

**Council Directive 2001/115/EC
of 20 December 2001**

amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the Economic and Social Committee(3),

Whereas:

(1) The current conditions laid down for invoicing and listed under Article 22(3), in the version given in Article 28h of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment(4), are relatively few in number, thus leaving it to the Member States to define the most important such conditions. At the same time, the conditions are no longer appropriate given the development of new invoicing technologies and methods.

(2) The Commission report on the second phase of the SLIM exercise (Simpler Legislation for the Single Market) recommended that a study be carried out to determine what details should be required for VAT purposes when drawing up an invoice and what the legal and technical requirements are as regards electronic invoicing.

(3) The conclusions of the Ecofin Council of June 1998 underlined the fact that the development of electronic commerce has made it necessary to establish a legal framework for the use of electronic invoicing to enable tax administrations to continue to perform their controls.

(4) It is therefore necessary, in order to ensure that the internal market functions properly, to draw up a list, harmonised at Community level, of the particulars that must appear on invoices for the purposes of value added tax and to establish a number of common arrangements governing the use of electronic invoicing and the electronic storage of invoices, as well as for self-billing and the outsourcing of invoicing operations.

(5) Lastly, the storage of invoices should comply with the conditions laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data(5).

(6) Since the introduction of the transitional VAT arrangements in 1993, Greece has adopted the prefix EL rather than the prefix GR laid down in the ISO International Standard No 3166 - alpha 2 referred to in Article 22(1)(d). Given the consequences of amending the prefix in all the Member States, it is important to lay down an exception for Greece providing that the ISO Standard does not apply in Greece.

(7) Directive 77/388/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is hereby amended in accordance with the following Articles.

Article 2

At Article 28h (which replaces Article 22 of the same Directive), Article 22 shall be amended as follows:

1. The following sentence shall be added to paragraph 1(d): "Nevertheless, the Hellenic Republic shall be authorised to use the prefix 'EL'."

2. Paragraph 3 shall be replaced by the following: "3. (a) Every taxable person shall ensure that an invoice is issued, either by himself or by his customer or, in his name and on his

behalf, by a third party, in respect of goods or services which he has supplied or rendered to another taxable person or to a non-taxable legal person. Every taxable person shall also ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of the supplies of goods referred to in Article 28b(B)(1) and in respect of goods supplied under the conditions laid down in Article 28c(A).

Every taxable person shall likewise ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of any payment on account made to him before any supplies of goods referred to in the first subparagraph and in respect of any payment on account made to him by another taxable person or non-taxable legal person before the provision of services is completed.

Member States may impose on taxable persons an obligation to issue an invoice in respect of goods or services other than those referred to in the preceding subparagraphs which they have supplied or rendered on their territory. When they do so, Member States may impose fewer obligations in respect of these invoices than those listed under points (b), (c) and (d). The Member States may release taxable persons from the obligation to issue an invoice in respect of goods or services which they have supplied or rendered in their territory and which are exempt, with or without refund of the tax paid at the preceding stage, pursuant to Article 13, Article 28(2)(a) and Article 28(3)(b).

Any document or message that amends and refers specifically and unambiguously to the initial invoice is to be treated as an invoice. Member States in whose territory goods or services are supplied or rendered may allow some of the obligatory details to be left out of such documents or messages.

Member States may impose time limits for the issue of invoices on taxable persons supplying goods and services in their territory.

Under conditions to be laid down by the Member States in whose territory goods or services are supplied or rendered, a summary invoice may be drawn up for several separate supplies of goods or services.

Invoices may be drawn up by the customer of a taxable person in respect of goods or services supplied or rendered to him by that taxable person, on condition that there is at the outset an agreement between the two parties, and on condition that a procedure exists for the acceptance of each invoice by the taxable person supplying the goods or services. The Member States in whose territory the goods or services are supplied or rendered shall determine the terms and conditions of the agreement and of the acceptance procedures between the taxable person and his customer.

Member States may impose further conditions on the issue of invoices by the customers of taxable persons supplying goods or services on their territory. For example, they may require that such invoices be issued in the name and on behalf of the taxable person. Such conditions must always be the same wherever the customer is established.

Member States may also lay down specific conditions for taxable persons supplying goods or services in their territory 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 laid down by Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures(6), Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation(7) and by Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT)(8).

(b) Without prejudice to the specific arrangements laid down by this Directive, only the following details are required for VAT purposes on invoices issued under the first, second and third subparagraphs of point (a):

- the date of issue;
- a sequential number, based on one or more series, which uniquely identifies the invoice,
- the VAT identification number referred to in paragraph 1(c) under which the taxable person supplied the goods or services;
- where the customer is liable to pay tax on goods supplied or services rendered or has been supplied with goods as referred to in Article 28c(A), the VAT identification number as referred

- to in paragraph 1(c) under which the goods were supplied or the services rendered to him;
- the full name and address of the taxable person and of his customer;
 - the quantity and nature of the goods supplied or the extent and nature of the services rendered;
 - the date on which the supply of goods or of services was made or completed or the date on which the payment on account referred to in the second subparagraph of point (a) was made, insofar as that a date can be determined and differs from the date of issue of the invoice;
 - the taxable amount per rate or exemption, the unit price exclusive of tax and any discounts or rebates if they are not included in the unit price;
 - the VAT rate applied;
 - the VAT amount payable, except where a specific arrangement is applied for which this Directive excludes such a detail;
 - where an exemption is involved or where the customer is liable to pay the tax, reference to the appropriate provision of this directive, to the corresponding national provision, or to any indication that the supply is exempt or subject to the reverse charge procedure;
 - where the intra-Community supply of a new means of transport is involved, the particulars specified in Article 28a(2);
 - where the margin scheme is applied, reference to Article 26 or 26a, to the corresponding national provisions, or to any other indication that the margin scheme has been applied;
 - where the person liable to pay the tax is a tax representative within the meaning of Article 21(2), the VAT identification number referred to in paragraph 1(c) of that tax representative, together with his full name and address.

Member States may require taxable persons established on their territory and supplying goods or services on their territory to indicate the VAT identification number referred to in paragraph 1(c) of their customer in cases other than those referred to in the fourth indent of the first subparagraph.

Member States shall not require invoices to be signed.

The amounts which appear on the invoice may be expressed in any currency, provided that the amount of tax to be paid is expressed in the national currency of the Member State where the supply of goods or services takes place, using the conversion mechanism laid down in Article 11 C(2).

Where necessary for control purposes, Member States may require invoices in respect of goods supplied or services rendered in their territory and invoices received by taxable persons in their territory to be translated into their national languages.

(c) Invoices issued pursuant to point (a) may be sent either on paper or, subject to an acceptance by the customer, by electronic means.

Invoices sent by electronic means shall be accepted by Member States provided that the authenticity of the origin and integrity of the contents are guaranteed:

- by means of an advanced electronic signature within the meaning of Article 2(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(9); Member States may however ask for the advanced electronic signature to be based on a qualified certificate and created by a secure-signature-creation device, within the meaning of Article 2(6) and (10) of the aforementioned Directive;

- or by means of electronic data interchange (EDI) as defined in Article 2 of Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange(10) when the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data; however Member States may, subject to conditions which they lay down, require that an additional summary document on paper is necessary.

Invoices may, however, be sent by other electronic means subject to acceptance by the Member State(s) concerned. The Commission will present, at the latest on 31 December 2008, a report, together with a proposal, if appropriate, amending the conditions on electronic invoicing in order to take account of possible future technological developments in this field. Member States may not impose on taxable persons supplying goods or services in their

territory any other obligations or formalities relating to the transmission of invoices by electronic means. However, they may provide, until 31 December 2005, that the use of such a system is to be subject to prior notification.

Member States may lay down specific conditions for invoices issued by electronic means for 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 laid down by Directives 76/308/EEC and 77/799/EEC and by Regulation (EEC) No 218/92.

When batches containing several invoices are sent to the same recipient by electronic means, the details that are common to the individual invoices may be mentioned only once if, for each invoice, all the information is accessible.

(d) Every taxable person shall ensure that copies of invoices issued by himself, by his customer or, in his name and on his behalf, by a third party, and all the invoices which he has received are stored.

For the purposes of this Directive, the taxable person may decide the place of storage provided that he makes the invoices or information stored there available without undue delay to the competent authorities whenever they so request. Member States may, however, require taxable persons established in their territory to notify them of the place of storage, if it is outside their territory. Member States may, in addition, require taxable persons established in their territory to store within the country invoices issued by themselves or by their customers or, in their name and on their behalf, by a third party, as well as all the invoices which they have received, when the storage is not by electronic means guaranteeing full on-line access to the data concerned.

The authenticity of the origin and integrity of the content of the invoices, as well as their readability, must be guaranteed throughout the storage period. As regards the invoices referred to in the third subparagraph of point (c), the information they contain may not be altered; it must remain legible throughout the aforementioned period.

The Member States shall determine the period for which taxable persons must store invoices relating to goods or services supplied in their territory and invoices received by taxable persons established in their territory.

In order to ensure that the conditions laid down in the third subparagraph are met, Member States referred to in the fourth subparagraph may require that invoices be stored in the original form in which they were sent, whether paper or electronic. They may also require that when invoices are stored by electronic means, the data guaranteeing the authenticity of the origin and integrity of the content also be stored.

Member States referred to in the fourth subparagraph may impose 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 laid down by Directives 76/308/EEC, 77/799/EEC and by Regulation (EEC) No 218/92 and to the right of access by electronic means, download and use referred to in Article 22a.

Member States may, subject to conditions which they lay down, require the storage of invoices received by non-taxable persons.

(e) For the purposes of points (c) and (d), transmission and storage of invoices 'by electronic means' shall mean transmission or making available to the recipient and storage using electronic equipment for processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means.

For the purposes of this Directive, Member States shall accept documents or messages in paper or electronic form as invoices if they meet the conditions laid down in this paragraph."

3. The following subparagraph shall be added to paragraph 8: "The option provided for in the first subparagraph cannot be used to impose additional obligations over and above those laid down in paragraph 3."

4. The following subparagraph shall be added to paragraph 9(a): "Without prejudice to the provisions laid down in point (d), Member States may not, however, release the taxable persons referred to in the third indent from the obligations referred to in Article 22(3)."

5. The following point shall be added to paragraph 9: "(d) Subject to consultation of the Committee provided for in Article 29 and under the conditions which they may lay down, Member States may provide that invoices in respect of goods supplied or services rendered

in their territory do not have to fulfil some of the conditions laid down in paragraph 3(b) in the following cases:

- when the amount of the invoice is minor, or
- when commercial or administrative practice in the business sector concerned or the technical conditions under which the invoices are issued make it difficult to comply with all the requirements referred to in paragraph 3(b).

In any case, these invoices must contain the following:

- the date of issue,
- identification of the taxable person,
- identification of the type of goods supplied or services rendered,
- the tax due or the information needed to calculate it.

The simplified arrangements provided for in this point may not be applied to transactions referred to in paragraph 4(c)."

6. The following point shall be added to paragraph 9: "(e) In cases where Member States make use of the option provided for in the third indent of point (a) to refrain from allocating a number as referred to in paragraph 1(c) to taxable persons who do not carry out any of the transactions referred to in paragraph 4(c), and where the supplier or the customer have not been allocated an identification number of this type, the invoice should feature instead another number called the tax reference number, as defined by the Member States concerned.

When the taxable person has been allocated an identification number as referred to in paragraph 1(c), the Member States referred to in the first subparagraph may also require the invoice to show:

- for services rendered referred to in Article 28b(C), (D), (E) and (F) and for supplies of goods referred to in Article 28c(A) and (E) point 3, the number referred to in paragraph 1(c) and the tax reference number of the supplier;
- for other supplies of goods and services, only the tax reference number of the supplier or only the number referred to in paragraph 1(c)."

Article 3

The following Article shall be inserted: "Article 22a

Right of access to invoices stored by electronic means in another Member State

When a taxable person stores invoices which he issues or receives by an electronic means guaranteeing on-line access to the data and when the place of storage is in a Member State other than that in which he is established, the competent authorities in the Member State in which he is established shall have a right, for the purpose of this directive, to access by electronic means, download and use these invoices within the limits set by the regulations of the Member State where the taxable person is established and as far as that State requires for control purposes."

Article 4

1. The words "or of the document serving as invoice" shall be deleted from the first and third indents of the third subparagraph of Article 10(2).

2. The words "or on any other documents serving as invoices" shall be deleted from Article 24(5) and the words "or on any other document serving as an invoice" shall be deleted from Article 26a(B), point 9.

3. The words "or a document in lieu" shall be deleted from point 4 of Article 26a(C).

4. The words "or other document serving as invoice" and "or document" shall be deleted from Article 28d(3) and from the second subparagraph of Article 28d(4).

5. In Article 28g (which replaces Article 21 of the same Directive), Article 21 shall be amended as follows:

- The words "or other document serving as invoice" shall be deleted from paragraph 1(d).

6. The words "or on any other document in lieu" shall be deleted from Article 28o(1)(e).

Article 5

Member States shall bring into force the laws, regulations and administrative provisions

necessary to comply with this Directive with effect from 1 January 2004. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 6

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

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 20 December 2001.

For the Council
The President
C. Picqué

(1) OJ C 96 E, 27.3.2001, p. 145.

(2) Opinion delivered on 13 June 2001 (not yet published in the Official Journal).

(3) OJ C 193, 10.7.2001, p. 53.

(4) OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2001/4/EC (OJ L 22, 24.1.2001, p. 17).

(5) OJ L 281, 23.11.1995, p. 31.

(6) OJ L 73, 19.3.1976, p. 18. Directive as last amended by Directive 2001/44/EC (OJ L 175, 28.6.2001, p. 17).

(7) OJ L 336, 27.12.1977, p. 15. Directive as last amended by the 1994 Act of Accession.

(8) OJ L 24, 1.2.1992, p. 1.

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

(10) OJ L 338, 28.12.1994, p. 98.