Economic situation research of a company in the context of participation in the capacity market

General Information

In regard to the publication in the Journal of Laws of the Act of July 23, 2021, amending the Act on the capacity market and certain other acts (Journal of Laws of 2021, item 1505), we inform that starting from the upcoming certification for the main auction, capacity providers submitting certification applications will be obliged to demonstrate that the given company along with related entities (economic unit) is not in a difficult economic situation within the meaning of Article 2(18)(a), (b), (c), or (e) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Official Journal of the European Union L 187 of 26.06.2014, p. 1, as amended). According to the aforementioned Commission Regulation (EU), **a company in a difficult situation shall be understood as a company where at least one of the following circumstances occurs:**

a) In the case of a limited liability company, when more than half of its subscribed share capital has been lost as a result of accumulated losses.

   Such a situation occurs when, as a result of deducting accumulated losses from reserves (and all other elements recognized as part of the company's equity), a negative cumulative amount is created that exceeds half of the subscribed share capital. For the purposes of applying this provision, the term "limited liability company" refers in particular to the types of entities listed in Appendix I to Directive 2013/34/EU, i.e., joint-stock companies, limited liability companies, and partnerships limited by shares, and "share capital" includes, where appropriate, any share premium.

b) In the case of a company where at least some members bear unlimited liability for its debts, when more than half of its capital shown in the financial statements of this company has been lost as a result of accumulated losses.

   For the purposes of applying this provision, the term "company where at least some members bear unlimited liability for its debts" refers in particular to the types of entities listed in Appendix II to Directive 2013/34/EU, i.e., general partnerships, limited partnerships, and civil partnerships.

c) In a situation where the company is subject to collective insolvency proceedings or meets the criteria under national law to be subject to collective insolvency proceedings at the request of its creditors.

d) In a situation where the company has received rescue aid and has not yet repaid the loan or terminated the guarantee agreement, or has received restructuring aid and is still subject to a restructuring plan.

e) In the case of a company that is not an SME, if in the last two years:

   a. the accounting ratio of debt to equity of this company exceeds 7.5, and

   b. the ratio of interest coverage to EBITDA of this company is below 1.0.

Documents attached to the certification application

During the certification process for the auction, it will be necessary to include the following documents:

1. **Statement that regarding the capacity provider and the group of entities associated with it treated as a whole (economic unit), there are no circumstances as referred to in Article 19(1)(11) of the amended Act on the capacity market.**

This obligation arises directly from Article 19(1)(11) of the amended Act on the capacity market, according to which the certification application includes a statement that there are no circumstances as referred to in Article 2(18)(a), (b), (c), or (e) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. The circumstances indicated in the aforementioned Article 2(18)(a), (b), (c), or (e) of Commission Regulation (EU) No 651/2014 indicate when a given company is in a difficult situation.

The examination of the condition relating to the prohibition of granting state aid to companies in difficult situations **concerns the applicant, i.e., the capacity provider and the group of entities associated with it** treated as a whole (rather than each entity associated with the applicant).

The definition of associated enterprises has been explained in Article 3(3) of Appendix I to Commission Regulation (EU) No 651/2014. Linked enterprises mean enterprises that are in one of the following relationships:

a) the enterprise holds a majority of the voting rights in another enterprise as a shareholder/member;
b) the enterprise has the right to appoint or remove a majority of the members of the administrative, management, or supervisory body of another enterprise;
c) the enterprise has the right to exercise dominant influence over another enterprise pursuant to an agreement with that enterprise or provisions in its articles of association or partnership agreement;
d) the enterprise, as a shareholder/member of another enterprise, controls, alone, pursuant to an agreement with other shareholders/members of that enterprise, a majority of the voting rights of the shareholders/members in that enterprise.

The statement that regarding the capacity provider and the group of entities associated with it treated as a whole (economic unit), there are no circumstances as referred to in Article 19(1)(11) of the Act on the capacity market, can be signed by the user of the registry authorized to submit the certification application for the auction based on Appendix 4.3 to the Capacity Market Regulation.

NOTE! The suggested statement template is available at: https://www.pse.pl/web/pse-eng/areas-of-activity/capacity-market/certification-for-auction

2. **Form of information presented when applying for aid other than aid in agriculture or fisheries, de minimis aid, or de minimis aid in agriculture or fisheries, prepared in accordance with the template attached as Appendix No. 1 to the Regulation of the Council of Ministers of April 8, 2026 ((Journal of Laws of 2026, item 523) concerning the scope of information presented by the entity applying for aid other than aid in agriculture or fisheries, de minimis aid, or de minimis aid in agriculture or fisheries (Journal of Laws 2010, item 312 and 1704, Journal of Laws 2016, item 238, Journal of Laws 2020, item 1338), signed by persons registered in the relevant register**

as authorized to represent this entity to which the information contained in the aforementioned form pertains;

In accordance with **Article 37(5) of the Act of April 30, 2004, on proceedings concerning state aid** (Journal of Laws of 2026, item 500), an entity applying for aid other than de minimis aid or de minimis aid in agriculture or fisheries is obliged to provide, together with the application for aid, information concerning the applicant and its economic activity, as well as information about the received state aid, including in particular the date and legal basis of its grant, form, and purpose, or a statement of non-receipt of aid. The template of the form that the applicant should complete is attached as Annex 1 to the Regulation of the Council of Ministers of April 8, 2026, amending the regulation on the scope of information presented by the entity applying for aid other than de minimis aid or de minimis aid in agriculture or fisheries (Journal of Laws of 2026, item 523).

NOTE! The template of the form concerning state aid is available on the websites:

Sejm of the Republic of Poland "ISAP - Internetowy System Aktów Prawnych"
https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20260000523
Office of Competition and Consumer Protection
https://uokik.gov.pl/pomoc-publiczna

The relevant form from the Office of Competition and Consumer Protection website is available in the "Przepisy dotyczące pomocy publicznej" section of the page, after following the path: "Polskie akty prawne" → "Informacje przedstawiane przy ubieganiu się o pomoc" → "Formularz obowiązujący od dnia 1 maja 2026 r".

Additional explanations: https://uokik.gov.pl/wzory_formularzy_pomocy_de_minimis.php in the tab "Badanie sytuacji ekonomicznej w przypadku podmiotów powiązanych".

3. **Financial statements for the last 3 financial years, prepared in accordance with accounting regulations.**

In accordance with the provisions of § 2(1) and (2) of the aforementioned regulation, issued on the basis of Article 37(6) of the Act of April 30, 2004, on proceedings concerning state aid (Journal of Laws of 2026, item 500), the applicant shall provide to the entity granting aid, in addition to the identification data and information about the conducted economic activity (**on the form concerning state aid), information concerning its economic situation**, including approved **financial statements for the last 3 financial years**, prepared in accordance with accounting regulations.