



Slovenia: state aid to businesses in times of an energy crisis

Government provides non-reimbursable grants for businesses to cope with extremely large increases in energy prices

19 October 2022

On 10 September 2022, the Law determining the aid to the economy due to high electricity and natural gas prices¹ ("ZPGVCEP") entered into force. The state will provide non-reimbursable grants to businesses to co-finance the cost of electricity and natural gas. By an amendment of ZPGVCEP enacted on 6 October 2022, the state aid has been further increased.

The measure is temporary (valid until the end of 2022) and is adopted on the basis of the Communication from the Commission Temporary Crisis Framework for State Aid Measures to support the economy following the attack of Ukraine by Russia ("**Temporary Crisis Framework**"). On 6 October 2022, the National Assembly approved an amendment to ZPGVCEP which has broadened the scope of the state aid and increased it from the original EUR 40 million to EUR 80 million (the "**Amendment**").²

In this Client Alert, we provide an overview of the ZPGVCEP with key information on the beneficiaries, the types and the amount of aid as well as the procedural steps necessary for obtaining the aid, including the changes introduced by the Amendment.

1. Beneficiaries

Beneficiaries are legal or natural persons carrying out an economic activity in the Republic of Slovenia who were registered as **companies, sole traders, cooperatives, economic interest groupings, chambers of commerce, representative trade unions, associations or institutions** up to and including **30 November 2021**. The ZPGVCEP does not mention branch offices of foreign companies ("*podružnice*") which are registered in Slovenia. In our view, also branch offices of companies established in an EU Member State should be eligible for the state aid, as the law would otherwise discriminate branch offices from EU Member States. Also, for the purposes of state aid rules, a business is any entity engaged in an economic activity regardless of its status and the manner in which it is financed.³

Businesses are **not eligible for aid if:**

- bankruptcy proceedings or liquidation proceedings have been initiated against them at the date of submission of the application for aid;
- they have outstanding tax liabilities and unreported and unpaid withholding tax returns for employment expenses for the last year amounting to EUR 1,000 or more;

¹ Act determining the aid to the economy due to high electricity and natural gas prices (Official Gazette of the Republic of Slovenia No. 117/22).

² Act amending the Act determining the aid to the economy due to high electricity and natural gas prices (Official Gazette of the Republic of Slovenia No. 133/22).

³ Section 2.1, paragraph 7 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union.

- they are eligible for a regulated price for natural gas or electricity under other regulations⁴ (in which case they are not eligible for aid for the period from 1 September 2022);
- they have increased the price of their products or services by more than 10 % as a result of increases in electricity and natural gas prices (see our comment in point 4 below);
- they are subject to sanctions adopted by the European Union as a result of Russia's attack against Ukraine; or
- they are financial institutions or insurance companies.

2. Eligible period and eligible costs

Companies are eligible to receive co-financing for costs incurred during the period **from 1 June 2022 to 31 December 2022 (eligible period)** which **exceed twice the increase in prices of electricity and natural gas** compared to 2021 (**eligible costs**).

3. Types of aid and amount of the aid

The ZPGVCEP provides for **three types of aid** to the economy:

A. Simple aid:

This type of aid is (as set out in Section 2.1 of the Temporary Crisis Framework) intended for companies affected by the Russian attack against Ukraine and/or the sanctions imposed or retaliatory countermeasures taken in response.

Simple aid will be granted in the form of **a non-reimbursable grant**. It may amount to a **maximum of EUR 500,000** per beneficiary during the eligible period, together with other aid received under Section 2.1 of the Temporary Crisis Framework.

The amount of simple aid per month during the eligible period amounts to **50% of the eligible costs** in a given month.

B. Specific aid:

Specific aid as set out in point 52 of Section 2.4 of the Temporary Crisis Framework enables companies to receive partial compensation for additional costs resulting from **exceptional increases** in the prices of natural gas and electricity.

⁴ Decree on setting gas prices from the system (Official Gazette of the Republic of Slovenia No.98/22) and Decree on the determination of electricity prices (Official Gazette of the Republic of Slovenia No. 95/22 in 98/22).

Specific aid will also take the form of **non-reimbursable grants**. It may amount to a **maximum of EUR 2 million** per beneficiary during the eligible period, together with other aid received under Section 2.1 and point 52 of Section 2.4 of the Temporary Crisis Framework.

The amount of specific aid per month during the eligible period amounts to 30% of the eligible costs in a given month.

C. Aid for 'energy-intensive businesses':

Aid for energy-intensive businesses (as set out in point 53 of Section 2.4 of the Temporary Crisis Framework) is granted in the form of **non-reimbursable grants to energy-intensive undertakings**⁵, i.e. undertakings whose annual cost of energy and electricity purchased or produced in the course of their activity amounts to at least 3% of the annual production value⁶. An applicant's status as an energy-intensive undertaking is proven by means of a decision or another form of proof from the tax authority entitling it to a refund of excise duty paid by it or to an exemption from excise duty. The decision or proof must be attached to the application for aid.

The amount of aid per beneficiary may not exceed **50% of eligible costs** and may not exceed **80% of the undertaking's operating losses**. It is limited to **EUR 2 million**. The total amount of aid per beneficiary, taken together with other aid received under Section 2.1 and point 53 of Section 2.4 of the Temporary Crisis Framework, may not exceed **EUR 25 million**. The amount of aid per beneficiary may be **increased to a maximum of 70% of the eligible costs** and may amount to a maximum of **80% of the operating losses** and may not exceed **EUR 2 million** and, taken together with other aid received under Section 2.1 and point 53 of Section 2.4 of the Temporary Crisis Framework, may not exceed **EUR 50 million** per undertaking, if the beneficiary is active in one of the specifically defined sectors (such as, the manufacture of leather clothes, aluminium production, the manufacture of plastics, casting of iron, etc.)⁷.

In calculating the maximum total amount of aid for all three types of aid, any aid received by any **subsidiaries and parent undertakings of the beneficiary acting as a single entity** with a common source of control is taken into account. In relation to the foregoing, Public Agency SPIRIT, as the competent authority, has clarified that aid received by a foreign affiliate under the EU Temporary Crisis Framework in another Member State will not be taken into account in the calculation of the maximum amount of aid received by an affiliate in Slovenia.⁸

A beneficiary may only claim one of the types of aid for the economy provided for by the ZPGVCEP.

⁵ As defined under Article 96(2) of the Excise Duty Act (Official Gazette of the Republic of Slovenia No. 47/16, 92/21 and 192/21).

⁶ Production value equals revenue, including subsidies, related to the price of the product, plus or minus the change in inventories of finished and unfinished products and products and services purchased for resale, minus the purchases of products or services for resale (Article 96(2) of the Excise Duty Act).

⁷ Article 7(4) of the Act determining the aid to the economy due to high electricity and natural gas prices.

⁸ Questions and answers regarding the aid to the economy due to high increases in electricity and natural gas prices (7.10.2022), point 46; https://www.spiritslovenia.si/resources-new/vsebina/SPIRIT/Razpisi/392/Vprasanja_in_odgovori_7.10.2022.pdf.

4. Conditions for eligibility

In addition to the conditions set out under point 1 above, the following conditions must be fulfilled by the beneficiary in order to be eligible for each of the types of aid. The beneficiary must prove that the conditions have been met by means of declarations accompanying the application for aid.

- (i) Conditions for obtaining **simple aid** and **specific aid**:
- the beneficiary purchases electricity and natural gas from external suppliers as a **final consumer**,
 - the beneficiary has **not increased the price of its products or services by more than 10 %** as a result of increases in electricity and natural gas prices,
 - the beneficiary has **not made any profit distributions, purchases of its own shares, payments of management bonuses or performance-related salaries to management** in or for the year 2022.
- (ii) Conditions for obtaining **aid for energy-intensive businesses**:
- the beneficiary purchases electricity and natural gas from external suppliers as a **final consumer**,
 - the beneficiary has **not increased the price of their products or services by more than 10 %** as a result of increases in electricity and natural gas prices,
 - the beneficiary has an **operating loss where the eligible costs amount to at least 50% of the operating loss** for the same period. The operating loss is estimated and subsequently demonstrated by the beneficiary on a monthly basis on the basis of the financial statements.
 - the beneficiary has **not made any profit distributions, purchases of its own shares, payments of management bonuses or performance-related salaries to management** in or for the year 2022.

The condition that the beneficiary must not have increased the price of its products or services by more than 10% is not provided for in the European Temporary Crisis Framework.

5. Procedural steps for obtaining the aid

The beneficiary will be able to claim the aid by **submitting an electronic application** to the Public Agency **SPIRIT Slovenia** between **1 November 2022 and 15 November 2022**, whereby the time of submission does not affect the priority of the application.

The deadline for submitting applications is 15 November 2022.

The application shall be signed with a **qualified digital signature** and submitted by the legal representative of the beneficiary.

In the application, the beneficiary shall specify the **data on electricity and natural gas costs** on the basis of which the eligible costs will be calculated. For the period June-September 2022, the beneficiary shall provide data on the actual costs and for the months of October, November and December 2022, the beneficiary shall provide data on estimated costs. The beneficiary will then have until 31 January 2023 to submit through the electronic application the data on actual costs of electricity and natural gas which were previously only estimated in the aid application

The declarations proving the eligibility of the beneficiary will be part of the electronic application and the beneficiary will confirm them when submitting the application.

The companies will receive the aid **in two tranches**. For eligible costs in the period of June 2022-September 2022, the funds will be paid by 31 December 2022, and for eligible costs in the period October-December 2022, by 15 March 2022.

The total amount of aid the state will provide to the economy is **€40 million for payments until the end of December 2022 and €40 million for payments in March 2023**.

6. Supervision and sanctions

The Ministry of Economic Development and Technology is responsible for supervising the implementation of the ZPGVCEP and will verify the accuracy and authenticity of the information provided by the beneficiary in the aid application after the aid has been paid.

If the beneficiary itself subsequently finds out that it was granted or paid too much aid or that it did not meet the conditions for obtaining it, it must notify the Public Agency SPIRIT in writing immediately or at the latest by 15 January 2023.

The aid recipient **may not make any profit distributions, purchases of its own shares, payments of management bonuses or performance-related salaries to management in or for the year 2022**. Otherwise, it must notify the competent authority (Public Agency SPIRIT) of the above payments and return the funds received.

The sanction for submitting incorrect or inauthentic information is (in addition to the obligation to return the amount of aid unduly received) to be placed on the list of ineligible beneficiaries under the Temporary Crisis Framework. As a result, the beneficiary will not be entitled to receive any payments under the Temporary Crisis Framework unless it proves that it did not submit the incorrect or inauthentic information intentionally.

Should you require any further details regarding the new act or how to obtain the aid, please do not hesitate to reach out to us.

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