

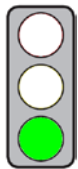
E-INVOICING AND END-TO-END E-PROCUREMENT IN THE PUBLIC SECTOR

cepPolicyBrief No. 2014-02

KEY ISSUES

Objective of the Directive and the Communication: The Commission intends all phases of the public procurement process to take place electronically from end to end and software systems for this to be compatible EU-wide. A binding European standard is to be developed for electronic invoicing, in particular.

Affected parties: Contracting authorities and contracting entities, companies as contractors.



Pro: (1) European standards for end-to-end e-procurement software make it easier for suppliers from other EU countries to take part in the public procurement process. This may result in better and more cost-effective offers for purchasers.

(2) A European standard for an e-invoice prevents foreign suppliers from incurring higher costs than domestic suppliers.

(3) The recommendation of the Commission that purchasers should accept only e-invoices, will hasten the distribution of e-invoices both here and for invoicing between companies in the private sector. This may save costs for all those involved.

CONTENT

Title

Proposal COM(2013) 449 of 26 June 2013 for a **Directive** of the European Parliament and of the Council on **electronic invoicing in public procurement**

Communication COM(2013) 453 of 26 June 2013: **End-to-end e-procurement** to modernise public administration

Brief Summary

Note: Page references relate to the Communication COM(2013) 453, article numbers and recitals to the proposed Directive COM(2013) 449.

► Background

- Public procurement involves the acquisition of construction works, goods or services from companies ("suppliers") by purchasers such as public authorities.
- The public procurement process takes place in six phases. The Commission wants all six phases to take place electronically ["end-to-end e-procurement"; see also Communication COM(2012) 179].
 - "E-procurement" is the electronic implementation of the first three phases. These are
 - the electronic notification of the public contract by the purchaser (e-notification),
 - the electronic publication of the procurement documents (e-access) and
 - the electronic submission of tenders by the supplier (e-submission).
 - "End-to-end e-procurement" is the electronic implementation of all six phases of the public procurement process. In addition to the three phases of e-procurement, these are
 - the electronic ordering by the purchaser (e-ordering),
 - the electronic invoicing by the supplier (e-invoicing) and
 - the electronic payment by the purchaser (e-payment).
- In the Communication, the Commission clarifies the status of implementation of end-to-end e-procurement as well as setting out measures which the Member States and the Commission should take in order to implement it further.
- With the Directive, the Commission wants to make electronic invoicing (Phase 5) the standard method for public contracts.

► Objectives of end-to-end e-procurement

- End-to-end e-procurement intends to
 - save costs for the purchaser and the supplier (p. 4),
 - promote the electronic implementation of other administrative processes (p. 4) as well as
 - make it easier for the supplier to apply for contracts across borders (p. 9); for this purpose, software, which handles the whole procurement process for both purchaser and supplier ("software system"), should enable the exchange of data EU-wide with no loss of information; this can be achieved, for example, by way of uniform file formats and network protocols; network protocols are rules for the exchange of data between computers.

- End-to-end e-procurement will only be implemented for public contracts where the estimated contract value exceeds the thresholds in the Public Procurement Directives [COM(2011) 895 (see [cepPolicyBrief](#)), COM(2011) 896 (see [cepPolicyBrief](#)) and Directive 2009/81/EC]. Depending on the type of contract, the thresholds are between € 130,000 and € 5.15 million.
- ▶ **Previous legislative measures for the implementation of end-to-end e-procurement**
 - The proposed Directives to modernise the public procurement [COM(2011) 895 and COM(2011) 896] regulate e-procurement (Phases 1–3). They will be passed in early 2014 and come into force shortly thereafter. They provide that:
 - Phases 1 and 2 – notification of the contract and publication of the procurement documents – must (also) take place electronically by no later than two years from entry into force. Paper form is still permitted (in addition).
 - Phases 1–3 may only take place electronically after four and a half years from entry into force (mandatory e-procurement) at the latest; in the case of central purchasing bodies, which award contracts on behalf of other purchasers, latest after three years from entry into force.
 - Electronic ordering (Phase 4) can only be introduced when tenders are submitted electronically.
 - Electronic invoicing (Phase 5) is to be regulated by the present proposed Directive.
 - Electronic payment (Phase 6) is already possible under the legislation on the Single Euro Payments Area (SEPA; see [cepPolicyBrief](#)).
- ▶ **European standards for end-to-end e-procurement (Communication)**
 - The European Committee for Standardisation (CEN) is to continue the process, already under way, of developing standards for end-to-end e-procurement software (p. 8). [On European standardisation cf. COM(2011) 315; see [cepPolicyBrief](#)]
 - The Commission wants to set up a forum for end-to-end e-procurement (p. 11), which, in particular
 - coordinates cross-border exchange and initiatives on end-to-end e-procurement as well as
 - identifies what further European standards are required for the end-to-end e-procurement software.
 - Member States should "promote" the use of the European standards (p. 9).
- ▶ **Development of a European standard for an electronic invoice (Directive)**
 - CEN is to draw up a European standard for the design of an electronic invoice ("e-invoice") [Art. 3 (1) and p. 8]. The invoice is to be designed so that
 - automatic electronic payment is possible (Recital 7),
 - no electronic signature (see [cepPolicyBrief](#)) is necessary (Recital 7),
 - protection of personal data is guaranteed [Art. 3 (1)],
 - it can be transmitted and opened without any loss of data irrespective of the software used for the e-invoice (Recital 11) as well as
 - it is not dependent on any specific hardware or software such as a specific operating system [Art. 3 (1)]; this is to avoid any distortion of competition (Recital 6).
 - The European standard will be published in the Official Journal of the EU [Art. 3 (2)].
 - Purchasers must accept invoices which correspond to this standard (Art. 4).
 - In addition, they may also accept paper invoices (Recital 16).
 - The Commission recommends that Member States require purchasers to accept only e-invoices as soon as they set up "the necessary infrastructure". Member States should, however, ensure that this does not give rise to any "unnecessary" additional costs for small and medium-sized enterprises (SMEs) (p. 8).
 - Member States must have implemented the Directive by no later than four years from its entry into force [Art. 6 (1)].
- ▶ **Further measures by the Member States for the implementation of end-to-end e-procurement (Communication)**
 - Each Member State should set-up an action plan in order to ensure implementation of the provisions on e-procurement and e-invoicing in accordance with the deadlines as well as to achieve end-to-end e-procurement (p. 9). For the purpose of implementing end-to-end e-procurement, the action plan should
 - establish a strategy and intermediate targets as well as
 - monitor the costs and benefits of end-to-end e-procurement as well as compliance with intermediate targets.
 - Each Member State should also (p. 10)
 - provide training for suppliers and purchasers as well as
 - foster the development and use of electronic certificates; electronic certificates are electronic documents which, like identity papers, can confirm that electronic information originates from a specific person; they enable suppliers to place certified documents required for the procurement process onto the internet so that purchasers can access them directly and do not have to request them first from the suppliers.
 - In order to finance training and develop the software systems for end-to-end e-procurement, the Member States may be able to use the EU structural funds (p. 10).

► **Further measures by the Commission for the implementation of end-to-end e-procurement (Communication)**

- In order to "lead by example", the Commission will implement e-procurement for contracts which it awards by mid-2015 (p. 11).
- The Commission will make its software for the e-invoice and the source code for this software publicly available ("open-source software") in order to reduce the investment costs for Member States (p. 11).
- The Commission wants to publish guidelines with which the software systems of the Member States for end-to-end e-procurement should comply. In particular, the software should
 - "ease" the access for SMEs and cross-border suppliers (p. 10) as well as
 - enable data exchange EU-wide with no loss of information.

Main Change to the Status Quo

New is that purchasers must accept e-invoices that correspond to a European standard that is yet to be drawn up.

Statement on Subsidiarity by the Commission

Different software systems for procurement and different software requirements for e-invoices in the Member States make it more difficult for suppliers to apply for cross-border public contracts.

Policy Context

The Single Market Act II [Communication COM(2012) 573] set the goal of making electronic invoicing standard in public procurement by 2020. In 2011, the Commission submitted a package of legislation on the modernisation of public procurement. In 2012, it published a Communication on strategies for implementing e-procurement [COM(2012) 179]. In 2013, the group of experts which it appointed (e-TEG) formulated recommendations for the simplification of e-procurement systems (see [Link](#)). Also in 2013, the Commission published a report presenting recommended procedures for e-procurement ("[Golden Book of e-procurement](#)"). Currently, the Commission is holding events to disseminate e-procurement and is making its e-procurement software publicly available on an open source basis.

Legislative Procedure (Proposed Directive)

26 June 2013	Adoption by the Commission
16 October 2013	Statement by the European Economic and Social Committee
28 November 2013	Statement by the Committee of the Regions
02 April 2014	1st Reading in European Parliament
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the EU, entry into force

Options for Influencing the Political Process (Proposed Directive)

Directorates General:	DG Internal Market and Services (leading)
Committees of the European Parliament:	Internal Market and Consumer protection (leading); Rapporteur: Birgit Collin-Langen (EPP-Group, D)
Federal Ministries:	Economy (leading)
Decision mode in the Council:	Qualified majority (Adoption by a majority of the Member States and with 260 of 352 votes; Germany: 29 votes)

Formalities (Proposed Directive)

Legislative competence:	Art. 114 TFEU (Internal Market)
Form of legislative competence:	Shared competence [Art. 4 (2) TFEU]
Procedure:	Art. 294 TFEU (Ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

As regards the conversion to end-to-end e-procurement, there is a risk that, in individual Member States, software will be introduced which is not compatible with the software of other Member States. This may put foreign suppliers at a disadvantage because it is more difficult for them to find out about public contracts or because they have higher costs when applying for or implementing the contract. Consequently, this may have a negative impact on the functioning of the internal market.

Impact on Efficiency and Individual Freedom of Choice

European standards for end-to-end e-procurement software make it easier for suppliers from other EU countries to take part in the public procurement process in a Member State: Public contracts can be advertised more effectively EU-wide because the standards ensure that, e.g. the different internet sites or procurement platforms, which advertise the contracts, can exchange information. As a result, more suppliers from the whole EU can apply for the contract. **This may result in better and more cost-effective offers for purchasers.**

A European standard for an e-invoice as well as the obligation that all purchasers EU-wide have to accept e-invoices corresponding to this standard, **prevents foreign suppliers from incurring higher costs than domestic suppliers.** Without a standard, there is a danger of this at least in cases where Member States follow the recommendation of the Commission and – as soon as the necessary infrastructure is set up – require purchasers to accept only e-invoices. With a standard, the foreign suppliers will not have to procure new software for e-invoices even in this case.

The fact that the standard for e-invoicing does not require an electronic signature, reduces the costs for all suppliers because setting up an electronic signature is costly. Other processes – e.g. reconciling invoice details with the contract details – are available to ensure sufficiently that the invoice comes from the right person. No signature is necessary for paper invoices either.

The recommendation of the Commission that, as soon as the necessary infrastructure is set up, purchasers should accept only e-invoices, forces suppliers – if the Member States implement it – to install the corresponding software and adapt their internal organisational structure to e-invoices. For example, electronic archiving will have to be introduced because the original invoice is only available in electronic form; a print-out, in particular, does not constitute the original. Due to the conversion costs, the more contracting parties who send and receive e-invoices the more worthwhile it is for a company to convert to e-invoicing. Insistence by purchasers on the exclusive use of e-invoices **will therefore hasten the distribution of e-invoices both here and for invoicing between companies in the private sector. This may save costs for all those involved** because both the time required for electronic processing and the costs of printing and postage will go down.

The fact that the four-year implementation period begins on the date that the Directive comes into force, gives rise to legal uncertainty because it is unclear how long CEN needs to develop the standard for the e-invoice. Without such a standard, however, no software for e-invoices can be developed. Thus there is a danger that the Member States will not be left with sufficient time to implement the Directive. The implementation period should therefore commence on publication of the standard in the Official Journal of the EU.

The fact that the Commission wants to make its software for the e-invoice publicly available to all purchasers brings down the costs for purchasers because they do not have to buy software individually. The fact that open source software is to be used means, firstly, that each purchaser can adapt it for its own requirements because the source code is publicly available and the software can therefore be individually modified. Secondly, with open source software, it is easier to develop individually adapted software versions which are compatible with one another because each individual software is based on the same original software.

Legal Assessment

Legislative competence

The Directive and the measures provided for in the Communication can be based on the competency to adopt measures for the approximation of laws in the internal market (Art. 114 TFEU).

Subsidiarity

Unproblematic. EU-wide uniform provisions on electronic invoicing and end-to-end e-procurement can be more effectively regulated at EU level.

Possible future follow-up measures by the EU

In the case of a procurement process within the framework of a project funded by the EU, the EU as provider of funds, may require the purchaser to provide evidence of its expenses. Where an invoice from the supplier is required in this regard, it should be ensured that the EU recognises e-invoices as evidence as well as paper invoices.

Conclusion

European standards for end-to-end e-procurement software make it easier for suppliers from other EU countries to take part in the public procurement process in a Member State; this may result in better and more cost-effective offers for purchasers. A European standard for an e-invoice prevents foreign suppliers from incurring higher costs than domestic suppliers. The recommendation of the Commission that purchasers should accept only e-invoices, will hasten the distribution of e-invoices both here and for invoicing between companies in the private sector. This may save costs for all those involved.