1. About the Local Government Association (LGA)

1.1. The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.

1.2. We are a politically led, cross-party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

1.3. There was a diversity of views among local government about Britain’s membership of the EU. To reflect this, the LGA remained neutral during and following the referendum on 23 June 2016.

2. Summary

2.1. Our submission focuses on state aid policy as relevant to local government. We do not offer a view on mergers and anti-trust policy.

2.2. In the vast majority of cases, councils will run a public procurement rather than provide state aid (such as a grant or subsidy) directly to an organisation or a business undertaking. Nevertheless, exiting the EU and membership of the single market could provide an opportunity to reform the state aid process, simplifying it and introducing greater local flexibilities for councils.

2.3. A new state aid policy covering regional aid will be needed to guide the delivery of new government growth funds, such as the proposed Shared Prosperity Fund, and the Industrial Strategy Challenge Fund. This system should be focused on promoting local economic growth. Greater flexibilities are also needed to give councils a green light to support directly smaller-scale local activities which deliver public benefits whilst not unduly distorting competition.

2.4. The LGA is also considering a range of improvements which could be introduced to the public procurement regime post-Brexit. These include a introducing a degree of new flexibility to allow councils to boost local economies as well as streamlined advertising and award procedures. The sub-committee may also wish to consider these issues in future.
3. Are state aid provisions likely to form an essential component of any future trade agreement between the UK and EU? Do any existing trade agreements between the EU and third countries provide a useful precedent for future UK-EU state aid arrangements?

3.1. Once the UK has left membership of the EU, we will still need to demonstrate a level of robustness in controlling public subsidies in order to secure trade deals with important partners globally. A number of small changes, such as a more flexible approach to supporting regional investment and freeing up the award of smaller amounts of aid, as outlined in section 5 of this submission, would bring improvements.

3.2. Any future UK-EU trade agreement is likely to remain within the framework of the WTO Agreement on Subsidies to which both the UK and the EU will remain a party. The Agreement commits countries to maintaining fair competition by limiting the amount of subsidies they give. The Agreement limits the public sector’s ability to make significant awards of state aid, or depart significantly from the current EU regime.

4. Will the UK require a domestic state aid authority after Brexit?

4.1. The UK currently has no domestic rules prohibiting state aid and will require a domestic authority once we have left the EU. The following state aid tasks, currently undertaken by the European Commission, will have to be assigned to a UK authority:

- policy creation and policy revision;
- information activities and promotion;
- technical cooperation, exchanges and networks;
- policy monitoring, reviews, reporting and assessments;
- enforcement and arbitration activities.

4.2. However, appointing an authority does not necessarily mean the creation of a new body. An effective enforcement regime, possibly involving the Competition and Markets Authority or the domestic courts, will be needed. The enforcement regime should include effective clawback of public funds in the event of illegal activity by the aid beneficiary.

4.3. In relation to smaller amounts of state aid, ways of resolving disputes outside of the courtroom should be created and may be preferred by both the public and private sector in cases where bringing more formal judicial proceedings would be burdensome and costly. The aim of the EU rules is to ensure that fair competition is not unduly distorted by one organisation or business receiving public money whilst its competitors do not. This should remain the central principle in any future domestic competition regime regulating public grants and subsidies.
5. 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?

5.1. The EU’s regional aid rules govern grants and preferential terms that are given to a company to promote investment and job creation in a local area. For example, a car plant in Coventry building London’s black cabs has received substantial amounts of Regional Growth Fund money.\(^1\) Local Enterprise Partnerships (LEPs) across England have also benefited allowing them to support a wide range of local businesses.\(^2\) The EU rules determine how much financial support public bodies are allowed to give companies setting up or expanding, according to their size and where they invest in line with the UK’s regional aid map drawn up by the Government. Under the current EU approach, around 29 per cent of local areas by population in the UK are designated as assisted areas meaning enterprises investing in an area can benefit from higher levels of public sector grant funding.\(^3\) Such aid is not directly administered by local authorities, but they have a range of responsibilities in relation to the economic development of their local area.

5.2. The dispersal of the European Structural and Investment Funds (ESIF), the Regional Growth Fund, and Enterprise Zone grants require clearance under the EU’s regional aid regime. Such schemes will typically be cleared at the programme level by the European Commission or will be exempted from the need for Commission approval under the regional aid elements of the EU’s General Block Exemption Regulation (GBER). If not otherwise cleared in these ways, an award of regional aid will need to be assessed and subject to a specific European Commission decision.

5.3. After the UK leaves the EU the Government can create its own approach to regulating regional aid. The White Paper *Legislating for the UK’s withdrawal from the EU* states that leaving the EU is an opportunity to ensure returning “power sits closer to the people of the UK than ever before”.\(^4\) The Government’s forthcoming industrial strategy also has the potential to make a significant contribution to place based growth by recognising the differential potential and investment needs of different areas and the critical role councils can play in identifying and meeting these needs.

5.4. To date, much of the focus has been on the design and delivery of a UK Shared Prosperity Fund able to meet the potential €10.5 billion (£8.4 billion) UK-wide funding gap for local government following the cessation of EU Structural Funds.

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Any successor arrangements for EU funding should be place-based to enable local areas to set their own priorities, and enhance their capacities to adapt to unknown challenges that will need to be addressed after Brexit.

5.5. As such, we would support the development of a replacement UK Regional Aid policy aligned with the industrial strategy that provides local government and its partners the flexibility to tailor interventions and investments that best support local growth. For example, by providing support to companies of all sizes, including large companies with more than 250 employees and putting measures in place to limit ‘subsidy shopping’ to ensure that a company remains in place for a number of years where it has received a grant to do so.

Supporting purely local activities

5.6. The EU’s de minimis regulation outlines amounts of aid which are so small they are deemed to fall outside of the EU’s control because they do not threaten to impact competition. The rules allow awards of aid totalling less than €200,000 to a beneficiary over three years, providing the beneficiary is receiving no aid from any other sources.

5.7. Such an exemption may be of use to local authorities and should be incorporated into the UK state aid system post-exit to allow a greater number of important local activities to be directly supported by councils without fear of legal challenge.

5.8. In addition, the limit should be raised to at least £500,000 over three years. This would allow a more streamlined process for both councils and local beneficiaries, helping to support local growth.

5.9. Similarly, recent state aid decisions from the European Commission exempting ‘purely local aid activities which have a marginal effect on trade’ should be reflected in domestic law. This would grant greater legal certainty to public bodies and the private sector. For example, recent cases confirmed by the European Commission not to involve state aid include:

- letting a local authority building to a local medical centre at below market rate (Germany)
- providing a grant to an arm’s length business advisory service (Germany)
- a grant to modernise a marina for local pleasure boats and recreational fishing (Netherlands)
- a subsidy to an outdoor training centre providing mountaineering training (Scotland)
- funds to build an assisted living facility for elderly residents (Portugal).

5.10. The Government should also simplify the accumulation rules which are in place in relation to undertakings which benefit from several different aid sources at once. It can be difficult for councils to identify all the different amounts of aid a single undertaking may receive from different sources.

5.11. The EU rules governing public guarantees and public loans must be simplified and higher thresholds put in place, with the aim of promoting local growth. Individual councils do not usually provide loans or guarantees, preferring to work instead through recognised schemes such as the Municipal Bonds Agency or through promoting the many loan and guarantee products of the European Investment Bank.

5.12. The EU’s General Block Exemption Regulation (GBER) outlines which types of aid above de minimis levels can be granted without the need to notify the European Commission. Such a suite of exemptions should feature in the domestic state aid regime post-exit, including as many of those aid activities as possible (both cross-cutting and sectoral) which promote local growth and employment, or deliver other benefits in the public interest.

5.13. A future UK regime could also provide councils with greater flexibilities to allow them to support non-profit-making activities or local social enterprises who reinvest surplus back into the local community. The lack of recognition under the EU system of such social enterprise organisations which deliver public good can be a frustration for councils. Organisations operating in the culture, heritage, arts, or not-for-profit sports sectors would also merit a more flexible approach than that currently available under the EU regime.

State aid to public service providers

5.14. The EU’s state aid to services of general economic interest (SGEI) regime governs subsidies awarded to providers of public services to compensate them for a task which may not otherwise be commercially viable. Examples include waste collection in sparsely populated or remote areas, air ambulances, ferry services to islands, funds for hospital facilities or social care for low-income individuals.

5.15. Councils often utilise public procurement rather than public subsidy, combining the unprofitable and profitable elements into a single overall contract for which the market can bid. Post-exit the Government should continue to ensure that specific vital local services can still benefit from local authority financial support if needed, especially in those sectors or geographic areas where the market would otherwise fail to deliver a service which is high quality and accessible to all.

5.16. The overall aim should be to limit the disadvantage faced by those living in more rural or remote areas to ensure citizens in local areas of all types can benefit from high quality and accessible public services which are affordable, if not free, at the
point of use. The issue of subsidising broadband roll-out, especially in more rural areas, merits special attention in a future domestic state aid regime. Broadband should be recognised as a fourth utility alongside water, electricity and gas and supports the Government’s proposed introduction of a universal service obligation. However, this will still leave approximately 60,000 homes without a connection. The state aid permissions should therefore be set accordingly, so that any remaining or future gaps in provision can be directly addressed by councils working either on their own public sector broadband initiatives or in conjunction with private sector delivery partners. Decisions relating to the preferred model of delivery should remain with local authorities.

5.17. The EU has a number of other specialist state aid regimes such as for coal, steel, and for car factories facing closure. The Government should take the opportunity to see if these separate regimes can be simplified and consolidated into a more streamlined domestic regime.

A domestic state aid policy

5.18. Councils find the EU state aid regime to be complex, requiring knowledge of a whole host of different pieces of EU legislation dependent upon the sector, the purpose of the aid, and the financial amounts involved. The cost of external legal advice can be disproportional to ensure a small grant is compliant with EU rules. These costs are ultimately funded by the taxpayer. A simpler regime for councils would reduce the need for external legal advice and give a green light to democratically determined local actions that support growth without having an undue impact on fair competition.

5.19. A future domestic state regime should include:

- Local flexibilities for aid which delivers public-interest objectives (but a strict approach to those aids which do not).
- New flexibilities for small-scale aid of a purely local nature.
- Transparency as regards the use of public funds. This could be achieved through a national online register of all state aid awards above a certain threshold (currently €200,000 in the EU).
- Simplified accumulation control to ensure an undertaking can present a full picture of the aid it receives from different sources for different purposes.
- Prevention of cross-subsidy (receiving public support for one activity which is in fact used to support another).
- Proportionate intervention rates for larger projects to ensure beneficiaries contribute an element of their own funding (funding 100% of an investment for example should be an exception).
- Robust controls on state aid to failing industries which are no-longer economically viable, but a supportive aid regime for worker retraining. Rescue and restructuring plans should only be financed where they show the company has a clear route back to profitability.

- Simplification of the aid process itself: light-touch notification and reporting requirements; rapid and transparent assessment and clearance of aid by an appropriate national authority, possibly the Competition and Markets Authority (CMA).

- A national training programme for local authority aid practitioners, delivered in partnership with the LGA.

5.20. Finally, greater coherency is needed between public procurement and state aid rules. Exit from the EU and the subsequent review of EU-origin laws as promised in the EU (Withdrawal) Bill could allow both to be considered together as a single domestic regime for the first time. A move towards a common approach, definitions, and thresholds across both regimes is needed, whilst still respecting the UK’s WTO commitments.

5.21. We look forward working with councils, central government and stakeholders to develop viable alternatives to EU law which work in practice at the local level.

6. 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?

6.1. Given the Government’s commitment in the EU (Withdrawal) Bill to transfer all EU legislation into UK law, the need for a specific transitional arrangement for state aid matters is reduced: many measures will not change on the day of Brexit. It will have to be clear to councils and the private sector who is the new responsible authority for state aid law in the UK and what are the new enforcement mechanisms.

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