

Legal Alert

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16 January 2023 | Aid to energy-intensive sectors related to sudden increases in natural gas and electricity prices

I. Status of works

The Ministry of Economic Development and Technology has published the government [program „Aid to energy-intensive sectors related to sudden increases in natural gas and electricity prices in 2022”](#).

The program was created based on [the Act on Principles of Implementation of Programs to Support Entrepreneurs in Connection with the Energy Market Situation in 2022-2024](#), the adoption of which we have reported in our earlier alert.

II. Who can apply for aid?

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

- incurred costs for the purchase of electricity and natural gas:
 - ✓ in 2021, accounting in total for no less than 3% of his production value, and/or
 - ✓ in the period from 1 January to 30 June 2022, accounting in total for no less than 6% of his production value;
- a minimum of one of entrepreneur’s activities, as listed in the KRS/CEIDG entry, is listed in the Annex to the Program¹ and it generated at least 50% of its revenue and/or production value during the reference and requested periods;
- conducts business in the territory of the Republic of Poland as of the date of application and for the entire **eligible period (1 February–31 December 2022) and at least one month of the reference period (1 January–31 December 2021)** for which the documented costs for the purchase of electricity and/or natural gas can be provided;

- is not in bankruptcy or liquidation as of the date of application or the conclusion of the contract;
- is not in arrears in the payment of taxes constituting the income of the state budget (with the exception of obtaining an exemption, deferment, distribution into instalments of tax arrears, or tax, or suspension in full of the execution of the decision of the tax authority) or social security contributions (except in cases of deferred payment);
- is not a subject to EU sanctions in connection with Russia's aggression against Ukraine, in particular, is not an entity listed in the legal acts imposing these sanctions, is not owned by or affiliated with entities targeted by these sanctions, is operating in industries targeted by EU sanctions, insofar as this assistance would impede the aim of these sanctions;
- against whom the measures set forth in the Act of 13 April 2022 on special solutions to prevent support for aggression against Ukraine and to protect national security were applied.

If the applicant applies for an **increased amount of aid**, additional requirements are:

- Showing a reduction in EBITDA of at least 40% in 2022 compared to 2021, or in the period 1 July 2022–31 December 2022 compared to the same period in 2021, or
- Negative EBITDA in 2022/2H2022.

EBITDA in 2022 or Q2 2022, respectively, taking into account the aid provided, must not be higher than 70% compared to 2021/2H2021.

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

¹Among others, 23.11 - manufacture of flat glass, 23.13 - manufacture of household glass, 23.31 - manufacture of ceramic tiles and tile, 24.10 - manufacture of pig iron, iron and steel and metallurgical products. And also activities under the following PKD codes: 05.10.Z, 06.10.Z, 07.10.Z, 07.29.Z, 08.91.Z, 08.93.Z, 08.99.Z, 10.41.Z, 10.62.Z, 10.81.Z, 11.06.Z, 13.10.A, 13.10.B, 13.10.C, 13.10.D, 13.30.Z, 13.95.Z, 14.11.Z, 16.21.Z, 17.11.Z, 17.12.Z, 19.10.Z, 19.20.Z, 20.11.Z, 20.12.Z, 20.13.Z, 20.14.Z, 20.15.Z, 20.16.Z, 20.17.Z, 20.60.Z, 21.10.Z, 23.14.Z, 23.19.Z, 23.20.Z, 23.32.Z, 23.41.Z, 23.42.Z, 23.51.Z, 23.52.Z, 23.99.Z, 24.20.Z, 24.31.Z, 24.42.A, 24.42.B, 24.43.Z, 24.44.Z, 24.45.Z, 24.46.Z or PRODCOM codes: 81221, 10311130, 10311300, 10391725, 105122, 105121, 105153, 105154, 10515530, 10891334, 20302150, 20302170, 25501134.

III. How much aid can be provided?

The maximum total amount of aid, provided in the form of direct non-repayable aid, per beneficiary's capital group is:

Standard:

50% of eligible costs, no more than €4 million

Increased:

80% of eligible costs, no more than €50 million

The amount of aid is calculated on the basis of the costs incurred for the purchase of gas and electricity during the requested period.

Formula for calculating eligible costs:

$$KK = \sum_t [\max\{0; (p_t^{ee} - 1,5 * p_{ref}^{ee}) * q_t^{ee}\} + \max\{0; (p_t^g - 1,5 * p_{ref}^g) * q_t^g\}]$$

where: t means the given month of the requested period; p_t^{ee} and p_t^g means the average net price per unit of electricity and natural gas, respectively, purchased from an external supplier and consumed by the beneficiary in period t (in PLN/MWh); p_{ref}^{ee} and p_{ref}^g means the average net price per unit of electricity and natural gas, respectively, purchased from an external supplier and consumed by the beneficiary during the requested period (in PLN/MWh); q_t^{ee} and q_t^g means the amount of electricity and natural gas, respectively, purchased from third-party suppliers and consumed by the Applicant in period t (in MWh).

For the period 1 September–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 same period in 2021.

Entrepreneurs entitled during the eligible period to purchase electricity at a fixed maximum price, based on the Law of 27 October 2022 on Emergency Measures to Curb Electricity Prices and Support for Certain Consumers in 2023, may apply for Aid only for the cost of purchasing natural gas.

IV. How to apply for aid?

Where should the application be submitted?

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

When to apply?

The application will have to be submitted electronically within **14 days** of the call announcement.

Applications should be submitted on the form provided by the Program operator in a dedicated application.

The call for applications will be launched in January, and information about the start of the call will be announced in the Public Information Bulletins of NFOŚ and the Ministry.

What should the application for aid contain?

- the applicant's identification – company name, legal form, registered office, identifier of the municipality where the applicant is located, e-mail, KRS and NIP or REGON numbers, size by number of employees and net turnover;
- data of persons authorized to conclude the contract;
- PKD or PRODCOM codes;
- requested period;
- indication of the amount of electricity and/or natural gas (MWh) purchased and consumed for own use during the requested and reference period, to three decimal places;
- unit prices for the purchase of electricity and/or natural gas by the applicant during the requested and reference period;
- the value of EBITDA, demonstrated by the applicant in 2021 and 2022 or in the second six months of these years (if applicable);
- the amount and calculation of eligible costs;
- requested Aid amount;
- the number of the bank account to which the payment of aid is to be made;
- statements about:
 - ✓ meeting the conditions for receiving aid,
 - ✓ awareness that submitting an application is tantamount to agreeing to undergo an inspection,
 - ✓ failure to meet the conditions to be considered an eligible customer within the meaning of Article 2(2) of the Act of 27 October 2022 on Emergency Measures to Curb Electricity Prices and Support Certain Consumers in 2023 (if applicable),
 - ✓ estimated decline or negative EBITDA in 2022 or the second half of 2022, entitling to an increased Aid limit (if applicable),
 - ✓ that entrepreneur, or any of affiliated entrepreneurs, is not under an obligation to repay the aid granted, resulting from a decision of the European Commission ordering repayment,
 - ✓ the truthfulness of the data contained in the Application, along with a clause stating "I am aware of the criminal liability for making a false statement."

- data on the cumulation of state aid: information on the receipt of aid by the applicant and related entities granted in accordance with section 2.4 of the Commission's Communication Temporary Crisis Framework for State Aid Measures to Support the Economy following the Aggression against Ukraine by Russia or aid granted in accordance with section 2.1 of the Communication, information on the receipt for the same eligible costs of aid granted under the de minimis regulations or under the temporary framework in the context of COVID-19.

What should be included with the application?

- Certificates of no arrears of taxes and Social Security contributions;
- Power of attorney (if applicable).

How do I prepare to apply for Aid?

In order to prepare to apply for support, we suggest that you first prepare the following documents:

- Contracts for the supply of electricity/gas (purchase, contracts comprehensive agreements) and invoices in connection with the purchase of electricity and gas;
- Current P-01 forms for 2021 and for 2022 submitted to the Central Statistical Office;
- Financial statements for 2020–2022 to determine the size of the beneficiary and EBITDA decline;
- An extract from the National Court Register indicating that the business was in operation on the date of application, the eligible and reference period.

However, we stipulate that the authority may also request other documents it deems necessary.

We point out that an independent auditor's report will be required when clearing the assistance.



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