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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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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) - Preparation for the trilogue

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).
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;
 - 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.

II. STATE OF PLAY

4. After the examination of the proposal in the Working Party on Competitiveness and Growth (Industry) at 21 meetings between February and November 2022, the Competitiveness Council, at its meeting on 1 December 2022, adopted a general approach¹ on the proposal.
5. In the European Parliament, the report by the Committee on Industry, Research and Energy (ITRE) was approved during the Plenary session on 13-16 February 2023. A mandate was granted to enter into inter-institutional negotiations with the Council. The rapporteur is Mr Dan NICA (S&D, RO).
6. The first two trilogues took place on 28 February 2023 and 9 March 2023. The Permanent Representatives Committee was debriefed on 1 March 2023 and 15 March 2023.

¹ Doc. 14668/22 + ADD 1.

7. After the second trilogue, negotiations at technical level continued, with four technical meetings between Presidency, European Parliament and Commission on 10, 17, 20 and 24 March 2023, and further technical meeting scheduled on 27 March 2023, at which further parts of the proposal were discussed. The third trilogue is scheduled on 30 March 2023.
8. Based on the discussions at meetings of the Working Party on Competitiveness and Growth (Industry) on 16 and 21 March 2023 and at an upcoming Working Party meeting on 27 March 2023, the Presidency is exploring possible compromise avenues that could provide the basis for a rapid agreement with the European Parliament. Work at technical level needs to continue to be based on the four-column table in order to cover the remaining Articles and all the recitals. The latest elements of the compromise suggestions are explained under Section III.

III. MAIN ISSUES AND LATEST ELEMENTS OF THE COMPROMISE PROPOSAL

9. The deliberations with the European Parliament and within the Council have permitted the Presidency to have a clearer picture concerning the most important elements of the European Parliament's position. With a view to the upcoming trilogue on 30 March 2023, the Presidency asks the Permanent Representatives Committee for flexibility with a view to a compromise package based on the following building blocks which should be part of an overall balanced agreement:

Regarding Pillar I

- a. Network of competence centres – procedures for establishing the network and for its organisation, composition and working methods – Articles 8(3) (row 170) and 8(4) (row 171):*

The European Parliament proposes to set up the procedure for establishing competence centres through a delegated act and to adopt decisions on the selection of entities forming the network through implementing acts, in line with the Commission's proposal.

The Council proposes that the procedure for the establishment is described in the Work Programme of the Chips Joint Undertaking, and that the Chips Joint Undertaking takes selection decisions as part of its implementation activities.

At the last trilogue, the Commission has shown openness to the Council's proposal.

It is therefore the intention of the Presidency to stick to the Council text.

b. Procedure to amend Annexes I and II – Article 9(2) (row 174) and 9(3) (row 175)

In its general approach, the Council deleted Annex I of the Commission's proposal and copied its substance within Articles 4 and 5. The Council also removed the delegated act allowing for the update of Annex II on indicators.

The European Parliament proposes to leave Annexes I and II and the provisions on their possible updates as suggested in the Commission's proposal.

At technical level, a compromise was found to keep main elements of Annex I in the two Articles, while maintaining Annex I for more details and examples.

The Presidency is of the opinion that those two delegated acts for updating of Annexes I and II could be an acceptable concession in view of an overall balanced compromise package.

c. Research legal base

The Council has deleted Articles 182(1) and 183 TFEU as further legal bases for the Chips Act proposed by the Commission, because it considers that it is neither necessary nor appropriate to include them, as Article 173(3) TFEU is the appropriate legal basis for the creation of the Chips for Europe Initiative. The research legal bases enable the adoption of the multiannual research framework programme, Horizon Europe, which is not amended by the Chips Act in the Council text. The research and innovation activities to be carried out under the Chips Act are already foreseen under Horizon Europe.

The European Parliament proposes an amendment to Horizon Europe for the budget, which could justify the research legal bases. If this amendment is removed, the corresponding legal bases should also be removed.

The Presidency intends to find a solution compatible with the Treaty, while recognising that the importance of research activities in the Chips for Europe Initiative could be underlined in a dedicated recital.

Regarding Pillar II

d. First-of-a-kind definition – Article 2(1), point 10 (row 94)

The European Parliament proposes to widen the “first-of-a-kind” definition by including design and equipment specifically used in semiconductor manufacturing.

Following an analysis of the Commission, design is already covered by specific funding possibilities linked to State aid and should not be included in this legislation. The specific funding could be recalled in a declaratory recital for clarification.

On the other hand, the Presidency considers that including equipment could be envisaged as part of an overall balanced compromise package.

e. First-of-a-kind facility – Article 10(1) (rows 178, 178a), Article 11(1) (rows 186, 186a) and Article 13(2) (row 207)

The European Parliament proposes to include a third category entitled “first-of-a-kind facility” in the provisions, in addition to Integrated Production Facilities (IPF) and Open EU Foundries (OEF). Subsequently, the IPF or OEF label would not be a condition for receiving State aid any more, as a qualification as “first-of-a-kind facility” would be equally sufficient, e.g. for SMEs, according to the European Parliament’s position.

The Presidency sees no advantages in this new category and intends to oppose such broadening of the conditions for receiving public support through a wider range of eligible facilities. It will make clear in the negotiations that the conditions should be as narrow as possible, given that the overall funds are limited.

Regarding Pillar III

- f. Scope of critical sector – Article 2(1), point 16 (row 100), Annex Ia (row 443a) and Recital 46 (row 56)*

While the Council suggests to establish the list of critical sectors by a static reference to the Directive on resilience of critical entities in Article 2(1), point 16, the European Parliament proposes a static reference by providing a list in a new Annex Ia.

The Presidency could envisage a possible compromise that would keep this Annex Ia, while adding a recital explaining the origin of the Annex and clarifying that the sub-sectors mentioned in the Directive are also of relevance.

Regarding other aspects

- g. International cooperation – Article 26a (rows 311a to f)*

The European Parliament proposes to introduce a new Article 26a on international cooperation.

The Council cannot agree, given that several elements of this proposed new Article overlap with the prerogatives of the Council under Article 16 TEU and the procedure pursuant to Article 218 TFEU.

The Presidency can, however, agree with the importance of international cooperation.. As a compromise, the Presidency intends to suggest highlighting the importance of international cooperation in this field in the text, fully respecting the Treaties.

- h. Intellectual property rights – Article 27a (rows 316b to n)*

The European Parliament proposes to introduce a new Article 27a on international access to and transfer of confidential information. Parts of the provisions in the proposed new Article overlap with the prerogatives of the Commission under Article 108 TFEU, in particular on the way in which State aid is recovered. The Article would also introduce restrictions on the transfer of confidential information and trade secrets.

The Council cannot agree with such proposals, as the introduced restrictions would considerably reduce the EU's attractiveness for foreign investors and would thus counteract the actual objectives of the Chips Act, and the European Parliament proposal would overlap with existing regulation.

The Presidency will defend this position of the Council. Here the Presidency sees little room for flexibility. As a compromise, the Presidency intends to suggest limited changes to highlight the importance of the protection of intellectual property rights in the text, without creating any obligations or overlaps.

i. Budget

The Presidency is aware of the importance of this item for all delegations.

The European Parliament suggests a total of EUR 3.3 billion, in line with what is suggested by the Commission. But in contrast to the Commission, the European Parliament proposes all as “fresh money”.

According to the Council's general approach, the funding supporting the Chips for Europe Initiative would be reduced by EUR 400 million, thus limiting it to an overall amount of EUR 2.9 billion if no alternative funding were identified. It has proved difficult how to finance the missing EUR 400 million.

Since the positions of the co-legislators are far apart, the Presidency will require some openness regarding the possible sources of the missing amount of EUR 400 million in view of an overall and balanced compromise package. Here the Presidency intends to stick to the Council statement adopted on 1 December 2022 regarding the limit of the re-use of decommitted funds in relation to the research framework programme and the contribution to the Chips Act from Horizon Europe. The Presidency recognises the wish to maintain the financial level of ambition of the initial proposal, but it must be indicated that the total amount might not be found.

10. The Presidency is of the opinion that compromises as outlined above could cater for the most important concerns of the European Parliament, while preserving the essential aspects of the Council's general approach, and that an approach along the lines suggested by the Presidency would thus pave the way for an overall balanced compromise package on this important proposal. The Presidency is therefore hopeful that such a compromise could be supported by a majority of delegations.

IV. CONCLUSION

11. The Permanent Representatives Committee is invited to:
- examine the elements as set out in Section III above; and
 - mandate the Presidency to continue the negotiations with the European Parliament at the third trilogue on 30 March 2023 on the basis of the approach outlined above.
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