ETNO – GSMA joint feedback to the European Commission's proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age

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About ETNO

ETNO has been the voice of Europe's telecommunication network operators since 1992 and has become the principal policy group for European electronic communications network operators. Its 40 members and observers from Europe and beyond are the backbone of Europe's digital progress. They are the main drivers of broadband and are committed to its continual growth in Europe. ETNO members are pan-European operators that also hold new entrant positions outside their national markets. ETNO brings together the main investors in innovative and high-quality e-communications platforms and services, representing 70.5% of total sector investment.

About the GSMA

The GSMA represents the interests of mobile operators worldwide, uniting more than 750 operators and nearly 400 companies in the broader mobile ecosystem, , as well as organisations in adjacent industry sectors. The GSMA also produces industry-leading Mobile World Congress "MWC" events held annually in Barcelona, Los Angeles and Shanghai, as well as the Mobile 360 Series of regional conferences. With over 5 billion mobile connections, GSMA operators are committed to supporting digital and financial inclusion globally.

The telecommunications industry

Telecommunications network operators make significant long-term investments in substantial physical and tangible local infrastructure of the countries in which they operate. This highly intensive capitalised investment makes communications cheaper, faster, and more powerful over time thereby creating the critical infrastructure within each market jurisdiction. The networks and associated operational activities form the backbone which enables the widely recognised digital transformation benefits, provide critical services that improve lives by creating an inclusive digital society.

Opening remarks

ETNO and the GSMA welcome the possibility to provide their comments below in response to the European Commission's ("EC") proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age ("ViDA proposal"). We agree that the European Union ("EU") needs a modern VAT system that appropriately addresses the developments and challenges of the digital economy, and that makes the best possible use of digital technology.

ETNO and GSMA members have operations throughout the EU, and commonly operate both cross-border and through subsidiaries or establishments in multiple EU Member States. Telecommunications businesses also typically transact with a very high volume of customers, and many of our members issue multiple millions of invoices each month. For these reasons, the proposed digital reporting requirements ("DRRs") are of particular relevance and interest to our members, and we therefore focus our comments within this response on the DRR aspects of the ViDA proposal.

Although we have identified a number of specific points of concern to raise for the EC's attention, we see clear benefits to be gained, for both business and government authorities, from harmonised digital reporting within the EU, and we support the EC's aim to implement a common standard for DRRs. We agree that alternative of continued implementation of fragmented country specific DRRs is both worse for business and less able to achieve benefits in VAT gap reduction.

ETNO and GSMA are very willing to continue to input on this work, which we are keen to make a success, and are ready to work constructively with the Commission throughout this process. Our response below highlights firstly a number of fundamental areas of critical importance, and then addresses some further points arising out of the detail of the proposal.

Fundamental and conceptual points

Benefits for business

A key concern of our members is the additional costs that DRRs will create for businesses, on top of the significant administrative and risk burden that businesses already face in their role as VAT collector. Our members' experience from Member States that have already introduced digital reporting is that this has led to additional administration. For example in both Czechia and Spain we have seen a significant increase in transactional level queries from the tax authority, e.g. relating to purchases that may not have been reported correctly by the supplier. In Italy we have experienced a need for duplication following electronic invoicing introduction - as it is not possible to include all commercially relevant information on the electronic invoices, paper or pdf statements are still sent to the customer.

It is our strongly held view that improved electronic invoicing and digital reporting should reduce the other, significant and growing, VAT collection burdens currently placed on business. We proposed that the EC consider the following changes, either as a part of the ViDA proposal or within future measures to modernise the EU VAT system:

- A relaxation of the *Kittel*[1] 'knew or should have known' test in cases of correctly and timely reported transactions. For example, if a transaction has been reported by a business via DRR, the period under which that business can be denied a right under the 'knew or should have known' test should be limited to a few months. We consider this approach logical given that authorities

[1] CJEU, *Axel Kittel*, 6 July 2006, C-439/04, ECLI:EU:C:2006:446

will have full visibility of a business's transactions, and should therefore be in a position to flag any concerns to that business over any supply chains involving fraudulent actors.

- Shorter statutes of limitation for errors in timely reported transactions. Given that tax authorities will be in possession of information on transactions within a few days of them taking place, there should be no need for multi-year limitation periods which have generally been considered necessary due to the time needed to complete paper-based audits.

- Improvement of relief for bad debts. Under the proposals, electronic invoices will require inclusion of a new field of the "*date on which the payment of the supply of goods or services is due*"[2]. This provides tax authorities with the information necessary to require and monitor adjustment of input VAT on unpaid invoices (as provided for under Article 185 of the VAT Directive). The availability of an enforceable mechanism for customer side adjustments, within a short period of time, offers a proportionate and effective solution to allow Member States to eliminate overly onerous conditions, whilst at the same time protecting the risk of tax loss.

Timescales

The two-day time limit to issue electronic invoices[3] is a significant shift from the current system and, in the view of our members, is not practicably realistic. In our experience, there are many circumstances where it is not commercially feasible to issue an invoice within this timescale, some examples of this include:

- Where a business is issuing a large volume of invoices (in the case of our members this can be several tens of millions of invoices), and these invoices cover a large range of complex commercial offerings, the billing system unavoidably requires significant elapsed time to complete a billing cycle. Where the chargeable event does not coincide with the invoice date, such as in Germany where the chargeable event for continuous services arises at the end of the billing period, it will be in practice impossible for systems to issue an invoice within two days of the chargeable event.

- For goods deliveries, especially where multiple parties are involved in either delivery or the supply chain, logistics tracking systems often do not update goods delivery information to billing system within such a short timeframe.

- Where a customer requires urgent delivery of goods or services, and this may be performed before any contract, or even pricing, is agreed commercially, and before the customer has been set-up within the supplier's billing system. The two-day time limit may therefore limit businesses commercial flexibility in time urgent scenarios.

We encourage the EC to amend the proposal for a two-day time limit on the issue of electronic invoices. We recognise the need for a shorter period in order to limit the possibilities for VAT fraud, and to provide tax authorities with near real time information necessary to support their activities. To provide the shortest possible commercially practical period, we propose that a ten-day time limit is applied.

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[2] 2022/0407 Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age Article 4(6).

[3] 2022/0407 Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age Article 4(4).

The further two-day time limit for digital reporting of these supplies[4] will again be a practical challenge. Our concern is that for businesses with significant volumes of invoices to report, it may not be possible to run the reports within a two-day timeframe, as all IT systems require elapsed time to run reports. This is especially the case for our sector, where millions of invoices are involved, and those invoices are typically issued by multiple billing systems. The very short timescales will inevitably lead to multiple errors requiring correction as there is not sufficient time to ensure all transactions are correct before reporting. DRRs therefore need a robust and simple framework for making corrections and we are concerned that the current proposal lacks any detail on this aspect.

Finally, we see clear challenges on the digital reporting of purchases. Even if invoices are actually received within the two-day timeframe (which is not guaranteed), the reporting deadline implies that invoices must be reported based on when they are received. This runs counter to business' natural systems and processes, which, as a matter of essential governance and financial control, require that incoming invoices are reviewed before being booked. It is only once booked that invoices would be available to be reported from an ERP system. Looking at the similar SII regime in Spain, we note that this requires incoming invoices to be reported within four days of their being booked. We strongly recommend the EC amends the ViDA proposal to adopt a similar approach for the reporting of purchase transactions based on date of invoice acceptance and not receipt. Failure to do so risks putting businesses in a position where it is impossible to comply without abandoning normal commercial controls and potentially exposing business to regular penalties for incorrect filing.

Summary Invoices

Removal of ability to issue summary invoices[5], under Article 223 of the VAT Directive, will increase administrative costs for business, as it will result in many more invoices being issued. The administrative impact will affect both suppliers, due to the cost of invoice issuance, and customers, due to the cost of processing the invoices received.

As a first example, some financing arrangements involve three parties, such that there will first be a sale of the phone form Company 1 to Company 2, and a subsequent finance sale to the end customer. Currently it is common to use summary invoices for such sales, with large volumes being processed each day, and this therefore representing a significant administrative simplification.

As a second example, under certain business contracts for telecommunications services, handsets are provided to the business customer as a part of this single supply of services. Customers may request additional handsets to meet their needs, triggering a sale from a third party to the Telco Company, and an onward sale (as a part of the service provision) to the business customer. Summary invoices are commonly used in such scenarios. This is a necessary simplification due to the ad hoc timing for additional handset requests. Separate invoicing would both disrupt this commercial operation, as well as having a negative cash flow impact on the Telco Company. We see a particular risk for service companies that invoice monthly for their services, but buy goods where the invoice would need to be issued maybe every day, leading to an imbalance in terms of cash flow impact.

Our preference is for the proposals to be amended, such that the possibility for summary invoices under Article 223 remains. If this is not possible, the proposals should at the least make clear that daily

[4] 2022/0407 Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age Article 4(10).

[5] 2022/0407 Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age Article 4(5).

summary invoices may be issued – i.e. a grouping of supplies occurred in the same day between the same parties.

Implementation Issues

A number of Member States have already adopted mandatory electronic invoice and reporting requirements, especially for domestic transactions. In Italy, for example, this has been implemented with a system which mainly relies on a central hub (Sistema di Interscambio, “SdI”) which also works as a repository for electronic invoices. Consideration should be given to how the ViDA proposal can safeguard the large investments already executed by businesses in these Member States for the implementation of national electronic invoicing and reporting requirements. This could be achieved either by ensuring compatibility between DRR and existing approaches, or potentially offering stand-still provision or very extended implementation timescales

In the view of our members, implementing DRR in all European markets at the same time in 2028 will be extremely challenging. Although the long lead time is appreciated, it is still the case that this will require simultaneous implementation across 27 Member States, and regardless of the extent of preparation this will inevitably create an unmanageable workload at the point of ‘go live’, stretching IT resources to breaking point. Our preference is for a phased introduction of DRR throughout the EU, rather than all coming on-line at once. Potentially this could also allow for a longer implementation for time for those Member States that may have more significant changes to make to existing domestic digital reporting requirements.

Non-established taxable persons

The proposed extension of the reverse charge mechanism to cover all supplies by non-established taxable persons to a customer who is VAT registered in that Member State[6], will lead to a significant increase in claims for input VAT through the EU VAT refund system. In the experience of our members, claims through the EU VAT refund system face considerable administrative burdens and several tax authorities are prone to reject valid claims on grounds of largely insignificant technicalities. We therefore have concerns that businesses will face negative cash flow impacts as a consequence of this proposal, and the delay to input VAT recovery that it implies.

In order to preserve neutrality, our view is that the reverse charge for supplies by non-established taxable persons should be made optional for supplier businesses. The proposed wording “*Member States shall allow that the taxable person liable for payment of VAT is the person to whom the goods or services are supplied if that person is already identified in that Member State*” suggests that this might be the intention, but it is not perfectly clear. We recommend that the wording is amended so that it is beyond doubt that non-established businesses will still be able to choose to register and account for local VAT if they prefer.

Data Security

Under the proposals, all the data will be stored in Central VIES. To keep such commercially sensitive data, detailing all cross-border transactions within the EU, all in one place poses a high risk from potential data breach. Clearly it will be critical to ensure the utmost standard of data security to protect the data from attacks by bad actors. We recommend that the EC consider whether the risk of

[6] 2022/0407 Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age Article 4(5).

data breach is mitigated through a solution based on local data storage and sharing between tax authorities as required.

Detail points

Invoice format

The ViDA proposal seems to be quite open on detailed format of electronic invoice, under the revised Article 217[7] of the VAT Directive, provided they are structured invoices. However, it is unclear whether Member States are able to introduce more restrictive conditions or whether business can adopt any format of structured electronic invoice which meets the basic conditions in Article 217. We recommend that it be made clear that business should be free to adopt any current standard, and innovate future standards, which are compliant with the essential requirements per Article 217. This would ensure commercial freedom and promote innovation.

Under the ViDA proposal, Member States are required to accept as valid any invoices which are compliant with Directive 2014/55[8]. In practice, this may make this format a de-facto standard if it is the only option to guarantee EU interoperability. In the view of our members, this creates a number of issues that should be considered by the EC:

- Alignment with Directive 2014/55 effectively locks commercial invoicing technology into a current existing standard. This may therefore be a blocker on future innovations in the field (i.e. Peppol network). Whilst we are supportive of a defined common EU standard for electronic invoicing and digital reporting, those solutions should be "future-proof" in the sense that they can be further developed when technology improves.

- The standards under Directive 2014/55 are currently very difficult to obtain. In order to obtain the necessary detail, multiple steps are needed to get access to the standard, including registration with Member States' standards bodies. This offends legal certainty as the legal requirements are not accessible. Once the ViDA proposal is approved, we recommend that the EC implements clear and central publication of the final agreed electronic invoicing standard.

- Once the Directive 2014/55 standard is obtained, it is incredibly complex. It runs to over 150 pages and is unlikely to be understandable to anyone but IT professionals. This again undermines legal certainty, and in practice is likely to force companies, especially SMEs, to use the commercial services of third parties to issue invoices at an increased cost. In our view, the need to use a third-party service provider for a business action as fundamental as invoicing, adds unnecessary cost and complexity, and will damage the competitiveness of EU businesses.

All of the above issues would be somewhat addressed provided that businesses are free to adopt alternate standards which meet Article 217, as highlighted above.

We also note the new requirement to show IBAN or bank account details on the invoice[9]. It is unclear why this information is needed, and it will increase costs of implementation for business as this data does not necessarily feed to invoicing platforms. If this implies a new VAT requirement to accept only

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[7] 2022/0407 Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age Article 1(6).

[8] 2022/0407 Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age Article 4(3).

[9] 2022/0407 Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age Article 4(6).

payment into a bank account this may inhibit future innovations in the payment area space, for example the adoption of central bank issued cryptocurrency.

Areas of continued fragmentation

One of the aims of the ViDA proposal is the harmonisation of VAT rules within the EU. However, we note that a number of measures encourage ongoing differences between Member States. This includes both:

- The amended Article 222 of the VAT Directive, providing the option for Member States to provide for a different timing for issuance of invoices for other transactions than the ones in the proposal; and
- The amended Article 273 of the VAT Directive, that allows Member States to introduce other obligations to ensure correct collection of VAT and prevents VAT fraud.

We request greater clarity on what specific measures and options the EC is considering in relation to these measures. What is the need or advantage for Member States to provide different timing rules for on issuance of invoices for other transactions? Would it be proportional to introduce even more measures to ensure correct collection of VAT?

Points for further clarification

Finally we would like to highlight a few short points of detail from the ViDA proposal, in relation to which our members consider that greater clarity would be helpful:

- In relation to the two working day deadline for the issue of an invoice relating to a cross-border supply, it is not clear which country's working days this refers to – there are many differences in public holidays across the EU.
- Greater detail is needed in relation to the meaning of 'prior authorisation'. For example in Italy invoice issuance must meet the formal conditions set up in the authority's portal in order to be accepted and issued – it is not clear whether or not this constitutes 'prior authorisation'.
- Do rules on self-billing need to be revised following this proposal? In some countries, self-bills need to be approved and some existing self-billing processes may not fit within the new electronic invoicing and digital reporting rules.