

PRACTITIONERS CALL FOR IMMEDIATE ADOPTION OF BETTER E-INVOICING RULES UNDER THE SPANISH PRESIDENCY

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When the European Commission last year proposed to delete Article 233 of the VAT Directive, many previously confident market players could not help but wonder what was so fundamentally broken as to justify not just fixing known problems but wiping away rules that have been the foundation of e-invoicing adoption since 2004.

The main justification for this unusually sweeping proposal appears to be an assertion that electronic invoicing adoption rates are slow. Another thesis is that this slow growth is mainly due to the integrity and authenticity controls mentioned in Article 233 being disproportionately stringent. A closer look at the facts shows that these assumptions are groundless.

- **Analysis shows that e-invoicing penetration advances at unparalleled rates compared to almost any other market.** Press statements calling deletion of Article 233 a precondition for Europe to save billions of Euros presuppose a correlation that simply does not exist. Billions of savings are rapidly being attained under the status quo. Whether legal change will support this trend remains conjecture.
- **Products and services for implementing the controls of Article 233 are widely available on a competitive market driven by open standards, at costs per invoice below one percent of the cost savings of going paperless.** These control measures are anchored in mature and widely used technologies, such as various robust Electronic Data Interchange methods, which have evolved over the past decades and continue to be perfected to support long-term data auditability in business-to-business processes.

As practitioners who are permanently on the receiving end of all market obstacles, and actively strive to remove barriers, we are the first to agree that the current legal framework set by Article 233 of the VAT Directive is imperfect:

- Member States have not sufficiently coordinated their transposition of the invoicing rules introduced by Directive 2001/115 (as now incorporated in 2006/112/EC).
- Much unnecessary pain and cost has been inflicted on companies due to structural flaws in the way Member States have provided information on how they interpret and enforce their primary legislation.
- Many Member States have been too inflexible by indiscriminately refusing to even consider methods other than contract-based secure EDI and advanced/qualified electronic signatures.

However, we have collectively overcome most of the above-mentioned weaknesses through collaboration among market players including tax administrations. The actions needed to remedy remaining shortcomings are well-documented, self-evident and inexpensive - but structurally ignored in Brussels. The very last thing needed now is reducing the legal certainty we have today; today's

Rev 7 (signatory list only)

spectacular growth rates are in large part due to the predictability that has emerged as a result of the 2001 e-invoicing rules.

The notion that removal of all references to specific control measures is a precondition for accelerating the penetration of electronic invoicing can only be accepted on the premise that also integrity and authenticity requirements for invoices can be legally nullified or ignored in practice. It is difficult to understand how this can be the basic premise for a policy objective if even the Commission proposal does not change these basic legal requirements. **As long as tax authorities audit and keep the ability to penalize companies for not retaining demonstrably real invoices, there will be a need for companies to know in advance exactly what they can do to avoid such penalties.** In many circumstances, the methods codified in Article 233 are not principally requirements on business but a protection against random enforcement decisions by tax administrations. They are also a robust basis for interoperability across diverse processes and legal cultures – including, importantly, for transactions with the many countries outside the EU that have similar legislation.

An obvious compromise position to perfect the EU legal framework has been available all along. Legal certainty and flexibility are by no means contradictory objectives: they can be maximized at the same time in improved EU e-invoicing rules which (1) require integrity and authenticity for *all* invoices to be demonstrable within a reasonable time from invoice issuance to the end of the storage period, (2) allow any means to be used towards this goal, and (3) refer to sufficiently defined methods, such as contract-based secure EDI and advanced electronic signatures, which benefit from mature standards frameworks and which Member States should in all circumstances continue to accept. High-level reference to standards should always be preferred to mentioning specific and therefore perishable technical features.

We oppose inclusion of an open-ended ‘internal control’ or ‘business controls’ notion on any level within Article 233 without a clear explanation that the ambiguity of those terms puts the burden of proof firmly on the taxable person. Such an explanation would at least warn companies availing themselves of this option that their processes will most likely be subjected to more intrusive audits and judged on the auditor’s criteria rather than based on objective legal norms.

Every day that passes without resolution of these issues further reduces market confidence in the EU’s commitment to electronic invoicing. We urge the Spanish Presidency and Member States to adopt the above obvious compromise position as quickly as possible.

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