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Subject:	Proposal for Directive Of The European Parliament And Of The Council on electronic invoicing in public procurement - General approach

I. INTRODUCTION

1. On 1 July 2013, the Commission submitted to the Council and the European Parliament a proposal for a Directive of the European Parliament and of the Council on electronic invoicing in public procurement¹. The objective of the proposal is to improve the functioning of the Internal Market by introducing mechanisms that would diminish market access barriers in cross-border public procurement, generated by insufficient interoperability of e-invoicing technical requirements or standards.

¹ 12104/13 MAP 62 COMPET 552 MI 621 EF 145 ECOFIN 687 TELECOM 192 CODEC 1703

2. The proposal has been identified as one of the key actions of the Single Market Act II, and is considered to be a complement to the modernisation of the public procurement rules, in particular with regard to the full transition to e-procurement. The European Council in its conclusions of 28 and 29 June 2012 stated that priority should be given to measures aimed at further developing cross-border online trade, including by facilitating the transit to electronic invoicing, and in its conclusions of 24 and 25 October 2013 stressed that the modernisation of public administrations should continue through the swift implementation of electronic invoicing.
3. The European Economic and Social Committee delivered its opinion on 16 October 2013.
4. The vote in the IMCO Committee of the European Parliament is foreseen for 17 December 2013.
5. The Permanent Representatives Committee at its meeting of 13 November discussed the Presidency compromise text and endorsed the text as amended during the meeting.

II. CONCLUSION

6. **The Council is invited to:**
 - **confirm the agreement on the general approach on the basis of the Presidency compromise as set out in the Annex to this note; and**
 - **invite the Presidency to start negotiations with the European Parliament on the basis of this general approach, with a view to reaching an agreement at first reading.**

2013/0213 (COD)

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on electronic invoicing in public procurement
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national Parliaments,
Having regard to the opinion of the European Economic and Social Committee¹,
Having regard to the opinion of the Committee of the Regions²,
Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Several global, national, regional and proprietary standards on electronic invoices exist and are currently used in Member States. None of these standards prevails, and most of them are not interoperable

¹ OJ C , , p. .

² OJ C , , p. .

- (2) In the absence of a common standard, Member States decide, when promoting the use of electronic invoices in public procurement or making it mandatory, to develop their own technical solutions based on separate national standards. Hence, the number of different standards coexisting across Member States is increasing and is likely to continue increasing in the future.
- (3) The multiplicity of non-interoperable standards results in excessive complexity, legal uncertainty and additional costs for economic operators using electronic invoices across Member States. Economic operators wishing to carry out cross-border procurement activities are often required to comply with a new e-invoicing standard each time they access a new market. By discouraging economic operators from undertaking cross-border procurement activities, the divergent legal and technical requirements concerning electronic invoices constitute market access barriers in cross-border public procurement and obstacles to trade. They obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market.
- (4) Those obstacles to intra-Union trade are likely to increase in the future as more non-interoperable national and proprietary standards are developed and as the use of electronic invoices in public procurement becomes more widespread or is made mandatory in Member States.
- (5) Obstacles to trade deriving from the co-existence of different legal requirements and technical standards on electronic invoices and from the lack of interoperability should be removed or reduced. In order to achieve this objective, a common European standard for an electronic invoice should be developed.

- (5a) The goal of interoperability is to allow information to be presented and processed in a consistent manner between business systems, regardless of their technology, application or platform. Full interoperability includes the ability to interoperate on three distinct levels: in terms of the content of the invoice (semantics), the format or language used (syntax), and the method of transmission. Semantic interoperability implies that the electronic invoice contains a certain amount of required information, and that the precise meaning of the exchanged information is preserved and understood in an unambiguous manner, independently of the way in which it is physically represented or transmitted. Syntactic interoperability implies that the data elements of an electronic invoice are presented in a format which can be exchanged directly between the sender and recipient and processed automatically. Syntactic interoperability can be ensured in one of two ways, namely through the use of a common syntax or by means of mapping between different syntaxes.
- (5b) A large number of syntaxes exist on the market. More and more, syntactic interoperability is ensured by means of mapping. This method is effective as long as the invoice contains all the required data elements at the semantic level and if their meaning is unambiguous. Since currently this is frequently not the case, action is therefore required to ensure interoperability at semantic level. In order to further simplify the use of e-invoicing and reduce costs, one of the long-term objectives should be to limit the number of syntaxes used preferably by recognizing only the most commonly used ones.

(5c) Invoices issued in different business sectors may require the inclusion of information specific to those sectors. Nevertheless, a limited number of common standard elements should be included in all invoices. The presence of these elements is indispensable for verification of whether the invoice properly reflects the underlying business transaction and to ensure that it is legally valid. A list of such elements required for VAT purposes is provided by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹. The European Standard for an electronic invoice should therefore be consistent with this core set of invoice information.

¹ OJ L 347, 11.12.2006, p. 1.

(6) The Commission should apply the relevant provisions of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation¹ to request the relevant European standardisation organisation to draft a European standard for the semantic data model for the core section of an electronic invoice (hereafter referred to as the ‘European standard on electronic invoicing’). Under Article 10(2) and 22(3) of Regulation 1025/2012, the Commission's decision laying down such a request is subject to Article 5 (examination procedure) of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers². In its request to the relevant European standardisation organisation, the Commission should require that such a European standard on electronic invoicing is technologically neutral in order to avoid any distortion of competition, that it should be compatible with relevant international standards on electronic invoicing, and that it should not affect the provisions of Council Directive 2006/112/EC. Since electronic invoices may contain personal data, the Commission should also require that such a European standard on electronic invoicing has regard to personal data protection, in accordance with Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data³. In addition to these minimum requirements, the Commission should determine, in its request to the relevant European standardisation organisation, further requirements as to the content of such European standard on electronic invoicing and a deadline for its adoption.

¹ OJ L 316, 14.11.2012, p. 12.

² OJ L 55, 28.2.2011, p. 13.

³ OJ L 281, 23.11.1995, p. 31.

- (7) The European standard on electronic invoicing should be based on existing specifications, including in particular those developed within the framework of European standardisation organisations such as CEN (CWA 16356 and CWA 16562), and should take into account and ensure compatibility with other relevant specifications developed within the framework of international standardisation organisations, such as UN/CEFACT (CII v. 2.0) and ISO (Financial Invoice based on the ISO 20022 methodology). In carrying out the mandate, the relevant European standardisation organisation should also take into account the results of Large-Scale Pilot Projects implemented within the framework of the Policy Support Programme of the Competitiveness and Innovation Framework Programme (CIP) and e-invoicing specifications of any other relevant bodies and organisations that are widely used by the business community. Such European standard on electronic invoicing should define semantic data elements referring to, in particular, complementary seller and buyer data, process identifiers, invoice attributes, invoice item details, delivery information, payment details and terms. While a sender of an electronic invoice should continue to have the possibility to guarantee the authenticity of the origin and the integrity of the content of the invoice by several methods, including by means of an electronic signature, in order to ensure compliance with the objectives of Council Directive 2006/112/EC, the European standard on electronic invoicing should not contain as one of its elements a requirement for an electronic signature. It should also be compatible with the existing standards for payments in order to allow for automatic processing of payments.

- (8) Where the European standard on electronic invoicing drafted by the relevant European standardisation organisation satisfies the requirements contained in the Commission's request, subject to examination procedure of Regulation (EU) No 182/2011, the references of such European standard on electronic invoicing should be published in the Official Journal of the European Union.
- (8a) In order to avoid excessive costs and burden for the contracting authorities and contracting entities, the relevant European standardisation organisation should be requested to identify a list with a limited number of syntaxes (not comprising the European standard) which comply with the European standard on electronic invoicing. The identified syntaxes must already be widely and successfully used by economic operators and contracting authorities. The Commission shall approve the list of syntaxes and publish it in the Official Journal of the European Union along with the reference of the European standard on electronic invoicing. The European standardisation organisation should also be requested to draft guidelines on transmission interoperability (not comprising the European standard) in order to facilitate the use of the European standard on electronic invoicing. These guidelines should not be obligatory on contracting authorities and contracting entities.

- (8aa) European standardisation organisations regularly review and update standards as necessary in order to respond to technological developments. In light of the rapid nature of such developments in the ICT sector, the Commission may request the relevant European standardisation organisation to regularly review and update the list of syntaxes in order to take into account these developments and ensure continuing interoperability.
- (8b) Where it deems it necessary to ensure the full and on-going interoperability, to take into account technological developments or to limit the number of syntaxes to be used, the Commission may review an adopted list of syntaxes. In doing so, the Commission should take into account the list of syntaxes identified, reviewed and updated by the relevant European standardisation organisation.
- (8bb) In order to ensure uniform conditions for the implementation of this Directive, as for the drawing up, the restriction and the review of the list of syntaxes, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council. The examination procedure should be used for the adoption of the implementing acts concerning the list of syntaxes given the fact that they serve to facilitate the application of the European standard on electronic invoice and ensure interoperability and rapid response to technological developments.

- (9) Contracting authorities and contracting entities should accept electronic invoices which comply with the European standard on electronic invoicing and with any of the syntaxes approved by the Commission. This implies that contracting authorities and contracting entities should not refuse electronic invoices solely on the grounds of non-compliance with requirements other than those specifically provided for in this Directive (for example national or sector specific requirements). However contracting authorities and contracting entities should remain free to verify, before paying the invoice, whether the content of the electronic invoice correctly reflects all the details of the business transaction. The obligation to not refuse electronic invoices in accordance with this Directive is without prejudice to Article 4 of Directive 2011/7/EU of the European Parliament and of the Council on combating late payment in commercial transactions¹.

¹ OJ L 48, 23.2.2011, p. 1.

(10) This Directive should apply to electronic invoices received by contracting authorities and contracting entities and issued as a result of the performance of contracts to which Directive [replacing Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹], Directive [replacing Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors²], Directive [on the award of concession contracts], or Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC³ applies. Only electronic invoices issued by the economic operator to whom the public contract or concession contract has been awarded (the main contractor) are covered by this Directive. However, when Member States, pursuant to Art 71 of [Directive replacing Directive 2004/18/EC] and Art 81 of [Directive replacing Directive 2004/17/EC] provide for direct payment to subcontractors, the arrangement to be determined in the procurement documents should include provisions concerning the use or not of electronic invoicing in the payments to the subcontractors. It should be clarified that, when a contract is awarded to a group of economic operators, this Directive applies to electronic invoices issued by the group as such or by the individual economic operators.

¹ OJ L 134, 30.4.2004, p. 114.

² OJ L 134, 30.4.2004, p. 1.

³ OJ L 216, 20.8.2009, p. 76.

- (10a) The object of concessions contracts is the procurement of works or services by means of a concession, the consideration of which consists in the right to exploit the works or services or in that right together with payment. Where concession contracts involving payments require invoices to be issued by the economic operator to whom the concession contract has been awarded, this Directive should also apply.
- (10b) This Directive does not affect the application of Article 346 of the Treaty on the Functioning of the European Union. Moreover, where the performance of the contract is declared to be secret or must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in a Member State and provided that the Member State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, contracting authorities and contracting entities may decide to impose for a particular contract special invoicing requirements other than those provided in this Directive. In such cases, contracting authorities and contracting entities should set out these requirements in the procurement documents.
- (12) By ensuring semantic interoperability and improving legal certainty, this Directive will also promote the uptake of electronic invoicing in public procurement, thereby allowing Member States, contracting authorities, contracting entities, and economic operators to generate significant benefits in terms of savings, environmental impact, and reduction of administrative burdens.

- (12a) The benefits from electronic invoicing are maximised when the generation, sending, transmission, reception, and processing of an invoice can be fully automated. For this reason, only machine-readable invoices which can be processed automatically and digitally by the recipient should be considered as being compliant with the European standard on electronic invoicing. A mere image file cannot be considered to be an electronic invoice in terms of this Directive.
- (13) The European Council, in its conclusions of 28 and 29 June 2012 and 24 October 2013, stated that priority should be given to measures aimed at further developing cross-border online trade and the modernisation of public administrations, including by facilitating the transition to and through the swift implementation of electronic invoicing.
- (14) The European Parliament in its resolution of 20 April 2012 pointed at market fragmentation resulting from national rules on electronic invoicing, underlined the substantial benefits offered by electronic invoicing, and stressed the importance of legal certainty, a clear technical environment and open and interoperable electronic invoicing solutions based on common legal requirements, business processes and technical standards. For these reasons, the European Parliament called on making electronic invoicing in public procurement mandatory by 2016.

- (15) The European Multi-stakeholder Forum on Electronic Invoicing (e-invoicing) set up by Commission Decision of 2 November 2010¹ unanimously adopted a Recommendation on the use of a semantic data model to support interoperability for electronic invoicing in October 2013.
- (16) Since contracting authorities and contracting entities will be able to accept electronic invoices which comply with standards other than the European standard on electronic invoicing as well as paper invoices unless otherwise provided in national legislation, this Directive does not place any additional costs or burden on enterprises, including micro, small and medium-sized enterprises in the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises².
- (16a) The Commission and the Member States should make every effort to minimise the cost of the European standard on electronic invoicing for its users, in particular for micro, small and medium-sized enterprises, so as to facilitate its uptake across the European Union.

¹ OJ C 326, 3.12.2010, p. 13.

² OJ L 124, 20.5.2003, p. 36.

(17) Since Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax contains rules on invoicing, including on electronic invoicing, its relationship with this Directive should be clarified. This Directive pursues a different objective and has a different scope of application than Council Directive 2006/112/EC, and hence it does not affect the provisions on the use of electronic invoices for VAT purposes contained in Council Directive 2006/112/EC. In particular, Article 232 of Council Directive 2006/112/EC concerns the relations between trading parties and aims to ensure that the use of electronic invoices by the sender cannot be imposed on the recipient. However, this is without prejudice to the right of Member States to impose on contracting authorities and contracting entities an obligation to receive, under certain conditions, electronic invoices.

- (18) In order to allow contracting authorities and contracting entities to properly prepare and take the technical measures that, following the establishment of the European standard on electronic invoicing and approval of the list of syntaxes, are necessary to comply with the provisions of this Directive, and having in mind the necessity of swift implementation of electronic invoicing, a transposition deadline of 30 months following the publication of the reference of the European standard on electronic invoicing and the list of syntaxes in the Official Journal of the European Union is justified. Notwithstanding this general transposition deadline and seeking to facilitate the take up of electronic invoicing for certain contracting authorities, such as local and regional contracting authorities and public undertakings, Member States may postpone the application of the requirements of this Directive for sub-central contracting authorities, public undertakings and contracting entities until 36 months following the publication of the reference of the European standard on electronic invoicing and the list of syntaxes in the Official Journal of the European Union. This possibility to postpone the application of the requirements of this Directive should not apply to central purchasing bodies.
- (19) Since the objectives of removing market barriers and obstacles to trade deriving from the existence of different national rules and standards and of ensuring interoperability cannot sufficiently be achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

This Directive shall apply to electronic invoices issued as a result of the performance of contracts to which Directive [replacing Directive 2004/18/EC], Directive [replacing Directive 2004/17/EC], Directive [on the award of concession contracts], or Directive 2009/81/EC applies.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) ‘electronic invoice’ means an invoice that has been issued, transmitted, and received in a structured electronic format which allows for its automatic processing;
- (3) ‘core section of an electronic invoice’ means a subset of information contained in an electronic invoice that is essential to enable cross-border interoperability, including the necessary information to ensure legal compliance;
- (3a) ‘semantic data model’ means a structured and logically interrelated set of terms and their meanings that specify the content of an electronic invoice;
- (3b) ‘syntax’ means the machine readable language or dialect used to represent the data elements contained in an electronic invoice;

- (4) ‘contracting authorities’ means contracting authorities as defined in Article [2] of Directive [replacing Directive 2004/18/EC], Article 1(17) of Directive 2009/81/EC, and Article [3] of Directive [on the award of concession contracts];
- (5) ‘contracting entities’ means contracting entities as defined in Article [4] of Directive [replacing Directive 2004/17/EC], Article 1(17) of Directive 2009/81/EC, and Article [4] of Directive [on the award of concession contracts];
- (6) ‘international standard’ and ‘European standard’ mean, respectively, an international standard and a European standard as defined in Article 2(1) of Regulation (EU) No 1025/2012.

Article 3

Establishment of a European standard

1. The Commission shall request the relevant European standardisation organisation to draft a European standard for the semantic data model for the core section of an electronic invoice.

The Commission shall require that the European standard for the semantic data model for the core section of an electronic invoice should comply at least with the following criteria:

- be technologically neutral;
- be compatible with relevant international standards on electronic invoicing;
- have regard to the need for personal data protection in accordance with Directive 95/46/EC;
- does not affect the provisions of Directive 2006/112/EC.

The Commission shall request the relevant European standardisation organisation to provide a list with limited number of syntaxes which comply with the European standard for the semantic data model for the core section of an electronic invoice and guidelines on transmission interoperability in order to facilitate the use of such standard.

The Commission may request the relevant European standardisation organisation to regularly review and update the provided list of syntaxes in order to take into account technological developments and ensure continuing interoperability.

The requests shall be adopted in accordance with the procedure laid down in Article 10(1) to (5) of Regulation (EU) No 1025/2012. They shall contain a deadline for delivering the requested European standard for the semantic data model for the core section of an electronic invoice and the list of syntaxes within a period not exceeding 3 years.

2. The Commission shall verify that the European standard for the semantic data model for the core section of an electronic invoice drafted following the request referred to in paragraph 1 satisfies the requirements contained therein and then approve it in accordance with the examination procedure referred to in Article 5a(2). It shall forthwith publish the reference of such European standard together with the approved, in accordance with Article 4 (2), list of syntaxes in the Official Journal of the European Union.

Article 4

Electronic invoices complying with the European standard

1. Member States shall ensure that contracting authorities and contracting entities do not refuse to receive electronic invoices which comply with the European standard for the semantic data model for the core section of an electronic invoice whose reference has been published pursuant to Article 3(2) and with any of the syntaxes approved by the Commission.
2. The Commission shall, by means of implementing acts adopted in accordance with the examination procedure referred to in Article 5a(2), approve the list of syntaxes that comply with the European standard for the semantic data model for the core section of an electronic invoice. In order to restrict the number of syntaxes identified in the list and with a view to ensuring rapid response to technological development and the full and on-going interoperability, the Commission shall, in accordance with the examination procedure referred to in Article 5a(2), review the approved list of syntaxes.

Article 5

Use of electronic invoices for VAT purposes

This Directive is without prejudice to the provisions of Council Directive 2006/112/EC.

Article 5a
Committee procedure

1. The Commission shall be assisted by the Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 6
Transposition and transitional provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 months following the publication of the reference of the European standard for the semantic data model for the core section of an electronic invoice and the list of approved syntaxes in the Official Journal of the European Union pursuant to Article 3(2). They shall forthwith communicate to the Commission the text of those provisions.

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.

- 1a. Notwithstanding paragraph 1, Member States may postpone the application of Article 4(1) for sub-central contracting authorities, as defined in Article [2] of Directive [replacing Directive 2004/18/EC], public undertakings and contracting entities as respectively are defined in Article [2] and [4(1)(b)] of Directive [replacing Directive 2004/17/EC], except for central purchasing bodies as defined in Article [2(18)] of Directive [replacing Directive 2004/18/EC], Article [2(18)] of Directive [replacing Directive 2004/17/EC] and Article 1(18) of Directive 2009/81/EC, until 36 months after publication of the reference to the European standard for the semantic data model for the core section of an electronic invoice and the list of approved syntaxes in the Official Journal of the European Union.
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 7

Review

The Commission shall review the effects of this Directive on the internal market and on the uptake of electronic invoicing in public procurement and report thereon to the European Parliament and the Council by 30 June 2023. Where appropriate, the report shall be accompanied by a legislative proposal.

Article 8
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 9
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President The President
