1. East of England European Partnership

1.1 The East of England European Partnership office in Brussels was established in 1998 as a partnership office, to represent the views of local organisations in the East of England to the institutions of the European Union as well as to UK government on EU-related matters. The European Partnership represents all 52 Local Authorities in the East of England across multiple tiers of local government and works closely with the East of England Local Government Association (EELGA) in this respect.

1.2 The office has partnership agreements with both the Hertfordshire and Greater Cambridge Greater Peterborough (GCGP) Local Enterprise Partnerships (LEP) as well as with Anglia Ruskin University, the University of East Anglia, the University Essex and Anglian Water.

1.3 The East of England Europe and International Panel (EIP) sets the political and strategic direction of the European Partnership. Membership includes local councillors, LEPs, universities, NGOs, further education and environmental organisations.

2. Summary

2.1 The East of England European Partnership is pleased to have the opportunity to respond to the call for evidence of this House of Lords inquiry into UK competition policy. Whilst the broader regulatory landscape relating to competition policy is of relevance for all of our partner organisations, it is principally the area of state aid which is of most concern and this submission concentrates on the state aid section of the inquiry.

2.2 We recognise that the government is planning to convert the vast majority of EU-derived legislation into UK law in preparation for Brexit, however, in the area of state aid virtually no UK-made rules exist at present. The entire body of legislation is derived from the direct application of an EU regulation which has not required transposition as have EU rules in many other areas. This presents a significant opportunity for the UK government to re-shape and improve its approach to state aid to better fit the UK domestic situation. Without rewriting the rulebook greater flexibility could be introduced for local areas with respect to certain rules and thresholds and better adapt nationwide policies such as Enterprise Zones to their usage.

2.3 Two areas of state aid are key for our partners in the East of England, notably Local Enterprise Partnerships (LEPs) and Local Authorities: public-sector procurement and provision of ‘regional aid’. At present the *de minimis* threshold can present problems for local authorities procuring public services, particularly when the value of the contract is close to the threshold of €200,000, given the accompanying volume of paperwork which can severely complicate the provision of services intended to benefit only the local area.

2.4 With regards to regional aid, the East of England has Assisted Area Status (AAS) conferred on certain local areas and this has proven to be a vital tool in increasing the degree to which local areas can provide enhanced public support to investment in local business and infrastructure. Post-Brexit, local policy levers such as these will be crucial in maintaining the UK’s global competitiveness.
2.5 Our submission focuses upon six of the inquiry’s terms queries in order to provide as concise a response as possible. Each part of Section 3 below consists of a specific response to a specific question.

3. **East of England responses to specific queries**

3.1 **Are state aid provisions likely to form an essential component of any future trade agreement between the UK and EU?**

The EU State Aid regime has been in place for many decades and forms an integral part of the functioning of the Single Market, both for Member States of the EU as well as governing to some extent the terms on which Third Countries trade with the bloc. The EU actively pursues a policy of encouraging its trading partners to implement more stringent domestic state aid policies as the EU’s recent opening of a ‘state aid dialogue’\(^1\) with China illustrates.

The issue of state aid has already featured as part of EU bilateral trade agreements with Third Countries for many years. For example, in 2009 the EU signed an Agreement on cooperation on anti-competitive activities with South Korea\(^2\). Even in the case of the EU and Switzerland, control of state aid is still very important with arguably\(^3\) the Swiss Federation’s own rules on competitive neutrality meaning that the country’s internal arrangements satisfy its EU trading partner. We recognise therefore that state aid control will form a key part of the trading relationship between the EU and the UK and our partners are not seeking to avoid a UK state aid policy, rather to improve upon what exists already to better suit a unique domestic economy.

The UK government’s current position on a domestic state aid policy is less clear. We assume that in enacting the EU Withdrawal Bill, the government will more or less introduce wholesale the current EU regulation into UK law, particularly since this will be a key plank of the government’s position to ensure continuity following Brexit. However, as no domestic UK law exists in this area at present, we appreciate that there will be significant opportunity to remodel this legislation before the EU Withdrawal Bill is enacted. Indeed, a recent consultation paper by HM Treasury on patient capital\(^4\) briefly highlights the current limitation of EU state aid rules, for example being in permitting the government to provide preferred returns to investors in order to stimulate the investment community. If there is therefore to be change to state aid rules in force in the UK, we would expect this to form part of future trade negotiations and would strongly support greater flexibility in certain areas, particularly where the impact on the functioning of the EU’s internal market is minimal.

3.2 **How will the Government’s industrial strategy shape its approach to state aid after Brexit? To what extent has the European Commission’s state aid policy limited interventions that the UK Government may have otherwise pursued?**

As mentioned above the *de minimis* threshold for applying state aid rules is historically provided problems for local authorities. The main reason for this is the difference in degree of associated paperwork for

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\(^1\) 2 June 2017, European Commission: State aid: Commission and China start dialogue on state aid control
\(^2\) 4 August 2009, Official Journal of the European Union 202/36
\(^3\) 2015, State Aid 2015 – Switzerland, Homburger
\(^4\) 1 August 2017, HM Treasury: Financing growth in innovative firms: consultation
projects just above this threshold which significantly outweighs the paperwork required for projects falling under the threshold. At present, the threshold is set at €200,000 and we would welcome a relatively straightforward step of increasing this amount under new UK rules in order to immediately avoid this problem. This would also decrease the cost burden on local authorities of complying with state aid rules in terms of lacking short-term, yet specialist, capacity required which has often had to be contracted in.

The Regional Aid Guidelines (RAG) have been a crucial economic development tool in several parts of the East of England. Following the simplification of many of the EU state aid regime’s exceptions (support for fundamental research, to ports and airports, etc.) the adoption of the General Block Exemption Regulation (GBER)\(^5\) and accompanying RAG have been a very welcome addition to the EU’s legislative framework on state aid. The awarding of Assisted Area Status (AAS) to specific wards in the East of England as displayed on the current RAG map provided for under this regulation has facilitated the development of local business support schemes which have been effective in nudging investment towards otherwise overlooked areas. In the East of England there have been numerous success stories of schemes designed around the exemption on enhanced state aid in areas with AAS as detailed in a case study report published by the European Partnership last year\(^6\).

The current rule remains quite restrictive, with large businesses (more than 250 employees) in particular only able to access very small amounts of increased public financial support (10% of the value of a project). If the UK government were minded to relax the thresholds of support for different types of businesses, this could unlock significant investment in areas with AAS. This is of particular relevance for UK-based companies with multiple premises around the country, some of which may be located in an area with AAS. These firms are typically classed as ‘large undertakings’ despite the fact that individual premises may be relatively low-key with fewer employees than the 250 threshold. There is anecdotal evidence that AAS is a significant factor in the strategic decisions of such firms to re-invest in premises, either safeguarding or creating new jobs, a key criteria of successfully securing public support under the AAS partial exemption from state aid. Under a UK state policy councils across the East of England would welcome more flexibility, either introducing a more bracketed system of public support accessible to differently sized companies or simply to increase the current intensities of public aid that can be provided.

We also appreciate that any changes in state aid rules as a result of the creation of a UK regime following Brexit would need to be integrated into the new UK industrial strategy. On procurement, the strategy highlights the restrictive nature of the EU state aid rules for procurement and hope that this means the UK government will seek to alleviate this burden, particularly for local authorities procuring services that are delivering only local benefits. Furthermore, the strategy’s commitment to work with Local Enterprise Partnerships to better shape what are regional and local institutions is

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\(^5\) European Commission, Regulation No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

\(^6\) 4 February 2016, East of England European Partnership: Assisted Area Status in England: Case studies
welcome. A key policy tool for both LEPs and local authorities is the programme of Enterprise Zones (EZs) which the industrial strategy could focus more upon, particularly in the context of a UK state aid policy. At the moment, EZs require a state aid notification to the European Commission but their usage in future is not clear. We would very much welcome guidance on how the government intends for a domestic state aid policy to aid the success of existing EZ and facilitate their designation in future.

3.3 **Will it be necessary for the UK and EU to agree a transitional arrangement for state aid matters after the UK’s withdrawal from the EU? If so, what transitional issues would such an arrangement need to address?**

Yes. As indicated by the government in recent weeks it is important that local authorities and business communities have continuity, at least, in the immediate period following Brexit. In terms of state aid policy this would allow businesses involved in public sector procurement to commit significant resources to such tendering activities safe in the knowledge that the rules of the game will be consistent in the short-term. For local authorities, this is vital in order to have a vibrant private-sector marketplace from which to procure public services and provide value for money. There is anecdotal evidence that businesses active and investing in areas with AAS in the East of England now factor this into their long-term strategic investment plans and decisions therefore avoiding any sudden changes in regulation is essential.

3.4 **Will the UK require a domestic state aid authority after Brexit?**

Yes. We fully expect the Department for Business, Energy and Industrial Strategy (BEIS) to take a departmental policy lead on a domestic state policy post-Brexit. However, there will still need to be a body to carry out the monitoring and enforcement that is currently the responsibility of DG Competition within the European Commission. Whilst this could also be fulfilled by a new team within BEIS, Brexit presents an opportunity to situate these functions in an independent, non-departmental body. This would provide potential providers of public services (e.g. local authorities, LEPs, etc.) and potential recipients, with the assurance that cases of state aid would be considered fairly and free from political interference. This would help smooth the transition to an efficient UK state aid regime as well as avoiding any loss of investment resulting from confusion and uncertainty caused by changes to the rules.

An alternative to setting up a separate body would be to make use of the knowledge and capacity of the Competition and Markets Authority (CMA), which is already charged with regulating aspects of UK competition policy. This again would fulfil the criteria of a state aid authority being removed from direct political control and would provide a clear point of contact to which to address queries and complaints. In addition, a visible state aid policy team or unit in BEIS would be a very welcome addition as this would allow local stakeholders to engage more effectively on this issue in helping to shape UK state aid policy in the years to come, including during and after any free trade negotiations with the EU and other Third Countries.

13 September 2017