

The file of the authorization request for the benefit from the telephony service on the Internet protocol shall comprise the following documents :

- information form established to this effect and delivered by the National Agency of Digital Certification, duly filled and signed by the authorization applicant,
- the list of equipments and software(s) to be installed which have obtained the approval of the operators of the public networks of telecommunications,
- the list of services and modalities of their supply and the assurance of their quality.

Art. 8 - The authorization for the benefit from the telephony service on the Internet protocol shall be granted by the general director of the National Agency of Digital Certification after the opinion of the technical commission established in this agency in pursuance of article 13 (ter) of decree n° 2007-1071 dated 2 May 2007 amending and completing decree n° 2001-2727 dated 20 November 2001, fixing the conditions and procedures of use of the means or services of encryption through the telecommunications network, as well the exercise of the related activities.

Art. 9 - The authorization shall be personally granted and might not be assigned or transferred. It does not provide its holder with any exclusive rights.

The decision of grant or refusal of the authorization shall be notified to the concerned within a one -month deadline following the date of the decision through a registered letter with acknowledgement of receipt or reliable electronic document with acknowledgement of receipt or by direct transmission to the applicant against receipt.

Art. 10 - The requests of the persons desiring to obtain the authorization to exercise the activity of telephony integrator on the Internet protocol shall be addressed to the Ministry charged of Telecommunications through a registered letter with acknowledgment of receipt or reliable electronic document with acknowledgment of receipt or by a direct deposit at this Ministry against receipt.

The file of the authorization to exercise the activity of telephony integrator on the Internet protocol shall comprise the following documents :

- information form established to this effect and delivered by the Ministry charged of Telecommunications, duly filled and signed by the authorization applicant,
- the documents justifying the conditions provided in article 11 of the decree herein.

Art. 11 - The person desiring to exercise the activity of telephony integrator on the Internet protocol shall :

- establish, at least, three (3) subsidiaries of its enterprise in three (3) governorates,

- employ a sufficient number of engineers or advanced technicians in telecommunications according to the requirements of the provided service,
- provide the service of call center for the technical assistance to the users of private network of administrative and economic enterprises which have entrusted them with the mission to set up the internal telecommunication infrastructure necessary to the supply of the telephony service on the Internet protocol and to see to the good functioning of the network and its upkeep.

Art. 12 - The authorization to the exercise of the activity of telephony integrator on the Internet protocol shall be granted by the Minister charged of telecommunications after the opinion of the commission established in pursuance of article 10 of decree 2006-3314 dated 25 December 2006, relating to the exercise of the activities of studies and enterprise of telecommunications.

Art. 13 - The authorization to exercise the activity of telephony integrator on the Internet protocol shall be personally granted and might not be assigned or transferred. It does not provide its holder with any exclusive rights.

The decision of grant or refusal of the authorization shall be notified to the concerned within a one -month deadline following the date of the decision through a registered letter with acknowledgement of receipt or reliable electronic document with acknowledgement of receipt or by direct transmission to the applicant against receipt.

Art. 14 - The Minister of Communication Technologies shall implement the decree herein which shall be published in the Official Gazette of the Republic of Tunisia.

Tunis, 21 July 2008.

Zine El Abidine Ben Ali

**Decree n° 2008-2639 dated 21 July 2008, fixing the conditions and the procedures of importation and commercialization of means and services of encryption through the telecommunications network.**

The President of the Republic,

On a proposal from the Minister of Communication Technologies,

Having regard to organic law n° 2004-63 dated 27 July 2004, protecting personal data,

Having regard to law n° 91-44 dated 1<sup>st</sup> July 1991, organizing the trade of distribution, as amended and completed by law n° 94-38 dated 24 February 1994,

Having regard to law n° 91-64 dated 29 July 1991, reacting to competition and prices, all amending and completing texts and notably law n° 2005-60 dated 18 July 2005,

Having regard to law n° 92-117 dated 7 December 1992, protecting the consumer,

Having regard to law n° 94-41 dated 7 March 1994, relating to the foreign trade,

Having regard to law n° 2000-83 dated 9 August 2000, relating to the electronic exchanges and trade,

Having regard to the telecommunications code promulgated by law n° 2001-1 dated 15 January 2001, as amended and completed by law n° 2002-46 dated 7 May 2002 and law n° 2008-1 dated 8 January 2008 and notably article 9,

Having regard to decree n° 2001-2727 dated 20 November 2001, fixing the conditions and procedures of use of the means or services of encryption through the telecommunications networks, as well the exercise of the related activities, as amended and completed by decree n° 2007-1071 dated 2 May 2007,

Having regard to the opinion of the Ministers of National Defense, of the Interior and Local Development, of Finance and of Trade and Handicrafts,

Having regard to the opinion of the Administrative Court.

Decreases the following :

#### Chapter one General provisions

Article one - The decree herein has for object to fix the conditions and the procedures of importation and commercialization of electronic equipments and systems comprising means allowing to encrypt the data exchanged through the telecommunications networks.

The provisions of the decree herein shall not apply neither to means nor to the services of encryption used by the Ministries of national Defense, of the Interior and Local Development and Foreign Affairs and the accredited diplomatic and consular missions in Tunis or the assimilated structures.

Art. 2 - Within the meaning of the decree herein, it shall be meant by :

- encryption means: the electronic equipments and systems allowing the encryption of the data exchanged through the telecommunications networks,
- encryption services: any operation carried out by an enterprise which the objective is to allow to others to exploit encryption equipments,
- technical approval: the verification operations carried out by an authorized institution for certifying that the technical characteristics of encryption equipments meet the technical standards and regulations in force.

#### Chapter two

#### The importation and commercialization of encryption means

Art. 3 - The importation and commercialization of the encryption means of frequent use approved in accordance with article 4 of the decree herein are not submitted to authorization. These equipments shall be fixed by the National Agency of Digital Certification in a list periodically updated.

The importation and commercialization of the other encryption means which are not provided in this list are submitted to authorization of the National Agency of Digital Certification on the basis of the technical approval certificate provided for by article 4 of the decree herein.

The encryption means provided for in the second paragraph of this article and which are imported by the enterprises for temporary use to satisfy their own needs are not submitted to authorization and technical approval. These enterprises will be fixed by the National Agency of Digital Certification in a list periodically updated.

#### Chapter three

#### The approval of encryption means

Art. 4 - The encryption means imported or commercialized and used to encrypt the data exchanged through the telecommunications networks are submitted to the technical approval of the National Agency of Digital Certification with the exception of the encryption means imported or commercialized by the companies provided for in the last paragraph of article 2 of the decree herein.

Art. 5 - The technical approval file shall comprise the following documents :

- the declaration form provided for in article 9 of the decree herein filled and signed by the legal representative of the company,
- the technical documentation drafted in Arabic, French or English language comprising the technical specifications of the encryption means.

Art. 6 - The National Agency of Digital Certification shall be charged of checking the data relating to the following aspects :

- the technical rules in the field of use of the encryption means,
- the inter-functioning of the encryption mean and the telecommunications public networks,
- the security of the data relating to the users.

Chapter four  
**The unique counter**

Art. 7 - It shall be established within the Center for Studies and Researches of Telecommunications a unique counter charged of providing the administrative authorizations relating to the importation and commercialization of electronic equipments and systems.

Art. 8 - The unique counter shall comprise the representatives of institutions charged of the services provisions provided for in article 9 of the decree herein which are authorized to directly provide these services within this counter.

Art. 9 - The unique counter provides these administrative services relating to the authorizations necessary to the importation and commercialization of electronic equipments and systems and this, through the following offices :

**- The office of the administrator charged of the unique counter :**

This office shall receive the requests of authorizations relating to the importation and commercialization of electronic equipments and systems.

The administrator charged of the unique counter shall coordinate with the different offices to answer the requests of importation and commercialization of electronic equipments and systems which have solicited him and accomplish the necessary procedures to this effect.

The enterprise shall present a declaration to this office. This declaration consist of a form to fill in one specimen signed by the enterprise legal representative, containing all the necessary information accompanied with the necessary justificative documents. The model of the form shall be fixed by a decision of the general director of the office of the National Agency of Digital Certification.

The form shall be collected from this office which immediately proceeds to the dispatching of the deposited requests to the specialized offices of the unique counter

This office is charged of answering the concerned enterprise within a maximum ten -day deadline as of the date of the request deposit.

**- The office of the National Agency of Frequencies :**

This office is charged of the study of the files relating to the requests of approval of the sue of frequencies for the radio electric equipment subject of the request of importation and commercialization, and this, after the opinion of the ministries of National Defense and the Interior and Local Development.

This office shall hand over the approval to the administrator within a maximum one-week deadline as of the date of the request deposit at the office of the National Agency of Frequencies.

**- The office of the National Agency of Digital Certification :**

This office shall deliver to the administrator a technical approval certificate and the authorization or commercialization of electronic equipments and systems comprising the means allowing to encrypt the date exchanged through the telecommunications networks within a maximum one- week deadline as the date of the request deposit at the office of the National Agency of Digital Certification.

**- The office of the Center for Studies and Researches of Telecommunications :**

This office shall deliver to the administrator the approval certificates of the telecommunications terminal equipments within a maximum one- week deadline as the date of the request deposit at the office of the Center for Studies and Researches of Telecommunications.

Art. 10 - The unique counter agents shall be appointed by decision of the Minister of Communication Technologies on a proposal from the concerned institutions, these agents remain belonging to the institution of origin.

The general director of the Center for Studies and Researches of Telecommunications shall deliver his opinion as regard to :

- the vocational mark and the output bonus granted to these agents,
- the grant of leaves of any nature and the absence authorization for any reason.

Art. 11 - The general director of the Center for Studies and Researches of Telecommunications sees to the good course of the unique counter and propose the necessary ameliorations as well as the extending of its prerogatives in view of ensuring other administrative services not provided for by the decree herein.

Chapter five  
**The encryption commission**

Art. 12 - A consultative commission called "encryption commission" shall be established by the general director of the National Agency of Digital Certification, notably charged of :

- delivering its opinion on the drafts of the regulatory texts relating to the encryption field,
- proposing the technical standards to adopt in the field of encryption of the exchanges through the telecommunications networks,
- studying the issues relating to the development of encryption means or services.

And in general manner, delivering its opinion on all issues which are submitted to the commission by the general director of the National Agency of Digital Certification.

Art. 13 - The encryption commission shall be chaired by the general director of the National Agency of Digital Certification or his representative. It shall be composed of :

- a representative of the Ministry of National Defense,
- a representative of the Ministry of the Interior and Local development,
- a representative of the Ministry of Communication Technologies,
- a representative of the National Agency of Digital Certification,
- a representative of the Center for Studies and Researches of Telecommunications.

The commission members shall be appointed by a decision of the Minister of Communication Technologies, on a proposal from the concerned Ministries and institutions.

The commission chairman may invite, for consultative purpose, any person whose participation is deemed helpful.

The commission shall meet on a call its chairman on the basis of an agenda communicated to the members a week at least before the commission meeting. The commission may only meet in the presence of the majority of its members, in case when the quorum is not reached, the commission will held, after ten days, a second meeting whatever the number of the present members is. In all cases, the commission make its decisions with the majority of the votes of the present members, in case of a tied vote, the chairman has a casting vote.

The commission works shall be recorded in minutes communicated to its members within the ten days following the date of the commission meeting.

#### Chapter six

##### **The requirements of public security and national defense**

Art. 14 - The concerned departments of the Ministries of National Defense and of the Interior and Local Development, each in his respective capacity, may consult all the documents relating to the electronic equipments and systems imported and commercialized allowing to encrypt the data exchanged through the telecommunications networks or examine the said equipments and systems.

These operations may be carried out by the declaring person or any other interested persons by these equipments or systems as well as by any other person holder of these equipments or systems because of his professional activity or possessing the related documents and data.

All the persons provided for by the precedent paragraph shall present at first request from the concerned departments of the Ministries of National Defense and of the Interior and Local Development the required documents and allow them to examine the equipments and systems. They are also bound to comply with the provisions which will be indicated to them by these departments.

#### Chapter seven

##### **The administrative sanctions**

Art. 15 - In case of serious infraction of the provisions of the decree herein, the Minister charged of Telecommunications may pronounce the immediate suspension of the authorization and the regularization of the concerned offender situation within a deadline not exceeding two months as of the date the suspension.

Art. 16 - The encryption means of all categories may be temporarily seized, without indemnity, by a decision of the Minister of National Defense and the Minister of the Interior and Local Development if it is proven that the use of these means disrupt the national defense and public security, and of the Minister of Communication Technologies, if it is proven that the use of these means disrupt the security of the telecommunications networks.

Art. 17 - All the prior provisions contrary to the provisions of the decree herein and notably the provisions of decree n° 2001-2727 dated 20 November 2001, fixing the conditions and procedures of use of the means or services of encryption through the telecommunications networks, as well the exercise of the related activities, as amended and completed by decree n° 2007-1071 dated 2 May 2007 shall be repealed.

Art. 18 - The Minister of National Defense, the Minister of the Interior and Local Development, the Minister of Communication Technologies, the Minister of Finance and the Minister of Trade and Handicrafts, each in his respective capacity, shall implement the decree herein which shall be published in the Official Gazette of the Republic of Tunisia.

Tunis, 21 July 2008.

**Zine El Abidine Ben Ali**