

I

(Legislative acts)

DIRECTIVES

COUNCIL DIRECTIVE 2010/45/EU

of 13 July 2010

amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾ lays down conditions and rules concerning value added tax (hereinafter 'VAT') with respect to invoices, in order to ensure the proper functioning of the internal market. In accordance with Article 237 of that Directive, the Commission has presented a report which identifies, in the light of technological developments, certain difficulties with regard to electronic invoicing and which, in addition, identifies certain other areas in which the VAT rules should be simplified with a view to improving the functioning of the internal market.
- (2) Since record keeping needs to be sufficient to allow Member States to control goods moving temporarily from one Member State to another, it should be made clear that record keeping is to include details of valuations on goods moving temporarily between Member States. Also, transfers of goods for valuation purposes to another Member State should not be regarded as a supply of goods for VAT purposes.
- (3) The rules concerning the chargeability of VAT on intra-Community supplies of goods and on intra-Community acquisitions of goods should be clarified in order to ensure the uniformity of the information submitted in recapitulative statements and the timeliness of the exchange of information by means of those statements. It is furthermore appropriate that the continuous supply of goods from one Member State to another over a period of more than one calendar month should be regarded as being completed at the end of each calendar month.
- (4) To help small and medium-sized enterprises that encounter difficulties in paying VAT to the competent authority before they have received payment from their customers, Member States should have the option of allowing VAT to be accounted using a cash accounting scheme which allows the supplier to pay VAT to the competent authority when he receives payment for a supply and which establishes his right of deduction when he pays for a supply. This should allow Member States to introduce an optional cash accounting scheme that does not have a negative effect on cash flow relating to their VAT receipts.
- (5) To provide legal certainty for businesses regarding their invoicing obligations, it should be clearly stated which Member State's invoicing rules apply.
- (6) With a view to improving the functioning of the internal market, it is necessary to impose a harmonised time limit for the issue of an invoice with respect to certain cross-border supplies.
- (7) Certain requirements concerning the information to be provided on invoices should be amended to allow better control of the tax, to create a more uniform treatment between cross-border and domestic supplies and to help promote electronic invoicing.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

- (8) Since the use of electronic invoicing can help businesses to reduce costs and be more competitive, current VAT requirements on electronic invoicing should be revised to remove existing burdens and barriers to uptake. Paper invoices and electronic invoices should be treated equally and the administrative burden on paper invoicing should not increase.
- (9) Equal treatment should also apply as regards the competences of tax authorities. Their control competences and the rights and obligations of taxable persons should apply equally whether a taxable person chooses to issue paper invoices or electronic invoices.
- (10) Invoices must reflect actual supplies and their authenticity, integrity and legibility should therefore be ensured. Business controls can be used to establish reliable audit trails linking invoices and supplies, thereby ensuring that any invoice (whether on paper or in electronic form) complies with those requirements.
- (11) The authenticity and integrity of electronic invoices can also be ensured by using certain existing technologies, such as Electronic Data Interchange (EDI) and advanced electronic signatures. However, since other technologies exist, taxable persons should not be required to use any particular electronic-invoicing technology.
- (12) It should be clarified that, where a taxable person stores online invoices which he has issued or received, the Member State in which the tax is due, in addition to the Member State in which the taxable person is established, should have the right to access those invoices for control purposes.
- (13) Since the objectives of this Directive regarding the simplification, modernisation and harmonisation of the VAT invoicing rules cannot be sufficiently achieved by the Member States and can therefore be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (14) In accordance with point 34 of the Interinstitutional Agreement on better lawmaking⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

- (15) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2006/112/EC

Directive 2006/112/EC is amended as follows:

1. in Article 17(2), point (f) is replaced by the following:

‘(f) the supply of a service performed for the taxable person and consisting in valuations of, or work on, the goods in question physically carried out within the territory of the Member State in which dispatch or transport of the goods ends, provided that the goods, after being valued or worked upon, are returned to that taxable person in the Member State from which they were initially dispatched or transported;’;
2. in Article 64, paragraph 2 is replaced by the following:

‘2. Continuous supplies of goods over a period of more than one calendar month which are dispatched or transported to a Member State other than that in which the dispatch or transport of those goods begins and which are supplied VAT-exempt or which are transferred VAT-exempt to another Member State by a taxable person for the purposes of his business, in accordance with the conditions laid down in Article 138, shall be regarded as being completed on expiry of each calendar month until such time as the supply comes to an end.

Supplies of services for which VAT is payable by the customer pursuant to Article 196, which are supplied continuously over a period of more than one year and which do not give rise to statements of account or payments during that period, shall be regarded as being completed on expiry of each calendar year until such time as the supply of services comes to an end.

Member States may provide that, in certain cases other than those referred to in the first and second subparagraphs, the continuous supply of goods or services over a period of time is to be regarded as being completed at least at intervals of one year.;

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

3. in Article 66, first paragraph, point (c), and the second paragraph are replaced by the following:

'(c) where an invoice is not issued, or is issued late, within a specified time no later than on expiry of the time-limit for issue of invoices imposed by Member States pursuant to the second paragraph of Article 222 or where no such time-limit has been imposed by the Member State, within a specified period from the date of the chargeable event.

The derogation provided for in the first paragraph shall not, however, apply to supplies of services in respect of which VAT is payable by the customer pursuant to Article 196 and to supplies or transfers of goods referred to in Article 67.;

4. Article 67 is replaced by the following:

'Article 67

Where, in accordance with the conditions laid down in Article 138, goods dispatched or transported to a Member State other than that in which dispatch or transport of the goods begins are supplied VAT-exempt or where goods are transferred VAT-exempt to another Member State by a taxable person for the purposes of his business, VAT shall become chargeable on issue of the invoice, or on expiry of the time limit referred to in the first paragraph of Article 222 if no invoice has been issued by that time.

Article 64(1), the third subparagraph of Article 64(2) and Article 65 shall not apply with respect to the supplies and transfers of goods referred to in the first paragraph.;

5. Article 69 is replaced by the following:

'Article 69

In the case of the intra-Community acquisition of goods, VAT shall become chargeable on issue of the invoice, or on expiry of the time limit referred to in the first paragraph of Article 222 if no invoice has been issued by that time.;

6. in Article 91(2), the second subparagraph is replaced by the following:

'Member States shall accept instead the use of the latest exchange rate published by the European Central Bank at the time the tax becomes chargeable. Conversion between currencies other than the euro shall be made by using the euro exchange rate of each currency. Member States may require that they be notified of the exercise of this option by the taxable person.

However, for some of the transactions referred to in the first subparagraph or for certain categories of taxable persons, Member States may use the exchange rate determined in accordance with the Community provisions in force governing the calculation of the value for customs purposes.;

7. the following Article is inserted:

'Article 167a

Member States may provide within an optional scheme that the right of deduction of a taxable person whose VAT solely becomes chargeable in accordance with Article 66(b) be postponed until the VAT on the goods or services supplied to him has been paid to his supplier.

Member States which apply the optional scheme referred to in the first paragraph shall set a threshold for taxable persons using the scheme within their territory, based on the annual turnover of the taxable person calculated in accordance with Article 288. That threshold may not be higher than EUR 500 000 or the equivalent in national currency. Member States may increase that threshold up to EUR 2 000 000 or the equivalent in national currency after consulting the VAT Committee. However, such consultation of the VAT Committee shall not be required for Member States which applied a threshold higher than EUR 500 000 or the equivalent in national currency on 31 December 2012.

Member States shall inform the VAT Committee of national legislative measures adopted pursuant to the first paragraph.;

8. Article 178 is amended as follows:

(a) point (a) is replaced by the following:

'(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Sections 3 to 6 of Chapter 3 of Title XI.;

(b) point (c) is replaced by the following:

'(c) for the purposes of deductions pursuant to Article 168(c), in respect of the intra-Community acquisition of goods, he must set out in the VAT return provided for in Article 250 all the information needed for the amount of VAT due on his intra-Community acquisitions of goods to be calculated and he must hold an invoice drawn up in accordance with Sections 3 to 5 of Chapter 3 of Title XI.;

9. Article 181 is replaced by the following:

'Article 181

Member States may authorise a taxable person who does not hold an invoice drawn up in accordance with Sections 3 to 5 of Chapter 3 of Title XI to make the deduction referred to in Article 168(c) in respect of his intra-Community acquisitions of goods.;

10. in Article 197(1), point (c) is replaced by the following:

‘(c) the invoice issued by the taxable person not established in the Member State of the person to whom the goods are supplied is drawn up in accordance with Sections 3 to 5 of Chapter 3.’;

11. Article 217 is replaced by the following:

‘Article 217

For the purposes of this Directive, “electronic invoice” means an invoice that contains the information required in this Directive, and which has been issued and received in any electronic format.’;

12. in Section 3 of Chapter 3 of Title XI, the following Article is inserted:

‘Article 219a

Without prejudice to Articles 244 to 248, the following shall apply:

(1) Invoicing shall be subject to the rules applying in the Member State in which the supply of goods or services is deemed to be made, in accordance with the provisions of Title V.

(2) By way of derogation from point (1), invoicing shall be subject to the rules applying in the Member State in which the supplier has established his business or has a fixed establishment from which the supply is made or, in the absence of such place of establishment or fixed establishment, the Member State where the supplier has his permanent address or usually resides, where:

(a) the supplier is not established in the Member State in which the supply of goods or services is deemed to be made, in accordance with the provisions of Title V, or his establishment in that Member State does not intervene in the supply within the meaning of Article 192a, and the person liable for the payment of the VAT is the person to whom the goods or services are supplied.

However where the customer issues the invoice (self-billing), point (1) shall apply.

(b) the supply of goods or services is deemed not to be made within the Community, in accordance with the provisions of Title V.’;

13. Article 220 is replaced by the following:

‘Article 220

1. Every taxable person shall ensure that, in respect of the following, an invoice is issued, either by himself or by

his customer or, in his name and on his behalf, by a third party:

(1) supplies of goods or services which he has made to another taxable person or to a non-taxable legal person;

(2) supplies of goods as referred to in Article 33;

(3) supplies of goods carried out in accordance with the conditions specified in Article 138;

(4) any payment on account made to him before one of the supplies of goods referred to in points (1) and (2) was carried out;

(5) any payment on account made to him by another taxable person or non-taxable legal person before the provision of services was completed.

2. By way of derogation from paragraph 1, and without prejudice to Article 221(2), the issue of an invoice shall not be required in respect of supplies of services exempted under points (a) to (g) of Article 135(1).’;

14. the following Article is inserted:

‘Article 220a

1. Member States shall allow taxable persons to issue a simplified invoice in any of the following cases:

(a) where the amount of the invoice is not higher than EUR 100 or the equivalent in national currency;

(b) where the invoice issued is a document or message treated as an invoice pursuant to Article 219.

2. Member States shall not allow taxable persons to issue a simplified invoice where invoices are required to be issued pursuant to points (2) and (3) of Article 220(1) or where the taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the VAT is due, or whose establishment in that Member State does not intervene in the supply within the meaning of Article 192a, and the person liable for the payment of VAT is the person to whom the goods or services are supplied.’;

15. Articles 221, 222, 223, 224 and 225 are replaced by the following:

‘Article 221

1. Member States may impose on taxable persons an obligation to issue an invoice in accordance with the details required under Article 226 or 226b in respect of supplies of goods or services other than those referred to in Article 220(1).

2. Member States may impose on taxable persons who have established their business in their territory or who have a fixed establishment in their territory from which the supply is made, an obligation to issue an invoice in accordance with the details required in Article 226 or 226b in respect of supplies of services exempted under points (a) to (g) of Article 135(1) which those taxable persons have made in their territory or outside the Community.

3. Member States may release taxable persons from the obligation laid down in Article 220(1) or in Article 220a to issue an invoice in respect of supplies of goods or services which they have made in their territory and which are exempt, with or without deductibility of the VAT paid in the preceding stage, pursuant to Articles 110 and 111, Article 125(1), Article 127, Article 128(1), Article 132, points (h) to (l) of Article 135(1), Articles 136, 371, 375, 376 and 377, Articles 378(2) and 379(2) and Articles 380 to 390b.

Article 222

For supplies of goods carried out in accordance with the conditions specified in Article 138 or for supplies of services for which VAT is payable by the customer pursuant to Article 196, an invoice shall be issued no later than on the fifteenth day of the month following that in which the chargeable event occurs.

For other supplies of goods or services Member States may impose time limits on taxable persons for the issue of invoices.

Article 223

Member States shall allow taxable persons to issue summary invoices which detail several separate supplies of goods or services provided that VAT on the supplies mentioned in the summary invoice becomes chargeable during the same calendar month.

Without prejudice to Article 222, Member States may allow summary invoices to include supplies for which VAT has become chargeable during a period of time longer than one calendar month.

Article 224

Invoices may be drawn up by the customer in respect of the supply to him, by a taxable person, of goods or services, where there is a prior agreement between the two parties and provided that a procedure exists for the acceptance of each invoice by the taxable person supplying the goods or services. Member State may require that such invoices be issued in the name and on behalf of the taxable person.

Article 225

Member States may impose specific conditions on taxable persons in cases where the third party, or the customer, who issues invoices is established in a country with which no legal instrument exists relating to mutual assistance similar in scope to that provided for in Directive 2010/24/EU (*) and Regulation (EC) No 1798/2003 (**).

(*) Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

(**) Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax (OJ L 264, 15.10.2003, p. 1);

16. Article 226 is amended as follows:

(a) the following point is inserted:

'(7a) where the VAT becomes chargeable at the time when the payment is received in accordance with Article 66(b) and the right of deduction arises at the time the deductible tax becomes chargeable, the mention "Cash accounting";

(b) the following point is inserted:

'(10a) where the customer receiving a supply issues the invoice instead of the supplier, the mention "Self-billing";

(c) point (11) is replaced by the following:

'(11) in the case of an exemption, reference to the applicable provision of this Directive, or to the corresponding national provision, or any other reference indicating that the supply of goods or services is exempt;

(d) the following point is inserted:

'(11a) where the customer is liable for the payment of the VAT, the mention "Reverse charge";

(e) points (13) and (14) are replaced by the following:

'(13) where the margin scheme for travel agents is applied, the mention "Margin scheme — Travel agents";

(14) where one of the special arrangements applicable to second-hand goods, works of art, collectors' items and antiques is applied, the mention "Margin scheme — Second-hand goods"; "Margin scheme — Works of art" or "Margin scheme — Collector's items and antiques" respectively;

17. the following Articles are inserted:

'Article 226a

Where the invoice is issued by a taxable person, who is not established in the Member State where the tax is due or whose establishment in that Member State does not intervene in the supply within the meaning of Article 192a, and who is making a supply of goods or services to a customer who is liable for payment of VAT, the taxable person may omit the details referred to in points (8), (9) and (10) of Article 226 and instead indicate, by reference to the quantity or extent of the goods or services supplied and their nature, the taxable amount of those goods or services.

Article 226b

As regards simplified invoices issued pursuant to Article 220a and Article 221(1) and (2), Member States shall require at least the following details:

- (a) the date of issue;
- (b) identification of the taxable person supplying the goods or services;
- (c) identification of the type of goods or services supplied;
- (d) the VAT amount payable or the information needed to calculate it;
- (e) where the invoice issued is a document or message treated as an invoice pursuant to Article 219, specific and unambiguous reference to that initial invoice and the specific details which are being amended.

They may not require details on invoices other than those referred to in Articles 226, 227 and 230.;

18. Article 228 is deleted;

19. Article 230 is replaced by the following:

'Article 230

The amounts which appear on the invoice may be expressed in any currency, provided that the amount of VAT payable or to be adjusted is expressed in the national currency of the Member State, using the conversion rate mechanism provided for in Article 91.;

20. Article 231 is deleted;

21. the heading of Section 5 of Chapter 3 of Title XI is replaced by the following:

'Paper invoices and electronic invoices';

22. Articles 232 and 233 are replaced by the following:

'Article 232

The use of an electronic invoice shall be subject to acceptance by the recipient.

Article 233

1. The authenticity of the origin, the integrity of the content and the legibility of an invoice, whether on paper or in electronic form, shall be ensured from the point in time of issue until the end of the period for storage of the invoice.

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.

"Authenticity of the origin" means the assurance of the identity of the supplier or the issuer of the invoice.

"Integrity of the content" means that the content required according to this Directive has not been altered.

2. Other than by way of the type of business controls described in paragraph 1, the following are examples of technologies that ensure the authenticity of the origin and the integrity of the content of an electronic invoice:

- (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) 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.

(*) OJ L 13, 19.1.2000, p. 12.

(**) OJ L 338, 28.12.1994, p. 98.;

23. Article 234 is deleted;

24. Articles 235, 236 and 237 are replaced by the following:

'Article 235

Member States may lay down specific conditions for electronic invoices issued in respect of goods or services supplied in their territory from a country with which no legal instrument exists relating to mutual assistance similar in scope to that provided for in Directive 2010/24/EU and Regulation (EC) No 1798/2003.

Article 236

Where batches containing several electronic invoices are sent or made available to the same recipient, the details common to the individual invoices may be mentioned only once where, for each invoice, all the information is accessible.

Article 237

By 31 December 2016 at the latest, the Commission shall present to the European Parliament and the Council an overall assessment report, based on an independent economic study, on the impact of the invoicing rules applicable from 1 January 2013 and notably on the extent to which they have effectively led to a decrease in administrative burdens for businesses, accompanied where necessary by an appropriate proposal to amend the relevant rules.;

25. Article 238 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. After consulting the VAT Committee, Member States may, in accordance with conditions which they may lay down, provide that in the following cases only the information required pursuant to Article 226b shall be entered on invoices in respect of supplies of goods or services:

- (a) where the amount of the invoice is higher than EUR 100 but not higher than EUR 400, or the equivalent in national currency;
- (b) where commercial or administrative practice in the business sector concerned or the technical conditions under which the invoices are issued make it particularly difficult to comply with all the obligations referred to in Article 226 or 230.;

(b) paragraph 2 is deleted;

(c) paragraph 3 is replaced by the following:

'3. The simplified arrangements provided for in paragraph 1 shall not be applied where invoices are required to be issued pursuant to points (2) and (3) of Article 220(1) or where the taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the VAT is due or whose establishment in that Member State does not intervene in the supply within the

meaning of Article 192a and the person liable for the payment of VAT is the person to whom the goods or services are supplied.;

26. Article 243 is replaced by the following:

'Article 243

1. Every taxable person shall keep a register of the goods dispatched or transported by him, or on his behalf, to a destination outside the territory of the Member State of departure but within the Community for the purposes of transactions consisting in valuations of those goods or work on them or their temporary use as referred to in points (f), (g) and (h) of Article 17(2).

2. Every taxable person shall keep accounts in sufficient detail to enable the identification of goods dispatched to him from another Member State, by or on behalf of a taxable person identified for VAT purposes in that other Member State, and used for services consisting in valuations of those goods or work on those goods.;

27. Article 246 is deleted;

28. in Article 247, paragraphs 2 and 3 are replaced by the following:

'2. In order to ensure that the requirements laid down in Article 233 are met, the Member State referred to in paragraph 1 may require that invoices be stored in the original form in which they were sent or made available, whether paper or electronic. Additionally, in the case of invoices stored by electronic means, the Member State may require that the data guaranteeing the authenticity of the origin of the invoices and the integrity of their content, as provided for in Article 233, also be stored by electronic means.

3. The Member State referred to in paragraph 1 may lay down specific conditions prohibiting or restricting the storage of invoices in a country with which no legal instrument exists relating to mutual assistance similar in scope to that provided for in Directive 2010/24/EU and Regulation (EC) No 1798/2003 or to the right referred to in Article 249 to access by electronic means, to download and to use.;

29. in Section 3 of Chapter 4 of Title XI, the following Article is inserted:

'Article 248a

For control purposes, and as regards invoices in respect of supplies of goods or services supplied in their territory and invoices received by taxable persons established in their territory, Member States may, for certain taxable persons or certain cases, require translation into their official languages. Member States may, however, not impose a general requirement that invoices be translated.;

30. Article 249 is replaced by the following:

Article 249

For control purposes, where a taxable person stores, by electronic means guaranteeing online access to the data concerned, invoices which he issues or receives, the competent authorities of the Member State in which he is established and, where 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.;

31. in Article 272(1), the second subparagraph is replaced by the following:

‘Member States may not release the taxable persons referred to in point (b) of the first subparagraph from the invoicing obligations laid down in Sections 3 to 6 of Chapter 3 and Section 3 of Chapter 4.’.

Article 2

Transposition

1. Member States shall adopt and publish, by 31 December 2012 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2013.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into Force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 13 July 2010.

For the Council

The President

D. REYNDEERS