

CEN

CWA 15574

WORKSHOP

July 2006

AGREEMENT

ICS 35.240.99

English version

Commission Recommendation 1994/820/EC October 1994,
proposed revision with the requirements of Directive
2001/115/EC present day e-Commerce practices and revised
definition of EDI Electronic Data Interchange

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Ref. No.:CWA 15574:2006 E

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Preview

Foreword

This CWA is part of a set of CWAs which has been prepared by the CEN/ISSS Workshop on Interoperability of Electronic Invoices in the European Community, with the view to supporting the effective implementation of the related Council Directive 2001/115/EC of 20 December 2001, with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of Value Added Tax, as well as regulations on electronic signatures and EDI. The set of CWA is as follows:

- Commission Recommendation 1994/820/EC October 1994, proposed revision with the requirements of Directive 2001/115/EC, present day e-Commerce practices and revised definition of EDI Electronic Data Interchange
- The list of invoice content details expressed as UN/CEFACT Core Components
- Recommendation to allow coded identifiers as an alternative to the current unstructured clear text identifications.
- A standardised set of codes with definitions to replace plain text clauses in eInvoice messages.
- Survey of VAT Data Element usage in the Member States and the use of codes for VAT Exemptions.
- eInvoices and digital signatures.
- Storage of Electronic Invoices.
- Guidelines for e-Invoicing service providers.
- eInvoice Reference Model for EU VAT purposes specification

An executive summary of these CWAs is available at:

ftp://ftp.cenorm.be/PUBLIC/eInvoicing/CWA/Executive_Summary.pdf

The final review/endorsement round for this CWA was successfully closed on 12 June 2006.

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Introduction

The proposed revision of Commission Recommendation 1994/820/EC October 1994 was completed in May 2005 and in keeping with the request of DG Enterprise, the document has been reviewed by the eInvoice CEN Workshop and cleared for review and discussion with the relevant persons in DG Enterprise and DG Taxud. The revised definition of EDI is given in Article 2.2.

The proposed revision was submitted to DG Enterprise on 1st June 2005 for distribution to interested parties in DG Enterprise and DG Taxud for comments and suggestions, as well as inquiring how we should proceed further as it is a Commission Document.

The proposed revision was also presented at the CEN/ISSS/eInvoicing Workshop open meeting on July 27th and distributed to the participants.

To facilitate the review, the document in revision mode is provided additionally in annex 1.

Preview

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1. Scope

The scope is to carry out two Recommendations of the eInvoicing Focus Group, namely;

- a) To bring Commission Recommendation 1994/820/EC October 1994 up to date with the requirements of Directive 2001/115/EC and present day e-Commerce practices {DG Enterprise, European Commission}
- b) The term 'EDI' in the Directive 2001/115/EC should have the widest possible meaning of formatted exchanges, not dependent on a specific 'technology' (EDIFACT, X-12, XML, etc..), nor limited to specific international, national or sector standards.

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2. Proposed revision of Recommendation

31994H0820

94/820/EC: Commission Recommendation of 19 October 1994 relating to the legal aspects of electronic data interchange (Text with EEA relevance)

Official Journal L 338 , 28/12/1994 P. 0098 - 0117

COMMISSION RECOMMENDATION of 19 October 1994 relating to the legal aspects of electronic data interchange (Text with EEA relevance) (94/820/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas Council Decision 91/385/EEC (1) established the second phase of the TEDIS programme (trade electronic data interchange systems), Article 3 thereof relating to the legal aspects of electronic data interchange (EDI); whereas Annex 1 to that Decision provides for the finalization of the draft European Model EDI Agreement;

Whereas agreements for the participation of the EFTA countries, namely Austria, Finland, Iceland, Norway, Sweden and Switzerland, were approved by the Council in 1989 (2);

Whereas EDI, by facilitating the exchanges of data between users, can contribute increasingly to the competitiveness of European undertakings in the manufacturing and services sectors; Whereas the promotion and swift development of EDI in Europe and between Europe and third countries requires a better understanding on the part of economic operators of the legal implications of conducting transactions by the use of EDI;

Whereas the work already initiated in the field of electronic data interchange during the first phase of the TEDIS programme (1988 to 1989), established by Council Decision 87/499/EEC (3), resulted in the preparation of a draft of a 'European Model EDI Agreement';

Whereas a 'European Model EDI Agreement' would contribute to the promotion of EDI by providing a flexible and concrete approach to the legal issues raised by the use of EDI, encouraging cooperation between users for the exchange of EDI messages;

Whereas the use of a 'European Model EDI Agreement' would improve the legal framework by providing a uniform approach to the legal issues; whereas it would increase the legal certainty for trading partners and reduce the uncertainty arising from the use of EDI; whereas it would avoid the need for every undertaking, especially small and medium-size companies, to draft their own 'Interchange Agreement' and consequently avoid duplication of work;

Whereas the 'European Model EDI Agreement' consists of legal provisions which need to be supplemented by technical specifications provided in a technical Annex according to the user's specific needs;

Whereas the 'European Model EDI Agreement' aims at ensuring an appropriate protection of confidential and personal data, in particular in the light of the proposal for a Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (4);

Whereas the 'European Model EDI Agreement' supports international and European standards;

Whereas the need for standardized 'Interchange Agreements' is recognized by other international organizations involved in the promotion of EDI such as the United Nations Economic Commission for Europe (UN/ECE) - Working Party on Facilitation of International Trade Procedures through its Programme of work on Legal Issues, and the United Nations Commission on International Trade Law (Uncitral);

Whereas the existence of a uniform European approach to issues relating to the use of EDI will improve the position of undertakings within the Member States in their negotiating power when trading via EDI with third countries;

Whereas the Commission will continue to monitor the developments in this area and, should the need occur, take the appropriate measures to up-date, revise and supplement this European Model EDI Agreement,

HEREBY RECOMMENDS:

1. That economic operators and organizations conducting their trading activities by EDI use the European Model EDI Agreement and its commentary, as set out in the Annexes hereto;
2. That Member States facilitate the use of this 'European Model EDI Agreement' and provide

the most appropriate measures to that end.

Done at Brussels, 19 October 1994.

For the Commission

Martin BANGEMANN

Member of the Commission

(1) OJ No L 208, 30. 7. 1991, p. 66.

(2) Council Decisions 89/689/EEC, 89/690/EEC, 89/691/EEC, 89/692/EEC, 89/693/EEC and 89/694/EEC, OJ No L 400, 30. 12. 1989, pp. 1, 6, 11, 16, 21 and 26.

(3) OJ No L 285, 8. 10. 1987, p. 35.

(4) COM (92) 422 final - SYN 287.

ANNEX 1

EUROPEAN MODEL EDI AGREEMENT LEGAL PROVISIONS Table of contents Page Article 1 Object and scope 100 Article 2 Definitions 100 Article 3 Validity and formation of contract 101 Article 4 Admissibility in evidence of EDI messages 101 Article 5 Processing and acknowledgement of receipt of EDI messages 101 Article 6 Security of EDI messages 102 Article 7 Confidentiality and protection of personal data 102 Article 8 Recording and storage of EDI messages 102 Article 9 Operational requirements for EDI 103 Article 10 Technical specifications and requirements 103 Article 11 Liability 103 Article 12 Dispute resolution 104 Article 13 Applicable law 104 Article 14 Effect, modification, term and severability 104 EUROPEAN MODEL EDI AGREEMENT LEGAL PROVISIONS This European Model Electronic Data Interchange (EDI) Agreement is concluded by and between:
and
hereinafter referred to as 'the parties',

Article 1

Object and scope

1.1. The 'European Model EDI Agreement', hereinafter referred to as 'the Agreement', specifies the legal terms and conditions under which the parties, conducting transactions by the use of electronic data interchange (EDI), operate.

1.2. The Agreement consists of the legal provisions set out in the following and shall be completed by a Technical Annex.

1.3. Unless otherwise agreed by the parties, the provisions of the Agreement are not intended to govern the contractual obligations arising from the underlying transactions effected by the use of EDI.

Article 2

Definitions

2.1. For the purpose of the Agreement, the following terms are defined as follows;

2.2. EDI:

Electronic data interchange is the transfer of commercial, administrative and business information between computer systems, using data messages as defined in 2.3 which have been mutually agreed by the parties in the transfer.

2.3. Electronic data interchange message:

An electronic data interchange message (EDI message) consists of a set of information, structured using agreed formats, prepared in a computer readable form and capable of being automatically and unambiguously processed.

2.4. Electronic data interchange agreements:

Electronic data interchange agreements comprise a set of agreed formats, directories and guidelines for the electronic interchange of structured data between independent computerized information systems.

2.5. Acknowledgement of receipt:

The acknowledgement of receipt of an EDI message is the procedure by which, on receipt of the message, the syntax and semantics are checked, and a corresponding acknowledgement is sent by the receiver.

Article 3

Validity and formation of contract

3.1. The parties, intending to be legally bound by the Agreement, expressly waive any rights to contest the validity of a contract effected by the use of EDI in accordance with the terms and conditions of the Agreement on the sole ground that it was effected by EDI.

3.2. Each party shall ensure that the content of an EDI message sent or received is not inconsistent with the law of its own respective country, the application of which could restrict the content of an EDI message, and shall take all necessary measures to inform without delay the other party of such an inconsistency.

3.3. A contract effected by the use of EDI shall be concluded at the time and place where the EDI message constituting acceptance of an offer reaches the computer system of the offeror.

Article 4

Admissibility in evidence of EDI messages

To the extent permitted by any national law which may apply, the parties hereby agree that in the event of dispute, the records of EDI messages, which they have maintained in accordance with the terms and conditions of this Agreement, shall be admissible before the Courts and shall constitute evidence of the facts contained therein unless evidence to the contrary is adduced.

Article 5

Processing and acknowledgement of receipt of EDI messages

5.1. EDI messages shall be processed as soon as possible after receipt, but in any event, within the time limits specified in the Technical Annex.

5.2. An acknowledgement of receipt is not required unless requested.

An acknowledgement of receipt can be requested by specific provision included in the Technical Annex or by express request of the sender in an EDI message.

5.3. Where an acknowledgement is required, the receiver of the EDI message to be acknowledged shall ensure that the acknowledgement is sent within one business day of the time of receipt of the EDI message to be acknowledged, unless an alternative time limit has been specified in the Technical Annex.

A business day means any day except a Saturday, Sunday or any declared public holiday in the intended place of receipt of an EDI message.

The receiver of an EDI message requiring an acknowledgment shall not act upon the content of the EDI message until such acknowledgment is sent.

5.4. If the sender does not receive the acknowledgement of receipt within the time limit, he may, upon giving notification to the receiver to that effect, treat the EDI message as null and void as from the expiration of that time limit or initiate an alternative recovery procedure as specified in the Technical Annex, to ensure effective receipt of the acknowledgement.

In case of failure of the recovery procedure, within the time limit, the EDI message will definitely be treated as null and void, as from the expiration of that time limit, upon notification to the receiver.

Article 6

Security of EDI messages

6.1. The parties undertake to implement and maintain security procedures and measures in order to ensure the protection of EDI messages against the risks of unauthorized access, alteration, delay, destruction or loss.

6.2. Security procedures and measures include the verification of origin, the verification of integrity, the non-repudiation of origin and receipt and the confidentiality of EDI messages. Security procedures and measures for the verification of origin and the verification of integrity, in order, to identify the sender of any EDI message and to ascertain that any EDI message received is complete and has not been corrupted, are mandatory for any EDI message. Where required, additional security procedures and measures may be expressly specified in the Technical Annex.

6.3. If the use of security procedures and measures results in the rejection of, or in the detection of an error in an EDI message, the receiver shall inform the sender thereof, within the specified time limit.

The receiver of an EDI message which has been rejected, or which contains an error shall not act upon the EDI message before receiving instructions from the sender. Where a rejected or

erroneous EDI message is retransmitted by the sender, the EDI message should clearly state that it is a corrected EDI message.

Article 7

Confidentiality and protection of personal data

7.1. The parties shall ensure that EDI messages containing information specified to be confidential by the sender or agreed mutually to be confidential between the parties, are maintained in confidence and are not disclosed or transmitted to any unauthorized persons nor used for any purposes other than those intended by the parties.

When authorized, further transmission of such confidential information shall be subject to the same degree of confidentiality.

7.2. EDI messages shall not be regarded as containing confidential information to the extent that such information is in the public domain.

7.3. The parties may agree to use a specific form of protection for certain messages such as a method of encryption to the extent permitted by law in either of their respective countries.

7.4. Where EDI messages which include personal data are sent or received in countries outside of the European Union, the relevant parties in those countries must ensure that an adequate level of data protection is maintained, under the provisions of the 1995 EC Data Protection Directive (95/46/EC). (5)

Article 8

Recording and storage of EDI messages

8.1. A complete and chronological record of all EDI messages exchanged by the parties in the course of a trade transaction shall be stored by each party, unaltered and securely, in accordance with the time limits and specifications prescribed by the legislative requirements of its own national law.

8.2. Unless otherwise provided by national laws, EDI messages shall be stored by the sender in the transmitted format and by the receiver in the format in which they are received.

8.3. Parties shall ensure that electronic or computer records of the EDI messages shall be readily accessible, are capable of being reproduced in a human readable form and of being printed, if required. Any operational equipment required in this connection shall be retained.

Article 9

Operational requirements for EDI

9.1. The parties undertake to implement and maintain the operational environment to operate EDI according to the terms and conditions of this Agreement, which includes but is not limited to the following:

9.2. Operational equipment

The parties shall provide and maintain, the equipment, software and services necessary to transmit, receive, translate, record and store EDI messages.

9.3. Means of communication

The parties shall determine the means of communication to be used, including the telecommunication protocols and if required, the choice of third party service providers.

9.4. EDI message agreements

All EDI messages shall be transmitted in accordance with agreed formats, recommendations and procedures.

9.5. Codes

Data element code lists referred to in EDI messages shall include UN/CEFACT maintained code lists, international code lists issued as ISO international standards and UN/ECE or other officially published code lists.

Where such code lists are not available, preference shall be given to the use of code lists published, maintained and ensuring correspondences with other coding systems.

Article 10

Technical specifications and requirements

The Technical Annex shall include the technical, organizational and procedural specifications and requirements to operate EDI according to the terms of this Agreement, which includes but is not limited to the following:

- operational requirements for EDI, as referred to in Article 9, including, operational

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