

# Electronic Invoicing: Legal Aspects



**Jos Dumortier**  
**Professor K.U.Leuven – ICRI**  
**Attorney - Bar of Brussels (time.lex)**



# Electronic Invoicing?

“electronic” doesn’t refer to the creation  
but  
to the communication and the storage of the invoice


# Some basic questions

- “invoice.doc” = “invoice.pdf”?
- “invoice.doc” = “invoice.docx”?
- which is the “original” invoice?
- ...

# Many alternatives to “e-communicate” the invoice

- handing over / sending by post a cd, dvd, memory stick, ...
- invoice in e-mail body or attachment
- automatic exchange of invoice between software applications
- ...
  
- Question: send AND store?
  - see later: what is received in electronic form should be stored in electronic form

# Role of intermediary

click on diagram to access details 



# Elektronic invoice: proof of obligation

- Art. 1322, al 2 CC :

*“ Can be considered as a signature, a whole of electronic data which can be attributed to a determined person and which demonstrates the integrity of the content of the instrument”*

# Consumer Law

- Functional-equivalence rule (art. 16, law electronic commerce )

*“Every legal or regulatory formal requirement for the creation of contracts by electronic means is fulfilled if the functional qualities of this requirement is guaranteed.”*

# Electronic invoicing in the VAT-regulation

- Before: individual and collective authorisations
- Directive 2001/115/EC
  - currently included in VAT-directive 2006/112/EC
- Belgium: Law of 28/01/2004 + Royal Decree 16/02/2004
- Circular Letter Ministry of Finance?
- New: draft european directive COM(2009)21

# Conditions

- Art. 1, § 2 Decree nr 1 : *“if accepted by the contractual partner”*
- Art. 1, § 3 Decree nr 1 : *“under the condition that the authenticity of the origin and the integrity of the content is guaranteed by means of **either an advanced electronic signature or the electronic exchange of data** following the standard code EDI”*
- Art. 1, § 4, Decree nr 1 : *“by or in the name of the Minister of Finance it can be accepted that the electronic communication of invoices takes place by other means than an advanced electronic signature or EDI, but under the condition that the authenticity of the origin and the integrity of the content of the invoice is guaranteed”.*

# Advanced electronic signature?

- a) *it is uniquely linked to the signatory;*
- b) *it is capable of identifying the signatory;*
- c) *it is created using means that the signatory can maintain under his sole control; and*
- d) *it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable;*

# Advanced electronic signature

- Basis: the 4 requirements
- CEN/ISSS Workshop on e-invoicing (eInvoicing1)
  - ...
  - CWA 15579:2006 - Signatures
  - CWA 15580: 2006 – Storage
  - eInvoicing2: Business plan (approved Feb. 2008)

# Definition of EDI

*“electronic transfer, from computer to computer, of commercial and administrative data, using an agreed standard to structure the message”*

(Recommendation 1994/820/EC)

# EDI Aspects

- **Content and structure** : EDI standard, XML, UN/EDIFACT, EANCOM, ANSI X12, GENCOD, ODETTE, BMF100(+), PIDX, CIDX, ebXML
- **Transport** : VAN (IBM, GXS-GEIS, ...), EDI mailbox, X400, Internet e-mail (AS1, ...), HTTP/S (RosettaNet, AS2, ...), FTP, OFTP-X25/ISDN, Isabel (very secure X400)
- **Basic Data Synchronisation:** Article numbers, delivery places, partner identifications
- **Choreography:** Sequence of transactions, schedule, control messages, signature

# Conservation of invoices

Article 60, § 3 VAT Code : “ (...)

*“Invoices stored by electronic means which guarantees a full online access to the data concerned, can be stored in another Member State of the European Community, if the VAT administration is priorly notified.*

*The authenticity of the origin and the integrity of the content of the invoices, as well as the readability, needs to be guaranteed during the whole of the conservation term. “*

# Scanning of paper invoices

- Article 60, § 3, al. 3 en al 4: « *Invoices received in electronic form need to be conserved in their original form, including the data guaranteeing the authenticity of the origin and the integrity of the content of every invoice.* »

*“Invoices received in paper form need to be conserved either in their original form or in digital form. In case of digital conservation the technologies or process-related means that are used, should guarantee the authenticity of the origin and the integrity of the content of the invoices.”*

# Circular Letter AOIF 16/2008

- Conservation of outgoing invoices sent in paper form: 4 possibilities
  - Conservation on paper (+ 5 years in electronic file – no specific requirements)
  - Daily digital storage on WORM support (e.g. DVD-R)
  - Digital conservation secured by an advanced electronic signature
  - Digital conservation secured by means of a sealing algorithm
- Conservation of outgoing invoices sent in electronic form: ???

# Circular Letter AOIF 16/2008

- Storing incoming invoices received in paper form: two possibilities
  - Conservation of the “original” in paper form
  - Digital conservation (“scanning”): authenticity and integrity should be guaranteed (by advanced e-signature or sealing algorithm)
- Digital conservation is also possible for “old” invoices (of which the obligatory conservation term is still current)
- Conservation of incoming invoices received in electronic form?

# Other European countries

- No specific requirements: Estonia, Finland, Norway, Sweden, Netherlands
- Advanced electronic signature: Austria, Belgium, Denmark, France, Ireland, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia, United Kingdom
- Advanced electronic signature + qualified certificate: Czech Republic, Poland, Spain
- Advanced electronic signature + qualified certificate + approved hardware/software: Germany
- Uncertain: Hungary, Slovenia, Greece

Brussels, 28 January 2009

## **VAT: Commission proposes a review of the VAT rules on invoicing with a view to reduce burdens on business and to help Member States tackle fraud**

*The European Commission today adopted a proposal to change the VAT Directive 2006/112/EC in respect to the invoicing rules, based on a Communication on the technological developments in the field of electronic invoicing. The aim of the proposal is to increase the use of electronic invoicing, reduce burdens on business, support small and medium sized enterprises (SMEs) and help Member States to tackle fraud. The proposal simplifies, modernises and harmonises the VAT invoicing rules. In particular, it eliminates the current barriers to e-invoicing in the VAT Directive by treating paper and electronic invoices equally. The proposal is a key element of the Commission's Action Programme to reduce burdens on business by 25% by 2012, and is part of the Commission's strategy to combat VAT fraud more efficiently.*

# Proposed article 232 VAT Directive

*“Invoices may be sent on paper or they may be sent or made available by electronic means.”*

(all other provisions are deleted)

# Proposed art. 242 VAT Directive

*“Every taxable person required to ensure that an invoice is issued by himself or by his customer or, in his name and on his behalf, by a third party shall ensure that copies of these invoices are stored.*

*Every taxable person receiving an invoice shall ensure that the invoice is stored.*

*The storage of an invoice shall be subject to the rules applying in the Member State in which the taxable person has established his business ...”*

# Storage

- Art. 246 al. 1 remains in the text: *“the authenticity of the origin and the integrity of the content of the invoice need to be guaranteed during the whole period of conservation”*
- Art. 246 al. 2 (*“data on the invoice should not be altered ...”*) deleted:
- Art. 247: *“The taxable person shall ensure the storage of invoices for a period of six years.”*

# Control

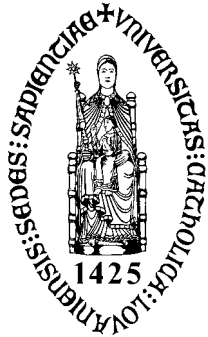
Proposed art. 249:

*“For control purposes, where a taxable person stores, by electronic means guaranteeing on-line access to the data concerned, invoices which he issues or receives, the competent authorities of the Member State in which he is established and, when the VAT is due in another Member State, the competent authorities of that Member State, shall have the right to access, download and use those invoices.”*

# Status of the draft directive

- adopted by the European Commission on 28/01/2009  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0021:FIN:EN:PDF>
- transmitted to the Council and the European Parliament on 30/01/2009
- 10/06/2009: Opinion of the EESC of the Parliament
  - Yes, but ...

# Contact



Jos Dumortier  
K.U.Leuven – ICRI  
Sint-Michielsstraat 6  
B-3000 Leuven  
(t) +32 (0)16 32 51 49

[www.icri.be](http://www.icri.be) / [jos.dumortier@law.kuleuven.be](mailto:jos.dumortier@law.kuleuven.be)



Jos Dumortier  
time.lex - Information & Technology Law  
Congresstraat 35  
B-1000 Brussel  
(t) +32 (0)2 229 19 47

[www.timelex.eu](http://www.timelex.eu) / [jos.dumortier@timelex.eu](mailto:jos.dumortier@timelex.eu)