

**Electronic invoicing in the light of the EU Directive 2001/115/EC**  
**by**  
**Anna Nordén, LL.M., General Counsel, Tekki AB, Sweden**

## **Introduction**

The Directive 2001/115/EC ("the Directive") was adopted with the aim to simplify, harmonize and modernize the situation regarding VAT invoicing. Although the Directive is not only applicable to electronic invoicing but also includes rules for invoices in general (*e.g.* regarding content, self-billing and outsourcing) the rules and requirements related to the electronic aspects have attracted most attention. This has led to the Directive often being referred to as the "e-Invoicing Directive".

## **Electronic invoicing according to the Directive**

The Directive states that from 1 January 2004 all EU member states must accept electronic invoices, provided two conditions are fulfilled. Firstly, the customer must accept receipt of invoices by electronic means. Secondly, guarantees need to be provided for the authenticity of the invoice's origin; and for the integrity of the invoice's contents.

The Directive provides two main methods to guarantee the authenticity of origin and integrity of contents of an invoice: either by using an *advanced electronic signature*; or by using *electronic data interchange* (in which case the security procedures must be laid down in an agreement). In addition to this main rule the Directive further allows Member States to require that the advanced electronic signature be based on a qualified certificate and created with a secure signature creation device (*i.e.* a *qualified electronic signature*). Member States are also allowed to accept electronic invoices sent by *other electronic means*; however this is subject to acceptance of the Member State(s) concerned.

In addition to security requirements for the transport of the invoice, the invoice must be stored in a manner that guarantees, for the entire storage period, the authenticity of the invoice's origin and the integrity of the invoice's contents. The invoice must also be readable.

## **Varying security requirements in national law**

Since the Directive allows member states to require different levels of security for electronic invoices it is not very surprising that the national laws vary. The security requirements range from just guaranteeing the integrity of the invoice (Sweden, Finland) to requirements of qualified electronic signatures (*e.g.* Germany, Slovakia, Spain).

## **Cross-border effects**

With such diverging requirements for electronic invoicing the question becomes what a company should do to pursue cross-border trade including electronic invoicing within the European Union. If the company is based in a country with lower requirements than the Directive's main rules, it may not be sufficient to comply with the national requirements (of course depending on what requirements the recipient's country's laws have). At the other end of the spectrum, a company based in a country requiring qualified electronic signatures should be able to automatically have its invoices accepted in all other countries. In between these extremes the question is what happens if an invoice is sent from a country with "main rule" requirements, *i.e.* advanced electronic signatures or secure electronic data interchange, to a country which has implemented qualified electronic signature requirements. The Directive should here according to the Commission be interpreted as though following the "main rule" requirements is sufficient – the high-level requirement-country would thus not be able to refuse such invoices on the grounds that they are not secured in compliance with its national legislation.