



EUROPEAN COMMISSION

Brussels, 6.5.2024  
C(2024) 3237 final

His Excellency  
Mr José Manuel Albares Bueno  
Minister for Foreign Affairs,  
European Union and Cooperation  
Plaza del Marqués de Salamanca, 8  
28006 Madrid, Spain

**Subject: Notifications 2024/0052/ES**

**Preliminary draft Royal Decree implementing Law 18/2022 of 28 September 2022 on the creation and growth of companies with regard to electronic invoicing between companies and professionals.**

**Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015**



Within the framework of the notification procedure laid down by Directive (EU) 2015/1535 <sup>(1)</sup>, the Spanish authorities notified to the Commission on 2 February 2024 the preliminary draft of the “Royal Decree implementing Law 18/2022 of 28 September 2022 on the creation and growth of companies with regard to electronic invoicing between companies and professionals” (the notified draft).

According to the notification message of the Spanish authorities, the notified draft aims at laying down the various requirements and characteristics of the new obligation of electronic invoicing between entrepreneurs and professionals (B2B) provided for in Article 2 bis of Law 56/2007 of 28 December 2007 on measures to boost the information society.

The notified draft establishes the obligation for electronically signing electronic invoices exchanged among companies and professionals with advanced electronic signatures, and

---

<sup>1</sup> ( ) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), OJ L 241, 17.9.2015, p. 1.

for private electronic invoice exchange platforms, to be able to operate using advanced electronic signatures compliant with regulation (EU) No 910/2014 <sup>(2)</sup>.

In the notified act, the concept of businessmen or professionals refers to both legal and natural persons.

Examination of the notified draft, which is limited to the text notified to the Commission on 2 February 2024, has prompted the Commission to issue the following comment:

**1. On the use of advanced electronic signatures for granting authenticity and integrity in the exchange of electronic invoices.**

The draft regulation establishes the obligation for electronically signing electronic invoices exchanged among companies and professionals with advanced electronic signatures, and for private electronic invoice exchange platforms, to be able to operate using advanced electronic signatures compliant with regulation (EU) No 910/2014.

No breach of EU law can be derived from the obligation established in the draft regulation, however, it is important to note that the concept of businessmen or professionals, as defined by the Spanish draft legal act, refers to both legal and natural persons, while in the referenced (EU) No 910/2014 regulation the concept of “electronic signature” applies only to natural persons.

“Electronic seals” serve as evidence that an electronic document was electronically signed by a legal person, ensuring certainty of the document’s origin and integrity.

According to regulation (EU) No 910/2014, a ‘signatory’ is a natural person who creates an electronic signature. Also, a ‘certificate for electronic signature’, necessary for generating the advanced electronic signatures referred to in the notified draft, means an electronic attestation which links electronic signature validation data to a natural person and confirms at least the name or the pseudonym of that person.

The above mentioned regulation contains similar concepts linked to legal persons. So, a ‘creator of a seal’ means a legal person who creates an electronic seal, and a ‘certificate for electronic seal’ means an electronic attestation that links electronic seal validation data to a legal person and confirms the name of that person. Consequently, due to the potential legal effects of referencing (EU) No 910/2014 regulation but using, in the notified draft, concepts that do not correspond exactly to those established in the EU regulation, the European Commission strongly recommends the use of the terms “advanced electronic signatures or seals” in the text instead of “advanced electronic signatures” in order to avoid ambiguity as the latter applies only to natural persons and legal persons can also be the issuers of electronic invoices.

The Commission invites the Spanish authorities to take into account the abovementioned comments.

---

<sup>2</sup> (Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

I remain, your Excellency, yours faithfully,

For the Commission

Roberto Viola  
Director General for  
Communications Networks, Content  
and Technology