EUROPEAN
COMMISSION

Brussels, 10.2.2020
COM(2020) 47 final

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

assessing the invoicing rules of Directive 2006/112/EC on the common system of value added tax

{SWD(2020) 29 final}

1. Introduction

Based on Article 237 of Directive 2006/112/EC[1] (the VAT Directive), 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 in particular the extent to which they have effectively led to a decrease in administrative burdens for businesses. It is in this framework that the Commission carried out an evaluation of the invoicing rules.

The evaluation was supported by an independent study led by the consulting group Economisti Associati and resulted in the Final Report published in February 2019[2].

The evaluation assessed the invoicing rules of Council Directive 2010/45/EU[3] (the Second Invoicing Directive or SID) and in particular whether they contributed to the four general objectives set initially, namely: i) the reduction of the administrative burdens on businesses ii) the reduction of VAT frauds/impact on control activities iii) the proper functioning of the Internal Market and iv) the promotion of SMEs.

The evaluation followed the five evaluation criteria of the Commission's Better Regulation Guidelines[4]: relevance, effectiveness, efficiency, coherence and EU Added Value.

2. Transposition and implementation of the Directive

To establish a starting point for the evaluation, the consultant carried out an analysis of how the Second Invoicing Directive has been transposed and implemented by the Member States. This analysis focused on whether Member States correctly transposed the Directive and measured the extent to which the national legal framework changed because of the Directive. For the sake of clarity the below summary of the analysis is divided in three thematic areas.

2.1. E-Invoicing

The Directive introduced three main changes to the EU legal framework for electronic invoices (e-invoices): (i) a new definition of e-invoice; (ii) the principle of technological neutrality; and (iii) the principle of equal treatment among the paper and electronic invoices. The changes have been introduced evenly across the EU. Even when the national provisions

---

1 Council Directive 2006/112/EC on the common system of value added tax, OJ L 347, 11.12.2006 , p. 1.

2 Report on the evaluation of Invoicing Rules of Directive 2006/112/EC: https://publications.europa.eu/en/publication-detail/-/publication/745fa4fe-2db0-11e9-8d04-01aa75ed71a1/language-en/format-PDF/source-search

3 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, OJ L 189/1, 22.7.2010.

4 For more information please see: https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en

are slightly different from the text of the Directive, there appear to be no problems of incorrect transposition.

More in particular regarding *the definition of an e-invoice*, the vast majority of Member States (24) introduced the e-invoice definition in their national legislation mirroring the one in the Directive. In four Member States either the definition has not been introduced or is somewhat different from the one included in the VAT Directive. Regarding *the principle of technological neutrality*, it has been transposed uniformly and no Member State requires the use of defined e-invoicing technology. Although four Member States only accept e-invoicing solutions explicitly mentioned in the national legislation, the foreseen options are defined broadly enough to ensure taxpayers' freedom of choice. To guarantee the principle of *equal treatment* legislative requirements on e-invoices beyond those that exist for paper invoices were removed in all Member States[5].

2.2. Invoicing issuance and content

The SID introduced a number of changes in the area of invoice issuance and content. The SID amended three specific invoicing regimes: self-billing, simplified invoices and summary invoices. The SID also introduced changes to the invoicing requirements applicable to cross-border transactions in view of reducing burdens and increasing harmonisation. The main changes concern the applicable invoicing rules, time of issuance of invoices and the content of cross-border invoices.

Overall, the Directive displays a very good level of transposition. The mandatory requirements of SID were all transposed in the national legislations. In addition, Member States introduced also in the national legislations changes that were optional for Member States. Finally some other changes were introduced by the Member States as additional simplifications, while not really foreseen by the Directive, but not contradicting it.

It is worth mentioning that for the invoice issuance and content, the national legislation of some Member States was already in line with the SID. Consequently, the extent of the changes depends on how previous national legislation was framed. Thus the Directive had an uneven impact on the different national legal frameworks. That is why for the purpose of the assessment these provisions were prioritised based on the extent of the legal change (i.e. the number of Member States in which they caused a change to the national legal framework) and the VAT practitioners' perception of whether they had affected companies' behaviour. This prioritisation showed that the changes regarding the applicable jurisdiction (Article 219a of the VAT Directive), simplified invoices (Articles 220a, 226b, 238 of the VAT Directive), timing to issue invoices (Article 222 of the VAT Directive) and self-billing (article 224 of the VAT Directive) were considered as substantive, whilst the other changes brought by the SID were rather considered of minor impact[6].

---

5 For more details on the transposition of the e-invoicing provisions see chapter 3.1.1. of the Commission Staff Working Document.

6 See section 3.1.2. of the Staff Working Document.

2.3. Other invoicing rules

The SID introduced one specific change targeting SMEs, the so-called combined cash accounting for certain micro-enterprises. The analysis of the transposition of the cash accounting provision shows no discrepancies between EU rules and national legal frameworks. Other changes relate to the VAT chargeability rules for the intra-Community supply and acquisition of goods and their transposition led to a harmonised approach in the Member States on this aspect.

3. Main impacts of the Second Invoicing Directive

3.1. The reduction of the administrative burden

The reduction of administrative burdens on businesses by the SID were triggered mainly by the following two sets of provisions: (i) e-invoicing requirements and (ii) the issuance and content of invoices, which simplified and harmonised the invoicing requirements.

Regarding e-invoicing, the positive role of the SID is recognised. The SID was clearly one of the factors which stimulated the growth in the use of *e-invoicing* among EU businesses since 2014. Based on the study, the biggest impact of the SID on the reduction of administrative burden is due to the higher uptake of unstructured e-invoicing[7], because of simplifications which encouraged companies to switch from paper invoices to PDFs[8]. The SID did not distinguish between structured[9] and unstructured e-invoices. By not differentiating between the two e-invoice formats and enforcing the technology-neutrality principle, the Directive did not directly stimulate the use of automatically processable invoices and thus it did not lead to an increase in the uptake of structured e-invoices.

Quantitatively[10], the Directive is estimated to have reduced administrative burdens on companies by EUR 1.04 billion over the 2014-2017 of which about EUR 920 million is to be attributed to the uptake of unstructured invoicing[11]. The micro companies[12] benefited the most from this impact of the SID, given that they adopted the unstructured e-invoices as they were not equipped to deal with structured e-invoicing requirements.

Regarding *the revision of issuance and content of invoices*, the burden reduction was assessed as rather limited. The provision that had the biggest impact on administrative burden

---

7 Unstructured e-invoices refer to invoices transmitted electronically without a prescribed or specific format, e.g. an email with a PDF attachment or a fax received in electronic not paper format.

8 Portable Document Format, a file format for capturing and sending electronic documents in the intended format

9 Structured electronic invoices refer to invoices issued, transmitted and received in a structured electronic format allowing their automatic and electronic processing.

10 Regarding the calculations please see section 5.2 and section 6 of the Final Report on the Evaluation of Invoicing Rules of Directive 2006/112/EC.

11 The rest of the savings comes from simplified invoicing and cash accounting scheme.

12 According to Commission Recommendation concerning the definition of micro, small and medium-sized enterprises ((C(2003/1422), a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

reduction was the simplified invoicing regime (in quantitative terms assessed at about EUR 38 million per year[13]).

3.2. The impact on the Internal Market

The SID provided a positive contribution to support the functioning of the internal market coming mainly from e-invoices and cross-border invoicing.

Firstly, the data collected within the study demonstrates that, while in 2014 one in four intra-EU traders issued e-invoices, this number increased to three in four traders in 2018. This implies that the SID removed the problems which made cross-border e-invoicing more difficult and thus clearly contributed to the increased usage of e-invoices in cross-border transactions.

Secondly, the SID introduced four further significant changes to the rules applicable to cross-border invoices: (i) the new rules on the applicable invoicing regimes (Article 219a); (ii) the uniform time limit for the issuance of invoices for intra-EU transactions (Article 222); (iii) the new rules on currency conversion (Articles 91 and 230); and (iv) the simplified content of invoices for cross-border transactions subject to reverse charge (Article 226a). Furthermore, the new rules on self-billing (Article 224) also simplified the use of this regime for cross-border transactions. These changes increased the legal certainty of the invoicing rules applicable to intra-EU transactions.

The impact on the Internal Market of the other SID provisions is considered more limited since they did not affect the invoicing processes and thus passed rather unnoticed by businesses.

3.3. The role of the Directive in the promotion of SMEs

Most of the measures of the SID are of a general nature applying to both large enterprises and SMEs. However, simplifying and harmonising the regulatory framework leads to reducing the administrative burdens and thus the measures have the potential to be especially beneficial for SMEs, which, due to their smaller size, usually experience more difficulties in complying with tax obligations than large companies.

The SID had a positive impact on SMEs due to the more widespread use of *unstructured e-invoicing.* This positive impact was more significant on SMEs and micro companies than on large companies. The SMEs benefited from about 55% of the burden reduction due to the more widespread use of unstructured e-invoicing. The difference in burden reduction, which is still significant, is attributed to large companies as large firms issue a visibly higher number of invoices.

The SID also amended two invoicing regimes fully or partly targeted to SMEs, namely cash accounting and simplified invoices, and thus contributed to their wider use. A number of Member States have introduced or enlarged the scope of *the cash accounting regime* after the

[13] Regarding the calculations please see section 6.2.2. of the Final Report on the Evaluation of Invoicing Rules of Directive 2006/112/EC.

changes introduced by the SID. It has been estimated that about 60,000 additional micro enterprises benefitted from the cash accounting scheme thanks to the SID. All in all, the uptake of the scheme remains still limited due to the fact that opting for the cash accounting scheme requires changes to the accountancy process which may in certain cases result in higher advisors' fees. The overall cost savings due to the higher uptake of the cash accounting scheme generated by the SID have been estimated at EUR 33 million for the ten Member States in which changes can be attributed to the SID. The importance of cash accounting though goes far beyond the mere reduction of administrative burdens. It played a very important role for micro-companies during the economic crisis when the economic conditions deteriorated and the payments became more difficult.

Regarding simplified invoices, due to the changes brought by SID, the regime has been introduced in a number of Member States while other Member States enlarged its scope. *The simplified invoicing regime* was assessed as having the biggest impact on administrative burden reduction from all the provisions on issuance and content of invoices (see above section 3.1). Still, the use of simplified invoices remains largely limited to specific business sectors, such as accommodation, restaurants, retail trade, petrol stations and transport services and thus the burden reduction is not substantial.

3.4. Fight against VAT fraud

As a whole, the Directive was also intended to support tax control activities, eventually fostering an improvement in VAT compliance. In particular the SID amended two provisions to this end: i) the time limit for issuing invoices for intra EU transactions and ii) the rules on the VAT chargeability of intra-EU supplies and acquisitions. However, there is no evidence of any significant impact of the SID on tax control or VAT compliance. The opinions expressed by tax authorities confirm that the effects of the SID when it comes to VAT compliance are, if any, rather limited. Tax authorities and stakeholders are of the opinion that not more can be achieved by invoicing rules in the area tax control. Since the information from invoicing is not readily available to tax authorities, their focus is currently on systems assuring real-time reporting allowing better risk analysis and more targeted controls. At the same time, it is reassuring that the simplification and harmonisation of invoicing and e-invoicing requirements did not have any adverse impact on tax control activities.

4. Main shortcomings of the Directive

The assessment of the invoicing rules showed one shortcoming of the SID and some emerging issues which are outlined below.

4.1. The lack of clarity on the BCAT

In the context of e-invoicing, the SID introduced the concept of Business Controls that create a reliable Audit Trail (BCAT) as a mean to prove the e-invoice Integrity and Authenticity (I&A). This concept is perceived as still complex, not uniformly interpreted by the tax

authorities and poorly applied by economic operators across the EU. Stakeholders see this as a shortcoming of the SID.

The SID (in Article 233) establishes the principle of the freedom of evidence for the economic operators to prove Integrity and Authenticity of e-invoices. However, in practice the only methods used include: (i) e-signature; (ii) the Electronic Data Interchange; and (iii) BCAT. Consequently, BCAT works as the default method to prove the e-invoice I&A for all companies which did not opt for e-signatures or EDI. This implies that most, if not all, companies exchanging e-invoices as unsigned PDFs should have a BCAT system in place. However, the compliance by companies and the enforcement by tax authorities were limited, and even absent in some Member States. Overall, stakeholders consider that there is lack of practical definition of the BCAT in the Directive. Some guidance was included in the secondary legislation of the Member States as well as in Explanatory Notes prepared by the European Commission. Despite these efforts, economic operators do not regard the guidance provided on BCAT as adequate and sufficiently clear. This translates into doubts on how this option should be applied in practice and whether it will be accepted during tax audits.

4.2. The complexity of archiving rules

A possible emerging aspect refers to archiving rules. The SID did not include provisions on archiving. Since the transpositions of the Directive, the complexity and regulatory fragmentation of the archiving rules increased unevenly. This is due to the fact that certain Member States adopted very detailed rules on the e-archiving of fiscal documents, which obviously also apply to e-invoices. Nearly 40% of stakeholders consider that national rules on archiving for e-invoices are burdensome and difficult to comply with.

4.3. 4.3 National e-reporting requirements

Another issue that emerged after the adoption of the SID but not resulting from it is the introduction by several Member States of requirements to submit electronic declarations on certain domestic transactions. The Member States introduced such reporting to tackle fraudulent activities. Stakeholders see a risk of dis-harmonisation and increased administrative burdens by the proliferation of such national e-reporting requirements.

5. Conclusions and possible way forward

The assessment of the Directive is largely positive, as having effectively supported the simplification and harmonisation of invoicing and e-invoicing rules across the EU. The SID contributed to the uptake of the unstructured e-invoicing, the reduction of administrative burdens on businesses, the increase of legal certainty for economic operators and the proper functioning of the internal market. The provisions of the SID remain relevant and appropriate for stakeholders' needs namely clearer, simpler and more harmonised e-invoicing rules.

In some areas, such as the improvement of tax control activities and SMEs promotion, the achievements were positive but lower than their potential.

The assessment also identified one shortcoming stemming from the SID, namely the lack of clarity on BCAT. Moreover, some other issues not derived from the SID but imposed at national level, have emerged, such as complex archiving rules and national e-reporting requirements.

Regarding the BCAT, there would be a need to provide more clarifications in order to tackle the above shortcoming. However, it is doubtful that such clarifications could be provided in the legislative text. This is because the intent of the BCAT is to encompass many different types of business processes and any definition included in the Directive would limit its scope and would risk becoming obsolete due to technological advancements. Furthermore, the tax authorities seem to attach less importance to strict Integrity and Authenticity (I&A) rules because of the introduction of e-reporting requirements. Finally, it would risk imposing additional burden on business, especially on SMEs. Therefore, it could be explored whether the clarification of the BCAT could be better achieved by Commission's Explanatory Notes and sharing of best practices in Member States. This could be accompanied by some further clarifications on the legal definition of e-invoices.

On the archiving rules, an area which is considered to be complex by businesses, it would be difficult to intervene at EU level since the detailed requirements on the storage of invoices are laid down by Member States. With the development of digital solutions, the reflection in this area could focus for instance on whether developing a standard for a European cloud service for storage of invoices could be useful.

As regards tax control, according to tax authorities and stakeholders current invoicing rules are well aligned with the needs of tax control activities and not much more can actually be obtained from invoicing rules to further improve tax control. Thus any possible amendment of the VAT Directive for this purpose would not bring much added value. Instead, many tax authorities are currently looking at how to get access to transaction data without having to get physical or electronic access to invoices, thus introducing effective and real-time e-reporting requirements.

The main focus of possible further improvements to promote SMEs would need to be on cash accounting. However, the cash accounting scheme is overall positively assessed by stakeholders and no emerging issues were signalled.

In terms of the limited administrative burden reduction, this is mainly attributed to the lower uptake of the structured e-invoice. This was the policy choice made in the SID. A more radical approach considering only structured e-invoices as a valid document would require amendments to the existing legislation.

In conclusion, the invoicing rules introduced by the SID are assessed as working well by tax authorities and stakeholders and no major issues were identified. In the context of the fight against fraud and given the technological developments and the recent trends in certain Member States on e-invoicing and e-reporting, the Commission together with Member States will explore whether the potential of e-invoicing can be further unveiled at EU level. The Commission will also open a reflection on the e-reporting requirements and in particular

regarding the impact on the internal market caused by the different rules applicable in Member States.