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PUBLIC CONSULTATION ON THE ROYAL DECREE PROJECT TO DEVELOP LAW 18/2022 ON THE CREATION AND GROWTH OF COMPANIES WITH REGARD TO THE ELECTRONIC INVOICE BETWEEN COMPANIES AND PROFESSIONALS.

7/3/2023 DECREE

1. PRIOR PUBLIC CONSULTATION

Object: Prior public consultation on the regulatory development provided for in the seventh Final Provision of Law 18/2022, of September 28, on the creation and growth of companies; referring to the technical and information requirements to be included in the electronic invoice in order to verify the payment date and obtain the average payment periods, the minimum interoperability requirements between the providers of technological solutions for electronic invoices, and the security requirements, control and standardization of the devices and computer systems that generate the documents.

Procedure: According to article 133 of Law 39/2015, of October 1, on Common Administrative Procedure of Public Administrations and article 26.2 of Law 50/1997, of November 27, of the Government, this document **substantiates prior public consultation** on the regulatory development of electronic invoicing between companies and professionals.

Purpose: Gather opinions from the most representative subjects and organizations potentially affected by the future standard, specifically about:

- a) The problems that are intended to be solved with the initiative
- b) The need and opportunity for its approval
- c) The objectives of the standard
- d) Possible alternative solutions

Objective: Obtain the opinion of the people or organizations representing them that will be the potential obligated subjects of the use of electronic invoicing between companies and professionals (B2B), as well as of the companies that provide B2B electronic invoicing services, of which manufacturers and developers of systems and computer programs related to billing and representative organizations of the same whose activity will be regulated in this standard or affected by it.

Observations to be made: Interested parties can make observations and comments on the elements included in this consultation, using the template provided for this purpose (in Excel format).

2. BACKGROUND

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The background to this standard is included in the following provisions: a) Law 18/2022, of September 28, on the creation and growth of companies. b) Directive 2014/55/EU of the European Parliament and of the Council, of April 16, 2014, regarding to electronic invoicing in public procurement. c) Royal Decree 1619/2012, of November 30, which approves the Regulation by which billing obligations are regulated. d) Law 15/2010, of July 5, amending Law 3/2004, of December 29, which establishes measures to combat late payment in commercial operations. e) Law 56/2007, of December 28, on Measures to Promote the Information Society. f) Council Directive 2006/112/EC of November 28, 2006 on the common system of the Value Added Tax. g) Law 3/2004, of December 29, which establishes measures to combat late payment in commercial operations. h) Law 58/2003, of December 17, General Taxation.

Law **18/2022, of September 28, on the creation and growth of companies**, is one of the regulatory reforms included in the Recovery, Transformation and Resilience Plan of Spain; specifically in Component 13 of "Promoting SMEs", in its reform R1 "Improvement of regulation and business climate". This Law includes among its provisions the universalization of the electronic invoicing obligation in transactions between companies and professionals.

The provisions of the **seventh final provision** and **article 12 of Law 18/2022, on the creation and growth of Companies**, will be taken into account. The universalization of B2B electronic invoicing is in line with the proposal of "VAT in the digital age" of the European Commission. In parallel, the procedures already initiated to obtain the community exception to articles 218 and 232 of Directive 2006/112/EC, relative to the common system of Value Added Tax, will continue.

3. PROBLEMS THAT ARE INTENDED TO SOLVE WITH THE NEW STANDARD

One of the factors that hinder the growth of companies, particularly SMEs, is **commercial delinquency**, understood as the **failure to comply with an obligation to pay on time, exceeding the maximum payment term of 60 days for private companies**, according to establishes Law 3/2004, of December 29, which establishes measures to combat late payment in commercial operations, later modified by Law 15/2010, of July 5, and with the exceptions included in sectoral legislation specific.

Smaller companies are the ones that suffer to a greater extent from non-compliance with payment terms. Large companies have a position of strength against the provider, especially if it is a small company. Thus, smaller companies have to assume the financial cost and the uncertainty generated by these practices,



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negatively influencing its liquidity and therefore its projects, investment capacity and solvency. Specifically, among the main consequences of late payments we can mention the additional need for financing, the increase in financial costs, the uncertainty regarding the assumption of risks, the reduction of margins, the loss of clients or the worsening of solvency. business.

Added to the above problem is that the asymmetry of bargaining power between customers and suppliers makes it extremely rare to claim the right to payment in the terms of Law 3/2004 before the courts due to the potential loss of customers. It is therefore necessary to improve compliance with the law to combat commercial delinquency and payment behavior in commercial operations, promoting a responsible culture in this regard.

On the other hand, the invoice constitutes the basic commercial document of the business activity. It documents the deliveries of goods and services that the activity of any company consists of, so its importance in the economic, financial and fiscal field is maximum.

The universalization of the electronic invoicing obligation in transactions between companies and professionals represents progress in terms of digitization of the Spanish business fabric, contributing to cost savings in the process of issuing, sending and receiving invoicing, as well as in the process of Integration of the invoices received in the systems of the client companies. The adoption of electronic invoicing in accordance with the principles and requirements established in Law 18/2022 on the creation and growth of companies will therefore allow to balance bargaining powers, promote the digitization of smaller companies and professionals, provide transparency on the payment terms of companies and professionals and promote compliance with commercial delinquency regulations.

The Project can also contribute to facilitating the digital standardization of the content of the invoice, improving its usability in the relations of businessmen among themselves and of these with third parties, such as public administrations or entities of the financial system.

On the other hand, the advances in the obligations to provide information to the Tax Administration, especially the current Immediate Information System (known as SII) for Large Companies and the Veri*factu systems, whose regulation is currently underway , for small, must now be complemented and completed with the mandatory electronic invoicing between businessmen. It is therefore necessary to make an effort to align all these obligations, tax and non-tax, to simplify the simultaneous compliance of all of them.



4. NEED AND OPPORTUNITY OF ITS APPROVAL

The articulation of an electronic invoicing system in our country that will address the Draft Royal Decree must **eliminate obstacles to the growth of companies and professionals** in two ways:

- **Fight against Commercial Delinquency:** Ensure compliance with general and sector commercial delinquency regulations and allow monitoring with reliable data on payment terms from customers to suppliers. Law 3/2004, which establishes measures to combat delinquency in commercial operations, is the fundamental regulatory reference on commercial delinquency and stipulates that in transactions between supplier and client a payment term cannot be agreed under any circumstances. more than 60 calendar days. However, the different studies of private and public entities yield data that indicate doubts about compliance with the standard, although they do not allow a perfect dimension of the seriousness of the problem. The introduction of the obligation to invoice electronically should contribute to combating two of the causes of commercial delinquency: technical, since the automation of validation, accounting and payment processes will reduce the time necessary to process payments; and that related to the imbalance of bargaining power of large customers over their suppliers, since the system leaves a trace of the reality of the payment dates both in the platform that mediates the transaction and in the Public Administration that is informed of it.

- **Digitization of companies** and, especially of small and medium-sized companies and self-employed professionals within the framework of the Recovery, Transformation and Resilience Plan. The Recovery Plan contains many different initiatives linked to promoting the digitization of companies (among which the Digital Kit program stands out for its relevance). The obligation to invoice electronically is yet another point of encouragement for the digitization of a series of horizontal business or professional processes such as the receipt of invoices, their accounting and the associated treasury management, in addition to medium-term compliance with the obligations of provision of information with the tax administration.

An improvement in payment terms to suppliers together with greater certainty about them should allow smaller companies and the self-employed to make more optimal use of their liquidity, reduce the working capital necessary for the activity and free up resources for a possible investment or hiring of personnel that conforms to a greater business growth.

5. OBJECTIVES OF THE STANDARD

The objective of the regulation is to determine the architecture that will support the Spanish B2B electronic invoice exchange system in development of the elements established in Law 18/2022, on the creation and growth of companies.



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The main elements of the planned development of the electronic invoicing architecture can be summarized in 7 points. It will be **a schematic**:

1. **mediated** by a network of electronic invoice exchange platforms (existing and future) subject to a minimum regulation in terms of information security, transmissions and authentication capacities and use of the different electronic invoice syntaxes admitted; 2. **complemented by a public system** for the basic exchange of invoices provided by the public Administration in which the issuers of electronic invoices or their designated platforms will have the obligation to deposit them in a single format at the headquarters of the Tax Agency, which will validate them formally and will make them available to their recipients or their representatives or platforms at that same headquarters.
3. **interoperable**, thanks to the technical capacity of computer solutions and platforms to translate the different structured formats most used in our country and based on international standards that will be admitted; without prejudice to the possibility of establishing a reference standard for referral to Public Administrations.
4. **interconnected**, so that each user only needs to connect to one platform, since private electronic invoice exchange platforms have the obligation to interconnect with any other platforms that request it, as long as the latter meet minimum requirements; 5. which exchanges, in addition to the electronic invoice, the information on the **effective payment date of the invoices** so that it is transmitted between the parties and to the Public Administration for follow-up;
6. that it has special **support for use by SMEs and professionals**, through longer transitional periods, facilities for the exchange of electronic invoices through the public exchange system and the aid of the digital kit;
7. that promotes transparency as a weapon against abuses in terms of payment; 8. That it is respectful of tax obligations and that it is complementary and seeks synergies with it, especially in terms of the reporting model to Public Administrations.

6. POSSIBLE REGULATORY AND NON-REGULATORY ALTERNATIVE SOLUTIONS

The purpose advocated by the initiative must necessarily be addressed through a regulatory alternative. In fact, the Law Creates and Grows, in its seventh Final Provision, establishes that:

“The Government is empowered to implement by regulation the provisions of this law, within the scope of its powers.



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In particular, in relation to the provisions of article 12 of this law, the Ministries of Economic Affairs and Digital Transformation and of Finance and Public Function, within the scope of their powers, will determine the technical and information requirements to be included in the invoice. for the purpose of verifying the payment date and obtaining the average payment periods, the minimum interoperability requirements between the providers of technological solutions for electronic invoices, and the security, control and standardization requirements of the devices and computer systems that generate the documents.

These technical requirements must take into account the current reality of the use of structured electronic invoices based on global standards in order to minimize, as far as possible, the compliance and adaptation effort of companies that already use structured electronic invoices based on said standards.

The term to approve these regulatory developments will be six months from the publication in the BOE of this law.

This development will be carried out accepting as valid, at least, the list of syntaxes contained in the Execution Decision (EU) 2017/1870 of the Commission, of October 16, 2017, on the publication of the reference of the European standard on billing. electronic data and the list of its syntaxes in accordance with Directive 2014/55/EU of the European Parliament and of the Council.

Prior to the approval of the regulatory development, the Government will open a period of public exposure of the regulation governing electronic invoicing, for the purpose of presenting allegations by the interested parties."

7. QUESTIONS

The following **questions related to the different elements necessary for the articulation of a B2B electronic invoice system** are proposed :

A. Scope of application: The electronic invoicing obligation covers all commercial operations between companies and professionals.

1. Should there be exceptions or longer transitional periods to the obligation to send and receive invoices in electronic format for certain types of invoices? What types of invoice should be excepted, if any? For what reason (quantity threshold, activity sector, etc.)?

2. What type of specific treatment should be given to situations of invoice issuance by the recipient or by a third party?



B. Architecture: The use of invoice exchange platforms that comply with the principles included in the law must allow moderating the effects of the frequent asymmetry of negotiating power between clients and suppliers and enable payment monitoring.

3. Should there be a public infrastructure for the exchange of electronic invoices that is alternative or complementary to the mandatory use of electronic invoicing platforms for delivery to customers? Because? For what type of companies or professionals is this alternative necessary? What alternative would it be?

C. Interoperability of formats

4. What types of electronic invoice syntax should be supported in addition to those already reflected in Law 18/20221 (Facturae, UBL, Cross Industry Invoice,)?

5. Should there be a commonly used, published reference syntax, regardless of what format conversions are required?

6. If the provider and customer use different electronic invoice syntaxes to communicate with their respective platforms, how do you determine which syntax should be used for the invoice to travel between the two platforms?

7. Must all electronic invoices be signed with an advanced electronic signature to guarantee their origin?

8. The content of the electronic invoice must include the obligatory tax requirements of the billing systems when these require data that ensures the non-repudiation and inalterability of the document?

9. The system must ensure that an electronic invoice with the minimum content of RD 1619/2012 (and that does not include other commercial specifications required by the client) cannot be rejected for technical reasons. Are there exceptions to this principle? Can such commercial specifications be enforceable if so provided in the contract between supplier and client?

10. Can a customer require, among the specifications of the electronic invoice that he wishes to receive, to include information that he has to provide to the supplier (eg purchase order)?

1 The seventh final provision of the Law refers to the formats contained in the Execution Decision (EU) 2017/1870 of the Commission, of October 16, 2017, on the publication of the reference of the European standard on electronic invoicing and the list of its syntaxes in accordance with Directive 2014/55/EU of the European Parliament and of the Council.



In that case, should such information be required to be available to the supplier prior to the date of delivery of the goods or provision of the services?

D. Platform Interconnection: The interconnection between platforms is essential in the system to ensure that any company can send invoices to all its customers using a single platform. For this reason, the platforms may not reject interconnection requests from other platforms or charge for it, provided that the requesting platform meets minimum work requirements with the different electronic invoice syntaxes admitted, information security, transmission security, control and report to the Administration.

11. What minimum technical requirements, quality standards or certificates must be demanded of electronic invoice exchange platforms so that they comply with the principles of compulsory and free interconnection?
12. What certificates or reports should be required from the platforms to ensure the compliance with information security requirements?
3. What information transmission protocols must be accepted as a requirement for electronic invoice exchange platforms? What certificates or reports should be required from the platforms in this regard?
4. What certificates or reports should platforms be required to demonstrate compliance with the requirements regarding the ability to work with all supported electronic invoice syntaxes?
5. What certificates or reports must be required from the platforms to demonstrate the ability to work with advanced electronic signature of invoices?
6. Should an availability or service level requirement be regulated between interconnected electronic invoice exchange platforms?
7. What should be the maximum period allowed to implement an interconnection between two platforms at the request of one of them? Should it depend on some complexity variable?

E. Invoice statuses: The purpose of the fight against delinquency of Law 18/2022 makes it mandatory to require that the parties exchange the effective payment date of each electronic invoice with each other and that they report it to the Administration. The payment is therefore a mandatory Invoice Statement that is communicated separately from the invoice itself.

8. Should there be mandatory electronic invoice statements beyond the actual payment information? What should they be and why?



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9. Accurately tracking payment terms requires a mandatory accept/reject invoice status. Would it be necessary to establish exceptions? for what reason?
10. Is it necessary to specify any other mandatory status of the invoice? for what reason?
11. Which of the two parties to the transaction must report the effective payment of the invoice to the other party and to the administration? The supplier, the customer, both, the companies above a certain size threshold?
12. Should the party not obligated to inform the payment have the capacity to contradict the information provided regarding the date of the payment before the Administration?
13. How should partial invoice payments be treated? Do they require a different status or is one status enough to record the date full payment is completed?
14. Is it necessary for there to be a mandatory statement to reflect the transfer of invoices to a financial institution? for what purpose? Would a voluntary status to be implemented by the interested platforms suffice?
15. Should the standard mention possible states of the non-mandatory implementation bill for information purposes? If so, which ones?

F. Submission of information to Public Administrations: The submission of information on invoices and their payment to the Public Administration must be as simple as possible and be coordinated with existing systems (Immediate Supply of Information) or in preparation (RD of software billing). The most widespread standard format in public administrations is Facturae.

16. Should there be a public IT platform or solution that serves both to comply with the obligations of electronic invoicing between the parties to the transaction and to send the information derived from this standard to the administration? For what type of companies or professionals?
17. If a solution managed by the Administration is created that stores all electronic invoices, do you consider it useful that it can be consulted by the parties to each transaction?
18. Could a repository like the one mentioned serve as a way of exchanging electronic invoices for smaller companies and professionals? Could it be a 9



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alternative or complementary solution for issuing, sending and receiving the invoice between supplier and customer?

19. What should be the method of sending the information on the date of payment of invoices to the Administration? Would it make sense to use the formulas that are used today for the AEAT's Immediate Supply of Information (SII) system to send the information on the payment of invoices?

G. Adaptations for smaller companies and the self-employed: It is of great importance to have the inclusion of smaller companies and the self-employed and professionals in the electronic invoicing system, since today they are often the most harmed by the use of deadlines. payments beyond the limits of the Law. This requires, however, a significant adaptation of the system to its needs and characteristics, including facilities and longer transition periods for certain obligations.

20. Information on the payment status of the invoice is an essential element to promote a prompt payment culture, however the obligation to provide this information could include longer transitional periods for certain companies and professionals. Do you consider it necessary to establish longer transitional periods? long for the obligation to provide bill payment information when the party obliged to provide the information is a small company or a professional/self-employed² or from a specific sector?
21. The intermediation of a platform has multiple benefits, however, is it necessary to temporarily allow smaller companies and professionals to send their electronic invoices directly to their clients without the need for the intermediation service of a billing platform?
22. Would it be useful for the Administration to make a form available to companies and professionals that issue few invoices per year to generate electronic invoices and make them available to their counterparts and the Public Administration?

8. SUBMISSION OF INFORMATION AND DEADLINE

Sending information: Observations and comments must be sent to this email address, using the Excel template prepared for this purpose: gtfactura@economia.gob.es **Deadline:** until ~~March 22, 2023~~

² This obligation would never enter into force before two years have elapsed from the approval of the regulatory development of Law 18/2022, on the creation and growth of companies.



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Required information:

Only responses in which the sender is duly identified will be considered.

In general, the contributions received will be considered susceptible to public dissemination.

The parts of the information sent that, in the opinion of the interested party, should be treated confidentially and consequently their free dissemination should not be appropriate, must be specifically indicated in the text of the participation itself, motivating the reasons for said classification .