

MALTA

ATT Nru XLIX tal-2021

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ATT sabiex jemenda l-Att dwar ir-Regolatur għas-Servizzi tal-Energija u l-Ilma, Kap. 545.

ACT No. XLIX of 2021

AN ACT enacted by the Parliament of Malta.

AN ACT to amend the Regulator for Energy and Water Services Act, Cap. 545.

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE VELLA
President

23 ta' Lulju, 2021

ATT Nru XLIX tal-2021

ATT sabiex jemenda l-Att dwar ir-Regolatur għas-Servizzi tal-Energija u l-Ilma, Kap. 545.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareg b'ligi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2021 li jemenda l-Att dwar ir-Regolatur għas-Servizzi tal-Energija u l-Ilma u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar ir-Regolatur għas-Servizzi tal-Energija u l-Ilma, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor,
għan u bidu fis-
sehh.
Kap. 545.

(2) L-għan ta' dan l-Att huwa sabiex jiġi emendat l-Att dwar ir-Regolatur għas-Servizzi tal-Energija u l-Ilma biex tissaħħaħ l-indipendenza tar-Regolatur u biex jiġu trasposti wħud mid-dispożizzjonijiet tad-Direttiva (UE) 2019/944 tal-Parlament Ewropew u tal-Kunsill tal-5 ta' Ġunju 2019 dwar regoli komuni għas-suq intern għall-elettriku u li temenda d-Direttiva 2012/27/UE (riformulazzjoni).

(3) Id-dispożizzjonijiet ta' dan l-Att għandhom jitqiesu li daħlu fis-seħħ fil-31 ta' Diċembru 2020.

A 1096

Sostituzzjoni
tal-artikolu 3
tal-Att
prinċipali.

2. L-artikolu 3 tal-Att prinċipali għandu jiġi sostitwit bl-artikolu ġdid li ġej:

"3. (1) Għandu jkun hemm korp legalment distint kif stabbilit b'dan l-Att, li jkun magħruf bħala r-Regolatur għas-Servizzi tal-Energija u l-Ilma, hawn iżjed 'il quddiem imsejjaħ "ir-Regolatur", li jkun magħmul minn President u mhux inqas minn erbgħa (4) u mhux iktar minn sitt (6) membri oħra.

(2) Ir-Regolatur għandu jkun indipendenti funzjonalment minn entitajiet pubbliċi jew privati oħra. Il-persunal u l-persuni responsabbli għall-immaniġġjar tar-Regolatur għandhom jaġixxu b'mod indipendenti minn kull interess tas-suq u ma għandhomx ifittxu jew jieħdu iSTRUZZJONIJET DIRETTI mill-Gvern jew minn entitajiet pubbliċi jew privati oħra meta jwettqu l-kompiti regolatorji tiegħu. Dan ir-rekwiżit għandu jkun mingħajr preġudizzju għal kooperazzjoni mill-qrib, kif xieraq, ma' awtoritajiet nazzjonali rilevanti oħra jew għal linji gwida ta' politika ġenerali maħruġa mill-Gvern li mhumiex relatati mas-setgħat u d-dmirijiet regolatorji tiegħu.

(3) Ir-Regolatur għandu jieħu deċiżjonijiet awtonomi, b'mod indipendenti minn kull korp politiku.

(4) Ir-Regolatur għandu jkollu r-rizorsi umani u finanzjarji kollha meħtieġa biex iwettaq id-dmirijiet tiegħu u jeżerċita s-setgħat tiegħu b'mod effettiv u effiċjenti.

(5) Ir-Regolatur għandu jkollu baġit annwali u awtonomija separat fl-implimentazzjoni tal-baġit.

(6) Il-membri tal-Bord tar-Regolatur għandhom jinhatru abbażi ta' kriterji oġġettivi, trasparenti u ppubblikati, fi proċedura indipendenti u imparzjali, li tiżgura li l-kandidati jkollhom il-ħiliet u l-esperjenza meħtieġa.

(7) Il-membri tal-Bord tar-Regolatur għandhom jinhatru mill-Ministru għal perjodu ta' ħames (5) snin jew għal dak il-perjodu itwal li jista' jiġi speċifikat fl-istrument tal-ħatra soġġett għal massimu ta' seba' (7) snin iżda l-membri li jiġu hekk maħtura jistgħu jiġu maħtura mill-ġdid, darba biss, fl-iskadenza tal-perjodu tal-kariga tagħhom, għal żmien ta' ħames (5) snin jew għal dak il-perjodu itwal li jista' jiġi speċifikat fl-istrument tal-ħatra soġġett għal massimu ta' seba' (7) snin.

Għandha tidhol fis-seħh skema ta' rotazzjoni xierqa għall-ħatriet tal-membri tal-Bord biex, skont l-istess skema, il-membri jiġu assenjati dati relattivi għat-tmiem tat-terminu tal-kariga tagħhom li ma jkunux l-istess għal kull wieħed minnhom.

(8) Il-Ministru jista' jinnomina lil wieħed (1) mill-membri l-oħra tal-Bord tar-Regolatur bħala Viċi President u l-membri li jiġi hekk nominat għandu ikollu s-setgħat kollha li jwettaq il-funzjonijiet kollha tal-President matul l-assenza jew l-inkapaċità tiegħu sabiex jaġixxi bħala President, jew meta l-uffiċċju u l-kariga ta' President tkun vakanti; u l-Ministru jista' wkoll, f'kull waħda miċ-ċirkostanzi hawn aktar qabel imsemmija, jahtar lil xi persuna oħra sabiex tagħmilha ta' President u f'każ bħal dak id-dispożizzjonijiet ta' qabel għandhom japplikaw għar-rigward ta' dik il-persuna.

(9) Persuna ma tkunx kwalifikabbli sabiex iżzomm il-kariga ta' membru tal-Bord tar-Regolatur jekk:

- (a) tkun Ministru, Segretarju Parlamentari jew membru tal-Kamra; jew
- (b) tkun imħallef jew maġistrat; jew
- (ċ) ikollha xi interess finanzjarju jew interess ieħor f'xi intrapriża jew attività li taffettwa jew tista' taffettwa t-twettiq tal-funzjonijiet tagħha bħala membru tal-Bord tar-Regolatur.

(10) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, il-kariga ta' membru tal-Bord tar-Regolatur issir vakanti:

- (a) meta jiskadi l-perjodu tal-kariga tiegħu; jew
- (b) jekk ikun hemm ċirkostanzi li jikkagunaw, li kieku mhux għax kien membru tal-Bord tar-Regolatur, li l-persuna li thaddan dik il-kariga tkun skwalifikata milli tinħatar fl-istess kariga.

(11) Membru tal-Bord tar-Regolatur jista' jitneħħa mill-kariga tiegħu mill-Ministru biss jekk dak il-membri huwa inkapaċi sabiex ikompli fil-kariga tiegħu jew għal kull waħda jew aktar mir-raġunijiet li ġejjin:

- (a) jekk il-membri jinstab li ma jistax jaġixxi b'mod indipendenti minn kwalunkwe interess tas-suq;

(b) jekk il-membru jinstab jieħu istruzzjonijiet jew direzzjonijiet minn kwalunkwe entità pubblika jew privata jew persuna oħra fit-twertiq tal-funzjonijiet regolatorji assenjati lir-Regolatur;

(ċ) fejn il-membru jinstab hati ta' mgħiba hażina taħt xi liġi.

(12) Jekk membru jirriżenja jew jekk il-kariga ta' membru tal-Bord tar-Regolatur tkun xort'oħra vakanti jew jekk membru ma jkunx jista' għal liema raġuni tkun iwettaq il-funzjonijiet tal-kariga tiegħu, il-Ministru għandu jieħu l-miżuri kollha xierqa sabiex timentela l-kariga vakanti, bla ħsara għad-dispożizzjonijiet tas-subartikoli (9), (10) u (11).

(13) Kull membru tal-Bord tar-Regolatur li għandu xi interess dirett jew indirett f'kull kuntratt jew negozju magħmul jew propost li jsir mir-Regolatur, li ma jkunx interess li jiskwalifika lil dak il-membru milli jibqa' membru, għandu jiżvela x-xorta ta' dak l-interess fl-ewwel laqgħa tal-Bord tar-Regolatur wara li huwa jkun sar jaf bil-fatti rilevanti, u dak l-iżvelar għandu mbagħad jitniżżel fil-minuti tal-laqgħa tal-Bord tar-Regolatur, u l-membru li jkollu interess kif hawn aktar qabel imsemmi għandu jirtira minn kull laqgħa li fiha jkun qed jiġi diskuss dak il-kuntratt. Meta l-interess tal-membru jkun tali li jiskwalifikah milli jibqa' membru, huwa għandu jirrapporta l-fatt minnufih lill-Bord tar-Regolatur u jissottometti r-riżenja tiegħu. Kull żvelar taħt dan is-subartikolu għandu jiġi mgħarraf mir-Regolatur lill-Ministru mingħajr dewmien.

(14) Kull membru tal-Bord tar-Regolatur għandu jevita kull kunflitt ta' interess meta jaġixxi bħala membru tal-Bord. Membru tal-Bord għandu jippreserva l-kunfidenzjalità dwar l-informazzjoni miksuba u dwar kwistjonijiet li għandhom x'jaqsmu mar-Regolatur matul u lil hinn mit-tmiem tal-mandat.

Fejn l-interess tal-membru jkun tali li jiskwalifikah milli jibqa' membru, huwa għandu jirrapporta l-fatt minnufih lill-Bord tar-Regolatur u jressaq ir-riżenja tiegħu. Kull żvelar taħt dan is-subartikolu għandu jkun ikkomunikat mir-Regolatur lill-Ministru mingħajr dewmien."

Emenda tal-artikolu 4 tal-Att prinċipali.

3. L-artikolu 4 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (b) tiegħu, il-kliem "Direttiva 2009/72/

KE" għandhom jiġu sostitwiti bil-kliem "Direttiva (UE) 2019/944"; u

(b) minnufih wara l-kliem "t-Trattat dwar l-Energija." għandu jiżdied il-paragrafu ġdid li ġej:

"Ir-Regolatur huwa b'dan maħtur bħala l-awtorità regolatorja unika fil-livell nazzjonali għall-finijiet tad-Direttiva (UE) 2019/944 u d-Direttiva tal-UE 2009/73/KE."

4. L-artikolu 5 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 5 tal-Att prinċipali.

(a) is-subartikolu (1) tiegħu għandu jiġi emendat kif ġej:

(i) il-kliem "indipendentement u imparzjalment" għandhom jiġu sostitwiti bil-kliem "indipendentement, trasparentement u imparzjalment";

(ii) fil-paragrafu (m) tiegħu l-kliem "proposti rigward xi azzjonijiet." għandhom jiġu sostitwiti bil-kliem "proposti rigward xi azzjonijiet;" u minnufih wara għandu jiżdied il-paragrafu ġdid li ġej:

"(n) li jwettaq investigazzjonijiet dwar il-funzjonament tas-suq tal-elettriku, u li jiddeciedi u jimponi kwalunkwe miżura meħtieġa u proporzjonata biex jippromwovi kompetizzjoni effettiva u jiżgura l-funzjonament xieraq tas-suq. Fejn xieraq, ir-Regolatur għandu jkollu wkoll is-setgħa li jikkopera mal-awtorità nazzjonali tal-kompetizzjoni u mar-regolaturi tas-suq finanzjarju jew mal-Kummissjoni fit-tmexxija ta' investigazzjoni relatata mal-liġi tal-kompetizzjoni."; u

(b) fis-subartikolu (2) tiegħu l-kliem "indipendentement u imparzjalment" għandhom jiġu sostitwiti bil-kliem "indipendentement, trasparentement u imparzjalment".

5. Fis-subartikolu (1) tal-artikolu 12 tal-Att prinċipali, minnufih wara l-kliem "Aġenzija għall-Kooperazzjoni tar-Regolaturi tal-Energija," għandhom jiżdiedu l-kliem "jew ksur tar-Regolament (UE) 2019/943, il-kodiċijiet tan-netwerk adottati skont l-Artikolu 59 ta' dak ir-Regolament, il-linji gwida adottati skont l-Artikolu 61 ta' dak ir-Regolament u fuq impriżi tal-elettriku li ma jikkonformawx mal-obbligi tagħhom taht ir-Regolament (UE) 2019/943".

Emenda tal-artikolu 12 tal-Att prinċipali.

A 1100

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 488 tat-13 ta' Lulju, 2021.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE VELLA
President

23rd July, 2021

ACT No. XLIX of 2021

AN ACT to amend the Regulator for Energy and Water Services Act, Cap. 545.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The short title of this Act is the Regulator for Energy and Water Services (Amendment) Act, 2021 and this Act shall be read and construed as one with the Regulator for Energy and Water Services Act, hereinafter referred to as "the principal Act".

Short title,
scope and
commencement.
Cap. 545.

(2) The scope of this Act is to amend the Regulator for Energy and Water Services Act to strengthen the independence of the Regulator and to transpose certain provisions of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast).

(3) The provisions of this Act shall be deemed to have come into force on the 31st December 2020.

A 1102

Substitution of
article 3 of the
principal Act.

2. Article 3 of the principal Act shall be substituted by the following new article:

"3. (1) There shall be a legally distinct body as established by this Act, to be known as the Regulator for Energy and Water Services, hereinafter referred to as the "Regulator" which shall consist of a Chairman and not less than four (4) and not more than six (6) other members.

(2) The Regulator shall be functionally independent from other public or private entities. The staff and the persons responsible for the management of the Regulator shall act independently from any market interest and shall not seek or take direct instructions from Government or other public or private entities when carrying out its regulatory tasks. This requirement shall be without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the Government not related to its regulatory powers and duties.

(3) The Regulator shall take autonomous decisions, independently from any political body.

(4) The Regulator shall have all the necessary human and financial resources it needs to carry out its duties and exercise its powers in an effective and efficient manner.

(5) The Regulator shall have a separate annual budget and autonomy in the implementation of the budget.

(6) The members of the Board of the Regulator shall be appointed based on objective, transparent and published criteria, in an independent and impartial procedure, which ensures that the candidates have the necessary skills and experience.

(7) The members of the Board of the Regulator shall be appointed by the Minister for a term of five (5) years or for such longer period as may be specified in the instrument of appointment subject to a maximum term of seven (7) years but the members so appointed may be re-appointed, once only, on the expiration of their term of office for a term of five (5) years or for such longer period as may be specified in the instrument of appointment subject to a maximum term of seven (7) years.

An appropriate rotation scheme for the appointment of the members of the Board of the Regulator shall be put in place, in terms of which the end date of the term of office of the Board members is not the same for all members.

(8) The Minister may designate one (1) of the other members of the Board of the Regulator as Deputy Chairman and the member so designated shall have all the powers and perform all the functions of the Chairman during his absence or inability to act as Chairman or during any vacancy in the office of Chairman; and the Minister may also, in any of the above circumstances, appoint another person to act as Chairman and in such a case the foregoing provisions shall apply in respect of that person.

(9) A person shall not be qualified to hold office as a member of the Board of the Regulator if he:

- (a) is a Minister, Parliamentary Secretary or a member of the House; or
- (b) is a judge or magistrate; or
- (c) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a member of the Board of the Regulator.

(10) Subject to the provisions of this article, the office of a member of the Board of the Regulator shall become vacant:

- (a) at the expiration of his term of office; or
- (b) if any circumstances arise that, if he were not a member of the Board of the Regulator, would cause him to be disqualified for appointment as such.

(11) A member of the Board of the Regulator may only be removed from office by the Minister if such member is unfit to continue in office for any one or more of the following reasons:

- (a) if the member is found unable to act independently from any market interests;
- (b) if the member is found taking instructions or directions from any other public or private entity or person in the exercise of the regulatory functions assigned to the Regulator;
- (c) where such member has been found guilty of misconduct under any law.

(12) If a member resigns or if the office of a member of the Board of the Regulator is otherwise vacant or if a member is for any reason unable to perform the functions of his office, the Minister shall take all appropriate measures to fill the vacancy so created, subject to the provisions of sub-articles (9), (10) and (11).

(13) Any member of the Board of the Regulator who has any direct or indirect interest in any contract or business made or proposed to be made by the Regulator, not being an interest which disqualifies such member from remaining a member, shall disclose the nature of his interest at the first meeting of the Board of the Regulator after the relevant facts have come to his knowledge; such disclosure shall then be recorded in the minutes of the meeting of the Board of the Regulator, and the member having an interest as aforesaid shall withdraw from any meeting at which such contract is discussed. Where the interest of the member is such as to disqualify him from remaining a member, he shall immediately report the fact to the Board of the Regulator and submit his resignation. Any disclosure under this sub-article shall be notified by the Regulator to the Minister without delay.

(14) Any member of the Board of the Regulator shall avoid any conflict of interest when acting as a member of the Board. A member of the Board shall preserve confidentiality on information obtained and matters pertaining to the Regulator during and beyond the end of the mandate.

Where the interest of the member is such as to disqualify him from remaining a member, he shall report the fact immediately to the Board of the Regulator and tender his resignation. Any disclosure under this sub-article shall be communicated by the Regulator to the Minister without delay."

Amendment of
article 4 of the
principal Act.

3. Article 4 of the principal Act shall be amended as follows:

(a) in paragraph (b) thereof, the words "Directive 2009/72/ EC" shall be substituted by the words "Directive (EU) 2019/944"; and

(b) immediately after the words "Energy Charter Treaty." there shall be added the following new paragraph:

"The Regulator is hereby designated as the single regulatory authority at national level for the purposes of Directive (EU) 2019/944 and EU Directive 2009/73/EC."

4. Article 5 of the principal Act shall be amended as follows:

Amendment of article 5 of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) the words "independently and impartially" shall be substituted by the words "independently, transparently and impartially";

(ii) in paragraph (m) thereof the words "positions and actions." shall be substituted by the words "positions and actions;" and immediately thereafter there shall be added the following new paragraph:

"(n) to carry out investigations into the functioning of the electricity market, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. Where appropriate, the Regulator shall also have the power to cooperate with the national competition authority and the financial market regulators or the Commission in conducting an investigation relating to competition law."; and

(b) in sub-article (2) thereof the words "shall also independently and impartially" shall be substituted by the words "independently, transparently and impartially".

5. In sub-article (1) of article 12 of the principal Act, immediately after the words "Agency for the Cooperation of Energy Regulators," there shall be added the words "or infringements of Regulation (EU) 2019/943, the network codes adopted pursuant to Article 59 of that Regulation, the guidelines adopted pursuant to Article 61 of that Regulation and on electricity undertakings not complying with their obligations under Regulation (EU) 2019/943".

Amendment of article 12 of the principal Act.

VERŻJONI ELETTRONIKA

A 1106

Passed by the House of Representatives at Sitting No. 488 of the
13th July, 2021.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA