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).

[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.

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 (*), 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 (**) and by Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) (***).

(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;