Council of the European Union
General Secretariat

Brussels, 10 October 2022

WK 13591/2022 INIT

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WORKING PAPER

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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Competitiveness and Growth (Industry)
Subject:	Chips Act : policy options on outstanding key issues - PowerPoint presentation (Compcro WP 10.10.2022)

Czech Presidency working paper (WK 13177/2022)

European Chips Act – policy options on outstanding key issues

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Industry Working Party
10 October 2022

Introduction

- Preparation for the drafting of the final compromise
- In line with the declared ambition of reaching a General Approach at the December COMPET Council meeting
- The CZ Presidency has identified nine outstanding issues
- You are kindly requested to clearly indicate your preferred options for each topic

1. Definition of “first-of-a-kind” semiconductor manufacturing facility in the Union

- **Option A:** Using the definition as proposed in the suggested new compromise text. Projects would be able to qualify as “first-of-a-kind” through innovation in many different dimensions, ranging from product to process to environmental impact. The definition has a wide remit, while at the same time ensuring no existing private initiatives are crowded out.
- **Option B:** Returning to the original, more generic definition as proposed by the Commission.
- **Option C:** Elevating the threshold to projects that offer a qualified level of innovation, so that not every improvement could qualify as “first-of-a-kind”, with a view to incentivize highly ambitious projects.

2. Requiring positive spill-over effects of investments

- **Option A:** Introducing the requirement as proposed in the suggested new compromise text. A clear list of the possible types of spill-over effects would have to be established to give guidance to investors.

- **Option B:** Returning to the proposal under FR PRES (doc. 8798/22), i.e. only requiring a positive impact on the security of supply and resilience of the ecosystem. This allows to ensure an added value for the entire Union, but is broad enough to cover many different types of benefits. Furthermore, it allows a clear distinction from the RDI and FID-related spill-over requirements for Important Projects of Common European Interest.

3. Role of Member States in the label decision for IPF and OEF

- **Option A:** Maintaining the current proposal, which foresees a consultation of the European Semiconductor Board before conducting the assessment and before launching the final decision, as well as before any decision as regards the repeal of the label. The Commission shall take into account the views of the Board, but not share the confidential information.

- **Option B:** Maintaining the current proposal, but in Article 12(4) strengthening the role of Member States in case of a repeal by introducing an obligation for the Commission to consult the Board and provide reasons for the repeal.

4. Possibility to derogate from environmental procedures for IPF and OEF

- **Option A:** Maintaining the provision of the current proposal, which foresees that the deciding authority may make use of the existing derogations from environmental procedures, leaving the decision to the relevant national authority.

- **Option B:** Strengthening the current proposal, so that the establishment and operation of IPF and OEF “shall” (instead of “may”) be considered of overriding public interest. This would foster the attractiveness of the label.

- **Option C:** Deleting Article 14(3). While authorities may still make use of the existing possibility to derogate, the Chips Act would no longer suggest to do so.

5. European Chips Infrastructure Consortium (ECIC) (1)

- **Option A:** Choosing the approach in the suggested new compromise text set out in the Annex [including 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. This adds legal certainty. In order to address concerns from various Member States, the current version already 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.

  Furthermore, this version sets out a clear procedure of how the Statutes can be amended and the role of the Commission in the process. Finally, the current text includes a provision stating that the ECIC may be considered an international organisation and therefore VAT exempted (if only composed by public entities, e.g. Member States).

5. European Chips Infrastructure Consortium (ECIC) (2)

- **Option B:** Based on the suggested compromise text, adding a new paragraph (to be drafted) to further stress the openness of an ECIC. There is currently no redress procedure in place in case the ECIC members decide against the addition of a new member. In the current compromise text, the Commission can only intervene on the ECIC's openness to new members when i) the ECIC is set up; and ii) if the ECIC makes an amendment to its statutes. A new provision could be added to introduce a redress procedure after the establishment of the ECIC, with the involvement of the Commission, in case of complaints linked to the non-acceptance of new applicants.

- **Option C:** Removing the ECIC from the legal act. In this case, other structures could be used, such as EDIC, Traditional consortia or Framework Partnership Agreement (FPA).

6. Design of mandatory information requests (1)

- **Option A:** Maintaining the current compromise text, which foresees that the Commission could launch mandatory information requests. This allows for the Commission to use the same infrastructure and tools as during the monitoring (e.g. the EU Survey platform), which reduces the burden for the addressed companies. A centralised approach also avoids duplication in terms of work and with regard to companies that are active in several Member States.
- **Option B:** Adding two elements on top of Option A (to be drafted): (1) As a safeguard to ensure proportionality, there should be a consultation of companies about the information that will be asked before launching the mandatory requests. (2) The Commission should share with Member States the information it has received from the businesses on their respective territory.

6. Design of mandatory information requests (2)

- **Option C:** Like Option B, but with the change that national authorities should send out the requests and relay the results to the Commission. The Commission would still be responsible for developing the survey and aggregating the results, but Member States would have full control over the collected information. At the same time, there is a risk that this would result in a differing quality of data that is difficult to compile, or that there would be a duplication with regard to companies that are active in several Member States.

7. Scope of the crisis toolbox

- **Option A:** Maintaining the current list of critical sectors, which is focussed on sectors that perform vital societal functions.
- **Option B:** Narrowing the scope by deleting certain critical sectors from the current list. If so, which ones and why?
- **Option C:** Extending the scope by adding automotive to the list of critical sectors. In practice, this would lead to a broader and more frequent use of the crisis mechanism and tools, notably since the automotive sector makes up approx. 37% of EU demand in semiconductors.
- **Option D:** Keeping prioritisation restricted to critical sectors, but allowing common purchasing for automotive. This would keep the burden of priority rated orders proportional, since critical sectors typically account for very small shares of the market volume. However, the use of common purchasing for automotive would ensure that there is a strong tool to support the automotive sector in a crisis.

8. Priority rated orders

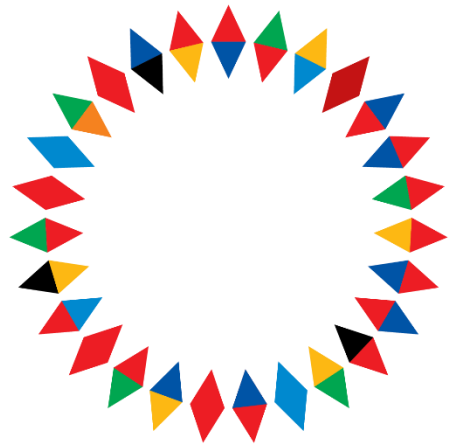
- **Option A:** Keeping the current design of the instrument, as clarified in the Presidency text (document 10863/22).

- **Option B:** Strengthening the safeguards for potential recipients of priority rated orders by introducing a hearing of the potential recipient before an order is launched (to be drafted). This would give opportunity to discuss the technical and commercial feasibility of the priority rated orders.

- **Option C:** Strengthening the safeguards for potential recipients of priority rated orders by: (1) introducing a hearing of the potential recipient before an order is launched, and (2) requiring that potential beneficiaries (end-users) should demonstrate in their request that they are not affected by the shortage as a result of their own procurement practices and that they are unable to mitigate the impact of the shortage through other means

9. Enforcement of obligations under pillar 3

- **Option A:** Maintaining the current proposal for an enforcement mechanism, which comprises of fines for non-compliance with mandatory information requests and notification obligations, as well as periodic penalty payments for non-compliance with priority rated orders. There is a maximum ceiling for both types of penalties, with a corresponding lower ceiling for SMEs.
- **Option B:** Introducing a different level of fines for non-compliance with mandatory information requests and with notification obligations, to take account of the fact that the level of gravity of the infringement is different. This would increase the proportionality of the mechanism.
- **Option C:** Introducing a different level of fines for non-compliance with mandatory information requests and with notification obligations to ensure proportionality (like in Option B), and at the same time increasing the maximum ceiling for priority rated orders to incentivise compliance with the obligation. This would address the concern that a periodic penalty payment of maximum 1.5% of the average daily turnover is too low to be a deterrent, notably during a shortage when price levels are high.



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