

**DIRECTIVE 1999/93/CE
IMPLEMENTATION**

THE PRESIDENT OF THE REPUBLIC

... O M I S S I S

ISSUES

The following decreto legislativo¹:

ART. 1

1. The present decree provides for the provision of law to implement Directive 1999/93/EC of the European Parliament and Council, of 13 December 1999, on a Community framework for electronic signatures.

ART. 2

1. For the purposes of this decree it is understood that:

- a) "electronic signature" means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication;
- b) "certifier" means an entity which issues certificates or provides other services in relation to electronic signatures;
- c) "accredited certifier" means a certifier which is accredited in Italy or in other State Members in the European Union, as set out in Article 3, subsection 2, of Directive 1999/93/EC;
- d) "electronic certificate" means an electronic attestation which links signature-verification data to the signatory and confirms the identity of that person;
- e) "qualified certificate" means a certificate which meets the requirements set out in Annex I of the Directive 1999/93/EC and is provided by a certification-service-provider who fulfils the requirements as set out in Annex II;
- f) "secure-signature-creation device" means an instrument used to create electronic signatures which meet the requirements as set out in article 10;
- g) "advanced electronic signature" means an electronic signature achieved by means of an information technology procedure which vouches for its univocal link to the signatory, is capable of identifying the signatory, is created using means that the signatory can maintain under his sole and exclusive control, is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable;
- h) "voluntary accreditation" means acknowledgement of possession by the certification-service-provider, of the highest level of quality and security requirements.

ART. 3

1. Provision of certification services by providers established in Italy or in another Member State is not subject to prior authorisations.

¹ "Decreto legislativo" is a decree having the same rank of a law.

2. The Presidency of the Council of Ministers – Department for innovation and technology, hereafter named “Department”, performs surveillance and control duties on this sector, also making use of the Authority for IT in the Public Administration (AIPA) and of other public bodies set out with Decree of the President of the Council of Ministers, or, by delegation, by the Minister for innovation and technology, in agreement with involved Ministers.

ART. 4

1. Certifiers established in Italy that intend issuing qualified certificates to the public must notify the Department, even by informatics means, before beginning their activity.
2. The controls undertaken to ascertain if the certifier issuing qualified certificates to the public meets the technical and organisation requirements set out in Article 13 , are entrusted to the Department, that where necessary may make use of the bodies specified in Article 3, subsection 2.
3. Controls in subsection 2 are effected in the Department’s official capacity or rather under justified notification by public or private bodies.

ART. 5

1. Certifiers that wish to attain acknowledgement by the Department of their possession of the highest level of quality and security requirements, may ask for accreditation.
2. The applicant must be endowed with additional technical requirements, as well as with financial liabilities and good repute, in comparison with what is required for the other certifiers, as per article 13 regulation.
3. The Department, to close examine the applications submitted under subsection 1, may make use of the organised bodies specified in Article 3, subsection 2
4. Upon acceptance of the application, the Department arranges for the applicant’s registration to be listed in a special public list, that may be looked up with telecommunication means and which is kept by the Department itself.

ART. 6

1. Article 10 of the unified legislation, of statutory and regulatory provisions on administrative documentation, issued with the Presidential Decree 28 December 2000, n. 445, is replaced by the following:

“Art. 10 (L) – Form and evidential weight of electronic documents.”

1. The electronic document shall have the same evidential weight as set out in Section 2712 of the Civil Code, relating to represented deeds and things.
2. An electronic document signed with a digital signature shall meet the written legal requirement. On the evidential side, the said document can be freely assessed, taking into account its objective quality and security features. Furthermore, it satisfies the requirements referred to in Sections 2214 et seq. of the Civil Code or in any other equivalent statutory or regulatory provision.

3. An electronic document, when undersigned with a digital signature or with any other type of advanced electronic signature, and if the signature is based on a qualified certificate and is created by a secure-signature-creation device, is full forensic evidence, until such document is challenged, that the statement originates by the subscriber.
4. An electronic document, when signed with a digital signature or with any other type of electronic signature cannot be denied its legal effectiveness and admissibility as evidence, solely on the grounds that it is in electronic form, or that the signature is not based upon a qualified certificate, or is not based upon a qualified certificate issued by an accredited certification-service-provider, or, finally, that it was not created by a secure signature-creation device.
5. Provisions in the present article also apply if the electronic signature is based upon a qualified certificate issued by a certifier in a country which is not a member of the European Union, when one of the following conditions applies:
 - a) the certifier satisfies the requirements set out in the abovementioned 1999/93/EC Directive and has been accredited in a Member State;
 - b) the qualified certificate is guaranteed by a certifier established within the European Community which satisfies the requirements set down in the mentioned directive;
 - c) the qualified certificate, or the certifier, is recognised under a bilateral or multilateral agreement between the community and third party countries or international organisations.
6. The ways and means to satisfy tax obligations relating to electronic documents or their reproduction in any medium shall be established by the Ministry of Finance (*Ministro delle Finanze*).

ART. 7

After article 28 of the unified legislation issued with Presidential Decree n. 445 of 2000 the following is added:

“ART. 28-bis (L)

Certifier's liability

1. A certifier that issues a qualified certificate to the public or that guarantees the reliability of such certificate to the public, is liable, unless it can prove that it did not act in a guilty manner, for damage caused to whoever reasonably relies on:
 - a. the accuracy of the information contained in the certificate at the time of its issuance and its completeness in relation to fulfilling all requirements for a qualified certificate
 - b. the assurance that at the time of the certificate issuance, the signatory held the signature-creation-data corresponding to the signature verification data given or identified in the certificate
 - c. the assurance that the signature-creation-data and the signature-verification data can be used in a complementary manner in cases where the certifier generates both of them.
2. A certifier who has issued a qualified certificate to the public is liable for any damage caused to any third party, who reasonably relies on the certificate, for failure to register revocation of such certificate unless the certification-service-provider proves that he has not acted negligently.

3. The certifier may indicate in a qualified certificate the limitations on its use, or a limit on the value of transactions for which the certificate can be used, provided that the limitations on the use or the limit on the value are recognisable to third parties. The certifier shall not be liable for damage resulting from improper use of a qualified certificate, which exceeds its limitations on the use, or exceeds the limit on the value placed on it.

ART. 8

1. Subsection 1 of Article 36 of the unified legislation issued by the President of the Republic with Presidential Decree n. 445 of 2000, is replaced by the following:

“1. Characteristics and issuing procedures of the Electronic Identity Card, the Electronic Identity Document and of the National Services Card are established by means of a Decree by the President of the Council of Ministers, adopted upon proposal by the Ministry of Internal Affairs, in agreement with the Ministers for the Public Function, for the Technological innovation, for Economy and finances, having heard the Authority for the Protection of Private Data”.

2. Subsection 3 e) of Article 36 of the unified legislation issued by the President of the Republic with Presidential Decree n. 445 of 2000 is replaced with the following:

“ e) the electronic procedures and information that can or must be known by the Public Administration and by other entities, required for the electronic signature”.

3. Subsections 4 and 5 of Article 36 of the unified legislation issued by the President of the Republic with Presidential Decree n. 445 of 2000 are replaced with the following:

“4. The Electronic Identity Card and the National Services Card can be used for the purpose of payments between private subjects and Public Administrations, in compliance with procedures established by Decree of the President of the Council of Ministers or, under his delegation, by the Ministry for Innovation and Technology, having regard to the opinion of the Banca d'Italia.

5. With Decree by the Ministry of Internal Affairs and by the Ministry for Innovation and Technology, having regard to the opinion of the Authority for the Protection of Private Data and the Conference State-Cities and local autonomies, technical and security rules relating to the technologies and materials utilised for the production of electronic Identity Card, the Electronic Identity Document and the National Services Card”.

ART. 9

1. Subsection 2 of Article 38 of unified legislation issued by the President of the Republic with Presidential Decree n. 445 of 2000 is replaced by the following:

“2. Applications and statements sent via telematic means are valid:

- a. if they are signed with a digital signature based on a qualified certificate issued by an accredited certifier and created by a secure-signature-creation device
- b. or rather, when the author is identified by the electronic system by using the Electronic Identity Card or the National Services Card (L).”

ART. 10

1. Conformity of the secure signature creation devices with the requirements set out in Annex III of the mentioned Directive 1999/93/CE is ascertained in Italy, in accordance with the national scheme for security assessment and certification in the Information Technology sector, defined in a Decree by the President of the Council of Ministers, or under his delegation, by the Ministry for Innovation and Technology, in agreement with the Ministries for Communications, for Productive Activities and for Economy and Finance. The national scheme shall not imply additional onus for the State budget and shall identify the public body in charge of accrediting the evaluation centres and of certifying the security assessments. The national scheme may also provide for assessment and certification according to further European and International criteria, even if they relate to different systems and products regarding the above mentioned sector.
2. The Decree as per subsection 1 fixes the date up to which the assessment, covered in the said subsection, shall be enacted consistently with the transient regime provided for by Article 63 of Technical Rules for the creation, transmission, storage, duplication, reproduction and validation, also for timing, of computer documents according to Article 3, Section 1, of the President of the Republic's Decree No. 513 of 10th November 1997, as per Decree by the President of the Council of Ministers 8 February 1999, published on Gazzetta Ufficiale n. 87 of 15 April 1999, and finally extended with the Decree by the President of the Council of Ministers 3 October 2001, published on Gazzetta Ufficiale n. 233 of 6 October 2001.
3. The conformity with the secure signature creation devices with the requirements prescribed in annex III of Directive 1999/93/EC, is also acknowledged if certified by the appropriate body specifically appointed by another Member State, and notified as per Article 11, subsection 1, letter b) of the said Directive.

ART. 11

1. Electronic documents signed with digital signature based on certificates issued by certifiers enrolled in the public list kept by the Authority for Information Technology in the public administration as per Article 27, subsection 3 of the mentioned unified legislation, approved by the President of the Republic with Presidential Decree n. 445 of 2000, yield the effects as set out in Articles 6, in paragraphs 1, 2 and 2, and Article 9 of the present Decree.
2. Certifiers that, at the date the regulations per Article 13 enters into force, are enrolled in the public list provided for in Article 27, subsection 3 of the mentioned unified legislation, issued by the President of the Republic with Presidential Decree n. 445 of 2000, shall officially be enrolled in the public list provided for in article 5 of the present Decree, and are entitled to carry on their activity, or to begin practicing, if same has not yet happened, with the purposes set out in subsection 1 of the present article.
3. Until the regulation as per article 13 enters into force, the certifiers mentioned in article 4 shall comply with the dispositions of article 28, subsection 2, letters a), c), e), f), g), h) and i), of the unified legislation issued by the President of the Republic with Presidential Decree n. 445 of 2000. In the case of cessation of the operations, they shall notify the Department for Innovation and Technology of the President of the Council of Ministers , and shall at the same time communicate either the taking over of their documentation by another certifier or its cancellation.

ART. 12

1. The dispositions (in force the moment the present Decree enters into force) that allow the presentation of applications or statements by electronic means to the public administration or to managers or keepers of public services according to different procedures from those set out in Article 9, shall continue to be in force up until the date fixed, with reference being made to each specific sector, with a Decree by the President of the Council of Ministers, that shall be adopted, in agreement with the Ministers involved, by 30 November 2002. The abovementioned date cannot in any case be later than 31 December 2005.

ART. 13

1. Within thirty days from the date the present Decree goes into force, regulations shall be issued as per Article 17, subsection 2, of Law 23 August 1988, n. 400, also with regard to the co-ordination of the dispositions of the unified legislation issued by the President of the Republic with Presidential Decree n. 445 of 2000 with the ones provided for in this Decree and in Directive 1999/93/EC, as well as defining” the requirements necessary to work out the certifiers operations.
2. The regulations shall be proposed and agreed by the Ministers specified in Article 1, subsection 2, of Law 29 December 2000, n. 422.