

Aid to energy-intensive sectors related to the sudden increases in natural gas and electricity prices

I. Current status of work

The President signed the Act on the Principles of Implementation of Programmes of Support for Entrepreneurs in Connection with the Energy Market Situation in 2022-2024. Under the Law, the Council of Ministers will issue a programme which will define the conditions for providing support.

Please find below information on the planned solutions, based on currently available information. The final solutions will result from the adopted legislation and may differ from the information below. The complete text of the programme has not yet been published; therefore, it is uncertain what documents the authority may require.

II. Who can apply for aid?

An entrepreneur who meets all of the following conditions will be able to apply for assistance:

An entrepreneur:

- that is an **energy-intensive business**, i.e.:
 - ✓ its costs of purchasing electricity and natural gas amount to at least 3% of the production value, and
 - ✓ a minimum of one of its activities is listed in the Annex to the Programme¹ and this activity generated more than 50% of its turnover or production value in the period from 1 January to 31 December 2021;
- that was in business at the date of applying and for the **entire eligible period (1 February - 31 December 2022) and reference period (1 January - 31 December 2021)**;
- that is not in difficulty²;
- that has tax residence in the EEA;
- that is registered in the territory of the Republic of Poland;
- whose primary beneficial owner does not have tax residence in a tax haven³;

¹ Among others, 23.11 - manufacture of flat glass, 23.13 - manufacture of hollow glass, 23.31 - manufacture of ceramic tiles and flags, 24.10 - manufacture of pig iron, cast iron, and steel and metallurgical products. And also activities under the following PKD codes: 07.29, 13.10, 13.95, 14.11, 16.21, 17.11, 17.12, 19.20, 20.11.11.50, 20.11.12.90, 20.13, 20.14.12.13, 20.14.12.23, 20.14.12.25, 20.14.12.43, 20.14.12.45, 20.14.12.47, 20.14.12.50, 20.14.12.60, 20.14.12.70, 20.14.12.90, 20.14.23.10, 20.14.63.33, 20.14.63.73, 20.14.73.20, 20.14.73.40, 20.15, 20.16, 20.17, 20.60, 23.14, 23.99.19.10, 24.42, 24.43, 24.44, 24.45, and 24.51.

- that is not in arrears with the payment of taxes constituting income of the state budget (with the exception of deferment, distribution into instalments of tax or tax arrears or suspension in full of the execution of a decision of a tax authority) and social security contributions (except in cases of deferred payment);
- and that is not subject to EU sanctions.

Where the applicant is applying for an **increased amount of aid**, additional requirements are:

- the applicant has incurred an **operating loss during the qualifying period**
- **the increase in eligible costs represents at least 50% of the operating loss** over the eligible period.

The use of aid in the form of tax exemptions under the SEZ/Polish Investment Zone does not conflict with the possibility of compensation.

III. How much aid can be provided?

The maximum total amount of aid, in the form of non-repayable direct aid, per beneficiary:

Standard:	Increased:
30% of eligible costs, up to a maximum of EUR 2 million	70% of eligible costs, max. 80% of operating losses, but not more than EUR 25 million

²In accordance with the Communication from the Commission - Guidelines on State aid for rescuing and restructuring non-financial firms in difficulty (OJ C 249, 31.07.2014, p. 1 and OJ C 224, 08.07.2020, p. 2), a firm is considered to be in difficulty if, without state intervention, it will almost certainly go out of business in the short to medium term. Therefore, a firm is considered to be in difficulty if one or more of the following circumstances apply:

a) for a company characterised by its shareholders' limited liability: more than half of the subscribed share capital has been lost through incurred losses. This is the case when the deduction of incurred losses from reserves (and from all other elements generally considered part of the company's own funds) leads to a negative result exceeding half of the subscribed share capital;

b) for a company in which at least some members have unlimited liability for the company's debts: more than half of the company's capital, according to the accounting documents, has been lost as a result of losses incurred;

c) the company is the subject of collective insolvency proceedings or fulfils the criteria under national law for being subject to collective insolvency proceedings at its creditors' request; or

d) for a company that is not an SME, if, in the last two years:

- the ratio of the book value of the outside capital to the book value of company capital was greater than 7.5; and
- the interest coverage ratio to EBITDA of this company was below 1.0.

Our information suggests that the premise may not be included in the final draft. Instead, a requirement not to be in liquidation, bankruptcy, or - possibly - restructuring may be introduced.

³The residency rule may be waived if the entrepreneur or the main beneficial owner is obliged to transfer its tax residence to the EEA within 9 months of receiving support.

- The amount of aid is calculated based on the costs incurred for the purchase of gas and electricity during the eligible period.
- The eligible cost is equal to the product of:
 - ✓ the number of natural gas and electricity units purchased from external suppliers during the eligible period, and
 - ✓ the specific increase in the unit price that the company pays per unit consumed (in PLN/MWh), with the price increase calculated as the difference between:
 - the unit price paid per month during the eligible period, and
 - twice the unit price paid on average during the reference period.

The formula for calculating eligible costs:

$$KK = \sum_{i=1}^{11} \{ [J_i^g * (C_i^g - 2 * C_{i,21}^g)] + [J_i^e * (C_i^e - 2 * C_{i,21}^e)] \}$$

where: KK denotes eligible costs, J_i^g and J_i^e denote the number of natural gas units and the number of electricity units purchased in month i respectively; C_i^g and C_i^e means respectively the unit prices of natural gas and electricity purchased by the beneficiary in month i ; $C_{i,21}^g$ and $C_{i,21}^e$ denote the average unit prices of natural gas and electricity, respectively, paid by the beneficiary in the period from 1 January to 31 December 2021; i is an index denoting consecutive months, starting from February 2022.

For the period 1 September to 31 December 2022, the amount of gas and electricity used to calculate eligible costs may not exceed 70% of the beneficiary's consumption for the corresponding period in 2021.

IV. How can you apply for assistance?

Where should you submit the application?

Applications are expected to be submitted to the National Fund for Environmental Protection and Water Management (NFOŚ).

When should you apply?

It is expected that the application will have to be submitted electronically within 14 days of the announcement of the call by NFOŚ.

What should an aid application contain?

- The applicant's identification - company, registered office, e-mail, and KRS and NIP numbers;
- The designation of the period to which the application relates;
- An indication of the amount of electricity or natural gas purchased and consumed for own use during the period covered by the application, to four decimal places;
- Unit prices for the applicant's purchase of electricity or natural gas during the application period;
- The reference price for an industrial customer's purchase of electricity or natural gas for the period from 1 January 2021 to 31 December 2021;
- The requested amount of compensation calculated in accordance with the Programme;
- Confirmation of loss due to operations;
- The account number to which the compensation is to be paid.

Applications should be submitted on the form prepared by the programme operator.

What should be included with the application?

- Documents or their copies proving that the applicant meets the conditions;
- A declaration of awareness of criminal liability for making a false statement;
- A declaration that you are not a company in difficulty;
- Certificates of no arrears of taxes or social security contributions.

How do I prepare to apply for assistance?

To prepare to apply for support, we suggest that the following documents be prepared in the first instance:

- Contracts for electricity and gas supply (purchase contracts, comprehensive agreements);
- Invoices issued by the electricity or gas supplier for the period from January 2021 to October 2022, together with a summary of source documents supporting the values stated in the application and documenting the calculation of the unit price;
- Print-outs from the accounting system confirming that an operating loss has been incurred during the eligible period (if increased aid is being applied for);
- The P-01 form for 2021 submitted to the Central Statistical Office;

- Financial statements for 2020-2021;
- An extract from the National Court Register indicating that the business was in operation at the date of the application, the eligible period, and reference period;
- The applicant's and the principal beneficial owner's tax residency certificates.

However, we stress that NFOŚ may also request other documents it deems necessary. It is also currently unclear whether the data submitted should be confirmed by an external auditor.

Please feel free to contact us

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