

Electronic signature law up-date: Türkiye

This update sets out the recent legislative developments related to electronic signatures in Türkiye.

Definition of an electronic signature

The electronic signature is 'electronic data that is added to another electronic data or has a logical connection with electronic data and used for authentication purposes' (article 3 of the Electronic Signature Law No. 5070). The electronic signature consists of letters, characters, or symbols that provides a guarantee that information is transferred in a closed system open to third parties without losing its integrity, and verifying the identities of the parties via electronic or similar means.

Electronic signature regulations in Türkiye

The Electronic Commerce Coordination Board ('ETKK') initiated the first studies on electronic signatures in Türkiye. This Board was established on May 8, 1998, under the Undersecretariat of Foreign Trade coordination and is working on issues such as electronic signatures and electronic commerce. The Ministry of Justice took initiatives to prioritize the studies on the legal dimension of electronic commerce. This was carried out within the framework of the ETKK. The ETKK Legal Working Group prepared a legal regulation that met the technical and administrative requirements, and the Ministry of Justice completed its work on this issue, and duly prepared the Draft Electronic Signature Law before moving it to the parliamentary agenda.¹

During the preparation of the draft law, the Ministry of Justice and the ETKK Legal Working Group conducted joint meetings and information exchange activities. The EU's Electronic Signature Directive (1999/93/EC),² the Electronic Commerce Directive 2000/31,³ the Model Law on Electronic Commerce prepared by UNCITRAL,⁴ and the Model Law on Electronic Signatures⁵ were taken into account during the preparation of the electronic signature law. The German Electronic Signature Law, which entered into force on May 22, 2001, was also used as a model law.⁶

Legislation on electronic signatures

Electronic Signature Law No. 5070 (23.01.2004)

<https://www.mevzuat.gov.tr/mevzuatmetin/1.5.5070.pdf>

Prime Ministry Circular No. 2004/21 (6.09.2004)

https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/200421_genelge.pdf

Regulation on the Procedures and Principles Related to the Implementation of the Electronic Signature Law (6.01.2005)

<https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/e-imza-yonetmelik.pdf>

Public Notice on the Processes and Technical Criteria Related to Electronic Signature (6.01.2005)

<https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/e-imza-teblig.pdf>

¹ Biçkin, İnci. 'Elektronik İmza ve Elektronik İmza ile İlgili Yasal Düzenlemeler' TBB Dergisi 63 (2006), s.119.

² Regulation Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13, 19.01.2000, p.12.

³ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, p. 1–16.

⁴ UNCITRAL Model Law on Electronic Commerce (1996) with additional article 5 bis as adopted in 1998.

⁵ UNCITRAL Model Law on Electronic Signatures (2001).

⁶ Biçkin, İnci. 'Elektronik İmza ve Elektronik İmza ile İlgili Yasal Düzenlemeler' TBB Dergisi 63 (2006), s.119.

General Conditions of Compulsory Certificate Financial Liability Insurance (27.01.2005)

<https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/genelsartlar.pdf>

The Tariff and Instructions of the Certificate Financial Liability Insurance (27.01.2005)

<https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/tarifetalimat.pdf>

Public Notice on the Amendment of the Public Notice on the Processes and Technical Criteria Related to Electronic Signature (18.06.2005)

<https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/e-imza-Degisiklik-Teblig.pdf>

Public Notice on the Amendment of the Public Notice on the Processes and Technical Criteria Related to Electronic Signature (21.01.2006)

https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/e_imza_tebliğ_21_01_2006.pdf

Regulation Amending the Regulation on Procedures and Principles for the Implementation of the Law on Electronic Signature (4.02.2006)

https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/e_imza_degisiklik_04_02_2006.pdf

Prime Ministry Circular No. 2006/13 (19.04.2006)

<https://www.resmigazete.gov.tr/eskiler/2006/04/20060419-5.htm>

The Decision of the Board on the Procedures and Principles regarding the Creation and Verification of Secure Electronic Signatures and Secure Electronic Signature Formats (1.06.2006)

https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/e_imza_degisiklik_04_02_2006.pdf

The Decision of the Board on the Determination of the Fees for the Certificate, Time Stamp and Related Services (20.12.2006)

<https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/UcretlerinBelirlenmesi.pdf>

Board Decision on Qualified Electronic Certificate, SIL and OCSP Request/ Reply Messages Profiles Guide (18.04.2007)

https://www.barobirlik.org.tr/dosyalar/belgeler/e-imza/mevzuat/profil_rehberi_kurul_karari.pdf

Law No. 5728 (8.02.2008)

<https://www.resmigazete.gov.tr/eskiler/2008/02/20080208-1.htm>

Public Notice on the Amendment of the Public Notice on the Processes and Technical Criteria Related to Electronic Signature (24.03.2020)

<https://www.resmigazete.gov.tr/eskiler/2020/03/20200324-7.htm>

Regulation on the Amendment of the Regulation on the Procedures and Principles for the Implementation of the Electronic Signature Law (15.10.2021)

<https://www.resmigazete.gov.tr/eskiler/2021/10/20211015-3.htm>

The main developments within the scope of the legislation

Electronic Signature Law No. 5070, dated 23 January 2004, entered into force on 22 July 2004. Law No. 5070, covers the legal structure of the electronic signature, the activities of the electronic certificate service providers, and the procedures related to the use of the electronic signature in all related fields.

In 2016, with the amendments made to subparagraph 10/1 (b) of the Law, the electronic certificate service provider was held responsible for examining the identities of people to whom it issued a qualified certificate.

In addition to article 10 of the Law dated in 2021, it is now provided that the electronic certificate service provider can remotely upload the qualified certificate to the requesting person's Republic of Türkiye identity card. With this

regulation, qualified certificates are paired with citizens' identity cards, permitting the data on the card to be actively involved in identity verification.

The electronic stamp was added to the scope of the Law in 2021, defined as 'electronic data that is added to another electronic data or has a logical connection with electronic data, and is used to verify the owner's information of the stamp.' Alongside this regulation, the website identity verification certificate and other electronic certificates were added to the scope of the Law, which resulted in establishing diversity and a secure foundation regarding the certificates.

With the *Prime Ministry Circular No. 2004/21*, it was determined to establish a 'Public Certification Structure' to meet the electronic certificate needs of public institutions and organizations from a single centre (a certificate to be used by public employees in intra- and inter-agency transactions).

Under the *Regulation on the Procedures and Principles Related to the Implementation of the Electronic Signature Law*, adjustments have been made to the notification and certification processes, secure electronic signature creation and verification data, the obligations of the owner of the qualified electronic certificate, and time stamp procedures.

With the *Public Notice on the Processes and Technical Criteria Related to Electronic Signature*, the processes and technical criteria relating to electronic signatures have been set out in more detail than in the previous legislation. Within the scope of the *Public Notice*, it is decided that the standards of organizations such as BS (British Standards), ETSI (European Telecommunications Standards Institute), ITU (International Telecommunication Union) and ISO/IEC (International Organization for Standardization/International Electrotechnical Committee) will be adopted in processes related to electronic signatures.

The *General Conditions of Compulsory Certificate Financial Liability Insurance* provides for the failure of Electronic Certificate Service Provider's (ESHS) to fulfil the obligations arising from the law on electronic signatures and their liabilities towards third parties against the organization or person that has a registered electronic signature.

In respect of the procedures and principles published in the Electronic Signature Law No. 5070 and *General Conditions of Compulsory Certificate Financial Liability Insurance*, the scope, amount, and the procedure of the insurance have been regulated under *The Tariff and Instructions of the Certificate Financial Liability Insurance*.

With the *Regulation Amending the Regulation on Procedures and Principles for the Implementation of the Law on Electronic Signature*, it is arranged that the transition period of the qualified electronic certificate will be determined by the contract and/or tax offices.

The *Regulation Amending the Regulation on Procedures and Principles for the Implementation of the Law on Electronic Signature* introduced electronic authentication services for the identity card of the Republic of Türkiye, which is the system that allows the process to be used in the Electronic Authentication System ('EKDS') integrated with the electronic certificate services. Under the latest regulations, EKDS has been transformed into a system where qualified and different electronic certificates using a similar infrastructure can be uploaded to the identity card remotely.

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