following the experience of the other Member States which did already rely on business controls since years. Business controls and reliable audit trail: As business controls in the sense of Art. 14 (1) of the German VAT Law, a process is sufficient that the taxpayer uses to reconcile the invoice with his obligation to pay in order to guarantee that only those invoices are paid for which there is a payment obligation (buy to pay process). The taxpayer can already use existing invoice review/reconciliation processes (which are already used for paper invoices). No technological processes are made mandatory for the taxpayer, he can use IT/ERP driven processes or manual processes.

Business controls fulfil the requirements of Art. 14 (1) of the German VAT Law, if they contain a reliable audit trail through which a connection can be made between the invoice and the underlying supply of goods or services. The audit trail can for example be guaranteed through a (manual) reconciliation of the invoice with the available underlying commercial documents (i.e. copy of the purchase order, order, contract, delivery note, payment evidence). There are no separate documentation requirements for the business controls process and the reliable audit trail. An invoice which is correct as to the content – particularly supply, consideration, supplier and recipient of the payment are mentioned correctly – justifies the presumption that there have been no disabling failures within the transmission process of an invoice regarding the authenticity of the origin and the integrity of the content.

Germany is an example when it comes to transitioning from a very strict e-invoicing set up fully relying on qualified electronic signatures to set up allowing trading parties to rely on business controls.

#### **3.4.9. Technology option for business controls**

Other than by way of the type of business controls described above the following are examples of technologies that ensure the authenticity of the origin and the integrity of the content of an electronic invoice: an advanced electronic signature within the meaning of point (2) of Article 2 of

Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, based on a qualified certificate and created by a secure signature creation device, within the meaning of points (6) and (10) of Article 2 of Directive 1999/93/EC; electronic data interchange (EDI), as defined in Article 2 of Annex 1 to Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange, where the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data.

The two options, an advanced electronic signature and EDI, are only examples of electronic invoicing technologies to ensure the authenticity of the origin and the integrity of the content and cannot be mandatory requirements. Where electronic invoices do not meet the conditions of Article 233(2)(a) or (b) they may still meet the requirements of business controls in the second subparagraph of Article 233(1) or may fulfil the condition of authenticity of the origin and integrity of the content through an alternative technology (including for instance advanced electronic signatures which are not based on a qualified certificate) or procedure. EDI is based on an agreement to exchange structured data in accordance with Commission Recommendation 1994/820/EC and can refer to any standardised format. It does not refer only to EDIFACT, which is just one example of such formats.

#### **3.4.10. Conclusions**

Apart from the legal text it will be practically important how this concept is translated in tax reality on a day to day basis, e.g. via administrative guidance or technical notes of the tax administrations, and how these are applied in practice.

However, practical experience on the application of the new legislation by the Member States and whether the EU Directive is applied in practice in a uniform way across the EU is not available at the moment due to the short time frame - the new regulations are only in place since January 1, 2013. This practical information will become available when the periods after 2013 will be under audit. Therefore it is important that the application of the new legislation in practice by the Member States is further monitored in order to collect obstacles and emerging questions. In addition a process should be established on the European level, whereby best practices and practical experiences can be addressed and shared by the trading parties..

It must be noted that the EU Commission<sup>22</sup> has also started to maintain a website<sup>22</sup> which points to a database which is completed by the Member States themselves. This database holds information where the VAT invoicing rules allow Member States the right to choose different options – it is not related to e-invoicing but to general invoicing requirements where options exist for the Member States.

The Forum itself should do this but in the mid-term there should be an accessible database in Europe facilitated by the Commission where trading parties can address and share their obstacles and best practices experienced.

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<sup>22</sup> [http://ec.europa.eu/taxation\\_customs/tic/](http://ec.europa.eu/taxation_customs/tic/)

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; the EU Web-portal currently under discussion in the area of VAT could be one means to share information and guidance documents on VAT by the Member States. Similar portals could be envisaged for other topics.
- 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 the application of the VAT legislation across the EU and the practical 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>23</sup>).

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<sup>23</sup> <http://www.e-invoice-gateway.net/>



**Recommendations**

- 1. Activity 3 recommends to the Member States to use of the explanatory notes provided by DG TAXUD as guidance for the application of their national legislation in practice in order to ensure a uniform application of the legislation across the EU. This should be encouraged by national Fora and national associations.**
- 2. Activity 3 recommends to the EU Commission to continue to monitor VAT legislation and to continue to monitor the application of the VAT legislation across the EU and identify practical challenges and best practices.**
- 3. Activity 3 recommends to the Member States and the EU Commission to issue guidelines for SMEs and micro-enterprises in order to provide concrete examples for large enterprises as well as for SMEs**
- 4. Activity 3 recommends to the EU Commission should set up and facilitate a process whereby obstacles and best practices on the application of the 2013 e-invoicing rules in practice across the EU can be identified with the aim to ensure a uniform application of the legislation across the EU.**
- 5. Activity 3 recommends to the EU Commission to simplify the access to legal information and to create a European wide network of national websites, supported by National Fora as wells as a “European Knowledge Base on Electronic Invoicing” in Europe (e.g. similar to the CEN e-invoicing Gateway).**

#### **D. Summary of Recommendations**

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.
4. Activity 3 recommends to the Member States and the European Commission to define a common set of bookkeeping principles for electronic business transactions.
5. 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.
6. Activity 3 recommends to the European Commission and the Member States a clarification in the proposed Regulation on Data Protection as regards “business card information” in order to provide clear legal justification for processing basic work or business related personal data.
7. 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.
8. 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.
9. 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.
10. 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.
11. Activity 3 recommends to the Member States the use of the explanatory notes provided by DG TAXUD as guidance for the application of their national legislation in practice in order to ensure a uniform application of the legislation across the EU. This should be encouraged by national Fora and national associations.
12. Activity 3 recommends to the EU Commission to continue to monitor VAT legislation and to continue monitoring the application of the VAT legislation across the EU.
13. Activity 3 recommends to the Member States and the EU Commission to issue guidelines for SMEs and micro-enterprises in order to provide concrete examples for large enterprises as well as for SMEs
14. Activity 3 recommends that the EU Commission should set up and facilitate a process whereby experiences both as regards obstacles and best practices on the application of the 2013 e-invoicing rules across the EU can be identified with the aim to ensure a uniform application of the legislation across the EU.

15. Activity 3 recommends to the EU Commission to simplify the access to legal information and to create a European wide network of national websites, supported by National Fora as wells as a “European Knowledge Base on Electronic Invoicing” in Europe (e.g. similar to the CEN e-invoicing Gateway).

**E. ANNEXES****1. Activity 3 Team Members**

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## **2. Overview on Responses Received from National e-Invoice Fora (September 2012)**

### **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**

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			<p>See 2 separate documents with detailed responses</p>   <p>CCI CONSULTATION DOCUMENT ON EG EI Consultation e-mail- S      Activity 3 MSF-</p>
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			<p>Archiving:</p> <p>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 recipient. 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>

			<p>formats: will the recipient 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 transposed to Romanian legislation through Government Ordinance no. 15/23.08.2012 which modified the Fiscal Code, and entered into force on January 1, 2013. Minor corrections were made to this primary legislation on the e-invoicing subject through Government Ordinances no. 8/23.01.2013 and no. 16/30.07.2013.</p> <p>Secondary legislation, detailing the implementation rules of the modified Fiscal Code, was adopted through Government Decision no. 1071/06.11.2012. Minor corrections were made to this secondary legislation (on the e-invoicing subject) through Government Decision no. 84/06.03.2013.</p> <p>Also, through Government Ordinances no. 16/23.08.2012 and no. 84/12.12.2012, 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, 2014.</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,</p>

					<p>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 existing policy with regard to e-invoicing.</p> <p>Legislation was passed end of March 2012:</p> <p><a href="http://www.eerstekamer.nl/wetsvoorstel/32877_implementationrichtlijn">http://www.eerstekamer.nl/wetsvoorstel/32877_implementationrichtlijn</a></p>
16	SWEDEN				<p>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.</p>
17	BULGARIA				
18	CZECH REPUBLIC				<p>Czech Republic has issued draft legislation for e-invoicing which are consistent with the rules as from 2013.</p>

### **3. Survey on Implementation of Directive 2010/45 (September 2013)**

#### **RESULTS OF ACTIVITY 3 – EU MSF 2013**

##### **QUESTIONNAIRE PART 2 (9<sup>th</sup> January 2013)**

**Based on the Interim Report of Activity 3 and the information collected in that report until September 2012, Activity 3 is now collecting the most updated information on the transposition of that Directive:**

- 1. Date of national legislation transposing the EU Directive 2010/45**
- 2. URL where we can find the original text of the legislation**
- 3. Definition of "electronic invoice"**
- 4. Definition of "business controls"**
- 5. Any examples mentioned for "business controls"**
- 6. Use of technologies like electronic signatures and EDI**
- 7. Any other solutions explicitly mentioned beyond the Directive**
- 8. Any explanations or technical notes guiding tax administration and/or taxable persons**
- 9. Any best practice identified in your country for business controls.**

##### **RESPONSES RECEIVED (31<sup>st</sup> August 2013)**

- 1. Ireland**
- 2. Romania**
- 3. Germany**
- 4. United Kingdom**
- 5. The Netherlands**
- 6. Slovakia**
- 7. Czech Republic**
- 8. Poland**

- 9. Finland**
- 10. Spain**
- 11. Bulgaria**
- 12. Lithuania**
- 13. Austria**
- 14. Luxemburg**
- 15. Sweden**
- 16. Italy**
- 17. France**
- 18. Slovenia**
- 19. Denmark**

<b>IRELAND</b>	
<b>1</b>	<p><b>Date of national legislation transposing the EU Directive 2010/45</b></p> <p>New VAT invoicing rules come into effect on 1 January 2013.</p>
<b>2</b>	<p><b>URL where we can find the original text of the legislation</b></p> <p>The new rules are contained in EU (VAT) Regulations 2012 (S.I. No. 354 of 2012) and VAT (Amendment) Regulations 2012 (S.I. No. 458 of 2012)</p> <p><a href="http://www.irishstatutebook.ie/pdf/2012/en.si.2012.0354.pdf">http://www.irishstatutebook.ie/pdf/2012/en.si.2012.0354.pdf</a></p> <p><a href="http://www.revenue.ie/en/practitioner/law/statutory/si-458-2012.pdf">http://www.revenue.ie/en/practitioner/law/statutory/si-458-2012.pdf</a></p>
<b>3</b>	<p><b>Definition of "electronic invoice"</b></p> <p>The issue of invoices or other documents in electronic format is subject to the following conditions:</p> <p>a) there is prior agreement between the issuer and the recipient in relation to the issue and acceptance of invoices or documents in electronic format,</p> <p>b) the electronic system being used conforms to the following specifications –</p> <ul style="list-style-type: none"> <li>- the system must be able to produce, retain and store electronic records and messages in such form and containing such particulars as are required for VAT purposes, and make them available to Revenue on request,</li> <li>- the system must be able to reproduce in paper or electronic format any electronic record or message required to be produced, retained or stored, and</li> <li>- the system must be able to maintain electronic records in a manner that allows their retrieval by reference to the name of the person who issues or receives the message or the date of the message or the unique identification number of the message.</li> </ul>
<b>4</b>	<p><b>Definition of "business controls"</b></p> <p>(a) An accountable person who issues or receives an invoice or other document under this Chapter, and for the purposes of section 84(1), shall apply business controls to each such invoice or other document to ensure</p> <p>(i) the authenticity of the origin of that invoice or other document,</p> <p>(ii) the integrity of the content of that invoice or other document, and</p> <p>(iii) that there is a reliable audit trail for that invoice or other document and the supply of goods or services as described therein.</p> <p>(b) The accountable person shall furnish evidence of the business controls used to comply with paragraph (a) as may be required by the Revenue Commissioners and such evidence shall be subject to such conditions as may be specified in regulations (if any)."</p>

5	<p><b>Any examples mentioned for "business controls"</b></p> <p>NA</p>
6	<p><b>Use of technologies like electronic signatures and EDI</b></p> <p>No mention of these in the new changes so assuming nothing changed in regard to this i.e. they are an alternative to business controls. "In general, electronic invoicing systems currently in use, which comply with the existing electronic invoicing rules (section 66(2) of the VATCA 2010 and Regulation 21 of the 2010 VAT Regulations), shall be regarded as complying with these new rules for electronic invoicing."</p>
7	<p><b>Any other solutions explicitly mentioned beyond the Directive</b></p> <p>NA</p>
8	<p><b>Any explanations or technical notes guiding tax administration and/or taxable persons</b></p> <p><a href="http://www.revenue.ie/en/tax/vat/leaflets/invoicing-rules-010113.pdf">http://www.revenue.ie/en/tax/vat/leaflets/invoicing-rules-010113.pdf</a></p>
9	<p><b>Any best practice identified in your country for business controls.</b></p> <p>NA</p>



<b>ROMANIA</b>	
<b>1</b>	<p><b>Date of national legislation transposing the EU Directive 2010/45</b></p> <p>23 August 2012 – Government Ordinance no.15/2012 which modifies the Romanian Fiscal Code (main legislation) 6 november 2012 – Governmental Decision no. 1071/2012 modifying the implementation rules of the Fiscal Code (secondary legislation)</p> <p>Some changes were made in 2013 to the primary and secondary legislation (minor changes from the e-invoicing point of view) through Government Ordinances no. 8/2013 and no. 16/2013 (primary), as well as Government Decision no. 84/2013 (secondary).</p>
<b>2</b>	<p><b>URL where we can find the original text of the legislation</b></p> <p>Only in Romanian language: a) Main legislation <a href="http://static.anaf.ro/static/10/Anaf/legislatie/OG_15_2012.pdf">http://static.anaf.ro/static/10/Anaf/legislatie/OG_15_2012.pdf</a> as ammended by :  <a href="http://static.anaf.ro/static/10/Anaf/legislatie/OG_8_2013.pdf">http://static.anaf.ro/static/10/Anaf/legislatie/OG_8_2013.pdf</a> and <a href="http://static.anaf.ro/static/10/Anaf/legislatie/OG_16_2013.pdf">http://static.anaf.ro/static/10/Anaf/legislatie/OG_16_2013.pdf</a></p> <p>b) Secondary legislation <a href="http://static.anaf.ro/static/10/Anaf/legislatie/HG_1071_2012.pdf">http://static.anaf.ro/static/10/Anaf/legislatie/HG_1071_2012.pdf</a> and ammended by <a href="http://static.anaf.ro/static/10/Anaf/legislatie/HG_84_2013.pdf">http://static.anaf.ro/static/10/Anaf/legislatie/HG_84_2013.pdf</a></p>
<b>3</b>	<p><b>Definition of "electronic invoice"</b></p> <p>Article 29 of GO 15/2012 - which modifies art.155 of Fiscal Code, point (3): <i>"[...] electronic invoice is an invoice that contains the informations required by the present article and was issued and received in electronic format [...]"</i></p>
<b>4</b>	<p><b>Definition of "business controls"</b></p> <p>Article 40 of GD 1071/2012 - which modifies art. 76 of the implementation rules of the Fiscal Code, point (7): <i>"In the context of art. 155 para. (24) of Fiscal Code, business controls means the process by which a taxable person assures to a reasonable extent the identity of the supplier /issuer of the invoice, the integrity of the content and the legibility of the invoice from the moment of issue until the end of the storage period. The business controls should be appropriate to the size/ activity type of the taxable person and should take into considera-tion the number and value of transactions, as well as the number and type of suppliers/customers, and, if case may be, any other relevant factors. An example of a business control is the matching of supporting documents."</i></p>

5	<p><b>Any examples mentioned for "business controls"</b></p> <p>See above Item 4.</p>
6	<p><b>Use of technologies like electronic signatures and EDI</b></p> <p>Article 29 of GO 15/2012 - which modifies art.155 of the Fiscal Code, point (25):  “Other than by way of the type of business controls described in point (24), other examples of technologies that ensure the authenticity of the origin and the integrity of the content of an electronic invoice are:  (a) an advanced electronic signature within the meaning of point (2) of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, based on a qualified certificate and created by a secure signature creation device, within the meaning of points (6) and (10) of Article 2 of Directive 1999/93/EC;  (b) an electronic data interchange (EDI), as defined in Article 2 of Annex 1 to Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange, where the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data.”</p>
7	<p><b>Any other solutions explicitly mentioned beyond the Directive</b></p> <p>NA</p>
8	<p><b>Any explanations or technical notes guiding tax administration and/or taxable persons</b></p> <p>6 november 2012 – Governmental Decision no. 1071/2012 modifying the implementation rules of the Fiscal Code- This secondary legislation includes most of the “Explanatory Notes on VAT invoicing rules” release by the Commission.</p>
9	<p><b>Any best practice identified in your country for business controls.</b></p> <p>NA</p>

<b>GERMANY</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	Directive 2010/45 was transposed in 2011, by revision of § 14 Federal VAT Legislation on 1 <sup>st</sup> November 2011 (UStG).
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	<a href="http://www.ferd-net.de/upload/BMF-Schreiben_Umsatzsteuer_02-07-2012.pdf">http://www.ferd-net.de/upload/BMF-Schreiben_Umsatzsteuer_02-07-2012.pdf</a> <a href="http://www.bdi.eu/download_content/StVereinfG2011.pdf">http://www.bdi.eu/download_content/StVereinfG2011.pdf</a>
<b>3</b>	<b>Definition of "electronic invoice"</b>
	An electronic invoice in the sense of § 14 para 1 sentence 8 UStG is an invoice which is issued and received in an electronic format. The invoice issuer is free how he transmits an invoice - subject to approval of the invoice recipient; e.g. by E-Mail (with image or text document annex) or de-mail (see de-mail Act of 28 4 2011, Federal Law Gazette I p. 666), transmitted via computer fax or Fax Server, via Web download or via EDI are. Standard fax standard fax or computer fax/fax server on invoice sent standard fax is considered paper bill.
<b>4</b>	<b>Definition of "business controls"</b>
	An internal control procedure meets the requirements of article 14, paragraph 1 UStG, if there is a reliable audit trail, through which a link between the invoice and the underlying supply can be made. This can be in the frame of an adequately equipped accounting, but also for example through a manual matching of the invoice with existing business documents (e.g. copy of the purchase order, order, purchase, delivery, transfer or payment voucher). No technical procedures are prescribed, which companies must use on a mandatory base. The internal control procedures are not subject to any separate documentation requirements. However, the taxpayer is still obliged to prove that the legal obligations and requirements for tax deduction are fulfilled.
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	See above
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	Examples of technologies that ensure the authenticity of the origin and the integrity of the content in an electronic invoice, are a qualified electronic signature (§ 2 No. 3 SigG) or the qualified electronic signature with service provider accreditation (§ 2 No. 15 SigG), and on the other hand the electronic data interchange (EDI) according to article 2 of the recommendation 94/820/EC of 19 10 1994 about the legal aspects of electronic data interchange (OJ EC 1994, L 338 p. 98), when the use of procedures is provided in the agreement on the exchange of these data,

	which ensure the authenticity of the origin and integrity of data (§ 14 para 1 and 2 UStG).
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	NA
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	<p>Explanatory letter has been published to all tax administrations on Federal and Laender level on 2<sup>nd</sup> July 2012:</p> <p><a href="http://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Steuerarten/Umsatzsteuer/Umsatzsteuer-Anwendungserlass/2012-07-02-Vereinfachung-der-elektronischen-Rechnungsstellung.pdf?__blob=publicationFile&amp;v=4">http://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Steuerarten/Umsatzsteuer/Umsatzsteuer-Anwendungserlass/2012-07-02-Vereinfachung-der-elektronischen-Rechnungsstellung.pdf?__blob=publicationFile&amp;v=4</a></p> <p>see also: <a href="http://www.ferd-net.de/upload/BMF-Schreiben_Umsatzsteuer_02-07-2012.pdf">http://www.ferd-net.de/upload/BMF-Schreiben_Umsatzsteuer_02-07-2012.pdf</a></p>
<b>9</b>	<b>Any best practice identified in your country for business controls.</b>
	<p>See above Explanatory letter which has been published by all tax administrations on Federal and Laender level on 2nd July 2012, it is very helpful and gives guidance for the trading parties. Forum on electronic Invoice has published guidance:</p> <p><a href="http://www.ferd-net.de/upload/KMU_-_eRechnung_TippsTricks_FeRD_16.11.pdf">http://www.ferd-net.de/upload/KMU_-_eRechnung_TippsTricks_FeRD_16.11.pdf</a></p>

<b>UNITED KINGDOM</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	Directive 2010/EU was transposed into UK legislation by Statutory Instrument 2012/2951 - The Value Added Tax (Amendment) (No. 3) Regulation 2012. This came into effect on 1 January 2013.
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	<a href="http://www.legislation.gov.uk/uksi/2012/2951/contents/made">http://www.legislation.gov.uk/uksi/2012/2951/contents/made</a> <a href="http://www.legislation.gov.uk/uksi/2012/2953/contents/made">http://www.legislation.gov.uk/uksi/2012/2953/contents/made</a>
<b>3</b>	<b>Definition of "electronic invoice"</b>
	The definition of an 'electronic invoice' within the legislation is : "electronic invoice" means an invoice that contains the particulars required by regulation 14 and which has been issued and received in any electronic format."
<b>4</b>	<b>Definition of "business controls"</b>
	NA
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	NA
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	NA
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	No
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	Updated Notice 700/63 'Electronic Invoicing', which is currently under preparation. It will contain guidance on the use of the business controls creating and audit trail between invoice and supply, EDI & digital signatures as means of ensuring authenticity & integrity of electronic invoices.
<b>9</b>	<b>Any best practice identified in your country for business controls.</b>

	<p>We will be publishing a short guidance note together with a link to the European Commission Explanatory Notes</p>
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<b>THE NETHERLANDS</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	15 March 2012; the transpositions enter into force on 1 January 2013.
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	<a href="https://zoek.officielebekendmakingen.nl/stb-2012-115.html">https://zoek.officielebekendmakingen.nl/stb-2012-115.html</a>
<b>3</b>	<b>Definition of "electronic invoice"</b>
	An invoice containing the data prescribed by the VAT law, which is issued and received electronically (art. 35d of the VAT Law, i.e. Wet op de omzetbelasting 1968).
<b>4</b>	<b>Definition of "business controls"</b>
	There is no specific definition. It is up to businesses to choose the business controls they wish to create a reliable audit trail between an invoice and a supply of goods or services. Article 233 of the VAT Directive is copied into article 35b of the VAT Law.
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	No specific examples are mentioned in the VAT Law.
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	These technologies are mentioned just as examples in article 35 b, paragraph 4, of the VAT Law.
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	No other examples mentioned in the VAT Law
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	There is a Dutch Tax Authority decision "BLKB-2012-477m" of June 27, 2012 on administrative, invoicing/billing and other obligations relating to VAT which contains an explanation to the articles in the law on VAT, more specific about PDF via e-mail, retention and auditability. No specific policy.
<b>9</b>	<b>Any best practice identified in your country for business controls.</b>

	<p>The Dutch Tax Authority adheres to the CEN Compliance Guidelines matrix on e-invoicing. A Dutch translation has been made available in December 2012 on the website.</p> <p><a href="http://130.208.242.38/ComplianceWeb/MatrixApplyFilters.aspx">http://130.208.242.38/ComplianceWeb/MatrixApplyFilters.aspx</a></p> <p>Otherwise there are no initiatives by the government.</p>
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<b>SLOVAKIA</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	Oct 1st, 2012
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	It is part of our VAT law <a href="http://www.zbierka.sk/sk/predpisy/246-2012-z-z.p-34800.pdf">www.zbierka.sk/sk/predpisy/246-2012-z-z.p-34800.pdf</a>
<b>3</b>	<b>Definition of "electronic invoice"</b>
	Is an invoice with given content and is issued and received in any electronic format; E-invoice can only be issued with the recipient's approval.
<b>4</b>	<b>Definition of "business controls"</b>
	Business controls are internal processes that lead to a reliable assurance of authenticity of origin, integrity of content and readability of invoice (This is just a small extraction).
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	<b>As an example pairing of related documents is mentioned. An invoice should not be handled as a single document but should be connected to contract, order, dispatch advice and/or other documents.</b>
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	They are listed in the legislation as examples to ensure authenticity of origin, integrity of content and readability of e-invoice from its issuance till the end of archiving period.
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	No
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	Technical description available: INTERNÝ RIADIACI AKT č. 16/2012/1100403
<b>9</b>	<b>Any best practice identified in your country for business controls.</b>
	No

<b>CZECH REPUBLIC</b>	
<b>1</b>	<p><b>Date of national legislation transposing the EU Directive 2010/45</b></p> <p>Amendment no. 502/2012 was approved 19.12.2012, 31.12.2012 it was promulgated in the Czech system of Law part 188, and it took effect from 1.1.2013.</p>
<b>2</b>	<p><b>URL where we can find the original text of the legislation</b></p> <p>Official wording of Amendment no. 502/2012 of the Law no. 235/2004 in Czech language is here: <a href="http://www.mfcr.cz/cps/rde/xbcr/mfcr/Legislativa_zakon_502-2012_meni_zakon_235-2004-o_dani_z_DPH.pdf">http://www.mfcr.cz/cps/rde/xbcr/mfcr/Legislativa_zakon_502-2012_meni_zakon_235-2004-o_dani_z_DPH.pdf</a></p>
<b>3</b>	<p><b>Definition of "electronic invoice"</b></p> <p>There is no term "Invoice" defined in the Czech system of law, it's usage is a user habit only. The Law is speaking about Tax Document, in the paper or electronic form, as it is mentioned in §26 part 2. There it is stated as follows: Tax Document can be in either paper or electronic form. A Tax Document is in electronic form if it is issued and received in an electronic way. A recipient of an electronic Tax Document must agree to the usage of the document in electronic form.</p>
<b>4</b>	<p><b>Definition of "business controls"</b></p> <p>In §34 part 3 it is stated as follows: Assurance of authenticity of origin of a Tax Document and integrity of its content can be achieved by control mechanisms of processes forming credible link between a Document and respective delivery. More specific details are mentioned in the Ministry of the Finance's material "methodological guidelines" no. 14/2012 to the invoicing rules in relation to implementation of the Directive EU/45/2010 to the VAT Law, part 7.4.</p>
<b>5</b>	<p><b>Any examples mentioned for "business controls"</b></p> <p>As mentioned in part 4.</p>
<b>6</b>	<p><b>Use of technologies like electronic signatures and EDI</b></p> <p>It is defined by VAT Law §34. More specific details are mentioned in the Ministry of the Finance's material "methodological guidelines" no. 14/2012 to the invoicing rules in relation to implementation of the Directive EU/45/2010 to the VAT Law, part 7.1. to 7.4</p>
<b>7</b>	<p><b>Any other solutions explicitly mentioned beyond the Directive</b></p> <p>There is not mentioned any solution explicitly. Ministry of Finance and Ministry of Interior have their preferences in the eGovernment system "Data Boxes", which fulfils the requirements of</p>

	VAT Law and Directive EU/45/2010.
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	Ministry of the Finance's material "methodological guidelines" no. 14/2012 to the invoicing rules in relation to implementation of the Directive EU/45/2010 to the VAT Law.
<b>9</b>	<b>Any best practice identified in your country for business controls.</b>
	There are many solutions on the market in our Country, such as solutions based on global standards provided by traditional EDI (UN/EDIFACT) providers in FMCG, automotive industry etc. or ISDOC format (made by ICT Union, based on UBL 2.0), which is used in SME or government sector.

<b>POLAND</b>	
<b>1</b>	<p><b>Date of national legislation transposing the EU Directive 2010/45</b></p> <p>See Item 2.</p>
<b>2</b>	<p><b>URL where we can find the original text of the legislation</b></p> <p>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 20 December 2012 (Journal of Laws 2012 item 1528),</p> <p><a href="http://www.dziennikustaw.gov.pl/du/2012/1528/1">http://www.dziennikustaw.gov.pl/du/2012/1528/1</a></p> <p>- regulation of the Minister of Finance amending the regulation on the tax return for some taxpayers, invoicing, terms of the storage of invoices and the list of goods and services, which are not applicable exemption from taxes on goods and services of 11 December 2012 (Journal of Laws 2012 item 1428),</p> <p><a href="http://www.dziennikustaw.gov.pl/du/2012/1428/1">http://www.dziennikustaw.gov.pl/du/2012/1428/1</a>.</p> <p>The above-mentioned regulations entered into force on 1st of January 2013.</p> <p>Also I would like to clarify that due to the amendment of the Polish VAT legislation, most of the provisions of those regulations will be transferred to the act. Modification in this area will come into force on 1st of January 2014 - Act of 7 December 2012 amending the Act on tax on goods and services and certain other acts (Journal of Laws 2013 item 35)</p> <p><a href="http://www.dziennikustaw.gov.pl/du/2013/35/1">http://www.dziennikustaw.gov.pl/du/2013/35/1</a></p> <p>This Act will regulate comprehensively scope of invoicing.</p>
<b>3</b>	<p><b>Definition of "electronic invoice"</b></p> <p>The requirements for sending invoices in electronic form provided in the above-mentioned regulations fulfil the definition of the "electronic invoice" from Article 217 Directive 112. I would like to add that the definition of an electronic invoice will be introduced (transferred) to the law consequence of Article 1 point 1, letter b Act of 7 December 2012.</p>
<b>4</b>	<p><b>Definition of "business controls"</b></p> <p>The above-mentioned regulations contain the following definition of "business controls": "The authenticity of the origin, the integrity of the content and legibility of the invoice can be provided by any business controls which establish a reliable audit trail between an invoice and</p>

	delivery of goods or provision of services.”
<b>5</b>	<p><b>Any examples mentioned for "business controls"</b></p> <p>Examples of business controls are not mentioned in Polish regulation, but The Ministry of Finance of Poland prepared explanations of the rules on invoicing - Information brochure titled „Zmiany w zakresie fakturowania” (“Changes in the invoicing”). This brochure contains examples of business controls.</p> <p>For the purposes of the provisions of the VAT business controls should be taken to mean the process by which the taxable person creates, implements and updates a sufficient level of assurance on the identity of the supplier or the issuer of the invoice (the authenticity of the origin), that the data in the VAT scope has not been altered (integrity of the content) and the legibility of the invoice from the moment of issue until the end of the storage period.</p> <p>The business controls should be appropriate to the size and type of business and the taxpayer and should take account the number and value of transactions as well as the number and type of suppliers and customers. Where appropriate, other factors should also be included.</p> <p>An example of business control is “matching” to the invoice supporting documents, such as order, contract, transport document or request for payment.</p> <p>It is important to note that the invoices in paper or electronic form are generally only one of the documents in a set of documents related to and documenting a transaction.</p> <p>Business control fulfils the requirements of the legislation, if it gives certain control path, which allows associating an invoice with the delivery/service, which was the basis for the issuing of the invoice. It can be done in the appropriate sound knowledge of accounting, but also for example by manually comparing invoices with existing commercial documents (e.g. copy of the order, order, purchase contract, certificate of delivery or confirmation of transfer payments). The entrepreneur is not obligated to use any technical processes and the implementation of any special regulations. Business control is not subject to a separate document requirement.</p> <p>In the case of the supplier the invoice can be combined invoice with order, transport documents and proof of payment. In the case of the customer the invoice can be contrasted with the approved contract (proof of purchase), delivery confirmation, and confirmation of the <u>transfer order</u>. However, these are only examples of typical documents that may be available, as many other documents can also be compiled with the invoice.</p>
<b>6</b>	<p><b>Use of technologies like electronic signatures and EDI</b></p> <p>According to § 4 point 4 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 20 December 2012: “Except for the use business controls referred to in point 3, the invoice authenticity of origin and integrity of the content shall be ensured in particular, in the case of the use of:</p>

	<p>1) a secure electronic signature as defined in art. 3 point 2 of the Electronic Signature Act of 18 September 2001 (Journal of Laws No. 130 item 1450 as amended), verified using a valid qualified certificate, or</p> <p>2) electronic data interchange (EDI) in accordance with the agreement concerning the European model of electronic data interchange if the concluded agreement, concerning that interchange, foresees the application of procedures guaranteeing the invoice authenticity of origin and its data integrity.”</p> <p>So advance electronic signatures and EDI became options which can still be used by businesses to guarantee the “authenticity of the origin” and the “integrity of the content”.</p>
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	No.
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	<p>Yes. The Ministry of Finance of Poland prepared explanations of the rules on invoicing (addressed to tax administration and taxable persons). Information brochure titled „Zmiany w zakresie fakturowania” (“Changes in the invoicing”) was published on</p> <p><a href="http://www.finanse.mf.gov.pl">www.finanse.mf.gov.pl</a> → VAT → Wyjaśnienia i komunikaty.</p>
<b>9</b>	<b>Any best practice identified in your country for business controls.</b>
	Not identified.

<b>FINLAND</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	The Act on amending the VAT Act (399/2012) was accepted on 29.6.2012 and it came into force 1.1.2013.
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	The Act 399/2012 can be found: <a href="http://www.finlex.fi/fi/laki/alkup/2012/20120399?search%5Btype%5D=pika&amp;search%5Bpika%5D=399%2F2012">http://www.finlex.fi/fi/laki/alkup/2012/20120399?search%5Btype%5D=pika&amp;search%5Bpika%5D=399%2F2012</a>  Consolidated version of the VAT Act: <a href="http://www.finlex.fi/fi/laki/ajantasa/1993/19931501?search%5Btype%5D=pika&amp;search%5Bpika%5D=arvonlis%C3%A4verolaki">http://www.finlex.fi/fi/laki/ajantasa/1993/19931501?search%5Btype%5D=pika&amp;search%5Bpika%5D=arvonlis%C3%A4verolaki</a>
<b>3</b>	<b>Definition of "electronic invoice"</b>
	Electronic invoice means an invoice, which has been issued and received in an electronic format. (209 d § (29.6.2012/399))
<b>4</b>	<b>Definition of "business controls"</b>
	No definition of "business controls" in the VAT Act other than the condition that these controls have to reliably verify the link between the invoice and the sale of goods or services. (209 g § (29.6.2012/399))  In the arguments of the Governments' proposal it is explained that the business controls referred to in the VAT Directive could be said to mean the process by which a taxable person has created and kept up to date a reasonable level of assurance on the identity of the seller or issuer of the invoice (authenticity of the origin), that the content required for VAT purposes has remained unaltered (integrity of the content) and the legibility of the invoice from the moment of issue until the end of the storage period.
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	No examples of "business controls" in the VAT Act. In the arguments of the Governments' proposal it is said that an example of a business control is the matching of documents and an example of this matching is given.
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	Electronic signatures and EDI are not explicitly mentioned in the legal text as examples but in the

	arguments of the Governments proposal Article 233 of the VAT Directive is explained.
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	No.
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	<p>In the arguments of the Governments proposal concerning the Act on amending the VAT Act the concepts applied in Article 233 of the VAT Directive are explained.</p> <p>The tax Administration updated the guidance about invoice requirements:</p> <p><a href="http://www.vero.fi/en-US/Precise_information/Value_added_tax/Required_VAT_details_showing_on_invoices/VAT_details_to_set_out_on_sales_invoices(15591)">http://www.vero.fi/en-US/Precise_information/Value_added_tax/Required_VAT_details_showing_on_invoices/VAT_details_to_set_out_on_sales_invoices(15591)</a></p>
<b>9</b>	<b>Any best practice identified in your country for business controls.</b>
	<p>The companies are using 3-way matching as part of their business controls:</p> <ul style="list-style-type: none"> <li>• Received e-invoice is match to a valid purchase order and an approved delivery note</li> <li>• the invoice is matched against the contract or order confirmation</li> <li>• the invoice information (e.g. identifications, account numbers) is matched against data at company's own database.</li> </ul>



<b>SPAIN</b>	
<b>1</b>	<p><b>Date of national legislation transposing the EU Directive 2010/45</b></p> <p>The new Spanish regulation on invoicing duties, Royal Decree 1619/2012, was published in the Official State Gazette last 1st December 2012 and entered into force 1st January 2013.</p>
<b>2</b>	<p><b>URL where we can find the original text of the legislation</b></p> <p>The original text of the legislation can be found in the following URL:  <a href="http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-14696">http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-14696</a></p>
<b>3</b>	<p><b>Definition of "electronic invoice"</b></p> <p>An electronic invoice is any invoice keeping legal requirements and issued and received in electronic form (article 9).</p>
<b>4</b>	<p><b>Definition of "business controls"</b></p> <p>No definition of business controls is settled in the Spanish regulation. This way 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. Business controls can be used to establish reliable audit trails linking invoices and supplies.</p> <p>Each company may have a particular system of business controls, so an unique legal definition would be complicated. However, the Commission Explanatory Notes might be useful in this matter.</p>
<b>5</b>	<p><b>Any examples mentioned for "business controls"</b></p> <p>Examples of business controls are not mentioned in the Spanish regulation.</p>
<b>6</b>	<p><b>Use of technologies like electronic signatures and EDI</b></p> <p>Since different technologies exist, taxable persons should not be required to use any particular electronic-invoicing technology. However, to preserve legal certainty, in the case of those taxable persons already using Electronic Data Interchange (EDI) and advanced electronic signatures, the Spanish regulation specifically states that these technologies, no longer mandatory, also ensure the authenticity of the origin and the integrity of the content (article 10.1).</p>

<b>7</b>	<p><b>Any other solutions explicitly mentioned beyond the Directive</b></p> <p>Also, in order to preserve legal certainty, any taxable person may submit other technological proposals to the Tax Agency of Spain before using them. In this case, the Tax Agency of Spain Auditing Department shall examine the proposal and validate such technologies (article 10.1.c). The submission of the proposal is available on line in the following link:</p> <p><a href="https://www.agenciatributaria.gob.es/AEAT.sede/tramitacion/IZ31.shtml">https://www.agenciatributaria.gob.es/AEAT.sede/tramitacion/IZ31.shtml</a></p>
<b>8</b>	<p><b>Any explanations or technical notes guiding tax administration and/or taxable persons</b></p> <p>Tax administration auditors are responsible to check whether business controls used by the audited company establish or not reliable audit trails linking invoices and supplies.</p>
<b>9</b>	<p><b>Any best practice identified in your country for business controls.</b></p> <p>Best practices (the matching of supporting documents, etc) are to be identified by Tax administration auditors through a formal tax auditory. These best practices cannot be listed in advance.</p>

<b>BULGARIA</b>	
<b>1</b>	<p><b>Date of national legislation transposing the EU Directive 2010/45</b></p> <p>The EU Directive 2010/45 is transposed in Bulgarian legislation via amendment of the Value Added Tax Act (State Gazette No.94/30.11.2012, effective 1.01.2013)</p>
<b>2</b>	<p><b>URL where we can find the original text of the legislation</b></p> <p><a href="http://www.minfin.bg/bg/page/174">http://www.minfin.bg/bg/page/174</a> - in Bulgarian  <a href="http://www.minfin.bg/en/page/174">http://www.minfin.bg/en/page/174</a> - in English</p>
<b>3</b>	<p><b>Definition of "electronic invoice"</b></p> <p>Article 114, paragraph 9 of the Value Added Tax Act states:</p> <p>"Documenting of supplies with electronic invoices and electronic notifications to invoices shall be carried out, provided that such documenting is accepted by the recipient with a written or tacit consent."</p>
<b>4</b>	<p><b>Definition of "business controls"</b></p> <p>Article 114, paragraph 10 of the Value Added Tax Act states: "The taxable person shall ensure the authenticity of origin, the integrity of content and the readability of the invoice or the notification thereto by exercising any type of control over the economic activity, creating a reliable audit trail between the invoice or the notification to the invoice and the supply of the goods or services."</p>
<b>5</b>	<p><b>Any examples mentioned for "business controls"</b></p> <p>Article 122 of the Value Added Tax Act states:</p> <p>"When the taxable person stores by electronic means that ensure on-line access to electronic invoices and electronic notifications to invoices issued or received thereby, the said person shall be obligated to ensure the competent revenue authorities (on-line) access by electronic means to the data stored to:</p> <ol style="list-style-type: none"> <li>1. the competent revenue authorities - where the person is established on the territory of the country and where the person is not established on the territory of the country but the tax on the supply is due in Bulgaria;</li> <li>2. the competent authorities of the member state where the tax is due - where the person is established on the territory of the country and the tax on the supply is due in another member state." </li></ol>

6	<p><b>Use of technologies like electronic signatures and EDI</b></p> <p>Article 114, paragraph 11 of the Value Added Tax Act states:</p> <p>“In addition to the control over the economic activity under paragraph 10, the authenticity of origin, the integrity of content and the readability of the invoice or the notification thereto shall be provided by one of the following indicative technologies: 1. a qualified electronic signature within the meaning of the Electronic Document and Electronic Signature Act, or 2. electronic data interchange.”</p>
7	<p><b>Any other solutions explicitly mentioned beyond the Directive</b></p> <p>We have no indications for measures that could broaden the scope of the Directive via its transposition in the national legislation.</p>
8	<p><b>Any explanations or technical notes guiding tax administration and/or taxable persons</b></p> <p>None</p>
9	<p><b>Any best practice identified in your country for business controls.</b></p> <p>NA</p>

<b>REPUBLIC OF LITHUANIA</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	20 December 2011 Law on Value Added Tax No. XI-1817
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	<a href="http://www3.lrs.lt/pls/inter3/dokpaieska.rezult_l?p_nr=IX-751&amp;p_nuo=&amp;p_iki=&amp;p_org=&amp;p_drus=&amp;p_kalb_id=1&amp;p_title=&amp;p_text=&amp;p_pub=&amp;p_met=&amp;p_lnr=&amp;p_denr=&amp;p_es=0&amp;p_tid=&amp;p_tkid=&amp;p_t=0&amp;p_tr1=2&amp;p_tr2=2&amp;p_gal=&amp;p_rus=1">http://www3.lrs.lt/pls/inter3/dokpaieska.rezult_l?p_nr=IX-751&amp;p_nuo=&amp;p_iki=&amp;p_org=&amp;p_drus=&amp;p_kalb_id=1&amp;p_title=&amp;p_text=&amp;p_pub=&amp;p_met=&amp;p_lnr=&amp;p_denr=&amp;p_es=0&amp;p_tid=&amp;p_tkid=&amp;p_t=0&amp;p_tr1=2&amp;p_tr2=2&amp;p_gal=&amp;p_rus=1</a>
<b>3</b>	<b>Definition of "electronic invoice"</b>
	Electronic invoices mean a VAT invoice, which shall set out the VAT invoice requisites, and which has been issued and received in electronic format.
<b>4</b>	<b>Definition of "business controls"</b>
	<p>The use of an electronic invoice shall be subject to acceptance by the recipient. A person who under this Law must document an VAT invoice or ensure it is documented, as well has to identify ways of ensuring a VAT invoice authenticity, integrity and legibility. VAT invoice authenticity under this Law is a supplier of goods (service provider), or a person who documents the VAT invoice, identity certainty while the VAT invoice integrity of the content means requisites to this Law has not been altered. VAT invoice authenticity, integrity and legibility a person can provide by using any business controls which makes it possible to verify the relationship between an invoice and a supply of goods or services.</p> <p>It should be noted that the concept of "business controls" is very broad, but it may be a process designed, implemented and continuously updated by responsible individuals (managers, owners, employees), which is designed to ensure adequate financial, accounting and maintenance of the statutory accounts of certainty and legal requirements.</p>
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	<p>"Business controls" to ensure VAT invoice authenticity: product (service) supplier's VAT invoices might be checked to purchase orders, contracts, transportation documents, payment documents and so on. The buyer's – with a confirmed purchase order, shipping notice, notice of payment and funds transfer. However, the VAT invoice can be checked with a number of other documents, and so on.</p> <p>VAT invoice integrity is the content of both goods (services) supplier's and buyer's obligation. They both, independently of one another, are free to choose how to meet this obligation, or agreement, to ensure that the VAT invoice contents are not changed (for example, using certain technologies - electronic data interchange tools or advanced electronic signatures). So, VAT payer</p>

	has to choose whether to implement business controls which provide a secure supply of invoices an audit trail, or the use of specific technologies to meet this obligation.
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	<p>An electronic VAT invoice authenticity, integrity can also be ensured in the following ways:</p> <ol style="list-style-type: none"> <li>1. Using a secure electronic signature, as defined in the Republic of Lithuania Law on Electronic Signature;</li> <li>2. Using electronic data interchange (EDI), as defined in Article 2 of Annex 1 to Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange, where the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity and integrity.</li> </ol>
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	There are no other solutions.
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	<p>Tax administrator has prepared a comment of Law on Value Added Tax (article 79) to taxable persons concerning electronic invoices which is available in a website of State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania</p> <p><a href="http://mic.vmi.lt/documentspublic.do?&amp;id=1000007324#tr1000007324">http://mic.vmi.lt/documentspublic.do?&amp;id=1000007324#tr1000007324</a></p>
<b>9</b>	<b>Any best practice identified in your country for business controls.</b>
	Don't have information concerning this.

<b>AUSTRIA</b>	
<b>1</b>	<p><b>Date of national legislation transposing the EU Directive 2010/45</b></p> <p>1.1.2013, please see § 11 Abs. 2 Umsatzsteuergesetz 1994 (UStG 1994) as amended in the Abgabenänderungsgesetzes 2012 (AbgÄG 2012) and E-Rechnung-Umsatzsteuerverordnung (E-Rechnung-UStV)</p>
<b>2</b>	<p><b>URL where we can find the original text of the legislation</b></p> <p>Abgabenänderungsgesetz 2012, BGBl. I Nr. 112/2012:  <a href="http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_112/BGBLA_2012_I_112.pdf">http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_112/BGBLA_2012_I_112.pdf</a></p> <p>E-Rechnung-UStV, BGBl. II Nr. 516/2012:  <a href="http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_II_516/BGBLA_2012_II_516.pdf">http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_II_516/BGBLA_2012_II_516.pdf</a></p> <p>Umsatzsteuerrichtlinien 2000, Rz 1564c ff:  <a href="https://findok.bmf.gv.at/findok/link?gz=%22BMF-010219%2F0288-VI%2F4%2F2012%22&amp;gueltig=20121219&amp;segid=%2219969.9.110+20.12.2012+07%3A29%3A56%3A23%22">https://findok.bmf.gv.at/findok/link?gz=%22BMF-010219%2F0288-VI%2F4%2F2012%22&amp;gueltig=20121219&amp;segid=%2219969.9.110+20.12.2012+07%3A29%3A56%3A23%22</a></p>
<b>3</b>	<p><b>Definition of "electronic invoice"</b></p> <p>An electronic invoice is a bill, which is issued and received, in an electronic format. It is only considered as an invoice within the meaning of the paragraph, that the authenticity of their origin and the integrity of their content, their readability are guaranteed. Authenticity of the origin means the security of the identity of the performing carrier or issuer of the invoice. Integrity of the content means that the into account content required under this federal law has not been modified.</p>
<b>4</b>	<p><b>Definition of "business controls"</b></p> <p>An internal control procedure is a monitoring procedure, which the seller provides to the matching of the invoice with its claim for payment or the contractor receiving the performance to the matching the invoice with his obligation to pay.</p> <p>Please refer to the Umsatzsteuerrichtlinien:  <a href="https://findok.bmf.gv.at/findok/link?gz=%22BMF-010219%2F0288-VI%2F4%2F2012%22&amp;gueltig=20121219&amp;segid=%2219969.9.110+20.12.2012+07%3A29%3A56%3A23%22">https://findok.bmf.gv.at/findok/link?gz=%22BMF-010219%2F0288-VI%2F4%2F2012%22&amp;gueltig=20121219&amp;segid=%2219969.9.110+20.12.2012+07%3A29%3A56%3A23%22</a>)</p>

<b>5</b>	<b>Any examples mentioned for "business controls"</b>  Examples mentioned in the Umsatzsteuerrichtlinien are i.e. manual comparison of invoice with other business documents i.e. order, contract and delivery receipt. Please see the excerpt of the Umsatzsteuerrichtlinien at the end of the document (German only).
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>  Yes, both are mentioned in the legislation.
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>  No.
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>  Information is given in the Umsatzsteuerrichtlinien, as well as on the official homepage of the ministry of finance:  <a href="https://www.bmf.gv.at/Steuern/Fachinformation/Umsatzsteuer/Informationen/ElektronischeRechneu_13620/_start.htm">https://www.bmf.gv.at/Steuern/Fachinformation/Umsatzsteuer/Informationen/ElektronischeRechneu_13620/_start.htm</a>
<b>9</b>	<b>Any best practice identified in your country for business controls.</b>  See Umsatzsteuerrichtlinien, above.



<b>LUXEMBURG</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	29.03.2013
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	<a href="http://www.legilux.public.lu/leg/a/archives/2013/0060/2013A0764A.html">http://www.legilux.public.lu/leg/a/archives/2013/0060/2013A0764A.html</a>
<b>3</b>	<b>Definition of "electronic invoice"</b>
	The VAT Act 1979 (" <i>loi modifiée du 12 février 1979 concernant la taxe sur la valeur ajoutée</i> "), as amended by the law of 29 March 2013 (implementing Directive 2010/45), defines an "electronic invoice" as an invoice that is " <i>issued and received in any electronic format</i> " (Art. 63.1 VAT Act)
<b>4</b>	<b>Definition of "business controls"</b>
	No. The law explicitly states as a principle that each taxable person for VAT purposes can freely determine how to implement business controls which create a reliable audit trail between an invoice and a supply of goods or services in order to guarantee the authenticity of the origin, the integrity of the content and the legibility of the invoice.
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	No.
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	Not explicitly mentioned any more, but it is clear from the first Circular that the direction of the VAT authorities issued on 4 April 2013 upon the official publication of the law of 29 March 2013 (implementing Directive 2010/45) the use of these technologies guarantee the authenticity of the origin, the integrity of the content and the legibility of the invoice.
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	No.
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	No clarification was given in the first Circular that the direction of the VAT authorities issued on 4 April 2013 upon the official publication of the law of 29 March 2013 (implementing Directive 2010/45).

9	<p data-bbox="261 192 1407 226"><b>Any best practice identified in your country for business controls.</b></p> <p data-bbox="261 277 1407 636">No, but it may be expected that the several operators will come with compliant solutions as Luxembourg will modernise its laws in respect of the electronic archiving of original paper documents without loss of probative value. A new grand-ducal regulation will lay down several criteria in terms of authenticity of the origin and integrity of the content. The evidence of compliance with these conditions will be facilitated, as undertakings will be allowed to benefit from a presumption of compliance if they have recourse to a certified and approved "dematerialisation and/or conservation service provider" (PSDC). Several undertakings are already preparing their PSDC application file and most likely, these service providers will also include the issuance and conservation of electronic invoices in their offering.</p>
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<b>SWEDEN</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	January 1, 2013
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	<a href="http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Mervardesskattelag-1994200_sfs-1994-200/?bet=1994:200">http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Mervardesskattelag-1994200_sfs-1994-200/?bet=1994:200</a>
<b>3</b>	<b>Definition of "electronic invoice"</b>
	Electronic invoice means an invoice that, according to § 17, has been issued and received in an electronic format (Chapter 1, § 17 a in the law, see above). § 17 contains definition about an invoice as such.
<b>4</b>	<b>Definition of "business controls"</b>
	There is no definition in the new VAT legislation, but it must be seen as referring to general accepted accounting principles (GAAP). In the preparatory acts to the law (Prop 2011/12:94 page 80) it refers to the rules in the Accounting Act and Book-keeping Act and it says that one of the purposes with the rules are to ensure that there are adequate routines in order to document business activities and preserve data so that financial condition and progress can be checked. The data shall be correct and unchanged and the book-keeping shall contain an audit trail so that financial position and results can be reconciled to individual business events.
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	The Swedish Accounting Standards Board ( Bokföringsnämnden, <a href="http://www.bfn.se">www.bfn.se</a> ) issues general advice and information material on accounting issues and accounting practices. They are good guidance for GAAP, including "business controls".
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	Electronic signatures and EDI are not specifically mentioned in the VAT legislation. EDI is used but electronic signatures are used only in a limited extent in order to ensure the authenticity of the origin and the integrity of the content. In Sweden mostly "business controls" are used to ensure this.

7	<p><b>Any other solutions explicitly mentioned beyond the Directive</b></p> <p>No</p>
8	<p><b>Any explanations or technical notes guiding tax administration and/or taxable persons</b></p> <p>The Swedish Tax Agency (Skatteverket, <a href="http://www.skatteverket.se">www.skatteverket.se</a> ) issues general advice and guidelines. There is a possibility to send questions to the Agency regarding different issues relating to the applicable legislation. The answers from the Agency are then published if it is a question of general interest.</p>
9	<p><b>Any best practice identified in your country for business controls.</b></p> <p>The accounting legislation in Sweden consists of mandatory accounting acts; the Annual Accounting Act and the Book-keeping Act, being the most important ones. Both the Annual Accounting Acts and the Book-keeping Act are general frameworks for accounting and both refer to "generally accepted accounting principles". As mentioned above the Swedish Accounting Standards Board issues general advice and information that identify best practice.</p> <p>We refer in this to Sweden, but it is worth to mention that there is a good description of business controls in the " Code of Practice on Electronic Invoicing in Europe "that was published by the former Expert group on e-invoicing, see "Core principles", 2.3 at <a href="http://ec.europa.eu/internal_market/payments/docs/einvoicing/code_of_practice_en.pdf">http://ec.europa.eu/internal_market/payments/docs/einvoicing/code_of_practice_en.pdf</a></p>

<b>ITALY</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	The new Italian regulation on invoicing duties, Decree Law no. 216/2012, was published in the Official State Gazette last 11 December 2012: so, Italy finishes its legislative process to transpose Directive 2010/45 amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing. The Decree Law no. 216/12 was enacted into Law no. 228 of 24.12.2012 (aspects on e-invoicing are contained in Article no. 1, co. 325).
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	<a href="http://def.finanze.it/DocTribFrontend/getArticoloDetailFromResultList.do?id={0EF0D0B4-4877-421A-9F7F-74842FD06E41}&amp;FROM_SEARCH=true&amp;codiceOrdinamento=300010000325000&amp;numeroArticolo=Articolo 1-com325&amp;idAttoNormativo={972C181C-26BE-44EC-9A06-0A5E7315E9DE}">http://def.finanze.it/DocTribFrontend/getArticoloDetailFromResultList.do?id={0EF0D0B4-4877-421A-9F7F-74842FD06E41}&amp;FROM_SEARCH=true&amp;codiceOrdinamento=300010000325000&amp;numeroArticolo=Articolo 1-com325&amp;idAttoNormativo={972C181C-26BE-44EC-9A06-0A5E7315E9DE}</a>
<b>3</b>	<b>Definition of "electronic invoice"</b>
	An electronic invoice is any invoice keeping legal requirements and issued and received in electronic form. The use of an electronic invoice shall be subject to acceptance by the recipient.
<b>4</b>	<b>Definition of "business controls"</b>
	NA
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	NA
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	NA
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	NA
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	NA

**9 Any best practice identified in your country for business controls.**

There isn't a specific definition or examples of "business controls" in the Law. It says that "Each taxable person shall ensure the authenticity of the origin, the integrity of the content and the legibility of the invoice from the point in time of issue until the end of the period for storage of the invoice; authenticity of the origin and integrity of the content may be guaranteed by systems of business control which ensure a reliable connection between the invoice and the sale of goods or the provision of services attributable to it, or by applying the qualified or digital electronic signature or by electronic transmission of EDI systems data or other technologies to ensure the authenticity of the origin and integrity of data."

The new Law specifies that e-invoices shall be stored by electronic means, while invoices created by electronic means or paper invoices can be stored by electronic means.  
It is possible to store invoices in a country with which legal instruments relating to mutual assistance are in force.

The new Law is the result of a constructive work in the Italian Forum on Electronic Invoicing. We are working now to propose explanations or technical notes for a correct interpretation of the new rule: in these notes we will sure insert an explanation of BI and EDI.

FRANCE	
<b>1</b>	<p><b>Date of national legislation transposing the EU Directive 2010/45</b></p> <p>The EU Directive 2010/45 has been transposed in French legislation by the article 62 of the law n°1510 published on the 29th of December 2012 (loi de finances rectificative pour 2012)</p>
<b>2</b>	<p><b>URL where we can find the original text of the legislation</b></p> <p>The article 62 of the finance law n°1510 can be seen at the following URL :</p> <p><a href="http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026857857&amp;dateTexte=&amp;categorieLien=id">http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026857857&amp;dateTexte=&amp;categorieLien=id</a></p> <p>Legislative articles related to new invoicing rules are in the following articles :</p> <ul style="list-style-type: none"> <li>• article 289 VI and VII of the "<i>code général des impôts (CGI)</i>",</li> <li>• articles L. 13 D and L. 13 E of the "<i>livre des procédures fiscales (LPF)</i>",</li> <li>• articles L. 80 F and L. 80 FA of the "<i>livre des procédures fiscales (LPF)</i>",</li> <li>• articles L. 102 B and L. 102 C of the "<i>livre des procédures fiscales (LPF)</i>".</li> </ul> <p>Those articles can be found on internet website legifrance (<a href="http://www.legifrance.gouv.fr">http://www.legifrance.gouv.fr</a>). For instance, article 289 of the CGI:</p> <p><a href="http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000018036005&amp;cidTexte=LEGITEXT000006069577">http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000018036005&amp;cidTexte=LEGITEXT000006069577</a></p> <p>In addition 2 decrees has been published :</p> <ul style="list-style-type: none"> <li>• Decree n°2013-346 published on April 24th, 2013, which modifies articles 242 nonies and 242 nonies A (mandatory fields) of Annex II of the CGI, and L102C of the LPF (archiving place of e-invoices) <a href="http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027351702">http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027351702</a></li> <li>• Decree n° 2013-350 published on April 25th, 2013, which modifies articles 96 of annex III of the CGI <ul style="list-style-type: none"> <li>○ Digital signature for e-invoices : 96F and 96Fbis</li> <li>○ EDI : 96G and 96H</li> <li>○ Audit trail and business control for paper and electronic invoices (default way) : 96I</li> <li>○ Restitution of invoices (paper or electronic) : 96Ibis <a href="http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027356611&amp;categorieLien=id">http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027356611&amp;categorieLien=id</a></li> </ul> </li> </ul>
<b>3</b>	<p><b>Definition of "electronic invoice"</b></p> <p>An electronic invoice is issued, transmitted, received and archived in an electronic format, whatever it is. Authenticity of the origin, integrity and sustainability of the content must be guaranteed from the date when it has been issued to the end of the archiving/storage period.</p>

<p><b>4</b></p>	<p><b>Definition of "business controls"</b></p> <p>Business controls are set up by each company and shall establish a reliable audit trail between the invoice issued and received and the underlying delivery of goods or services. Business controls are organized, documented, permanent, chosen by each company and implemented under its responsibility:</p> <ul style="list-style-type: none"> <li>• to control the operation of the issuing, transmission and reception system for invoices (paper or electronic).</li> <li>• and to ensure that invoices issued and received correspond to the realization of a supply of goods or services actually performed.</li> <li>•</li> </ul> <p>Controls should enable the company to determine whether the substance of the invoice is correct, that is to say,</p> <ul style="list-style-type: none"> <li>• is the supply of goods or services delivered in accordance with the presentation made on the invoice (quantity and quality),</li> <li>• and has the issuer of the invoice therefore a right to payment.</li> </ul>
<p><b>5</b></p>	<p><b>Any examples mentioned for "business controls"</b></p> <p>Companies are free to determine how to organize their business controls. These can be integrated into the accounting system. They may also consist of a manual comparison of invoices with other business documents (purchase orders, delivery notes, proof of payment ...).</p> <p>Business controls can be performed in paper or electronic form. All business documents necessary to the reliable audit trail and business controls proves have to be archived in the same storage period than the related invoice.</p>
<p><b>6</b></p>	<p><b>Use of technologies like electronic signatures and EDI</b></p> <p>The digital signature alone guarantees the authenticity of origin and integrity of content of invoices (readability has to be performed, which is the case for pdf invoices for instance) if it is advanced, based on a qualified certificate and created by a secure creation device, within the meaning of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999.</p> <p>EDI also guarantees the authenticity of origin and integrity of content and readability of invoices under conditions laid down by decree (which includes a summary list and a partner list that must be archived in addition to the invoice for the same period of time).</p>
<p><b>7</b></p>	<p><b>Any other solutions explicitly mentioned beyond the Directive</b></p> <p>Any technical solution for the transmission of electronic invoices (other than those referred to in paragraph 6 above) is authorized by the French legislation when business controls establishing a reliable audit trail between an invoice and the underlying supply of goods or service, are implemented by the company in the respect of article 289 VII 1° of the CGI and related articles (Annexe III of CGI and LPF).</p>



<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>  The tax administration guidance document (Bulletin Officiel des Impôts) should be published in the summer 2013 and will be available on:  <a href="http://www.legifrance.gouv.fr">www.legifrance.gouv.fr</a>
<b>9</b>	<b>Any best practice identified in your country for business controls.</b>  None

<b>SLOVENIA</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	Act amending the Value added tax act – ZDDV-1G (OG RS no. 83/12) – entry into force 1. January 2013
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	<a href="http://www.mf.gov.si/en/areas_of_work/taxes_and_customs/taxes_and_custom_duties/">http://www.mf.gov.si/en/areas_of_work/taxes_and_customs/taxes_and_custom_duties/</a>
<b>3</b>	<b>Definition of "electronic invoice"</b>
	An electronic invoice shall include data required under VAT Act and shall be issued and received in any electronic form (VAT act - art 84(2)).
<b>4</b>	<b>Definition of "business controls"</b>
	Business controls shall create a reliable audit trail between an invoice and a supply of goods or services (VAT Act – art. 84(4)).
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	A reliable audit trail.
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	The authenticity of the origin and the integrity of the content of an invoice may also be guaranteed by using advanced digital signature or electronic data interchange (EDI)
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	No.
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	There is general explanation main changes in Act amending the Value added tax act published on the web site of Tax administration (available only in Slovene language): <a href="http://www.durs.gov.si/si/davki_predpisi_in_pojasnila/davek_na_dodano_vrednost_pojasnila/razno/obvestilo_o_spremembah_zakona_o_davku_na_dodano_vrednost_novela_zddv_1g/">http://www.durs.gov.si/si/davki_predpisi_in_pojasnila/davek_na_dodano_vrednost_pojasnila/razno/obvestilo_o_spremembah_zakona_o_davku_na_dodano_vrednost_novela_zddv_1g/</a> . We are also preparing additional explanations regarding electronic invoices that will also be published on the web site of Tax administration in the very near future.

<b>9</b>	<b>Any best practice identified in your country for business controls.</b>
	Currently no.

<b>DENMARK</b>	
<b>1</b>	<b>Date of national legislation transposing the EU Directive 2010/45</b>
	The new legislation transposing the EU directive was adopted on 27th March 2012
<b>2</b>	<b>URL where we can find the original text of the legislation</b>
	<a href="https://www.retsinformation.dk/forms/R0710.aspx?id=141153">https://www.retsinformation.dk/forms/R0710.aspx?id=141153</a> – see no. 19, § 52 - § 52 c.  <a href="https://www.retsinformation.dk/forms/R0710.aspx?id=142583">https://www.retsinformation.dk/forms/R0710.aspx?id=142583</a> – this is supplementary legislation – se § 45
<b>3</b>	<b>Definition of "electronic invoice"</b>
	DK do not distinguish between paper invoices and electronic invoices. See § 45, number 1, in the adopted supplementary legislation.
<b>4</b>	<b>Definition of "business controls"</b>
	DK has no specific rules on the definition on business controls. It is up to the business to prove the liability and integrity of the invoices. See § 45, number 2, in the adopted supplementary legislation.
<b>5</b>	<b>Any examples mentioned for "business controls"</b>
	No.
<b>6</b>	<b>Use of technologies like electronic signatures and EDI</b>
	Still allowed but we have no longer specific VAT rules in this respect.
<b>7</b>	<b>Any other solutions explicitly mentioned beyond the Directive</b>
	No.
<b>8</b>	<b>Any explanations or technical notes guiding tax administration and/or taxable persons</b>
	No technical notes are issued. See the general legal guidance on this:  <a href="http://www.skat.dk/pdf.ashx?pdfurl=http%3a%2f%2fwww.skat.dk%2fSKAT.aspx%3fold=2068792%26vld=206519%26print=1&amp;lang=DA">http://www.skat.dk/pdf.ashx?pdfurl=http%3a%2f%2fwww.skat.dk%2fSKAT.aspx%3fold=2068792%26vld=206519%26print=1&amp;lang=DA</a>

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<b>9</b>	<b>Any best practice identified in your country for business controls.</b>