



# EXPERT INTERVIEW - COMMISSION PROPOSAL TO CHANGE THE EU VAT DIRECTIVE

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**TrustWeaver interviewed international VAT expert Gwenaelle Bernier, a Partner at French law firm Fidal, about the status and future of the [Commission Proposal for modifying the VAT Directive<sup>1</sup>](#), and in particular about the proposed new rules for integrity and authenticity of electronic invoices.**

## WHAT IS THE STATUS OF THE PROPOSAL?

GB: This is a proposal from the European Commission to the Council. The Commission is the executive body of the EU consisting of non-elected officials. The Council represents relevant public administrations of the Member States. The Commission can propose legislation but has no formal vote in the final decision. After a Commission proposal for new or changing legislation, a political process starts among the Member States, and we are just at the beginning of such a process. The Council may adopt this new Commission proposal within months, or take years to debate it. Adoption by the Council requires unanimity among all 27 Member States. Once that is achieved – if it can be achieved –, Member States have a period of at least two years to adopt their national laws (to “transpose” the Directive). The target transposition date noted in the proposed Directive is 1 January 2013.

## HOW SHOULD BUSINESSES ACTIVE IN THE EU READ THE COMMISSION PROPOSAL?

GB: It is important to read the actual proposed Directive text rather than the Commission press release or the paraphrasing of that press release by various commentators. The proposal addresses many aspects of VAT in the EU and not only invoicing rules. You can only really understand the various proposals with a sufficient understanding of the purposes and principles of VAT law – focusing on a specific part of the proposal without viewing against this general backdrop can lead to erroneous conclusions.

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<sup>1</sup> [http://ec.europa.eu/taxation\\_customs/resources/documents/common/whats\\_new/com\\_2009\\_21\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/com_2009_21_en.pdf)

## DO YOU VIEW THE CURRENT REGULATORY FRAMEWORK IN THE EU AS UNHELPFUL?

GB: When PriceWaterhouseCoopers (PwC) interviewed tax administrations about e-invoicing last year for a European Commission study, Member States without exception responded that none of their current requirements were superfluous. In reality, tax administrations benefit from e-invoicing too, because electronic invoices can be more easily analyzed in the framework of e-tax audits. Tax administrations are not in the business of preventing efficient data flows, but they want to ascertain that there is one and a sole invoice per economic transaction and that such invoice receive the right VAT treatment. Their only condition – which businesses must take seriously – is thus that companies exercise a sufficient level of control over their processes so that they can verify that all transactions subject to VAT are appropriately handled. The current rules are not unworkable. I see a lot of great implementations that maximize benefits for both businesses and tax authorities. Naturally things could be a lot better still if the EU could achieve more harmonization in law and audit approaches.

## CAN YOU COMMENT ON THE ARTICLES ABOUT INTEGRITY AND AUTHENTICITY OF E-INVOICES? WHAT DOES “EQUAL TREATMENT” MEAN IN PRACTICE?

GB: The Commission has acted on complaints about lack of uniformity with a proposal to delete the articles from the VAT Directive that address electronic invoicing under the heading “Sending of invoices”. This deletion would have as a consequence that the VAT Directive’s rules on electronic invoicing would move from a rule-based to a principle-based regime whereby the current explicit options (EDI, advanced electronic signatures and “other means” subject to Member State approval) for guaranteeing integrity and authenticity would be replaced by a functional requirement for maintaining integrity and authenticity. This regime would be identical for paper and electronic invoices via the requirements outlined in current VAT Directive Article 246 (under the “Storage of invoices” heading). In such a regime, Member States could no longer penalize companies merely because their electronic invoices are not transmitted or protected in a specific way defined in legislation – the way in which auditability is ensured would be left up to each company. The proposal would codify the so-called “equal treatment” principle whereby an electronic invoice cannot be subject to requirements over and above those that apply for paper invoices. Since no form requirements exist for paper invoices, such form requirements would become illegal for Member States to impose on electronic invoices. However, as has always been the case, sanctions such as denial of VAT deduction could still be applied if a tax administration cannot reasonably ascertain that an invoice is the only real, complete and unaltered invoice that was sent or received for a specific transaction and it is not stored according to these principles.

## WHAT DO YOU ADVISE COMPANIES THAT HAVE IMPLEMENTED SYSTEMS COMPLYING WITH THE CURRENT RULES FOR INTEGRITY AND AUTHENTICITY OF ELECTRONIC INVOICES OR THAT ARE PLANNING TO DO SO? SHOULD THEY WAIT UNTIL THE RULES HAVE CHANGED?

GB: Since the base requirement of auditability won’t go away, current and planned implementations should go full steam ahead. “Equal treatment” does not mean that controls such as e-signatures or the security measures embedded in good EDI systems will become obsolete. There aren’t all that many ways of ensuring auditability and the current options will always be an excellent way of deploying e-invoicing without any VAT risks. If the proposal goes through, companies may be able to mix and match more and it opens the way for adoption of new technologies and control processes that we can expect to emerge going forward. Companies that want to avoid legal uncertainty and complicated audits will continue to adopt control measures that enable easy evidence of transactions no matter what happens with the detailed requirements.

## WHAT DO YOU THINK WILL HAPPEN WITH THE COMMISSION PROPOSAL IN THE COUNCIL?

GB: Judging from current Member State attitudes and legislative history in other VAT-related areas, about a third of the Member States can be expected to view the proposed changes as a step in the right direction. Many Member States believe they already practice equal treatment, but the devil is in the detail: audit practices, legal cultures and the way businesses interact with tax administrations differ considerably among Member States. This makes the debate particularly difficult. It is impossible to predict where these discussions will end up. What we can say already now is that the discussions in the Council will not be very easy.

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