

ASSEMBLY OF THE REPUBLIC

Law Nr. 11/2017, of 8 September

In the light of the need to create an energy regulatory authority for the subsectors of electricity derived from any source of renewable energy, liquid fuels, and natural gas distribution and marketing, the Assembly of the Republic under the provisions of article 179.1 of the Constitution of the Republic determines:

CHAPTER I

General Provisions

Article 1

(Establishment)

The Energy Regulatory Authority, for short ARENE, is hereby established and to be governed by the provisions of this Law, while having the powers of supervision, regulation, representation, inspection and sanction under the terms of the law.

Article 2

(Legal status)

ARENE is a public legal entity, with legal personality and administrative, financial, patrimonial and technical autonomy, under the supervision of the Minister overseeing the area of energy, which performs its duties in accordance with this Law, with its statutes and other applicable legislation.

Article 3

(Objectives)

The objectives of this law are:

- a) ensure the regulation of the activities of the energy subsectors including the distribution and marketing of petroleum products and their derivatives;
- b) ensure strict compliance with the principles and standards applicable to the energy sector, in accordance with national legislation and international standards and best policies;
- c) promote fair competition between public and private operators in the energy sector;
- d) make the energy market more competitive, efficient, economical and environmentally sustainable;
- e) ensure the satisfaction of the public interest and defend the rights of consumers of electric energy and fuels;
- f) strengthen control of the impacts of energy use on the environment;
- g) contribute to national energy security.

Article 4

(Scope)

1. ARENE exercises the powers as defined in article 1 of this Law, in the following areas:
 - a) the production, transmission, distribution and marketing of electricity provided by any source of energy and the functions related to operating the system and the market;
 - b) the production, storage, distribution, marketing and transport of liquid fuels;
 - c) the distribution, transport, storage and marketing of natural gas at a pressure of 16 bar or less;
 - d) the production, transport, storage, distribution and marketing of other forms of energy.
2. Nuclear energy is excluded from the scope of ARENE's activities.

Article 5

(Principles)

In its activities ARENE is guided by the principles of independence, objectivity, proportionality, transparency, impartiality and predictability, and it is incumbent upon the State to ensure the prorogations necessary for the proper exercise of its tasks and responsibilities.

Article 6

(Tasks)

1. The tasks of ARENE are the following:
 - a) the protection of the rights and interests of consumers, in particular final consumers who are vulnerable when it comes to prices and the form and quality of service provision, by promoting their education and access to information;
 - b) the prevention of anti-competitive behaviour and abusive or discriminatory practices, by ensuring transparency in commercial transactions between operators, in accordance with applicable legislation;
 - c) the protection of the interests of the various stakeholders in the energy sector, in accordance with current legislation and relevant contracts;
 - d) guarantee the existence of conditions allowing the regulated sectors functioning as public services to obtain economic and financial equilibrium, when properly and efficiently managed;
 - e) contribute to the gradual improvement of the economic, qualitative, technical and environmental conditions of the regulated sectors, by stimulating the adoption of policies that promote energy efficiency and the existence of adequate quality standards for the services provided;
 - f) the promotion of energy efficient technology;
 - g) contribute to the existence of conditions that are conducive to the efficient use of energy resources;
 - h) when requested, conciliate, mediate and arbitrate in disputes relating to issues arising between different concessionaires and licensed entities or between concessionaires and licensed entities and their consumers, concerning the matters defined;
 - i) the promotion of national energy security, with a view to the balanced and sustainable development of the country.
2. Part of its tasks is to act in a manner consistent with the objectives of national policies and strategies for the energy sector, through continuous supervision and monitoring of the internal market for electricity, liquid fuels, natural gas and renewables, in accordance with the provisions of this law.

Article 7

(Responsibilities)

1. Within the context of regulating and developing the energy sector, it is incumbent upon ARENE to:
 - a) implement, the policies and strategies for the development of the energy sector in the country;
 - b) instruct and process public tendering procedures for the awarding of contracts for the production, transport, distribution and marketing of electricity and for the distribution and marketing of natural gas, issue the respective opinion as well as the procedures concerning requests for the transfer of licenses;
 - c) to instruct and process licensing procedures for the processing, distribution and marketing of liquid fuels, as well as issue opinions concerning requests for the transfer of licenses;
 - d) to establish and approve tariffs and prices of energy, gas and petroleum products regulated under the law and ensure their application;
 - e) issue opinions and recommendations concerning proposals for policies and legislation related to the energy sector, including the respective Expansion Plan;
 - f) propose the formulation, alteration or adjustment of policies and legislation concerning the energy sector;
 - g) to promote free competition in the provision of energy services;
 - h) prevent and take necessary steps against anti-competitive practices and the abuse of dominant positions;
 - i) to carry out studies and investigations that have proved to be necessary or appropriate for the pursuit of its tasks and responsibilities;
 - j) promote the development of energy infrastructure and ensure, in the cases provided for in the applicable legislation, their being shared among operators;
 - k) for regulatory purposes collect, systematize and manage relevant information on operators and energy service providers.
2. Within the context of supervision, inspection and sanctioning, it is incumbent upon ARENE to:
 - a) ensure compliance with the terms and conditions of concession contracts and of licenses of entities providing electric energy, liquid fuels and the transport, distribution and marketing of natural gas;
 - b) supervise and verify the compliance with laws, regulations and other standards;
 - c) propose to the competent authority the suspension or cancellation of concession agreements, licenses or other contracts, whenever it proves necessary;

- d) propose to the entity that oversees the area of energy the application of the sanctions provided for in the concession agreements or the licenses;
 - e) share knowledge of other violations gathered during the performance of its duties with the relevant authorities;
 - f) issue administrative instructions to operators, providers and users of energy services, provided that these do not interfere with private management and with the rights and freedoms defined by law;
 - g) conduct surveys, inspections and tests of facilities and equipment for the production, storage and maintenance of energy;
 - h) carry out measurements and inquiries and publish reports on the quality of energy;
 - i) apply fines or other sanctions to entities that violate the provisions of this Law and other applicable legislation.
3. Within the context of international representation, it is incumbent upon ARENE to:
- a) represent the Republic of Mozambique in international organizations and negotiations in the area of energy;
 - b) establish cooperation with regulators of other countries with a view to the pursuit of common objectives and interests;
 - c) implement international treaties, concessions and agreements related to the energy subsectors

Article 8

(Relations with other entities)

ARENE may join or establish cooperative relations with regulatory bodies and relevant international organizations in the area of energy, as well as participate in relevant national, regional or international institutions or bodies in the pursuit of its objective.

CHAPTER II

Organization and Functioning

Article 9

(Bodies)

The bodies of ARENE are:

- a) The Board of Directors;
- b) The Supervisory Board;
- c) The Advisory Board

Article 10

(Board of Directors)

1. ARENE is headed by a Board of Directors, a ruling body consisting of a minimum of 3 and a maximum of 5 members, all of them executives carrying out their activities on an exclusive basis.
2. Members of the Board of Directors are citizens of recognized repute and with technical knowledge and experience in relevant matters within the scope of the tasks and responsibilities of ARENE.
3. The Chairman of the Board of Directors is appointed by resolution of the Council of Ministers, at the proposal of the Minister overseeing the area of energy.
4. It is incumbent upon the minister overseeing the area of energy to appoint and exonerate the remaining members of the Board of Directors, at the proposal of its Chairman.

Article 11

(Duration of the term of office)

1. The term of office of the members of the Board of Directors is five years, renewable once.
2. The members of the Board of Directors of ARENE remain in office until the taking office of new members.

Article 12

(Termination of the mandate)

1. In the performance of their duties, the members of the Board of Directors shall be guaranteed independence.
2. The mandate of the members of the Board of Directors may be terminated in one of the following instances:
 - a) end of the mandate;
 - b) revocation of the mandate;
 - c) resignation of the position;

- d) permanent physical or mental incapacity or incompatibility of the holder;
- e) death.

Article 13

(Revocation of the mandate)

1. The term of office of the members of the Board of Directors of ARENE may be revoked in the following cases:
 - a) serious misconduct committed by the member in the performance of his/her duties or in the performance of any other duties inherent to the position in question;
 - b) conviction for intentionally committing a criminal offence carrying a sentence of long-term imprisonment;
 - c) absence of more than five consecutive meetings without authorization;
 - d) involvement in any activity, remunerated or not, that places him/her in a conflict of interests or may call into question the proper fulfillment of the duties of his/her office;
 - e) poor performance of the duties for which he/she has been appointed;
 - f) temporary incapacity for more than nine consecutive months or twelve months in one and the same year.
2. The revocation of the mandate implies the permanent impediment to the exercise of functions as a member of the Board of Directors of A RENE.
3. In the case of revocation of the mandate under the terms of paragraphs a) and e) of number 1 of this article, the member of the Board of Directors shall be entitled to defend him or herself.

Article 14

(Resignation of the position)

The members of the Board of Directors may resign upon presenting a notification in writing, at least 30 days in advance.

Article 15

(Incompatibility)

1. The office of member of the Board of Directors of ARENE is incompatible with the existence of a legal relationship with a concessionary entity or an entity licensed for engaging in the activities listed in article 4 of this law.
2. Membership of the Board of Directors of ARENE is also incompatible with membership of sovereign bodies, local State bodies and local authorities, except in the cases especially provided for by law.

Article 16

(Supervisory Board)

1. The Supervisory Board is the body responsible for controlling legality and merit of the financial and asset management of ARENE.
2. The Supervisory Board shall be composed of three members, including the Chairman, appointed by the Minister overseeing the area of finance.
3. The term of office of the members of the Supervisory Board is three years, not renewable.

Article 17

(Advisory Board)

1. The Advisory Board is a body offering consultation, technical support and participation in defining the broad lines of action of ARENE.
2. The composition of the Advisory Board of ARENE is defined in its organic statute.

CHAPTER III

Financial and Asset Management

Article 18

(Revenue of ARENE)

1. ARENE has its own funds and budget for the pursuit and fulfillment of its objective.
2. The revenue sources of ARENE are:
 - a) the State budget;

- b) the value of the regulatory fee to be defined by the Government;
 - c) the value of fines applied for transgression of energy legislation;
 - d) other revenue, income or values arising from its activities, donations, subsidies or other forms of financial support.
3. In determining the regulatory fee, international best practices concerning financing and sustainability mechanisms of regulatory authorities should be taken into account.

Article 19
(Expenses of ARENE)

The expenses of ARENE consist of:

- a) remuneration of its employees;
- b) the costs resulting from carrying out the tasks and responsibilities bestowed upon it;
- c) the hiring of technical advice necessary for the fulfillment of its tasks and responsibilities;
- d) the costs of inquiries, studies, technical assessments, audits and investigations in the area covered by its tasks and powers;
- e) the costs of acquiring, maintaining and preserving assets, equipment or services.

Article 20
(Management instruments)

1. The ARENE management tools are:
 - a) the annual and multiannual activity plans;
 - b) the annual budget;
 - c) the annual report on activities and accounts.
2. Each year, the Board of Directors of ARENE submits to the Ministers responsible for sectoral and financial supervision the report and the accounts for the respective fiscal year.

Article 21
(Financial Management)

1. Applicable to the financial management of ARENE are the rules and provisions in force concerning the principles of budgetary and accounting management of institutions with administrative and financial autonomy.
2. ARENE's accounts are subject to an annual audit by an independent auditor hired by the Board of Directors, whose report is an integral part of the annual report and accounts.

Article 22
(Assessment of accounts)

For evaluation purposes ARENE presents its accounts to the Administrative Court.

Article 23
(Employment)

1. The legal and labour relations of ARENE employees shall be governed, as the case may be, by the rules applicable to civil servants and agents of the State or by the rules of the individual employment contracts.
2. State officials may perform functions in ARENE being employed on secondment, while maintaining the rights acquired under the law.

CHAPTER IV
Final and Temporary Provisions

Article 24
(Termination)

The National Electricity Council (CNELEC), established by Law Nr. 21/97 of 1 October, has been extinguished.

Article 25
(Transfer arrangements)

The human, material and financial resources, including the directives and obligations, of CNELEC are transferred to ARENE.

Article 26
(Organic statute)

It is incumbent upon the Council of Ministers to approve the Organizational Charter of ARENE within 90 days after the entry into force of this law.

Article 27
(Regulation)

It is incumbent upon the Council of Ministers to regulate this law within 90 days after the date of its publication.

Article 28
(Entry into force)

This law enters into force 90 days after its publication.

Approved by the Assembly of the Republic on 10 May 2017.

The Chairwoman of the Assembly of the Republic, *Veronica Nataniel Macamo Dlhovo*

Promulgated on 7 August 2017.

To be published (*Publication date: 8 September 2017*).

The President of the Republic, FILIPE JACINTO NYUSI.