



## DTCE urges Romania to faithfully transpose Directive 2010/45

5 December 2012

*An association established in 2011, Digital Trust and Compliance Europe (DTCE) brings together businesses and practitioners with an interest in trust and compliance methods and technologies in Europe.*

DTCE analysed new Romanian legislation which, in part, transposes Directive 2010/45 as regards electronic invoicing. DTCE insists that a complete and faithful transposition of the Directive is a precondition to achieve harmonization and increase the uptake of electronic invoicing.

We hereby raise our great concerns about these new laws, and recommend that the Romanian legislator under the monitoring of the European Commission carefully address the following issues related to new rules for e-invoice issuance as well as archiving:

- As regards **issuance** of electronic invoices, our analysis of the new Romanian Law no. 148/2012 (scheduled to enter into force January 1, 2013) on electronic recording of commercial transactions (Official Gazette, Part I, no. 509, of July 24, 2012) shows that Romanian legislation intends to deviate from both the letter and the spirit of Directive 2010 in important ways. The law mentions technical and financial conditions which appear to imply that from 1 January 2013 there will be a requirement to obtain prior authorization for issuing e-invoices. As we understand it, the secondary legislation setting rules for obtaining such authorization is not adopted yet and will probably be issued early 2013. From January 2013 onwards, Romania will be the only EU Member State with requirements for prior authorization, something that the VAT Directive has prohibited Member States to require since 1 January 2005. This timing creates a situation whereby it is impossible for service providers and users already using e-invoicing in Romania to remain in compliance.
- In relation to **archiving** of electronic invoices, the Romanian Law no. 135/2007 (Official Gazette no. 345 of May 22, 2007) introduces a requirement of prior authorization for datacentres (Art. 17). This requirement is detailed in Order of MCSI no. 489/2009 on methodological norms for the authorization of data centres. Despite Art. 5 of Law no. 135/2007 stating that 'the provision of electronic archiving services is not subject to prior authorization', Order of MCSI no. 493/2009 regarding the technical and methodological application of Law no. 135/2007 requires an authorisation from the MCSI to become an e-archiving administrator (for both taxable persons and e-archive service providers).



**Because these provisions conflict with Directives 2001/115 and 2010/45, DTCE urges the Romanian authorities to withdraw without delay:**

- **the implied requirements for prior authorization for issuance of e-invoices;**
- **the requirements for prior authorization for data centres;**
- **the requirements for prior authorization for becoming an e-archive administrator.**

If Romania does not take the actions suggested above, this may reduce the confidence that the new EU VAT rules around electronic invoicing seek to build. DTCE is certain that this is not the result Romania seeks to obtain with this new legislation. DTCE and its members would be pleased to discuss the content of this statement further with the appropriate Romanian authorities and/or European Commission DG TAXUD.

Should the Romanian authorities decide not to withdraw the above-mentioned requirements, DTCE requests a transition period allowing taxable persons and their service providers to continue issuing and archiving invoices electronically without prior authorization until they have had a reasonable time to adapt and meet the conditions to comply with the law.

**For more information contact: Peter tom Suden, DTCE Chair, [pertertomsuden@dtce.eu](mailto:pertertomsuden@dtce.eu) with cc to [bod@dtce.eu](mailto:bod@dtce.eu)**