Legal Advice

Midlands Engine Development Company – State aid

Browne Jacobson LLP – 12th November 2020

Background and instructions

In brief summary, North West Leicestershire District Council, Broxtowe Borough Council, Rushcliffe Borough Council, Nottinghamshire County Council and Leicestershire County Council (the **Councils**) are proposing to establish a new type of locally led urban development corporation (**LLUDC**), which will require primary legislation. The aim is to regenerate and develop 3 sites around Radcliffe on Soar, Toton and East Midlands Airport. Given the time that it will take to establish an LLUDC, the Councils propose to set up an interim development company (the **IDC**), which may itself set up specific delivery vehicles.

The intention is that the IDC will be funded by:

- The Councils (via loans and/or grants); and
- Grant funding from MHCLD.

Potential third-party contributions will be sought from the following:

- Homes England
- Strategic landowners); and
- Government, LEP's, Industry partners & Universities/UKRI research and innovation funding.

There are a number of different models of activity in which the IDC (or specific vehicles) might engage:

- Promoter and enabler, sponsoring projects developed by third parties;
- Strategic master developer, acquiring land and delivering strategic infrastructure, then selling the serviced land to third party developers;
- Joint venture, either acting as strategic master developer or delivering direct with another entity;
- Direct deliver, acquiring land, delivering strategic infrastructure and directly developing the land.

It is likely that the IDC will engage in more than one of these strategies.

We are asked to advise on the State aid implications of the proposals and, in particular, in respect of:

- The mechanisms for the Councils' (and Government) funding for the IIDC;
- Downstream funding of the project specific vehicles which sit beneath the main IDC;
- Provision of "back office support" to the IDC by the Councils.

It is noted in particular that the State aid advice will need to take into account the funding contribution mechanism yet to be adopted in terms of loans/grants, including appropriate methodologies the Councils/the IDC may adopt for managing the risks where exact figures or mechanisms are not yet known.

Our advice

Executive Summary

In brief summary, it will be possible to structure the funding of the IDC and the project specific vehicles either by loans or by the provision of grant funding. In the case of loans, these should be at market rates and grant funding should be direct towards the "public" infrastructure activities of the IDC.

Structuring funding and the provision of other resources to the IDC:

Investment from the Councils into the IDC should, with an important exception, be made in accordance with the Market Economy Operator Principle. In other words, as if the Councils were acting as private sector bodies. So, loan funding should be in line with the Commission's reference rate table. That said, there is a reasonable amount of flexibility in decision making.

Other resources provided to the IDC, whether they are land or back office services, should be provided at market rates.

The important exception to funding from the Councils in accordance with the Market Economy Operator Principle applies equally to funding from MHCLG. If the funding is being applied by the IDC on public realm infrastructure works, infrastructure works or land remediation (in each case, provided relevant conditions are complied with) then this will not be State aid.

Accordingly, if the IDC is funded by way of loans at market rates and/or by grants to the extent that the IDC will be carrying out "public sector" development along the lines of public realm and other infrastructure works, then funding of the IDC will be State aid compliant.

Structuring funding to project specific delivery vehicles:

This applies in much the same way as funding to the IDC. It will be treated as public funding if it flows down from the Councils through the IDC. The exception for funding for public realm infrastructure works will equally apply. Special attention should be given to any joint ventures or arrangements with private sector operators to ensure that they are treated in line with the Market Economy Operator Principle.

Aid to the Councils

Funding from MHCLG should be flowed down through the Councils to the IDC to be used for public infrastructure works etc. That will ensure that there is no argument that they are being funded in a capacity as economic undertakings.

Aid to contractors or consultants

Where the IDC or the project specific delivery vehicle appoints these, it should ideally do so following a competitive tender, to ensure that they are not being paid more than market rates.

Introduction

As the Councils are aware, Article 107 of the Treaty on the Functioning of the European Union ("TFEU") lays down the basis general rule prohibiting State aid measures:

"Any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the

production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

Broken down into separate tests, in order to be considered State aid, a particular measure must meet all of these criteria:

- It is granted by the State or through State resources;
- It favours certain undertakings or the production of certain goods (i.e. it is selective rather than being of general application);
- It distorts or threatens to distort competition; and
- It affects or is able to affect trade between Member States.

As the Councils will be aware, this means that each measure that falls under the definition may not be implemented before receiving the approval of the Commission.

Any State aid will be provided after 1st January 2021. If the UK agrees a trade deal with the EU, then there is (probably) going to be a new UK subsidy regime developed. There are many questions about what that would look like but it would be unlikely to be resolved by the end of this year, so there would have to be an interim regime. The most realistic option is likely to be to continue the current State aid regime, but for it to be enforceable domestically. The statutory instrument drafted in 2019 to provide the framework for a state aid regime should the UK leave the EU without a withdrawal agreement would work as a basis for this.

If there is no trade deal by the end of the year, then the State aid regime will largely fall away (at least until a deal is actually agreed). The State Aid (Revocations and Amendments) (EU Exit) Regulations 2020 provide for this. However, Article 10 of the Protocol provides that the whole of EU state aid law, including current mechanisms of enforcement by the Commission, national courts, and the CJEU, applies to the whole UK to the extent that UK measures have a potential effect on trade in goods between Northern Ireland and the EU (in particular, of course, Ireland). Article 10 is enforceable by any person with standing (e.g. a competitor of a business benefiting from State aid falling under Article 10) in the UK courts and anyone can complain to the Commission. The Councils will be aware that the House of Lords refused to pass the relevant clauses in the Internal Market Bill allowing the Government, in effect, to bypass Article 10, but it remains to be seen whether the Government will still be prepared to breach international law.

Given the uncertainties, this advice is based on State aid law as it stands on the date of this advice.

Aid to the IDC

Is the IDC an economic undertaking?

The first question to answer is whether the IDC will be regarded as an undertaking for the purposes of the State aid rules. If the IDC is not an undertaking then it is not capable of receiving State aid. The legal entity of a body is irrelevant for the purposes of assessing whether it is an undertaking and, in some circumstances, a company may not be an undertaking for State aid purposes. It is also irrelevant whether an entity has been set up to generate a profit or is a not for profit body, so even though it is proposed to establish the IDC as a company limited by guarantee, it can still be an economic undertaking. The key test is whether the IDC engages in economic activity. An economic activity means the offering goods and services on a market on which private sector operators might operate for a profit. The IDC will be engaging in property development activities so it is difficult to argue that (at least in principle) that it is not engaging in an economic activity.

For completeness, it is worth noting that when a public sector body is engaging in carrying out public functions then it is considered to be acting as a non-economic undertaking. Public functions include, for example, delivering public infrastructure or providing social care services and funding received for this will not give rise to illegal state aid to that public body. In practice, this can be difficult to apply, given that local authorities have a broad range of functions and powers, including powers to engage in commercial activity. In the present case, where widescale property development is proposed, it will be difficult to argue that there is no economic activity.

If the IDC is an economic undertaking, is it receiving a selective advantage from aid?

If the IDC is not receiving a selective advantage from its relationship with the Councils, then there will be no State aid to the IDC from the Councils. If the Councils can demonstrate that a private operator operating under normal market economy conditions would act in the same way as the Councils in its dealings with the IDC then Market Economy Operator Principle (**MEOP**) will apply, there will be no selective advantage and the funding arrangements will not constitute State aid and it will not be necessary to consider the other State aid tests – although for completeness we note that . Dealings with the IDC include:

- Any funding or other forms of public support being given to the IDC and any restrictions placed on these funds;
- The consideration payable by the IDC for any back office or other support services being provided to the IDC from the Councils;
- The terms upon which the Councils are investing in the IDC;
- The transfer of any assets to the IDC;
- The terms of any loans being provided from the Councils to the IDC.

Shareholder loans

If loans from the Councils to the IDC are made in accordance with MEOP then there should be no State aid. The applicable starting point for calculating a loan in line with MEOP is the reference rate applicable at the time of the award i.e. the reference rate referred to in the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02) (the "**Communication**"). This is based on the one year money market rate (1 year IBOR) and is published on the Commission's website and is used as base rate to which a risk-dependent margin is added (see https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html).

The base rates are updated by the Commission every month and in order to calculate the appropriate interest rate an appropriate uplift must be added to the base rate applicable to the UK. The Communication uses the creditworthiness of the recipient and the collateralisation of the loan to calculate a number of basis points to be added to a base rate which is set by the Commission from time to time. The table reads as follows:

Loan margins in basis points			
Rating category	**Collateralisation**		
	High	**Normal**	**Low**
Strong (AAA-A)	60	75	100
Good (BBB)	75	100	220
Satisfactory (BB)	100	220	400

Weak (B)	220	400	650
Bad/Financial difficulties (CCC and below)	400	650	1000

The Communication provides that when dealing with a special purpose vehicle with no trading history at least 400 basis points (i.e. 4%) should usually be added to the base rate and that this is a minimum figure and the circumstances may dictate that a higher rate should apply. The IDC will be set up as a stand alone company with no trading history and therefore under the terms of the Communication 4% should be added to the applicable base rate.

A recent Commission decision (*Decision 2019/1712*) has confirmed the principle that the Communication is a starting point and it is possible that an interest rate lower than the relevant market rate can satisfy the principle of MEOP where there are associated shareholder benefits. These may only be economic or financial benefits which would also be relevant to a private sector investor in the Councils' position, the Councils would still have to demonstrate that they had acted as investors seeking a return and that the decision to grant the measure would also need to be grounded on economic evaluations similar to those a market investor would have carried out with a view to determining the profitability of the investment.

Therefore, it would be necessary to look and evaluate whether a private company acting as a shareholder would decide to provide financing at that rate taking account of the risks and the associated shareholder benefits. A widely accepted methodology to determine a return on investments such as the internal rate of return (IRR) should be calculated and compared to the normal expected market return.

Equity funding

We note this for completeness, as it is proposed that the IDC will be a company limited by guarantee. Similar principles apply to equity funding in the IDC – would a private sector operator invest on similar terms to the Councils, taking into account only private sector considerations? include long term strategic considerations) are taken into consideration. "Public" or "social" considerations, such as the Councils' desire to regenerate the sites must be ignored for the purposes of this principle. However, the Councils could take into account the positive financial effect of the developments on other property or land interests held by the Councils.

In considering whether the MEOP principle is complied with, the judgments in the High Court and the Court of Appeal in *Sky Blue Sports & Leisure Limited, R (on the application of) v Arena Coventry Limited [2014] EWHC 2089 and [2016] EWCA Civ 453* are particularly helpful. The High Court judgment notes that some private investors do have long term objectives with a structural policy and are guided by a long term view of profitability and if an investor is a shareholder in the relevant undertaking, he may be more likely to have such long term objectives. The judgment also notes that although the MEOP test is an objective one, the law recognises that there is wide spectrum of reasonable reaction to commercial circumstances in the private market and that

"consequently a public authority has a wide margin of judgment".

The test is that the transaction will not amount to State aid

> *"unless the recipient would manifestly have been unable to obtain comparable facilities from a private investor in the same situation."*

So the test in practice is that State aid will only be found:

> *"where it is clear that the relevant transaction would not have been entered into, on such terms as the State entered into it, by any rational private market operator in the circumstances of the case".*

The Court of Appeal confirmed the approach of the High Court.

As the courts in the Arena Coventry case have recognised, there is no "template" market sector investor and different investors will have different appetites for risk etc. That being so, if the Councils can reasonably say that their decisions are within the bounds of a decision that a market sector investor could make (i.e. not an irrational market sector investor) even if it is looking at longer term profits (albeit with realistic prospects of these), then the Councils are likely to be acting in accordance with MEOP.

It is worth noting that where funding (e.g. grant funding) from the Councils to the IDC (including where this funding flows down to the project specific vehicles) to carry out public realm infrastructure works and certain types of land development, this funding could be taken out of the equation in terms of looking at what the Councils are contributing from a MEOP perspective. We deal with this below.

Provision of support services to the IDC by the Councils

Support services to an economic undertaking by the Councils at no cost or a low cost would amount to an economic advantage to the IDC which would allow it to trade from a lower cost base, which in turn gives it a competitive advantage. This is unlikely to be justifiable on the basis of the MEOP, because in normal market conditions, organisations do not provide their assets and services without a charge. This is the case even where they are the shareholders of the recipient undertaking.

The Councils should identify each service or asset that is being provided to the IDC and charge the IDC for it at a market rate. For some elements of the support to be provided, this is relatively straightforward – for example, there will be a range of market prices for administrative support which could be identified by benchmarking against other providers. The Councils could then charge the IDC for the support it receives at a rate based on that benchmarking exercise. Where there is no obvious market price, an alternative could be the full costs of the service plus a typical margin.

Transfer of assets to the IDC from the Councils or other public sector bodies

Transfer of assets from the Councils or from other public sector bodies should be at market value.

Grant funding from MHCLD

Grant funding from MHCLD will not meet the MEOP test as far as the IDC is concerned. Accordingly, any funding should be applied to the IDC's activities that fall outside of the State aid zone. We have touched on funding for land development and public realm infrastructure above in terms of Council funding and this will be equally applicable to any MHCLG funding. We deal with this below.

Aid to project specific delivery vehicles

Project specific delivery vehicles could be wholly owned by the IDC or could be joint ventures with private sector bodies.

In either case, the first thing to consider is whether the provision of funding from the Councils via the IDC is capable of being classed as State aid. Firstly, the aid must be granted via State resources which will clearly be the case if the money comes directly from the Councils. In the *Stardust Marine* case, the it was held that the mere fact that a public undertaking is under State control is not sufficient for measures taken by that undertaking, such as the financial support measures to be imputed to the State. It is also necessary to examine whether the public authorities must be regarded as having been involved, in one way or another, in the adoption of those measures. In the light of the Councils' strategy and decision making proposals for the IDC, our view is that any decision by the IDC to provide a loan or funding to a project specific delivery body would be seen as imputable to the State, not least because the IDC will be wholly owned by the Councils. If the IDC were able to provide funding to a project specific delivery body without approval from the Councils, then there would be a potential argument that the funding being given is not imputable to the State and thus not capable of being State aid. However, we assume that this will not be the case.

Accordingly, our advice in relation to the funding of the IDC above (and provision of other economic advantages) is equally applicable to the provision of funding to project specific delivery bodies by the IDC.

Similar considerations will apply to grant funding provided by MHCLG.

For completeness, we note that it will be important to avoid providing State aid to any private sector partners in a project specific delivery body – again, the MEOP principle should be applied, so that a private sector partner invests on equivalent terms to the IDC. Similarly, any contractual arrangements with developers should be entered into on a MEOP basis.

Aid to the Councils

As we have advised above, grant funding from MHCLG should be provided to the IDC to spend on activities that mean that there is no State aid to the IDC. The funding (if it were provided via the Councils) would flow down through the Councils without there being State aid to the Councils.

We would advise that MHCLG funding is not provided to the Councils for generic investment into the IDC. A local authority is certainly capable in some circumstances of receiving State aid if it is engaged in the provision of goods or services within a commercial market place either directly or as an investor. The Councils are acting as investors here and while there may be an argument for saying that the Councils would not be in receipt of illegal State aid in receiving generic funding on the basis that they are not acting as undertakings for the purpose of the receipt of such funding and its expenditure but as public bodies, carrying out public functions, it would be a more cautious route to avoid this.

Aid to consultants and contractors

It is clear law that public funding of infrastructure construction through open and non-discriminatory public tenders, performed according to public procurement rules does not normally involve State aid. This is on the basis that MEOP applies and there is no benefit to the contractor over and above what the market would pay in similar circumstances.

Accordingly, the IDC should appoint contractors or consultants following a transparent, fully advertised competitive tender (or previously procured framework) and this would ensure that the successful contractor(s) are not being remunerated at greater than market rates and thus receiving State aid. The absence of a competitive tender is not always fatal, as an independent expert's report may also be used to assess the market rate for the works or services.

Funding for State aid compliant activities

As noted above, grant funding from MHCLG or from the Councils may be provided to the IDC or a project specific delivery body to carry out certain development activities in a State aid compliant manner, without the requirement to apply MEOP. We set these out below and any grant funding should be expressed to be for the purpose of these works. It is worth noting that the proposed roles of the IDC as promoter and enabler and strategic master developer (and some of the joint venture activities) essentially cover these activities.

We understand that some grant funding may be used by the IDC for masterplanning and for the appointment of consultants. On balance, it would be State aid compliant to grant fund the masterplanning and consultants' work on the basis that, as we understand it, the main thrust of the project activity carried out by the IDC is likely to be through the State aid compliant "public sector" infrastructure works and work done through the masterplanning and work done by consultants would presumably contribute towards these works being carried out. It would, however, be prudent to provide for clawback in the contractual arrangements with the IDC to ensure that the Councils are able to recover grant funding of the masterplanning/consultants' work that, in the event, directly benefited direct development.

Public realm infrastructure works

Public realm infrastructure works carried out by economic undertakings such as construction of public squares, completion of landscape works, construction of roads, pathways and cycle lanes not benefiting specific developments and certain flood defence may be funded by public sector bodies and that funding will not amount to State aid.

Without going into the full history, the Commission's 2016 Notice on the notion of State aid summarises the position by saying that:

> "public funding of infrastructure that is not meant to be commercially exploited is in principle excluded from the application of the State aid rules", which *inter alia* covers (i) public roads, bridges or canals made available for public use without consideration and (ii) infrastructure intended for activities that the state normally performs in the exercise of its public powers. The Commission further clarified that, when "an infra-structure is used for both economic and non-economic activities, public funding will fall under the State aid rules only insofar as it covers the costs linked to the economic activities."

Subsequent caselaw reinforced the Commission's views and, in summary, the case law generally provides that works that might benefit a development but also benefit a wider public will not constitute State aid but the funding of access transport infrastructure - be it railways, roads or canals that only go to a development - will be State aid.

Whether infrastructure is for public or private benefit is a matter of evidence and will vary from project to project, taking into account the Commission's view and the case law of the

factors that determine whether infrastructure will be deemed specifically to benefit a private undertaking. For there not to be State aid, it is necessary to demonstrate that there is a broader purpose to the infrastructure than just the development in question.

If the Councils and the IDC can identify works that amount to public realm infrastructure works, then their funding either by the Councils or MHCLG will not be illegal State aid in itself and can be ignored in calculating whether MEOP applies as far as the Councils' investment in the IDC is concerned.

Enabling works

We note that it is proposed that the IDC may develop infrastructure on certain sites and then sell the land on to developers.

The Commission's *2016 Notice on the Notion of State aid* made it clear that public investment for the construction or upgrade of public realm infrastructure does not amount to State aid if it does not directly compete with other infrastructure of the same kind; however, the public funding of infrastructure that is in competition with similar infrastructure may provide a selective economic advantage. That said, the Commission made it clear that even if such infrastructure is funded partly or wholly with the help of State funding, there will be no aid to operators and end-users if they pay a market price.

This derives to a greater or lesser extent from the Commission's decision in relation to what is known as the German land case[1]. In that case, the scheme had two stages:

1) The renovation and development of land which was eligible for funding; and

2) The subsequent sale of the remediated / developed land to any interested third party.

The funding was for eligible costs linked to development, expansion and revitalisation of industrial and commercial areas:

- Groundwork for making land ready to build;
- Construction costs for streets, street lighting, anti-noise barriers, landscaping;
- Connection costs to the mainframe for water, electricity, gas and sewage;
- Environmental protection measures and decontamination, provided that the polluter pays principle is respected, that there is a direct technical link to the measure in question, and that they are essential for its implementation as well as economically justifiable;
- Removal of superstructure that exists on industrial and commercial sites (old factories, military buildings or supply facilities).

Projects were selected on the basis of eligibility criteria laid down in rules defined in advance by the relevant law. The recipients (the **responsible bodies**) were local authorities, associations of local authorities, non-profit organisations or joint ventures between municipalities or non-profit entities on one hand, and commercial enterprises on the other, where a majority share was held by the local authorities or the non-profit participants.

[1] SA.36346 (2013/N) – *Germany* – GRW land development scheme for industrial and commercial use.

In most cases, the responsible body was the owner of the land. Where it did not own the land, it had to have an agreement with the land owner to sell it to the responsible body, with any profit from such the sale going to the responsible body.

Claw-back clauses were applied to recover any profit from the responsible body resulting from the sale of the redeveloped land, after taking into account the costs incurred.

Responsible bodies could entrust the implementation to developers through an open, transparent and non-discriminatory tender procedure. The commercial activities of developers had to be restricted to carrying out the relevant works or marketing of the land with these conditions:

- Developers are selected in compliance with rules on public procurement and State aid;
- The development or marketing company must receive a normal market payment determined through the bidding procedure for its services;
- Proceeds obtained from the marketing are to be paid to the body responsible for implementing the project;
- The body responsible for implementing the project has sufficient influence over the design of the project to ensure that its interests are served;
- The developer's commercial activity must be restricted to the operation or marketing of the land; and
- The developer may not use the land itself.

After the development of the land, any interested third party could buy the remediated land, which had to be sold to the highest bidder or at a market price determined by an independent valuation.

The Commission said that the public authorities were responsible for the decontamination and revitalisation of land located in eligible areas, in the respect of the "polluter pays" principle, by making the terrain ready to build upon and ensuring that it is connected to utilities (water, gas, sewage and electricity) and transport networks (rail and roads). They were not involved in the funding of construction of buildings or other structures, nor in the management or administering the operation of land and/or buildings.

The Commission concluded that there was no State aid for responsible bodies:

- Their tasks were not economic in nature:

  "(34) Activities which are part of the performance of public duties are non-economic in nature. The development and revitalization of public land by local authorities (with the use of public funds) is not an economic activity, but part of their public tasks, namely the provision and supervision of land in line with local urban and spatial development plans."

- There was no transfer of state resources to undertakings:

  "(35) ... The transfer of resources from the Federal Republic of Germany and the federal states to the budget of the local authorities for carrying out land development projects represents an intrastate financial transfer between public

authorities and therefore does not constitute State aid within the meaning of Article 107(1) TFEU."

- Funding did not create an advantage:

  "(36) Moreover, the claw back mechanism provides that bodies responsible for implementing the projects are under the obligation to refund any possible profits from the sale of the redeveloped site to the grant awarding body. Therefore, an advantage within the meaning of Article 107(1) TFEU at the level of the responsible body can be excluded for these development projects."

The Commission considered that in the (rare) cases:

> *"(37) ... where the bodies responsible for implementing the projects are not municipalities [but were not for profit or majority owned by public/not for profit bodies], the measure cannot be considered to represent a pure intrastate financial transfer. However, since the measure provides that all responsible bodies for implementing the projects are under the obligation to refund any profits from the sale of the redeveloped site to the grant awarding body, an advantage within the meaning of Article 107(1) TFEU at the level of the responsible body can be excluded for these development projects."*

This principle is likely to be based on the concept that several legal entities can be considered as one undertaking for the purposes of State aid and not act as economic undertakings. The key case on this point is *AceaElectrabel Produzione SpA v Commission*[2]. The Court of Justice considered the relevant factors determining when two legal entities can be correctly regarded as one economic unit for the purposes of State aid and held that the following were relevant factors to consider when assessing this:

(a) the existence of a controlling share; and

(b) other functional, economic and organic links.

While this would not apply across the board to the IDC's activities, it may well apply so as to establish that link between the IDC and the Councils as far as land development is concerned.

The Commission noted that since developers were always selected through an open, transparent and non-discriminatory public procurement procedure, they:

> *"(39) ... provide their services against a market conform fee. Under these conditions, there is no advantage within the meaning of Article 107(1) TFEU to developers."*

Finally, the Commission considered whether an indirect benefit could flow to the final purchasers and/or users of the developed or remediated land:

> *"(40) ... this could be the case if the buyer receives land – as an indirect result of the measure – at a price below the market price."*

But the scheme:

> *"(41) ... provides that the land has to be sold in accordance with the guidance provided in the Commission's land sale communication. Therefore, the measure contains sufficient safeguards to ensure that the buyer pays a market price for the*

[2] C-480/09

land, securing that the buyer is not a beneficiary of the measure within the meaning of Article 107(1) TFEU."

These principles could certainly be applied in the case of the IDC (although not to a project specific delivery body where the majority owner is a private sector body). The decision in the German land case was on the basis that it was expected that the site would be disposed of for market value on completion of the works and this is anticipated as a possibility. A competitive tender was used in the German land case to select any developer and this was implicitly a prerequisite to there being no aid to the developer.

While the devil will be in the detail in each case, it is likely that this will be another route forward for applying funding from the Councils and/or MHCLG.

Decontamination works

There may also be the opportunity to fund the IDC to undertake decontamination works. Article 45 of the General Block Exemption Regulation permits investment aid to undertakings repairing environmental damage by remediating contaminated sites, being damage to the quality of the soil, surface water or groundwater. Up to €20 million of funding may be provided at 100% intensity of the eligible costs, subject to compliance with other requirements of GBER, including the "polluter pays" principle.

Browne Jacobson LLP **12th November 2020**