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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	6170/22 + ADD1
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework of measures for strengthening Europe's semiconductor ecosystem (Chips Act) - <i>Guidance for further work</i>

I. INTRODUCTION

1. On 8 February 2022, the Commission submitted to the European Parliament and to the Council a proposal for a Regulation establishing a framework of measures for strengthening Europe's semiconductor ecosystem (Chips Act)¹. It is not accompanied by a formal impact assessment.

¹ 6170/22 + ADD 1.

2. The aim of the proposed Regulation is to strengthen the European semiconductor ecosystem, to increase the EU's security of supply of semiconductors and to develop new markets for cutting-edge European technologies. The initiative is intended to cover the whole value chain from design to manufacturing capacities. It aims in particular at limiting the risks of future shortages or tensions in the supply of semiconductors in Europe and at containing the consequences where necessary, thus contributing to European industrial resilience. And it seeks to structure a European approach to this issue, which should contribute to strengthening the internal market.
3. In order to achieve these objectives, the proposal is built on three pillars:
- Pillar 1: setting up the Chips for Europe Initiative to support technology capacity building and large-scale innovation across the EU to enable the development and deployment of cutting-edge and next generation semiconductor and quantum technologies that will strengthen the EU's capabilities and competences in advanced design, systems integration and component production; more specifically, the Chips for Europe Initiative includes five operational objectives related to: the development of pilot lines, to test and experiment innovative process technology and design concepts; the development of a design platform, to facilitate access to design resources; support to quantum chips; the set-up of competence centres and the strengthening of skills, to increase access and talent across the Union; and a Chips Fund, to support start-ups and the scaling-up of SMEs;
 - Pillar 2: creating a framework to ensure security of supply by attracting increased investment and production capacity in semiconductor manufacturing as well as in packaging and advanced testing and assembly through first-of-a-kind integrated production facilities and EU open foundries;

- Pillar 3: establishing a mechanism for coordinating surveillance and crisis response between Member States and the Commission to strengthen collaboration with and between Member States, monitor the supply of semiconductors, estimate demand, anticipate shortages, trigger the activation of a crisis phase and deploy a dedicated toolbox.
4. The Commission proposed to base the Regulation on Articles 114, 173(3), 182(1) and 183 TFEU, relating to approximation of laws, industry, and research and technological development. However, in the course of the examination of the Commission's proposal in the Council's preparatory bodies, it was concluded that Articles 182(1) and 183 TFEU are not suitable as a legal basis.
 5. The proposal for a Chips Act is accompanied by a proposal for a Council Regulation amending Regulation (EU) 2021/2085 establishing the Joint Undertakings under Horizon Europe (the so-called "Single Basic Act"), as regards the Chips Joint Undertaking², to implement most of the actions foreseen under the Chips for Europe Initiative.
 6. The European Parliament's Committee on Industry, Research and Energy (ITRE) appointed Mr Dan NICA (S&D, RO) as rapporteur on the Chips Act proposal. The ITRE Committee is expected to vote on its amendments to the Commission's proposal and adopt the mandate for negotiations in January 2023, with the negotiating mandate expected to be voted at Plenary in February 2023.
 7. The opinion of the European Economic and Social Committee on the proposal for a Chips Act was adopted on 15 June 2022³, while the requested opinion of the Committee of the Regions is still pending.

² 6171/22.

³ 10439/22.

II. WORK WITHIN THE COUNCIL

8. The Council (Competitiveness), at its meeting of 24 February 2022, heard a presentation from the Commission on the content and aim of the proposed Chips Act. It took note of the progress achieved and held a policy debate on the Commission's proposal at its meeting on 9 June 2022.
9. The Working Party on Competitiveness and Growth (Industry) started examining the proposal under the French Presidency in February 2022 with a presentation of the proposal by the Commission. A detailed examination of the Commission's proposal and of a first compromise text, prepared by the French Presidency, ensued at ten Working Party meetings.
10. The work continued during the Czech Presidency on the basis of a revised compromise text, prepared by the Czech Presidency, at Working Party meetings on 8 and 15 July, on 5, 12, 19 and 26 September, and on 6 and 10 October 2022.
11. Following the discussions at Working Party level, the Presidency has amended several provisions of the Commission's proposal to take account of delegations' requests. The latest compromise text prepared by the Presidency on this basis is set out in document 13528/22. It was examined at Working Party meetings on 19 and 24 October 2022. At this stage, all delegations have a general scrutiny reservation on the text.
12. While delegations generally support the objectives of the proposal, their views still differ on how best to achieve those objectives. The Presidency endeavoured to improve the proposal's clarity and feasibility and to provide legal certainty. However, the Presidency deems necessary to further assess the situation on two key issues of the proposal and requests the Permanent Representatives Committee for political guidance on the most suitable way forward on these issues mentioned below.

III. ISSUES FOR POLITICAL GUIDANCE

13. The Presidency presents the following two topics for discussion and outlines its proposals for the possible approaches to be followed on each of them. On both issues, the Permanent Representatives Committee is invited to indicate which of the options proposed by the Presidency it can support as the way forward.

Funding and financial architecture

14. The budgetary construction of the proposal is described in the legislative financial statement accompanying the proposed Chips Act. The Chips for Europe Initiative, endowed with an amount of up to EUR 3.3 billion, will not have a separate financial envelope. Instead, Article 3 of the proposed Regulation establishes that the Chips for Europe Initiative shall be supported by funding from the Horizon Europe programme and the Digital Europe programme, and in particular the Specific Objective 6 thereof, for a maximum indicative amount of EUR 1.65 billion and EUR 1.65 billion respectively. This funding shall be implemented in accordance with the respective programmes. The investments would be spent on research and innovation activities as well as on capacity building. Funding for research and innovation activities would come from Horizon Europe, and funding for capacity building from the Digital Europe Programme.
15. As for Horizon Europe, up to EUR 1.65 billion would be implemented in favour of the Chips for Europe Initiative, including EUR 150 million from Cluster 3, EUR 900 million from Cluster 4, EUR 300 million from Cluster 5, and EUR 300 million under the European Innovation Council.

16. Concerning the Digital Europe programme and its new Specific Objective 6, a total sum of up to EUR 1.65 billion would be allocated through reallocation of EUR 600 million from the existing objectives of the programme, a contribution of EUR 400 million from the Connecting Europe Facility programme, and EUR 250 million from the unallocated margin under Heading 1 of the current multiannual financial framework (MFF). In addition, given the limited resources available under the current MFF, one of the measures proposed by the Commission is to increase the Digital Europe programme by EUR 400 million to be transferred from the Horizon Europe programme.
17. To compensate for this reduction of the Horizon Europe budget, the Commission proposes to make available again, for the benefit of the Horizon Europe programme, a further amount of EUR 400 million from the decommitments⁴ under this programme, in line with Article 15(3) of the Financial Regulation; this amount would come in addition to the EUR 0.5 billion already mentioned in the Joint Declaration⁵ by the European Parliament, the Council and the Commission on the re-use of decommitted funds in relation to the research programme; the Commission's Chips Act proposal suggests supplementing the amount indicated in the Joint Declaration with an additional EUR 400 million in decommitments over the period 2023-2027.

⁴ Commitment appropriations resulting from total or partial non-implementation of projects belonging to that programme or its predecessor, pursuant to Article 15(3) of the Financial Regulation.

⁵ OJ C 444 I/03, 22.12.2020.

18. The Working Party on Competitiveness and Growth (Industry), partly in the presence of the members of the Budget Committee and the Working Party on Research, discussed in depth the funding and the financial architecture of the Chips Act proposed by the Commission. While delegations generally agreed that Horizon Europe and the Digital Europe programme are the appropriate main programmes to implement the Chips Act, Member States' positions are divided regarding the amounts to be reallocated. Furthermore, most delegations have pronounced themselves against the recourse to decommitments under the Horizon Europe programme to compensate for its reduced budget, and several of them objected to the use of the unallocated margin under Heading 1 of the MFF.

Taking this into account, the Presidency proposes two options:

Option A:

19. Leaving the budgetary construction unchanged, thus supporting the funding and the financial architecture proposed by the Commission in its proposal for a Regulation establishing a framework of measures for strengthening Europe's semiconductor ecosystem (Chips Act) and in the legislative financial statement accompanying it.

Option B:

20. Rejecting the recourse to decommitments under Horizon Europe. To implement this option, the Presidency would suggest the following modifications to the proposed Chips Act Regulation:
- to remove recital (10) from the legal act; and
 - to reduce the amounts relating to the Digital Europe Programme and its Specific Objective 6 in Articles 3(2) and 34(1)(3) by -EUR 400 million.

European Chips Infrastructure Consortium

21. The proposed European Chips Infrastructure Consortium (ECIC) is a voluntary mechanism to facilitate the implementation of different parts of the Chips for Europe Initiative, including for example the set-up of new pilot lines. The Chips Act proposal lays down its characteristics and the procedure for its establishment. However, this instrument is not mandatory, and the actions for which an ECIC could be used would be defined by Member States and the Commission in the work programme of the Chips Joint Undertaking. Its use would remain optional, i.e. if Member States would not find it useful, it would not be included in the work programme.
22. An ECIC would have a legal personality granting it certain advantages compared to traditional consortia. For instance, an ECIC would not be limited by the duration of the MFF and could therefore offer the necessary continuity for larger projects carried out under the Chips for Europe Initiative. Moreover, an ECIC, unlike traditional consortia, could actually own infrastructures (pilot lines, design platform) and develop and manage intellectual property. It could also engage in revenue-generating activities such as intellectual property creation and licensing. The allocation of the budget would be decided by the ECIC members and reflected in its Statutes.
23. Nevertheless, a number of delegations expressed doubts regarding the ECIC, notably concerning its openness towards new members and its benefits compared to traditional consortia. The different compromise texts presented so far have tried to address these concerns and further clarify the provisions. However, while some delegations agree on the added value of the ECIC, other delegations still believe that it needs further clarifications. Several delegations question the added value of the ECIC compared to a traditional consortium and suggest to remove this instrument from the legal act.

The Presidency proposes two options:

Option A:

24. Supporting the approach set out in the latest compromise text prepared by the Presidency (document 13528/22) in Articles 7, 7a, 7b and 7c and in the new recital (16a) which builds on the Commission's proposal and further clarifies and details the ECIC, also aligning it with the provisions on the European Digital Infrastructure Consortium (EDIC) in the Digital Policy Programme⁶. This means, in particular, that rules on winding up, liability and jurisdiction are included in the legal act and not left to the Statutes, in order to add legal certainty. To address concerns from various Member States, the proposal includes provisions on the openness of the ECIC to new members and the possibility for Member States to be observers even if they do not contribute financially to the ECIC. Moreover, the proposal sets out a clear procedure of how the Statutes can be amended and clarifies the role of the Commission in the process. Furthermore, the proposal includes a provision stating that the ECIC may be considered as an international organisation and therefore be exempted from VAT, if only composed of public entities such as Member States.

⁶ 11900/21.

Option B:

25. Removing the ECIC from the legal act by deleting Articles 7, 7a, 7b and 7c and recital (16a).

If this option is chosen, other structures could be used, such as:

- European Digital Infrastructure Consortium (EDIC)⁷;
- traditional consortia⁸;
- Framework Partnership Agreements (FPA)⁹.

IV. CONCLUSION

26. The Permanent Representatives Committee is invited to provide guidance on the above-mentioned issues.
27. The guidance will allow the Presidency to continue work towards reaching a General Approach at the Council (Competitiveness) meeting on 1 December 2022.

⁷ At least three Member States need to be part of an EDIC, while members of an ECIC are not necessarily Member States. Moreover, contrary to an ECIC, the Commission has a veto right in an EDIC.

⁸ Member States are not members of traditional consortia, while they can either participate or be observers in ECICs and EDICs. Moreover, traditional consortia, given that they do not have legal personality, are not able to ask for loans, e.g. from the European Investment Bank, like ECICs or EDICs can do, and are limited in time and cannot be extended beyond the period of the current MFF. Furthermore, traditional consortia cannot benefit from a VAT exemption, like ECICs or EDICs composed of Member States can do. Finally, if traditional consortia decide not to be open to new participants, the Commission cannot intervene.

⁹ An FPA is an agreement concluded between the Commission and a consortium with the aim to contribute to specific Union policy objectives. FPAs are long-term cooperation instruments that serve as an umbrella for regular or recurrent grants in the same field or area and under a common action plan (or work programme of activities). It gives a consortium the possibility to apply in more or less the same composition to a number of subsequent specific grant agreements. An FPA does not have legal personality, so it is not able to ask for loans.