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From paper to pixels: navigating the entangled net of VAT deductions

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Abstract
Our study focuses on the jurisprudential accents regarding formal requisites of the right to deduct in the European framework. All consequences, in both economic and legal dimension regarding VAT, are embedded in the threads that form it: VAT is an indirect, general, consumption tax, of European origin, with fragmented payment and neutral effect on the economic agent. For this tool to trawl throughout the European economy, the tension from different national regulations is dispersed through considerable harmonisation both normative and jurisprudential. We propose an empirical analysis of the right to deduct in the contemporary context; we start from the current ECJ case-law regarding the existence and content of traditional, paper invoice and we generate an inventory of conditionalities. This systematised spectrum of requisites will be further used to read the normative content regarding VAT in the digital age and draw a prognostication for future case-law. Our working hypothesis is that formal conditionality regarding invoice will plummet into oblivion; the e-invoice will tackle old habits.

Keywords: right to deduct, paper invoice, e-invoice, formal requisites

> "Fish," he said, "I love you and respect you very much. But I will kill you dead before this day ends." (Goodreads, nd)

Introduction

Value does not exist without human contact (Diacon et al., 2013), humans assert it to their interaction through their dialogue and protect it amidst norms: religious, moral, legal ones; assets don't have rights (Beleiu, 2003) nor a direct legal dimension. Value, rights, obligations are merely Human's projection; a social interaction becomes a legal bond in relation to an abstract legal model designed by preceding social action of a certain person or a certain group – the Sovereign (Codrea, 2023). Law, in a general sense, tells us how things should be (Codrea, 2023), as a reaction to a preexisting value ascribed by a prior human interplay: being precedes subject (Foucault, 1982); gifts precede donations; power precedes

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punishment (Hirst, 1984), economic activity precedes taxation. Souverain's intervention through the normative chases the regulated object as the old man is chasing the marlin: engaged, power exerting, hopeful to impose a certain direction to the societal plot. The European single market is truly an exemplar of such a construct amidst legal intervention, deriving from power and Member States' will, evolving in time (Casagrande & Dallago, 2024) and developing a net of legal structures, norms, competences and procedures. One of these fishing knots branching out of the freedoms of movement is the common system on value-add tax (Sixth Council Directive 77/388/EEC, 1977). VAT is almost contemporain with the European dream (Szarowska, 2009); they are growing, shapeshifting simultaneously like all living matter into a model of indirect taxation for tax systems around the world (de la Feria, 2013; Schenk & Oldman, 2007). Hence, nowadays, we are in the presence of a common market with a common tax on goods and services, both protective of the freedom of movement and careful with the budgetary structure.

It's common knowledge (Costea, 2013; Minea & Costaş, 2006) that VAT is a European source tax with divided payment, "chargeable on each transaction only after deduction" (Gaston Schul Douane Expediteur BV v. Inspecteur der Invoerrechten en Accijnzen, 1982), as "fragments of value added are combined via the global supply chain" (Johnson & Noguera, 2012) with neutral effect on the patrimony of the taxable person. This correlated surfacing of a single market and a common tax had to give a response to the most relevant inter-statal question: where is VAT due? In order to answer this question, one must admit to budgetary sovereignty; hence the solution to this conundrum – the place of taxation being given at the place of consumption - made VAT a fragmented tax, due in the state of destination, especially in business-to-business transactions, according to the principle of destination (Genschel, 2013). This mechanism is based on split payments to different national budgets, implemented by exempting goods/services from VAT in the departure state and by the right to deduct. Thus, in economic transactions contrasting with consuming transactions, VAT is bidimensional, deriving from two legal agreements, bilateral and onerous (with some exemptions like auto-consumption, loss, small commercial gifts) regarding the same good or service, in the same shape or transformed. Consequently, an economic activity (Costea, 2013), regardless of its form will owe to the budget the difference between the VAT paid *in amonte* (Godeanu, 2008) and the VAT collected *in aval*. This mathematical equation is the translation of the legal concept of the *right to deduct* (Dmowski, 2023; Henkow, 2008; Varju, 2019). The calculation is based upon article 167 VAT Directive and transposed in the jurisprudential standard of connection between the input tax and output tax (Merkx, 2018). This linking is transposed in substantial criteria for deduction (BLP Group plc v. Commissioners of Customs & Excise, 1995): "the goods or services in question must have a direct and immediate link with the taxable transactions", under express limitation: "Any limitation of the right of deduction granted to taxable persons must ... be applied in a similar manner

in all the Member States and presupposes the existence of a Community provision expressly authorizing it" (Commission of the European Communities v. French Republic, 1988) and by formal criteria: the taxable person must hold an invoice or a similar document. The right to deduct is traditionally depicted as the pillar of the VAT system (de la Feria, 2015) assuring its neutrality and territoriality in a similar manner in all Member States: "one of the basic features of the VAT system is that VAT is chargeable on each transaction only after deduction of the amount of VAT borne directly by the cost of the various components of the price of goods and services" (Gaston Schul Douane Expediteur BV v. Inspecteur der Invoerrechten en Accijnzen, 1982). The connection between several statal jurisdictions and the multiplication of declarative mechanisms sourced VAT's fragmented system as a fraud incentive. Hence, the right to deduct may be detoured from its legitimate scope and used as a tool of diminishing payable VAT, through illegal exertion (Keen & Smith, 2006). This context inspired the choice of our motto, as due diligence and fraud are in a constant clash both in administrative and juridical practice and mobilise arguments that try simultaneously to enforce the right to deduct and diminish VAT fraud. The battle between the Oldman and the Marlin, as depicted by Hemingway, is symbolically relevant and gather all conflictual tension in the conditionalities applied to the right to deduct both in substantial and formal dimension. The substantial requirement is refined as "a direct and immediate link" provable both in material dimension – trackability of goods/services and in intentional component (Costea & Ilucă, 2019). As to the means of proof – the formal, the right to deduct under VAT regulation is indissolubly connected to the invoice, as sole ground for deduction (*locum tenens* documents are permitted):

> In order to be entitled to deduct the value-added tax payable or paid in respect of goods delivered or to be delivered or services supplied or to be supplied by another taxable person, a taxable person must hold an invoice ... the invoice must state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions (Léa Jorion and Société anonyme d'étude et de gestion immobilière 'EGI' v. Belgian State, 1988).

As our study is oriented towards predicting future behaviours (based on the recent e-invoice standards) in a new environment (digital administration of VAT), we won't ponder too much on the why is VAT due, and just state that there is a connexion between (single) market and taxes (VAT) and between taxes (VAT) and budgets (national, local, European Union) (Costea & Ilucă, 2024). So, we will limit our investigation to a radiography of the current situation and based on the identified key elements we will try to predict future directions for administrative and judicial practice regarding the invoice prerequisites.

1. Current framework on VAT – between tradition and innovation

As prior stated, VAT is an indirect, general, consumption tax, with European legal framework, fragmented payment and neutral effect on the economic agent. The provisions on VAT are significantly harmonised (de la Feria, 2013) and object to further harmonisation throughout the case-law of the European Court of Justice (ECJ). As the single market is the taxable frame, VAT is the most important European tax project and the most significant budgetary source. As to the state of affairs, at this point in the EU construct, there is no European tax, but only national, regional or local taxes.

1.1. Structural analysis of VAT – central role of the invoice

Law is a formalised content, expressing the will of a Sovereign. In social science language, law is both the result of a public policy through a decision-making process, regardless of the level of intervention (Nijkamp & Delft, 1977) and the instrument for implementing a public policy by conferring or limiting certain rights and obligations. In a social sciences sense, taxes, hence also VAT are the result of a public policy or at least a part of a public policy (in this case European policy mediated through decision making mechanisms within European Union). Thus, VAT is the result of the discretionary will of the Sovereign, who has the power to choose whom, what, how much to tax. But taxes, are also the main instrument of congregating public revenues, playing the main role in financing further public policies. In a syncretic way, we can assert VAT is a policy in itself and the source of financial power of multiple structures directed towards a universality of public policies. In legal language, VAT is a sum of material and procedural norms, but also the result of implementing the will of law subjects, in a variety of forms, modulated by the subjects' freedoms: to contract, to circulate, to exit contracts etc.

VAT as a contributor to budgetary system

The above-mentioned duality is nor ineffable, nor antagonistic; so, the Sovereign plays a dual role, as creditor and debtor, merely a vessel for the distribution of resources, which in a democratic landscape has a prime and overwhelming source – dynamics of private patrimonies. In his debtor role, as consecrated by the European, constitutional or administrative law (Bostan, 2010), the Sovereign through the normative and executive powers – Parliament, Council, Commission, national, regional or local deliberative structures, Member States, national, regional or local Governments, authorising officers in all levels – in the frame of the budgetary procedure will administrate public resources according to its competences. Budgetary framework is infused with public policies up to the point where general legal norms are its sole limitation; hence the budget in its expenditure

dimension is a tool for implementing public policies within the political framework specific to a certain social arrangement (Smith & Levy, 2024). As a policy maker, European Union and its predecessors dispose of a certain volume of appropriations according to European policies (Olsen & McCormick, 2018) amidst a Multiannual Financial Framework (European Parliament, n.d.) and a budgetary procedure (Regulation (EU, Euratom) 2024/2509, 2024) given article 322 of the Treaty on the Functioning of the European Union (TFEU). So, the European Union, through the Commission, across administrative and contractual mechanisms (Kapustāns, 2022) directly or by shared management with Member States embraces the role of public debtor, executing an annual series of appropriations with specific destination according to planning instruments – MMF, European budget, European funds and European programs[1]. For example, in the MFF 2014-2020, the EU allocated over 460 billion euros for regional expenses, the main types of expenses from the European Union budget being for aid, new schools, the creation of new jobs, medical assistance, etc (European Commission, n.d.). The particularity in budgeting European policies is the complementarity to state-level policies and the attained autonomy by targeting certain results, outcomes which as prosaic as they might seem to an ontological approach (our hero is a fisherman, not a king), are part of a European policy and hence of the European identity (Codrea, 2023).

But the debtor role is a subsequent role, ensuing, undertaking and implementing a sum of revenues; in this context, tradition plays an important role, as societal constructs have embedded certain powers of the Sovereign to collect public revenues, mainly taxes. But as taxes derive intrinsically from power in its regalian dimension and target a certain relation between the Sovereign and its subjects, a transfer of competences in the creditor dimension from Member States to European Union is not (yet) attained; taxes, part of the prior pillar III, under the Maastricht Treaty have migrated through the Lisbon Treaty to pillar two, but are today still tackled through the harmonisation technique (Costea, 2010), the European Union being a second-hand creditor, amid fiscal competence of Member States.

This is the scaffold upon which VAT ensures budgetary revenues, as a notable source due to its focus – consumption. The prevalence of VAT in CEE/UE budget is measured upon two dimensions: an indirect one, as Member States transfer part of the collected VAT (Council Decision 2020/2053, 2020), and an (in)indirect one, as Member States owe a proportion of their gross national income, obligation executed from the general national budget, hence from VAT. VAT levies are collected based on a uniform appeal rate of 0.30% for all Member States, based on the weighted average VAT rate (Reiwer-Kaliszewska, 2018). VAT calculation base in each

[1] European Regional Development Fund, European Social Fund Plus, Cohesion Fund, Just Transition Fund, European Maritime, Fisheries and Aquaculture Fund, Asylum, Migration and Integration Fund, Internal Security Fund, Instrument for Financial Support for Border Management and Visa Policy.

Member State is capped at 50% of the gross national income calculation base, to avoid situations of regression of the VAT- based resource[2]. Details of the calculation mechanism exceed the scope of our study, as our point is to convince our lecturer of central and imminent interweave of VAT in the European Union revenue netting.

As a tool of financing public expenditure (Dagan 2024), VAT plays, as shown above, a national role and a secondary European one; some Member States distribute from the sums collected as VAT to local budgets (lands, federal states, regions, counties, municipalities). Overall, VAT assures an EU27 average at a third of public, statal revenues (European Commission: Directorate-General for Taxation and Customs Union, 2022) and represents 10.8% of GDP. At the level of 2020, a percentage of 46.1% of total tax revenue was attributed to the central or federal government, 35.5% to the social insurance funds, 17.8% to the local authorities, and approximately 0.5% were transferred to the European Union budget (European Commission: Directorate-General for Taxation and Customs Union, 2022). In Romania, from 18.08 billion euros centrally collected in VAT (ANAF, 2023) in 2023, a total of 4.86 billion (Ministerul Dezvoltării, Lucrărilor Publice și Administrației, n.d.) was distributed to local administrations – counties and municipalities representing 26.88% of collected VAT; in Spain, the local communities benefit from 35% of the VAT collected at national level; in Austria, 67.8% of collected VAT went to the federation, 20.5% to Länder and 11.7% to the municipalities. This mechanism does not transform VAT in its core, as VAT remains in all cases a central tax, but attest that the whole and its parts are made of the same clay (Codrea, 2023). This infusion of one fiscal revenue in all levels of budgetary procedures - supranational, national and local -, instrumentalised amid a centralised, statal running of VAT sets in motion a European strategy of taxation on the single market and feeds a concurrence of values and policies legally relevant and defended under the concept of *protecting the financial interests of the European Union.* Hence, enactment tools such as methods, procedures, steps surpass the national regulatory framework and justify the above stated role of VAT as a tax of European origin and implementation.

Structural inquiry on VAT central pillar. Invoice conditionality on the right to deduct

As mentioned above, the method for collecting VAT must ensure a neutrality for the economic agent; therefore the core of the VAT system resides in the legal concept of *the right to deduct* meant to transmit the tax throughout the stream chain

[2] This methodology for determining the harmonized VAT calculation base was established in Regulation (EC) no. 1553/89 of the Council regarding the definitive unitary regime for the collection of own resources from VAT, https://eur-lex.europa.eu/legalcontent/RO/TXT/?uri=CELEX%3A31989R1553.

from supplier to supplier down to the retail stage, "irrespective of the number of transactions which take place in the production and distribution process before the stage at which the tax is charged" (Gaston Schul Douane Expediteur BV v. Inspecteur der Invoerrechten en Accijnzen, 1982).

Traditionally, the right to deduct is wielded in a bivalent context, containing a substantive condition and a formal condition. The formal condition was initially regulated by article 18-23 6th Directive 77388/EEC. Since VAT is almost as old as the large scale use of computational techniques, the first versions of the legal text, art. 18 par. 1 regarding the customer must be read as addressing in a paper written or printed document: "to exercise his right to deduct, the taxable person must: (…), hold an invoice" and art. 22 par. 3 regarding the supplier "(a) Every taxable person shall issue an invoice, or other document serving as invoice in respect of all goods and services supplied by him to another taxable person, and shall keep a copy thereof… (b) The invoice shall state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions". Thus, concomitantly with executing a transaction on taxable goods or services or at least a payment for a future supply, the supplier (a taxable person) will draft a document – an invoice or a *locum tenens*, on paper in double print, to record the tax and to preserve a proof of the transaction and will deliver one copy to the customer. The content of the document was regulated at two levels: (i) a common communitarian one – the invoice must contain data on the price of the transaction as taxable base (or the exemption if the case) and the rate of VAT working as a *de minimis* conditionality and (ii) a statal one, deriving from subsidiarity principle, as Member States will regulate the criteria and the standard content of the invoice[3]. Since the invoice (and implicitly any substitute) was edited on paper, the common practice has been for it to be transmitted in person or by a physical delivering method usually along with the supplied goods or services. Hence, prior to the Industrialised revolution 4.0., invoice was qualifiable as a paper, a document, an imprint, not to be confused with the legal transaction (Costea, 2017) source of the taxable operation – namely any type of contractual bond. Its drafting became a reflex in economic transactions, implemented with the patience of a scribe and employed in all type of contracts to immortalise, photograph, eternalise the performance of contractual obligations both for parties' use, but especially for use in relation to a third: the tax authority exerting a control on the right to deduct. This omnipresence of the invoice is contingent on customer's nature, as it is ubiquitous in business-to-business transaction, at times replacing enterally the contract as *instrumentum probationis* and rarely used in relation to non-taxable persons.

Formalism in invoice matter accrued, as national regulations attached a handful of details to the Directive substratum: identities of parties, object of the operation, identification number, identity of the receiver, number and date of

[3] 6th Directive 77388/EEC, art. 22 par. 3 „*(c) The Member States shall determine the criteria for considering whether a document serves as an invoice*".

emission, payment due date, signatures, place of stamp etc. This tendency to overcharge the content of the document under the sanction of losing the right to deduct was submitted to an analysis of convergence with the Directives scope amid preliminary rulings of the ECJ. Appraising the two confronting values: a certain rigidity of the national fiscal legislation aiming at collecting the maximal tax and a certain flexibility specific to contractual bonds between professionals, the ECJ chose to discern in regarding to paper invoice content between what is "necessary to ensure the correct levying of value-added tax and permit supervision by the tax authorities" (Léa Jorion and Société anonyme d'étude et de gestion immobilière 'EGI' v. Belgian State, 1988, para. 17) and what "… by reason of their number or technical nature, render the exercise of the right of deduction practically impossible or excessively difficult" (Léa Jorion and Société anonyme d'étude et de gestion immobilière 'EGI' v. Belgian State, 1988, para. 18).

1.2. Shapeshifting in the computational age. From paper invoice to digital invoice to e-invoice

Directive 2006/112/EEC introduced under the chapter *Invoicing* a new paradigm; the concept of invoice is extended to any "*documents or messages on paper or in electronic form as invoices*", under article 218, applicable generally to transaction with European element; Member States are authorised to set different standards for national supplying. Directive 2006/112 uses a different *legi ferenda* technique as it indicates directly the mandatory elements of the invoice (of which nine compulsory and six alternative) and forbids Member State to condition it under the signature of the parties. As shown in our previous studies (Costea, 2017; Costea, 2023), a tri-dimensional approach is due; under the Directive's provisions invoice might have a paper form, a digital form or an electronic form. The latter two are not to be confused.

Invoice may have a digital form, whereas in between parties the paper communication is replaced by a digital one, under the condition of reception's confirmation; this communication can be made by e-mail, platforms, applications etc. allowing faster and more secured connection between supplier and customer. Nevertheless, a gap intervenes between the supplying moment – delivery of goods or services - and the emission of the digital invoice; the digital invoice travels through a different path than the goods it refers to and is independent of the means the contractual bond is formed. Digital invoice, although filled up more rapidly and transmitted almost simultaneously presents the vulnerability of the above-mentioned gap; hence the actual reception of the invoice and of the goods or services it refers to may leave room for informalities, intentional or not. The digital invoice is an inter-partes occurrence, with consequence on the communication with the fiscal body throughout VAT return (which at its turn might be stationery or digital).

In e-voice form, the invoice is issued on-line amid a platform that grants the fiscal body access to the recordings. The VAT in the Digital Age (ViDA) package agreed unanimously upon in November 2024 (Council of the European Union, 2024), sets for 2028 the goal of a real-time, digital, European reporting system, in which VAT will be stated through e-invoices. This system will be shared upon fiscal authorities from all Member States and will allow the digital presence of the fiscal body at each transaction within the internal, single market. The omnipresence and omniscience of national authorities is at this point viewed as a viable means of closing all gaps in reporting VAT and prevent VAT fraud, especially the missing-trader scheme that generates an annual loss of almost 100 billion euros[4]. The E-invoicing system rests upon a number of normative interventions announced by the Commission in 2022, namely amending Directive 2006/112/EC, Regulation (EU) No 904/2010 as regards the VAT administrative cooperation and Regulation (EU) No 282/2011 as regards information requirements for certain VAT scheme, the first step being made by the adoption of a Draft Council Directive 2006/112/EC as regards VAT rules for the digital age (Council of the European Union, 2024). The European standard[5] for the semantic data model of the core elements of an electronic invoice have been set by Commission's Implementing Decision (EU) 2017/1870 (Commission Implementing Decision (EU) 2017/1870, 2017) to fill-up a digitally integrated regulatory framework (Beuselinck et al., 2024). All invoices must comply to the said European standard, under a guarantee that the supplier may choose the means of communicating the e-invoice: directly, throughout a third party – a private platform or a public platform.

All the above mentioned conditionalities apply also to the self-invoice.

In a perfect administrative e-invoice model, all invoices are sent via VAT platforms, tax authorities having complete control over transactions and access to

[4] The VAT Gap is the overall difference between the expected VAT revenue based on VAT legislation and ancillary regulations and the amount actually collected: https://ec.europa.eu/taxation_customs/business/vat/vat-gap_en, accessed on 07.12.2024.

[5] The Commission implementing Regulation (EU) 2019/2026: the records kept by the taxable person shall contain all of the following information: (a) as regards the Member State from which the goods have been dispatched or transported: (i) the taxable person's VAT identification number or tax identification number in that Member State, if any; (ii) the address from which the goods were dispatched or transported; (b) as regards the Member State to which the goods have been dispatched or transported: (i) the taxable person's VAT identification number or tax identification number in that Member State, if any; (ii) the address to which the goods were dispatched or transported; (c) the description and quantity of the goods dispatched or transported to another Member State, indicating where applicable whether those are capital goods as defined by the Member State to which the goods have been dispatched or transported; (d) the date of the dispatch or transport of the goods referred to in point (c); (e) the taxable amount indicating the currency used; (f) any subsequent increase or reduction of the taxable amount; (g) where a self-invoice is issued, the information contained on the invoice", https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0965.

large amounts of data with the aim of cutting tax evasion. The model also, theoretically, eliminates the need for a formal VAT return from companies (Stanley-Smith, 2019). The viability of the model depends on the unified, standardised format of e-invoice in all involved jurisdictions; the lack of such a unitary approach would burden significantly the taxpayer with IT costs to reorganise, transform, save in different formats, access and manage multiple accounts. In a rather theoretical approach, the question whether such changes will curb fraud and remain proportional is raised (Amand, 2023). The predicted costs of implementing the e-invoice are significant, especially for SMEs and subsequent limitations, such as the indication of the bank account and IBAN, of the due date seems excessive.

The major issue lies in the consistency of the fiscal secret, as all business information in synthetic form would be stored on the public platform administrated by the fiscal authorities. Hence, access to such information would jeopardise commercial secrecy and rend businesses vulnerable. On the other hand, the e-invoice system nourishes a dream long dreamt, namely maximising VAT collection (Iancu, 2022) even if other doctrine voices pin the famous Romanian VAT gap (up to 35%) on the methodology of taxation, not on supervising tax collection (Amand, 2023). The statement that e-invoice facilitates compliance (Iancu, 2022) appears convincing as a platform administrated by tax authorities sets in motion data filters upon the drafting of the e-invoice, alerting the issuer on the error they committed. There is no more place for material error regarding VAT numbers, addresses, number of the invoice etc.; apparently there are no more costs with printing and communication invoices and assuring proper storage. Nevertheless, the method requires an authentication system acquired at a certain cost; an increase in accounting working time, as e-invoice demands professional skills in operating the system, a certain computer literacy above the one required for a business operator is necessary, but also access to expert answers to errors.

A significant element for professional transactions, the due date will also be affected by the transition to e-invoice. Issuance of the e-invoice and report of the transaction are crucially hastened; the e-invoice will be due in two working days from the chargeable event (Biban, 2023). The purpose of this short term is to allow fiscal authorities to correlate, as soon as possible, preferably before the payment, the information from the present transaction to prior and subsequent transactions in the same supply chain and hence avert the time-frame necessary for missing-trader fraud.

The overall purpose of precipitating the transactions' exposure to fiscal algorithm of asserting compliance is to filter huge amounts of information, identify red-flags, clues, pointers of attempted fraud and intervene in the incipient stage, preventing the fraudulent scheme from accumulating significant sums of due VAT. Hence the right to deduct would freeze as soon as possible, regardless of the location of the participants to the fraudulent scheme with inter-Member State elements, exposing in real time the dissimulated transactions which at this point exploit the slow communication between a plurality of tax administrations. Such clues could

consist in intense activity of a recently registered taxable person, frequency or exclusivity of a certain customer, high volume invoices compared to total volume of transactions, bank-flow, number of employees etc. The use of machine learning models and AI by the tax authorities would allow for an early tracing of these fraudulent paths and an efficient reaction, mainly resulting in blocking the exert of the right to deduct based upon suspicious e-invoices and conducting a fiscal investigation.

As to the state of affairs, several Member States have applied at national level regulations on e-invoices and their transmission to tax authorities/customers, in electronic format, through an on-line platform. Romania has recently joined the small group of EU Member States that have already implemented or are in process of implementing the e-invoice system, namely Hungary, Italy, Poland, Belgium and France. In the close future, 2025-2026, the system will emerge in Spain, Latvia, Croatia, Slovakia, Slovenia and Germany (European Union, n.d.). In Romania's case from the beginning of 2024, amid the RO e-Invoice system, a total of 445 million invoices were issued of which a tenth in business to government relation – we must take note that the system was tested last year in B2G transactions. In Italy, since 2019, the "Sistema di Interscambio" processed over 2 billion B2B e-invoices.

It becomes clear for the presented arguments that we are facing an equation with multiple unknowns. At this point, as the e-invoice is arising and sets a barrier in the classical exertion of the right to deduct along with all the elements tackled above, we need to (e)-contextualise the traditional formal elements of the right to deduct, as regulated since the sixth Directive and nuanced by the jurisprudence of the ECJ.

2. Methodology and working hypothesis

The method used is closer to an empirical analysis, as we start from the current ECJ case-law regarding the existence and content of traditional, paper invoice and we generate an inventory of conditionalities. This systematised spectrum of requisites will be submitted to a prognostication exam, as we will assert for every jurisprudential condition the applicability in case of e-invoice.

The working hypothesis is that the formal condition will plummet into oblivion with expenses for the taxpayer; the e-invoice strategy is implemented with costs for the taxable persons, both financial and symbolic. The financial charge derives from replacing a low competence, pen and paper document, with a digital act implying cost of hardware and software. The symbolic harm is both one of identity - loss of all identificatory input in designing the invoice - and one of communication in the contact supplier-customer, a communication hereon mediated by a platform administrated by tax authority.

Our empirical approach addressed an inventory of 95 ECJ judgments subsumed to rulings regarding the right to deduct[6] from which 17 decisions addressed specific particulars on the invoice in paper form.

3. Jurisprudential findings and predictions for the future e-invoice

Upon the above-mentioned inventory, we propose a mirror analysis, with an actual dimension for caselaw regarding traditional invoices (first column) and a conjecture, presumption for the e-invoice (second column). This matrix of jurisprudential variables regarding the invoice vs. e-invoice is based on almost 20 judgements/orders of the ECJ organised chronologically as follows:

Specific requisites for paper invoice	Predictive requisites for e-invoice
1) *Léa Jorion and EGI v. Belgian State, 1988*: The Belgian VAT law set a list of particulars that the (paper) invoice must contain: date on which the invoice is issued; its serial number in the trader's sales ledger (which must appear not only on the duplicate of the invoice but above all on the original issued to the customer); identity of the supplier of the goods or services and of the customer (name and address of the persons concerned); date of delivery of goods or completion of the services; usual designation and quantity of goods supplied or the nature of the services, specifying the details required to establish the applicable rate of VAT; price of the goods or services and the other components of the taxable amount; VAT rate applicable; total amount of VAT charged; a statement of the grounds for exemption, where the transaction invoiced is not subject to VAT.	In issuing an e-invoice, the vast majority of these particulars are pre-set and predetermined in the default format by the service provider – the intermediary or the public platform. Data such as: issuance date, identity of the supplier, serial number in the trader's sales ledger, VAT rate applicable are filled-in automatically, within a choosing menu. Also, for the rest of the data, such as: identity of the customer, usual designation and quantity of goods supplied or the nature of the services, the price of the goods or services and other components of the taxable amount can be used templates, which just involves selecting them from a previously saved list, also accessible to the tax authority. Overall, filling-in the e-invoice appears to be more facile and less prone to error. The volume of data being constant, the use of digital processor facilitates the issuance course.
2) *John Reisdorf v. Finanzamt Köln-West, 1996*: The right to deduct input tax depends on the possession of the original invoice or a substitutive document. Member States may consider as an invoice not only the original document, but any other document	In the case of e-invoice, discussions regarding the compulsion for an original document are no longer relevant. As the invoice is drafted, transmitted and stored in digital environment, the collection of data processed in that background

[6] Court of Justice of the European Union, https://curia.europa.eu/jcms/jcms/Jo2_7046/en/, accessed on 07.05.2024.

containing proof of all goods or services supplied by a trader to another taxable person. As Member States may establish the criteria by which substitutive documents may serve as an invoice, they also have the power to decide that a document cannot serve as an invoice if an original has been drawn up and is in the possession of the recipient.	constitute the original, legible through a specific software and hardware and visible at any time. This also implies that tax authorities can view, at any time, the initial form of the invoice and all further interventions. In both cases, there is a risk to the integrity of the archive (physical or electronic) as well as to unauthorised access to the data (which is less under the supplier's control in the case of e-invoice).
3) *Pannon Gép Centrum Kft v. APEH Központi Hivatal, 2010*: Mandatory and minimal specifications on a paper invoice are: (1) date of issue; (2) a sequential number, based on one or more series, that uniquely identifies the invoice; (3) the identification number for VAT purposes […], on the basis of which the taxable person delivered the goods or provided the services; (4) the customer's VAT identification number […]; (5) the full name and address of the taxable person and the customer; (6) the quantity and nature of the goods delivered or the volume and nature of the services provided; (7) the date on which the delivery of goods or the provision of services was carried out or completed; (8) the taxable base for each quota or exemption, the unit price excluding VAT and any price reductions and rebates, if they are not included in the price unitary; (9) the applied VAT rate; (10) the amount of VAT to be paid, unless a special regime applies for which this directive excludes such mention; Article 1/E paragraph 1 of Order no. 24 of 1995 (XI. 22) of the Bulgarian Minister of Finance on the fiscal identification of invoices, simplified invoices and receipts and the use of cash registers and taxi meters to ensure the issuance of receipts provides: "An invoice printed on paper using an IT device can be used for fiscal identification only if the invoice is registered in a strict bookkeeping performed so that: a) the	In the case of e-invoice, all form conditions are easier to meet; some are immediately indicated by the generative platform such as: (1) date of issue; (2) a sequential number, (10) VAT amount to be paid; some are completed rather automatically by the platform: (3) VAT number of the supplier; (5) identification data of the supplier; some may be chosen from a preexisting data base, linked to an error message in case of wrong data (4) customer VAT number (5) identification data for the customer, (6) quantity of goods – that might be compared to accounting data, (7) date of deliverance, (8) VAT quota, unit price, reductions, (9) VAT rate. By using an electronic invoicing program, the taxpayer is assisted in completing the invoice data, being much easier to comply with all the formal conditions of the invoice. The software may easily include a warning, if and when data is incorrect, and the issuance of the invoice may be conditioned by the modification of said data. However, some material errors may subsist; in such cases it is possible that upon transmission, tax administration software detects the error and sends a message or upon reception the customer observes these errors and address a message of refusal to accept the invoice. In these situations, modifying the e-invoice is much easier, doable directly on the e-invoice, with the updated version being sent to the tax authorities/customer.

computer program used to issue the invoice guarantees the numbering continues without omissions or repetitions [...]". Member States are not allowed to limit the exercise of the right to deduct VAT by compliance with the conditions regarding the content of the invoices, which are not expressly stipulated by Directive 2006/112. A constant is in place: the sanction for non-compliance residing in loss of deduction right.	The updated e-invoice is ruled by the same form conditionalities. A constant is in place: the sanction for non-compliance residing in loss of deduction right, even though it is unlikely to arrive at such a stance without prior notification.
4) *Barlis 06 – Investimentos Imobiliários e Turísticos SA v. Autoridade Tributária e Aduaneira, 2016*: Directive 2006/112 Article 226 point 6) requires the invoice to include details regarding the volume and nature of the services provided; point 7) requires the invoice to include the date when provision of services was performed or ended. The Court ruled that the fundamental principle of VAT's neutrality requires input VAT to be granted if the substantive conditions are met, even if certain form conditions were omitted by the taxable person, such as incorrect date of completion of the provision of services or inconsistent numbering of the subsequently rectified invoice and of the credit note cancelling the initial invoice. Member States cannot link the exercise of the right to deduct VAT to compliance with conditions on content of invoices, which are not expressly allowed by the Directive. Hence, the marge of appreciation of statal intervention is limited under Directive 2006/112 and no additional criteria may be imposed. Par. 42: "The Court has held that the fundamental principle of the neutrality of VAT requires deduction of input VAT to be allowed … even if the taxable persons have failed to comply with some formal conditions. Consequently, where the tax authorities have the information necessary to establish that the substantive	By using drafting software and an online platform integrated with the supplier's accounting information and fiscal data-base, some of these errors are preventable by the occurrence of an alert message when data on chargeable event are not consistent with the accounting information; it would be impossible to mention a quantity of goods larger than the one in stock or other goods that are not in possession of the supplier. The error risk is significantly diminished as, when content elements are inconsistent, the software operating the platform would stop the issuing/saving/sending of the invoice and require corrective measures. Even more, fields to be completed may be set as mandatory and prevent the closure of the issuing process or might compare data with other accounting information: for example, it would be impossible to issue an e-invoice with a larger volume of goods than those in stock or with a different price than the sale price. Thus, in the case of e-invoice, the traditional grounds for a deduction refusal for irregularities in the form of the invoice are limited. Nevertheless, this behaviour is conditioned by the quality of the implementing software and by its adaptative capacity to the motricity of contractual frame: delivering future goods, establishing a reduction of price, collecting the price in stages etc.

requirements have been satisfied, they cannot … impose additional conditions which may have the effect of rendering that right ineffective for practical purposes".	
5) *Senatex GmbH v. Finanzamt Hannover-Nord, 2016*: According to article 226 point (3) of Directive 2006/112, the invoice must state the identification number for VAT purposes, on the basis of which the taxable person delivered the goods or rendered the services. Directive 2006/112 provides the possibility to rectify an invoice if certain mandatory details have been omitted, such as the VAT number. The rectification document produces retroactive effects. Pct. 35: "It follows that the right to deduct VAT must, in principle, be exercised for the period during which, on the one hand, this right arose and, on the other hand, the taxable person is in possession of an invoice."	This occurrence is not compatible with the e-invoicing system, as the software will spot the error and stop the validation of the e-invoice in presence of such error. Hence, subsequent rectification for this purpose remains unnecessary; this type of practice is prevented because in the presence of these errors, the invoice cannot be issued and sent to the fiscal authorities. If and when a modifying document is generated, the *ex tunc* effect is mandatory also for the e-invoice, as it is barely a declarative procedure based on a state of facts.
6) *SC Paper Consult SRL v. Direcţia Regională a Finanţelor Publice Cluj-Napoca and Administraţia Judeţeană a Finanţelor Publice Bistriţa Năsăud, 2017:* The right to deduct VAT must comply with requirements or conditions for both substance and form, regarding amongst other the invoice and the status of the supplier – active or inactive taxpayer. The taxable person might be required to verify the status of its supplier in a public, on-line register, if the implied resources do not exceed a proportional obligation in regard to the objective of fighting VAT fraud.	In the case of the e-invoice, indicating the supplier and verifying his status are automatised steps and may be integrated in the process of drafting the e-invoice without supplementary efforts on behalf of the taxable person, prior or concomitantly with the contracting phase. Hence, compliance is significantly simplified; steps are burned; form conditions are easier to be met; informative procedures are easy going under the e-invoice spectrum.
7) *Geissel v. Finanzamt Neuss and Finanzamt Bergisch Gladbach v. Butin, 2017:* The deduction of input VAT must be allowed if the substantive requirements are satisfied, even if the taxable persons have failed to comply with certain formal conditions. The detailed, national rules regarding the indication of issuer's address on the invoice	The considerations of the Court are applicable *mutatis mutandis* to e-invoice; event if formal errors will have a limited occurrence, in the rare cases where these occur, their impact will be determined by their nature and effect. In the context of e-invoice, this ruling tends to have little to no effect as e-invoice cannot even be issued if all the formal conditions required by the drafting software are not met.

cannot be a decisive condition for the purposes of the deduction of VAT. In order to achieve the objectives pursued by VAT system, it is not necessary to lay down an obligation to indicate the address where the issuer of the invoice carries out its economic activity; it is not necessary that supplier's economic activities be carried out at the address indicated on the invoice issued by that supplier.	Regarding the issuer's address, the e-invoice cannot be generated and saved in a final form, unless all the data required by the program is provided and only after a prior verification with the data on the customer. In the light of the ECJ ruling, a platform is forbitten to require the indication of the address of the work point in order for the e-invoice to be issued.
8) *Vădan v. Agenţia Naţională de Administrare Fiscală, 2018*: A strict application of requisites regarding the VAT status of the applicant conflicts with VAT principles since it would disproportionately prevent the taxable person from benefiting from fiscal neutrality relating to their transactions, such being the case of prior registration for VAT purposes and issuance of an invoice as a supplier. Accordingly, the taxable person is required to provide objective evidence that goods and services were acquired from taxable persons for the purposes of their own transactions subject to VAT, in respect of which they have actually paid VAT. That evidence may include, *inter alia*, documents held by the suppliers from whom the taxable person has acquired the goods or services in respect of which they have paid VAT. An assessment based on an expert's report commissioned by a national court may, if necessary, supplement that evidence or reinforce its credibility, but may not replace it (input invoices).	ECJ stated that a strict denial of the right to deduct, based on the absence of invoicing to clients would conflict with the principles of neutrality and proportionality. Hence, no matter the form of output invoice, physical, digital or e-invoice, its absence is not ground to deny the right to deduct. Evidence that goods and services were provided may include, besides the suppliers' invoice, other documents issued by the business partners from whom the taxable person has acquired those goods or services. Regarding the output e-invoice, we can state that if the message is not issued through the official platform and communicated exclusively electronically, it will be deemed as non-existent. This does equivalate with an objective refusal of deduction. So, secondary means of proof (Galan, 2023) will apply in accordance with those established by ECJ.
9) *Mennica Wrocławska sp. z o.o. v. Dyrektor Izby Administracji Skarbowej we Wrocławiu, 2018*: According to article 226, point (6) of the VAT Directive, the quantity and nature of the goods supplied, or the extent and nature of the services rendered must appear on the invoice. ECJ concluded that the tax authorities cannot refuse the right to deduct VAT on the sole ground that an invoice does not meet these conditions, if those authorities have all the information to	The reasoning of the ECJ stand also in the case of e-invoice. The indication of the delivered goods is a requisite of the e-invoice, but it is not an absolute element, not admitting supplementary or even contradictory proof. Incorrect indication in the e-invoice, or *lato sensu* all indications in the e-invoice are subject to further verification throughout all means of evidence granting tax authorities access to all available additional information.

verify that the substantive conditions are satisfied. It is the responsibility of the applicant to establish that they meet the conditions and to provide the necessary evidence to enable tax authorities to assess whether it is appropriate to grant the deduction requested. These authorities cannot limit to examining the invoice itself but must also consider all additional information provided by this taxable person. Despite the error in the identification of the goods, as to the precise name of the goods delivered, it is noticed: - firstly, that the applicant provided tax authorities with necessary documents and explanations in order to define the real purpose of those transactions and to attest their reality, - secondly, that the transaction purpose was confirmed by those authorities, - thirdly, the other data appearing on the invoices at issue in the main proceedings, particularly those relating to the methods of calculating VAT, are correct.	Thus, error in the narrative part of the e-invoice, regarding description of good or services, place of deliverance, grounds for exemption are possible even in the electronic system, and might challenge the taxable person to upbring supplementary evidence during a control procedure. We are not in the presence of a reversal of the burden of proof, but of a conditioned probative force, that allows tax authorities in any circumstances to extent the control to factual element, beyond the content of the invoice/e-invoice. Hence, rules regarding e-invoices do not replace the common regulation (civil law), regulation keeping accounts and drafting of other legal documents with probative relevancy. All these elements may be verified by the tax authorities in an audit procedure concerning the right to deduct. Regarding the standard of proof, it is noticeable that the real limitation of the right to deduct would be the presence of a fraudulent or abuse transaction or series of transactions, a barrier to the deduction of VAT in all working hypothesis.
10) *Întreprinderea Individuală Dobre M. Marius v. Ministerul Finanţelor Publice, 2018*: Identification for VAT purposes as well as the obligation of the (future) taxable person to declare when it starts, when it changes or when it ends activities are tasks additional to holding an invoice. The significance of these requirements in the cleavage substance-form is limited to procedural requisites in the purpose of tax control, which cannot call into question the right to deduct VAT. Once these procedural conditions – validity of the VAT code are fulfilled, by a new registration – the substantive elements survive this formal irregularity and generate the targeted effects in exerting the right to deduction.	The connection between substantive and formal conditions is different for e-invoicing. The taxable person is unable to receive an e-invoice as customer if the supplier will be prevented by the platform to issue an e-invoice bearing the annulled VAT number. Hence, the system will alert the supplier on drafting the e-invoice, and thus the irregularity would be known, indirectly also to the customer. If the e-invoicing is prior to the supply, then the parties might postpone it. If the supply already took place, the customer could address the issue of its VAT registration. In all cases, as long as the substantive and formal expressly required are met, supplementary conditionality is not grounds for refusing the right to deduct.
11) *Vikingo Fővállalkozó Kft. v. Nemzeti Adó- és Vámhivatal Fellebbviteli*	An e-invoice cannot be issued without indicating the fiscal identification number of

Igazgatósága, 2020: The applicant was refused the right to deduct pursuant, *inter alia*, to the rules of the Law on Accounting, from which it follows that the invoice must prove a transaction being carried out in fact and, therefore, relate to a genuine economic transaction.

However, the circumstance that in the main proceedings the goods were neither manufactured nor supplied by the invoices' issuer or its sub-contractors, whilst they were lacking human and material resources, is not sufficient to conclude that the supplies of goods at issue did not exist and to exclude the right to deduct relied on by a third party – the applicant, since that fact may be the result both of a fraudulent pretence by the suppliers and simply of recourse to subcontractors.

The Court decided that tax authorities cannot, as a rule, require the return applicant to ensure that his supplier has the capacity of a taxable person, they were in possession of the goods at issue and were able to supply them and that they satisfied their obligations as regards declaration and payment of VAT.

12) *SC C.F. SRL v. A.J.F.P.M. and D.G.R.F.P.C., 2020*: The national practice pursuant to which the exercise of the right to deduct is subject to holding support documents other than the tax invoice is contrary to the VAT Directive. The benefit of the right of deduction cannot be denied unless it is established that the taxable person knew or should have known that, by purchasing these goods or services, they were participating in an operation involved in a VAT fraud committed by the supplier or another operator who intervened upstream or downstream in the chain of these deliveries or services.

The competent national tax administration cannot, however, generally require the said taxable person, to check whether the issuer of the invoice had the goods in question and was able to deliver them and if and they

the supplier. Therefore, the conditionalities embedded in the software as mandatory fields according to the European standard for electronic invoicing and the list of its syntaxes checks whether the indicated number is valid or not and generates an error message. Thus, cases of VAT fraud with un-authorised business partners, especially in the context where the One Stop Shop – OSS system is active, will be eliminated. The costumer will be protected.

In a functional e-invoice model, connected with public data bases such as prior VAT registration, prior invoicing activity, employer status etc., the platform could be programmed to issue a warning when a supplier with faults in such characteristics issues an e-invoice or the platform even stop such a taxable person from issuing e-invoices. Hence, all documents generated within the platform bear a presumption of validity for the receiver; documents transmitted through other means than the official platform will *ex officii* be excluded from generating VAT effects.

We can notice a national practice of distributing VAT fraud's effects within the chain of supply up to any taxable person taking part in the transaction flow based on its obligation to gather evidence and verify its suppliers. This obligation exceeds the frame of the VAT directive and does not qualify as substantive requisites. Even when implementing the European e-invoice, this working hypothesis remains an issue, as monitoring transactions through a software app, even if on-line, will not grant the return applicant/the customer access to data necessary to verify their suppliers on the substance of the transaction source of the good or service.

The burden of proof and the obligation to intervene resides operantly with the tax authority. Only fiscal authorities have access to relevant information to assess the

fulfilled the obligations regarding the declaration and payment of VAT to ensure that there are no irregularities or fraud at the level of upstream operators or, on the other hand, to have documents in this regard.	regularity of a transaction in the supply chain. The European e-invoice system having access to a plurality of data sources and suppliers and having integrated an AI tool with embedded syntax for detecting fraudulent transactions or even suspicious transaction will address eventually the *carrousel fraud.*
13) *A. v. Dyrektor Krajowej Informacji Skarbowej, 2021*: Extensive norms governing VAT regulate all aspects of the written reflection of a transaction such as obligations related to accounts, invoicing and filing returns. But the right to deduct is not necessarily dependent on obtaining an invoice, submitting a tax declaration or calculating due VAT within a specific timeframe. Hence, at times, input VAT and output VAT will not be generated within the same tax period. The deduction conditionality delays the exercise of the right to deduct VAT. Thus, it results in the burden of VAT being temporarily borne by the taxable person. This delay is governed by the statute of limitation regarding the right to deduct and not by procedural norms on invoice issuance. National legislation that prohibits systematically the exercise of the right to deduct VAT on an intra-Community acquisition during the same period as that during which the amount of VAT must be calculated, without providing for all of the relevant circumstances to be taken into account, *inter alia*, the good faith of the taxable person, goes beyond what is necessary to ensure the correct collection of VAT and to prevent tax evasion.	The e-invoice scaffold is constructed on the idea of opposability of the transaction to the tax authority, as a direct and immediate effect of issuing an invoice. An e-invoice will not be considered dully issued if it has not been drafted and communicated electronically, in accordance with the procedure provided for by national law in the indicated term. But this short term procedure should not exclude long term effects of the VAT and replace the material statute of limitations on the right to deduct. The court held and the reasoning is transgressive to e-invoice, that the right of deduction is not necessarily dependent on a specific time frame form obtaining an e-invoice, submitting a tax declaration and calculating the VAT. Even more, as the timetable contracts in the communication through a publicly administrated platform, subject to various inconsistencies, the right to deduct could not be submitted to such a limitation. We predict that future jurisprudence will be called upon to answer on the effectiveness of tardive e-communication and that the right to deduct will prevail if the substantive conditions are met.
14) *Ferimet SL v. Administración General del Estado, 2021:* On the question of the consequences, deriving from taxable person's concealment of the true supplier of goods where it is undisputed that those goods have been supplied and that they have	The e-invoice does not allow the indication of a fictious supplier, defined as a taxable person not registered for VAT purposes or even a non-existent person. The platform conditions the issuance of the e-invoice on the indication of a real, taxable

been used by that taxable person, the ECJ ruled that substantive elements are at bay. The naming of the supplier on the invoice relating to the goods or services based on which the right to deduct VAT is exercised, is a formal condition for the exercise of that right. By contrast, the status of the supplier of the goods or services as a taxable person lies among the material conditions for the exercise of that right. In cases where the identity of the true supplier is not mentioned on the invoice, if that prevents the supplier from being identified and, therefore, the supplier's status as a taxable person from being established, that status is one of the material conditions of the right to deduct VAT. It follows that a taxable person must be refused that right to deduct if, considering the factual circumstances and notwithstanding the evidence provided by that taxable person, the information necessary to verify that that supplier had the status of taxable person is lacking.	person through its VAT identification number. Other elements, even if mandatory, such as the name and address of the supplier are superfluous as the platforms verify the identity of the supplier and consumer based upon a serial number and generate and automatic input. All irregularities regarding the status of the supplier will prevent the issuance of the e-invoice. Hence, a fraudulent behaviour amid simulating the existence of a taxable person is no longer possible; nor exerting the right to deduct through a simulation by indicating the identification number of a real taxable person, stranger to the transaction, as the platform will immediately notify the presumed supplier on the transaction. Simulation within the digital environment would be possible only with the concurrence of the supplier, part of a prior fraudulent agreement. Also, traditional document forgery would be useless, since the transaction must be recorded in digital form. The construct is vulnerable to digital fraud, where software solutions would temper with the data generated, retrieved or stored by the tax platform.
15) *Kemwater ProChemie s.r.o. v. Odvolací finanční ředitelství, 2021*: The right to deduct will be analysed through extended lenses. The supplier and tax authorities cannot restrict themselves to providing/ examining the invoice itself. The burden of proof might target additional information or documents to be provided by the applicant. The burden of proof lies on the taxable person exerting the right to deduct in two folds: a) the status of the supplier is to be proven amid objective means by the return applicant; b) the actual supply of input good and services. In the absence of this standard of evidence, the right to deduct input VAT will be refused, without the tax authorities having to prove that applicant committed	This two-level charge of proof is also appliable to the e-invoice context. The e-invoice is a first-hand tool for verifying transactions. As we mentioned already, where data collected from the flow of e-invoices raises a red-flag, further investigations from the tax authorities are required. The control does not transfer the burden of proof to the tax authority, but merely request the taxable person invoking the right to deduct to provide additional proof regarding the status of the supplier and the content of the transaction. We predict that tax procedures regarding the extensive, ample evidence, subsequent to the (e-)invoice, maintain their relevancy in the context of e-invoice and will require further jurisprudential intervention in order

VAT fraud or that they knew, or ought to have known, that the transaction was related to such fraud.	to clarify the content and extent of this evidence.
16) *Megatherm-Csillaghegy Kft. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, 2022*: Title XI of the VAT Directive lists certain obligations incumbent upon taxable persons liable for that tax: i) to pay VAT; ii) to state when their activity as taxable persons commences, changes or ceases; iii) to use the identification for VAT purposes; iv) to keep proper accounts; v) to store all invoices; vi) to submit a return within a given period. These detailed rules might be qualified as formal requirements or conditions, secondary to holding an invoice. Failure to meet these obligations might be sanctioned through refusal of the right to deduct. Such a refusal has more to do with not having the necessary data available to establish that the substantive requirements are met than with failure to comply with supplementary tasks. It must be noted that the right to deduct VAT paid during the period preceding the revocation of a taxable person's tax identification number is actual in cases where the right has not been fraudulently or improperly invoked. The taxable person is entitled to claim that right after the restoration of their identification number following the rectification of the formal omissions which had led to its revocation. Penalising non-compliance with formal obligations by refusing the right to deduct VAT, without considering the substantive requirements and without examining whether those requirements are satisfied, goes further than is necessary to ensure the correct collection of the tax.	The issuance of an e-invoice is just a part of the personal obligations to be honoured by the taxable person; it is merely a step in the process of collecting the portion of VAT assigned to that transaction and only a part of the broader mechanism of supervising VAT in the chain of goods/services. The e-invoice is the big catch, but other obligation as indicated by the normative frame and confirmed by the ECJ are in place. Some of these obligations are inherently fulfilled by the digital algorithms, such as generating turnovers or returns, storing invoices, registers, returns etc. The Court has clarified that the date on which the VAT return is filed or the invoice issued does not necessarily influence the substantive requirements which confer the right to deduct that tax. However, according to Romanian norms, implementing e-invoicing respecting the timetable for communication is assured under administrative sanctions such as fines or deduction denial. We can clearly state that the national Romanian provisions are not in accordance with the ECJ jurisprudence and even with the Directive, and that it is very likely that a future case-based denial of deduction will be sanctioned by forthcoming jurisprudence.
17) *Shortcut – Consultadoria e Serviços de Tecnologias de Informação, Lda v. Autoridade Tributária e Aduaneira, 2023:*	As to the content and level of detail of an e-invoice, it is noticeable that invoice in general is a brief document, a condensed

National tax authorities may not refuse the right to deduct VAT on the grounds that invoices containing statements such as "application development services" do not comply with the formal requirements. The Directives do not allow Member States to condition the right to deduct VAT by requisites relating to the content of invoices which are not expressly provided for by the VAT Directive.

The wording of the Directive indicates that it is mandatory to specify the scope and nature of the services provided, without however specifying that it is necessary to describe the specific services provided exhaustively.

In the main proceedings, it is common ground that the invoices in question adequately describe the extent, namely the quantity, of the services provided, since they indicate their duration in hours.

If the invoices in question do not meet the specific prerequisites, tax authority may verify whether other documents contain a more detailed presentation of the services in question and can be treated as an invoice.

statement of the parties, drafted rapidly, and must assure a rapid use. In accordance with the contractual practices between the parties, the e-invoice might or might not be doubled by drafted agreements or other documents. Such evidence does not interfere with the right to deduct, as it relies on civil norms regulating contractual bonds, being an *inter-partes* issue, optional to the taxable person.

Hence, an e-invoice will contain a brief description of the scope and nature of the services provided, without describing exhaustively the specific services provided.

In the frame of a VAT platform, collected date should be minimal and limited to truly necessary information, as a means of reducing the volume of data and easing a further automatic control algorithm. The current Romanian platform does not require minute details about the services provided as a mandatory condition for issuing the e-invoice. The only condition is to indicate the object of the invoice, as abstract as possible. The issuer of the e-invoice is free to indicate the information they appreciate necessary regarding the scope and nature of services provided.

Hence, the right to deduct cannot be submitted to additional requirements that enhance the content of the provided information.

Conclusion

After organising and analysing such a vast portfolio of jurisprudential arguments, we can notice some obvious changes and predict forthcoming working directions. Firstly, the debate on identification of the invoice, of the parties – supplier and consumer, on their status, on the serial number of the (e-)invoice and its *de minimis* contents is history, as software data base and its syntaxes will control the validity of such elements prior to the issuance of the e-invoice and stop the issuance process. Since an alternative is not available, the lack of a valid message in digital form will be followed by the inexistence of the right to deduct. Secondly, the e-invoice mechanism eliminates all debates regarding subsequent modification of the invoice, storage of the invoice, multiple exemplars, original versus copies, as the

digital platform ensures automatised functions in this regard. Thirdly, in case of reversal or cancellation of the e-invoice, the platform assures sufficient tools to carry out these operations with the help of computer software.

The realm of the future holds different practical issues, especially the emphasised dichotomy between the content of the transaction (moment, details, parties' agreements) and its reflection in the digital demesne. Thus, the desired contribution of the e-invoice to preventing or fighting fraudulent transactions depends on a clear, well-drafted, exhaustive data processing algorithm with immediate intervention from the tax control authorities. Equal relevance and significant risk target the second echelon of evidence, as substantive requisites become more relevant and subject to a more intense analysis. The charge of proof extending is accompanied by the hazard of shifting focus from e-invoice to other documents, not submitted to harmonisation and hence burdening and self-sabotaging the newly implemented system.

We can answer our working hypothesis with an affirmation: the formal conditionalities regarding the right to deduct are reduced to minimum by the e-invoice system. Further questioning is relevant: Is the e-invoice becoming an administrative act, under such scrutiny from the tax authority? Is it losing its declarative content due to a verification while being drafted? Is e-invoicing a sum of administrative operations? Does it evidential force diminish due to standardisation?

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