



SEMI Europe Priorities for the European Chips Act Trilogue Negotiations

Recommendations to the European Commission, Parliament, and Council

Brussels, 02/03/2023

Executive Summary

SEMI Europe, the global industry association representing more than 300 European companies from across the global electronics manufacturing and design supply chain, would like to bring to your attention the priorities of the semiconductor industry for the upcoming European Chips Act trilogue negotiations between the European Commission, Parliament and Council.

Since its publication in February 2022, the European Chips Act has established itself as a strategic centerpiece of Europe's industrial ambition. Translating directly into the green and digital twin transition, the initiative is expected to turn the tide on Europe's talent shortage, accelerate the growth of domestic chip design and production capabilities and reinforce the security of supply of critical components, essential for the region's expanding industrial value chains.

Heading into 2023, the European Chips Act must become the bloc's pathway to growth, making Europe a competitively attractive investment option for the semiconductor industry. While the ambitions and the objectives of the EU Chips Act remain valid, the geo-political climate has changed one year on. Europe needs to decrease its dependencies in terms of production, but at the same time it has to strengthen - more than ever- its own position in the global semiconductor ecosystem by also increasing the capabilities and performance of its strengths: i.e. European products and technologies that other regions around the world rely on.

Looking ahead, the European Commission, Parliament and Council are urged to ensure that the European Chips Act supports the whole ecosystem by strengthening Europe's semiconductor competencies across the entire value chain, accelerating investment into existing and new facilities critical for enabling the production of semiconductors, developing strategies to grow Europe's talent base and introduce means to become a strong voice and partner for international cooperation on critical topics such as export control, security of supply or international standardization roadmaps and norms.

As a strong supporter of Europe's industrial growth and resilience, SEMI Europe encourages a swift adoption of the European Chips Act and urges the co-legislators to closely liaise with relevant industry stakeholders in the coming period to ensure that the Act is set on a competitive footing with similar initiatives across the globe.

In this regard, **SEMI Europe sets out the following 5 priorities for the trilogue negotiations** addressing critical points of importance to Europe's electronics industry:

- 1. The first-of-a-kind definition must build on Europe's strengths and apply to the entire ecosystem.**
- 2. Pillar 3 must protect Europe while not undermining its strength as region of sustainable investment and growth.**
- 3. Industry must become an actively and directly involved stakeholder in EU Chips Act governance.**
- 4. The EU must speak with one voice and international cooperation must be a central feature of its long-term chip strategy.**
- 5. Commit concrete budgets and investments to skills and the development of Europe's electronics talent pipeline.**

1. The first-of-a-kind definition must build on Europe's strengths and apply to the entire ecosystem

The semiconductor ecosystem continues to grow ever-more complex. With increasing demand for components with specific performance characteristics and power efficiency properties - innovative materials, chip design, wafer fabrication, ion implantation, photolithography, and chip packaging techniques have become critical enablers of technical improvements and business competencies, generating commercial investment flows and new market opportunities.

As a critical sectoral initiative, it is important that the European Chips Act comes from a position of strength and recognizes the importance of semiconductor design, materials, gases, equipment, fabrication and packaging installations, as well as mature nodes of various sizes. They are crucial to Union's future technological resilience and success of the twin green and digital transition.

It is the view of SEMI Europe and its membership, that the first-of-a-kind facilities classification must extend to all relevant semiconductor facilities (including the production or transformation of materials and gases, design, equipment and device manufacturing) that are deemed as critical to meet long-term semiconductor component demands. Europe must avoid that innovation of mature process technology and nodes (essential for Europe's automotive and defense industry) falls behind the global competition. Further, equipment, specialty materials and gases are key to enable growth of the semiconductor industry in Europe and provide leverage to attract FDI for advanced node manufacturing. We therefore welcome the proposed changes by both Parliament and Council on this point and suggest they agree on a broad definition of first-of-a kind facility which offers enough legal clarity for undertakings.

Europe needs to decrease its dependencies in terms of production but at the same time it has to strengthen its own position in the global semiconductor ecosystem by increasing the capacities, capabilities and performance of European products and technologies other regions around the world rely on. Nevertheless, success remains strongly dependent on close collaboration with trusted allies.

A stronger position for Europe can not be achieved tomorrow, the European Chips Act must lay the ground in a long-term perspective for the EU Member States to provide public funding and support to the entire ecosystem, from R&D, to design, equipment, materials and production.

Therefore, SEMI and its members advocate a broad definition of FOAK facilities along the entire value chain.

**Reference articles (see Annex): Article 2 Definitions, Article 10 Integrated Production Facilities.*

2. Pillar 3 must protect Europe while not undermining its strengths as region of sustainable investment and growth

Our sector believes that expanding the semiconductor supply chain in Europe and collaboration remain at the forefront of any effort to advance Europe's preparedness in addressing supply chain disruptions. For this we first and foremost need to make sure that Europe is an attractive place to invest. The proposed mechanisms under pillar 3 – mandatory information gathering, priority rated orders and common purchasing schemes – are far-reaching. While they seem to be designed to protect the supply chain of chips (regardless of whether such measures would be effective or not) they include the risk of undermining the attractiveness to invest in the semiconductor supply chain in Europe - especially if there is uncertainty on when and how these measures can be activated or applied. In our view the focus needs to shift from crisis management to long-term crisis prevention. For this increased transparency within the supply chain and knowledge about the supply chain are important, once measures to achieve this are proportionate and respect the need for commercial confidentiality¹. The EU can support this by facilitating the communication and collaboration of industrial actors (up- and downstream): e.g., through a working group in the European Semiconductor Board and through long-term mapping of the semiconductor supply chain and Europe's dependencies.

A crisis definition *"based on concrete and reliable evidence of a serious and immediate threat"* is essential to provide legal certainty to investing companies and to avoid potential misuse or overuse of the crisis measures. Further, the critical sectors should be clearly defined and significantly narrowed down. The inclusion of a broad portfolio of industries in the list will likely lead to excessive activations of the crisis stages and may cause severe disruptions in the chip supply – esp. if only deployed in the EU.

Any legislation hindering the flow of information intra-company or inter-companies would be counterproductive. The respect for **intellectual property** and **trade secrets** is of course paramount for the success of the EU Chips Act. Globally operating companies could not run their business efficiently if sensitive business information and trade secrets are not protected by appropriate and necessary levels of confidentiality. Article 27a (CA 5) fully ignores that companies have implemented strong IP protection practices over the years. Instead, it intends to introduce an unbearable administrative burden for companies by obliging them – through agreements with the European Commission – to notify and receive permission from the Commission before engaging in *"a transfer"* to a third country that may infringe the intellectual property rules and rights of the Union or its Member States. This would result in inhibiting the frequent occurrence of intra-company data transfers necessary for conducting basic business operations. Thus, notifying *"any planned transfer"* to and making them pending decision from the Commission, would result in high administrative hurdles and delays for globally operating companies, disrupting operations at yet unforeseeable levels. In addition, in *"case of a breach of the agreement"*, institutions can request the *"recovery of the full amount of state aid provided to the beneficiary"* or repeal any special status applied under Pillar 1 and Pillar 2. Likeminded countries, such as the United States, set up clearer and more understandable rules, forbidding *"significant transactions"* such as *"material expansions of manufacturing capacities"* in countries of concern that would present a risk for *"national*

¹ For its part, SEMI Europe as industry association connecting the global semiconductor manufacturing and design ecosystem, advances international collaboration through its specialized communities and advisory councils, building partnerships for a resilient and growth-oriented future. The SEMI Global Automotive Advisory Council (GAAC) is a key platform of SEMI, that engages critical industry stakeholders globally in pursuit of innovations and new partnerships. The GAAC connects auto manufacturers (OEMs), semiconductor device makers, equipment, and materials suppliers to address export control developments, supply-chain challenges and regulatory bottlenecks, working with public sector representatives to improve transnational business flows.

security”. In practice, under the Article 27a of the EU Chips Act, companies would have to consent to unbearable obligations for their basic daily business operations that would put them at a considerable disadvantage vis-à-vis their competitors. Article 27a adds another significant competitive disadvantage to Europe as investment location and hence counteracts the overall objective of the EU Chips Act.

**Reference articles (see Annex): (16a), Article 2 (16) ‘critical sectors’, Article NEW Long-term strategic mapping, Article 18 Activation of the crisis stage, Article 21 Priority rated orders, Article 27a International access to and transfer of confidential information.*

3. Industry must become an actively and directly involved stakeholder in EU Chips Act governance

As the ‘absorber’ of commercially sensitive and economically significant decisions, the industry must be a core and integral part of the governance structures introduced by the European Chips Act.

The European Semiconductor Board as the critical governance body, is anticipated to be tasked with substantial responsibilities including decisions on complex, technical subjects such as production, certification and standardization of semiconductor technologies. It is imperative that such decisions reflect Europe’s geopolitical interest by taking into consideration the realities of the global semiconductor ecosystem dynamics, industry expertise and best practice that can enhance the Union’s preparedness to supply networks disruptions, shortages and geopolitical shocks impacting the supply of critical materials, chemicals, components and technologies.

In SEMI Europe’s view, active, permanent and formal industry stakeholder participation is an essential part of Europe’s inclusive and transparent policy and decision-making process and should be reflected in the European Semiconductor Board structure..

**Reference articles (see Annex): Article 24 (4), Article 25 (4).*

4. The EU must speak with one voice and international cooperation must be a central feature of its long-term chip strategy

With the importance of technology increasing as a parameter of geopolitical competition, semiconductors have become the new frontier of international engagement. With shifting priorities, foreign policy continues to ‘spill-over’ from international organizations and foreign ministries into new geopolitical structures with corporate, non-state actors who are faced with a fair-share of responsibility and accountability in shaping the global collaborative networks. Global cooperation of the EU Member States must be coordinated on a European level.

As one of the digitization frontrunners, the Union is well positioned to become a pioneer and global center of chip (and technology) diplomacy. Equipped with strong global presence, Europe is prone to become a common ground for the international community and industry to address pressing issues concerning export, investment, supply chains as well as innovation and R&D partnerships. Delays in shipping have created acute shortages and increased supply uncertainties of raw and other essential materials used in the manufacturing process. The Commission should ensure that the transport of gases and raw materials receives access to priority shipment and supply.

It is important that Europe acts based on evidence and coherent knowledge which is why it is necessary to regularly assess the effects of trade policies, tariffs, export restrictions, trade barriers and other trade-related measures on the security of supply, as well as, the effect of business closures, delocalization or acquisitions of Union key market actors by third countries. It is self-evident that the Union should proactively engage with industry in order to make this assessment relevant.

It is SEMI Europe's view that the EU needs to speak with a united and increasingly strong voice in matters affecting the business of semiconductor companies with strong presence in the region, with a particular focus on trade and supply chain resilience. This is why we strongly support the establishment of a chips diplomacy initiative as means to create a structured forum that empowers collaboration on critical issues, improves our ability to manage the security implications of geopolitical developments and advances exchange of opinions on industry matters affecting the semiconductor and tech industry. SEMI recommends exploring the possibility to use and build on existing vehicles of formal government-industry interaction.

**Reference Articles (see Annex): Article 26A new international cooperation.*

5. Commit concrete budgets and investments to skills and the development of Europe's electronics talent pipeline

Sound knowledge of circuits fundamentals, analog and digital electronics, electronic instrumentation and control, coding skills and strong analytical problem-solving capabilities are only some of the requirements professionals need to meet in order to face the daily challenges of the semiconductor design and manufacturing industry. With STEM education as basis for professional growth, technical and engineering skills continue to be a critical success factor for employment within the ever-growing global chip ecosystem.

The semiconductor industry continues to face a deepening shortage of professionals equipped with the right knowledge and skills to master the intricacies of chip design and manufacturing. Europe lacks structures to enable the acquisition of up-to-date knowledge, hands-on apprenticeships and academic curricula that reflect the demands of today's industry.

The envisaged national competence centers and pilot lines should serve as learning hubs, expanding access to knowledge, hands-on experience and enable up- and re-skilling. We further recommend that the national competence centers will be complemented by a European Chips Skills Alliance targeting modernization and expansion of industry-academia partnerships – building on existing initiatives and projects such as the Pact for Skills and METIS.

In order for the European Chips Act to put future investments into the region's semiconductor ecosystem to work, incentives and targeted investment into the region's talent pipeline will be necessary, complemented by collaboration with like-minded international partners. SEMI Europe urges the co-legislators to support Europe's talent transformation and to commit to a concrete budget and investments into critical skills as part of the Chips Act, securing a steady stream of expertise for Europe's future world-class semiconductor ecosystem.

Annex I: SEMI Europe comments on the ITRE report on the European Chips Act

Following are SEMI Europe's comments and recommendations on articles deemed as critical to the success of the Chips Act initiative.

European Chips Act ITRE Amended Text
<i>Article 2</i> <i>Definitions</i> (10) 'first-of-a-kind facility' means a new or retrofitted industrial facility capable of semiconductor manufacturing or design, including front-end or back-end, or both, or capable of manufacturing materials, passive components or equipment specifically used in semiconductor manufacturing that is not substantively already present within the Union, for instance with regard to the technology node, processing of raw and substrate materials and process and product innovation-that can increase the recyclability of semiconductors, reduce demonstrably and significantly the required production inputs, offer better energy and environmental performance or increase the level of security, safety and reliability of components contributing to the security of chips supply in the internal and export markets;
SEMI Europe Position/Comments
 SEMI Europe in principle supports the amendment, especially the first part. According to the Regulation Article 10 and 11 of the European Chips Act, companies interested to invest in the EU, may have recognized their installations as (first-of-a-kind) Integrated Production Facility or Open EU Foundry. These should not be limited only to advanced technologies, and in particular to advanced-CMOS nodes below 10nm. It is the view of SEMI Europe members, that such endeavors should include or be extended to all relevant semiconductor technologies such as equipment, materials, design and device manufacturing. Geopolitics have changed radically since the publication of the EU Chips Act in February 2022. More than ever, it will be important that EU Chips Act supports the entire ecosystem and builds on European strength along the supply chain – including material and equipment. For the second part: The European Chips Act should focus on the production of semiconductors, components materials and equipment. Provisions addressing the manufactured product – like recycling of semiconductors – should not be addressed by the Chips Act Regulation. Recyclability and circularity along the supply chain incl. recycling of production inputs is more relevant and applicable.

European Chips Act ITRE Amended Text

Article 10 Integrated Production Facilities

1. Integrated Production Facilities **shall be** first-of-a-kind semiconductor design and manufacturing facilities, including front-end or back-end or both, **or capable of manufacturing materials or equipment used in semiconductor manufacturing**, in the Union that contribute to the security of supply **and the resilience of the semiconductor ecosystem within** the internal market, **to the economic competitiveness of the Member States and where relevant, to the security of the global semiconductor supply chains.**

SEMI Europe Position/Comments

● SEMI Europe in principle **supports** the amendment.

According to the Regulation Article 10 and 11 of the European Chips Act, companies interested to invest in the EU, may have recognized their installations as (first-of-a-kind) Integrated Production Facility or Open EU Foundry.

These should not be limited only to advanced technologies, and in particular to advanced-CMOS nodes below 10nm. It is the view of SEMI Europe members, that such endeavors should include or be extended to all relevant semiconductor technologies such as equipment, materials, design and device manufacturing. Geopolitics have changed radically since the publication of the EU Chips Act in February 2022. More than ever it will be important that the EU Chips Act supports the entire ecosystem and builds on European strength along the supply chain – including material and equipment.

European Chips Act ITRE Amended Text

Article 2 (16) / Annex 1a Critical Sector

‘critical sector’ means any sector referred to in the Annex of the Commission proposal for a Directive of the European Parliament and of the Council on the resilience of critical entities, the defense sector and other activities that are relevant for public safety and security;

SEMI Europe Position/Comments

● We **oppose** the proposal for the Chips Act to have its own Annex on the critical sectors.

We instead suggest to continue to refer to the Critical Entities Directive as in the original proposal. Considering that the Critical Entities Directive is subject to future changes. We advise that Directive changes are not automatically incorporated into the Chips Act, but subject to an delegated act.

We strongly recommend to not add any additional “critical” sectors to the text. The Critical Entities Directive provides an adequate framework which is appropriate for Pillar 3 as the implications of adding sectors has far-reaching implications for the use of the emergency toolbox. The legislators have carefully defined critical sectors in a specific legislation -this work should not be duplicated. We recommend using the Council version of this article.

European Chips Act ITRE Amended Text

Article 2 (16a) *Semiconductor Crisis*

‘semiconductor crisis’ means the existence, based on concrete and reliable evidence of a serious and immediate threat to citizens, and to the functioning and security and defense of the Union’s critical infrastructure, economy, and institutions, of a serious and extraordinary disruption in the semiconductor supply chain, thus preventing the supply, repair or maintenance of essential products within the semiconductor supply chain, which has the potential to cause significant shortages of semiconductors, intermediate products or raw or processed materials to the extent that it would have a serious, extraordinary, and detrimental effect on the functioning of the critical sectors as defined in Article 2(16) and Annex Ia.

SEMI Europe Position/Comments

We explicitly support this amendment.

The proposed mechanisms under Pillar 3 – mandatory information gathering, priority rated orders and common purchasing schemes are far-reaching. They entail the risk to undermine the attractiveness to invest in the semiconductor supply chain in Europe - especially if there is uncertainty when these measures can be triggered and applied. A crisis definition “*based on concrete and reliable evidence of a serious and immediate threat*” is essential to provide legal certainty to investing companies and to avoid potential misuse or overuse of these crisis measures.

We explicitly support the inclusion of this definition as both the original proposal and the Council’s text lack the legal certainty with regards to the crisis definition.

European Chips Act ITRE Amended Text

New Article *Long-term strategic mapping*

3. The Commission shall carry out a long-term strategic mapping exercise of the Union’s semiconductor value chain in cooperation with the national competent authorities designated pursuant to Article 26(1), with the aim of identifying early warning indicators, of building knowledge and capacity to inform future industrial policy measures and assess the Union’s strengths and weaknesses in the global semiconductor value chain.

2. The Commission shall work together with the European Semiconductor Board and key market representative organisations, to develop a framework and transparent methodology for a long-term strategic mapping of the semiconductor value chains and if needed, update the framework and the methodology.

2a. The Commission shall have a dedicated structure based on new and existing capacities and expertise that are capable of conducting the long-term strategic mapping according to the framework and methodology approved by the European Semiconductor Board. For that purpose, such new dedicated

structure shall be adequately staffed and shall have the necessary financial resources. The Commission shall develop and provide a standardized and secure platform for the information collection and processing for the purpose of this Article. Any information obtained pursuant to this Article shall be treated in compliance with the confidentiality obligations set out in Article 27.

3. The mapping of the undertakings operating along the Union's semiconductor supply chains shall be based on, among other sources, commercially available data and relevant non-confidential information from undertakings.

The Commission, after consultation of national competent authorities and key market representative organisations, shall adopt guidance for the provision of information about the early warning indicators, to ensure that data is comparable, is collected and stored securely, and allows for meaningful and effective analysis. The Commission shall update that guidance when necessary, in order to reflect technological, geopolitical, and market developments. In particular, the long-term strategic mapping shall:

- (a) identify key products and critical infrastructures in the internal market that are depending on the supply of semiconductors;
- (b) identify all levels of the value chains, namely inputs, production steps, and products of the semiconductor industry, including end-customer industries;
- (c) identify and assess incentives, opportunities and gaps in investments in the semiconductor supply and value chains in the internal market, such as access to skilled and adequately trained workers, proximity to clusters of the semiconductor supply chain, access to critical raw materials and inputs, availability of renewable energy and sustainable material supplies;
- (d) analyse the market regarding the entry barriers, the technology characteristics, the dependencies on foreign technology and providers, and chokepoints of the value chain;
- (e) analyse how the measures provided for in Articles 20, 21 and 22 could solve the crisis as defined in Article 18 and provide different crisis scenarios;
- (f) identify early warning indicators pursuant to Article 16.

SEMI Europe Position/Comments



SEMI Europe supports this new article.

Mapping should replace a regular monitoring exercise which would lead to mandatory sharing of sensitive business data by companies, which might risk the competitiveness of the Union's semiconductor industry and lead to administrative burden on the industry.

Long-term strategic mapping should include the entire semiconductor supply chain and not be limited to semiconductor manufacturing. The mapping should underpin, guide, and help to improve all activities of the Chips Act and serve as a basis for negotiations with international partners.

European Chips Act ITRE Amended Text

Article 18 Activation of the Crisis Stage

3. A semiconductor crisis shall be considered to occur if conditions *set out in Article 2(16 a) are met*.

Before activating the crisis stage, the undertakings relevant within the critical sectors shall demonstrate that they diligently assessed their respective security of supply of semiconductors and implemented risk mitigation measures, including diversification of suppliers and stockpiling of crisis-relevant products, with the aim of reducing the risks of shortages.

2. *After endorsement of the European Semiconductor Board*, where an assessment of the Commission provides concrete, serious, and reliable evidence of a semiconductor crisis, **in 11accordance with paragraph 1a of this Article**, the Commission may activate the crisis stage by means of implementing acts in accordance with Article 33(2). The duration of the activation, **which in any case shall not exceed 6 months**, shall be specified in the implementing act.

2a. *The activation of the crisis stage shall be accompanied by a crisis situation assessment report, drawn up by the Commission and the European Semiconductor Board, and made available to the European Parliament.*

3. Before the expiry of the duration for which the crisis stage was activated, the Commission shall, after consulting the European Semiconductor **Board and key market representative organisations**, assess whether the activation of the crisis stage should be **terminated or** prolonged. Where the assessment concludes that a prolongation is appropriate, the Commission may prolong, **in due time**, the activation by means of implementing acts. The duration of the prolongation shall be specified in the implementing acts adopted in accordance with Article 33(2). The Commission may repeatedly decide to prolong the activation of the crisis stage where this is appropriate.

Before activating or prolonging the crisis stage, the Commission shall take into account the potential negative impacts and consequences of the crisis stage on the Union's semiconductor industry and critical sectors.

During the crisis stage, the Commission shall, upon request from a Member State or on its own initiative, convene extraordinary meetings of the European Semiconductor Board as necessary. Member States shall work closely with the Commission and coordinate any national measures taken with regard to the semiconductor supply chain within the European Semiconductor Board.

5. Upon expiry of the duration for which the crisis stage is activated, the measures taken in accordance with Articles 20, 21 and 22 shall cease to apply. The Commission shall review the Union risk assessment pursuant to Article 16(2), **update the mapping and the monitoring of the semiconductor value chains pursuant to Article 15 and Art. On mapping taking into account the lessons learned from the crisis**, no later than six months after the expiry of the duration of the crisis stage. **The conclusions of the review shall be made available to the European Parliament.**

SEMI Europe Position/Comments

 **We explicitly support this amendment.**

We explicitly support this compromise amendment. The proposed mechanisms under Pillar 3 – mandatory information gathering, priority rated orders and common purchasing schemes are far-reaching. They entail the risk to undermine the attractiveness to invest in the semiconductor supply chain in Europe, especially if there is uncertainty when these measures can be activated and applied.

European Chips Act ITRE Amended Text

*(42) Article 18a
Semiconductor Crisis*

(42) The semiconductor crisis stage should **only be activated if the conditions of the semiconductor crisis are fully met. In order to ensure an agile and effective response to such a semiconductor crisis, the Commission should be empowered to activate the crisis stage, by means of an implementing act, for a predetermined duration of time, upon the endorsement of the European Semiconductor Board in accordance with this Regulation. The activation of the crisis stage should be a last resort, with a clear set of checks and balances included throughout the process, to ensure that the crisis stage is used in a proportionate and necessary way. The Commission should assess whether the crisis stage should be either terminated or prolonged. Should the Commission conclude, after consulting the European Semiconductor Board, that such termination or prolongation is appropriate, it should act accordingly, by means of an implementing act.**

SEMI Europe Position/Comments

● **We would like to highlight the potential for improvement in this amendment.**

(42) is not fully coherent with Article 18 “Activation of the crisis stage”.
Some of the language of (42) should be integrated in Article 18 esp. on the termination of the crisis stage.

European Chips Act ITRE Amended Text

Article 21

Priority rated orders

1. **In cases referred to in Article 18(1)**, where necessary and proportionate to ensure the **basic** operations of all or certain critical sectors, the Commission may oblige Integrated Production Facilities and Open EU Foundries to accept and prioritise an order of crisis-relevant products ('priority rated order'). The obligation shall take precedence over any performance obligation under private or public law.

2. **Where applicable**, the obligation under paragraph 1 can be imposed to other undertakings **of the semiconductor value chains** which have accepted such possibility in the context of receiving public support.

3. When a semiconductor undertaking established in the Union is subject to a third country priority rated order measure, it shall inform the Commission. Should that obligation significantly impact the operation of certain critical sectors, the Commission may oblige that undertaking, **where necessary and proportionate**, to accept and prioritise orders of crisis relevant products in line with paragraph 4, 5 and 6.

4. The obligations under paragraph 1, 2 and 3 shall be enacted **as a last resort measure** by the Commission via decision. The decision shall be taken **after consulting the European Semiconductor Board and** in accordance with all applicable Union legal obligations, having regard to the circumstances of the case, including the principles of necessity and proportionality and **after the critical sector concerned proves that it acted in due diligence and exhausted all preventative mitigation measures, including finding alternative suppliers or creating stockpiles**. The decision shall in particular have regard for the legitimate aims of the undertaking concerned and the cost, effort **and technical aims** required for any change in production sequence. In its decision, the Commission shall state the legal basis of the priority rated order, fix the time-limit within which the order is to be performed, and, where applicable, specify the product and quantity, and, **where applicable**, state the penalties provided for in Article 28 for non-compliance with the obligation. The priority rated order shall be placed at fair and reasonable **market** price.

4 a. For facilities carrying out a priority rated order, the Commission may work with the European Semiconductor Board and its structures to exchange best practices and to enable Member States to introduce or improve tax incentives applied to these facilities.

5. The undertaking concerned shall be obliged to accept and prioritise a priority rated order. The undertaking may request the Commission to review the priority rated order where it considers it to be duly justified based on one of the following grounds:

- (a) if the undertaking is unable to perform the priority rated order on account of insufficient production capability, production capacity, **or on technical grounds**, even under preferential treatment of the order;
- (b) if acceptance of the order would place an unreasonable economic burden and entail particular hardship for the undertaking, **including risk in business continuity**.

6. Where an undertaking is obliged to accept and prioritise a priority rated order, it shall not be liable for any breach of contractual obligations that is required to comply with the priority rated orders. The liability shall be excluded only to the extent the violation of contractual obligations was necessary for compliance with the mandated prioritization.

SEMI Europe Position/Comments

● **We would like to highlight the potential for improvement in this amendment.**

A due diligence check and preventative mitigation measures provide more legal certainty. This helps to make sure that both – the supply and the demand side of semiconductor products work together to solve the supply issues. Taking into the consideration the far-reaching impact of priority rated orders the due diligence is more than appropriate. Critically, the “right to object” and “right to be heard” require stronger attention and representation across the article. Additionally, “market price” should take into account the realities of semiconductor industry and reflect the cost pattern accordingly.

European Chips Act ITRE Amended Text

Article 27a

International access to and transfer of confidential information

1. The transfer of or access to confidential information, including trade secrets and other commercially sensitive data as well as content protected by intellectual property rights, within the scope of this Regulation held in the Union to third countries shall only be allowed where a bilateral or multilateral agreement regarding protection of that confidential information and enforcement of those intellectual property rights is in force and effectively complied with between the requesting entity in a third country and the Union, or between the requesting entity in a third country and a Member State.

2. The Commission and Member States shall take all reasonable technical, legal and organisational measures, including contractual arrangements or export restrictions, to prevent international transfer or governmental access to confidential information, including trade secrets and other commercially sensitive data as well as content protected by intellectual property rights, where such transfer or access would be in contravention of Union law, the national law of the relevant Member State, or where it may impinge on national security or defence interests of the Union or its Member States.

2a. Any undertaking receiving state aid under this Regulation ('beneficiary') shall enter into an agreement with the Commission or with the responsible Member State that precludes the beneficiary from engaging in a transfer, under the rules defined in that agreement to a third country whose laws or their enforcement thereof infringes intellectual property rules and rights of the Union or its Member States, inter alia through forced technology transfer, intellectual property theft, or counterfeiting and piracy. This shall not apply to existing facilities or to those that contribute to legacy semiconductor chips or technologies.

Based on the terms of agreement, the beneficiary shall notify the Commission of any planned transfer to a third country that may infringe the intellectual property rules and rights of the Union or its Member States. The Commission shall decide whether the planned transfer is permissible under the agreement, and shall notify the beneficiary in due time.

In case of a breach of the agreement, the Commission or the responsible Member State shall request compensatory measures including:

- (a) recovery of the full amount of state aid provided to the beneficiary;
- (b) repeal of the status of Integrated Production Facility, Open EU Foundry, first-of-a-kind facility, or participation in the Joint Undertaking where applicable;
- (c) imposition of fines in accordance with Article 28 of this Regulation.

3. In the absence of an agreement as referred to in paragraph 1 or 2a of this Article, transfer of or access to confidential information, trade secrets or content protected by intellectual property rights within the scope of this Regulation held in the Union shall take place only where such a transfer or access takes place within one entity, with one or more of its subsidiaries or its direct business partners that are established outside of third countries that infringe on intellectual property rules of the Union and its Member States and where the protection of intellectual property rights, confidential information and trade secrets is ensured by reasonable technical, legal and organisational measures and in full respect of Directives (EU) 2016/943 and 2004/48/EC.

4. Where confidential information, including trade secrets and other commercially sensitive data as well as content protected by intellectual property rights, is shared with competent authorities of a third country, such information shall be transferred from a single contact point in the Commission, and be transferred to a single designated contact point in the third country. The designated provider of the data shall keep a detailed log of all information transmitted to the third country.

5. The European Semiconductor Board shall advise and assist the Commission in developing guidelines and on the assessment of whether the conditions laid down in paragraphs 1, 2a and 3 are met, in particular as regards the

technical, legal and organisational measures put in place in order to protect confidential information, trade secrets or intellectual property rights and ensure their effective enforcement.

6. Where the conditions laid down in paragraph 1 or 3 are met, the entity transferring information or providing access thereto shall provide the minimum amount of information needed in order to fulfil the request. The information shall be protected by reasonable technical, legal and organisational measures, including storage in a secure physical environment separation from other databases, and physical intrusion controls. Once the information is no longer required, it shall be deleted.

7. If an entity outside of the Union has received confidential information, including trade secrets and other commercially sensitive data as well as content protected by intellectual property rights, but has violated the rules set out in this Regulation or the accompanying guidelines on the technical, legal and organisational measures to protect this information, all further transfer of information to this entity shall be suspended.

Any information obtained pursuant to this Article shall be treated in compliance with the confidentiality obligations set out in Article 27.

SEMI Europe Position/Comments

 **We oppose this amendment.**

The semiconductor supply chain is complex and global. The smooth and secure transfer of information between legal entities of the same company or between different undertakings is essential for the proper functioning of the supply chain.

This article would bring a lot of legal uncertainty. It is vague and not necessary as (1) companies perform intra-data sharing through secure networks and (2) legal instruments already exist to protect IP and trade secrets, and to limit specific transfers to less-secure countries where necessary, through e.g. export controls. This article could also further lead to incoherence within the Union as the implementation may depend on bilateral agreements between individual Member States and non-EU countries.

The flow of information that is essential to achieve business operations of multinational companies will be hindered. This will make Europe less competitive on the global market. This article would further lead to additional administrative burdens, particularly cumbersome for SMEs actively participating in this global supply chain. It would fully undermine the objective of the EU Chips Act to attract investments to the EU. There is no evidence of a need to add a specific legislative provision related to semiconductors.

European Chips Act ITRE Amended Text

Article 24(4)

Structure of the European Semiconductor Board

The Commission may establish standing or temporary sub-groups for the purpose of examining specific questions. Where appropriate, the Commission **shall** invite **key market representative organisations or any other** organisations and experts representing the interests of the semiconductor industry, trade unions, and users of semiconductors at Union level, to **provide input to** such sub-groups in the capacity of observers. A sub-group including Union Research and Technology Organisations shall be established for the purpose of examining specific aspects on strategic technology directions and reporting on this to the European Semiconductor Board. ***Proceedings and conclusions of the sub-groups meetings shall be made public, while ensuring the safe handling and processing of confidential information.***

SEMI Europe Position/Comments

● **We would like to highlight the potential for improvement in this amendment.**

Given the complexity of the supply chain, industry needs to be involved in the European Semiconductor Board in a structural and systematic way.

The amendment is a step in the right direction but we believe the wording is still too “optional” and on a case-by-case basis. It is important that all relevant industry stakeholders along semiconductor the supply chain operating in Europe are involved in a structural way incl. upstream and downstream industry. i.e through standing sub-groups.

European Chips Act ITRE Amended Text

Article 25(4)

Structure of the European Semiconductor Board

The Commission **shall involve key market representative organisations and shall** appoint observers to take part in the meetings, as appropriate. The Commission **shall** invite experts with specific expertise, including from relevant stakeholder organisations, with respect to a subject matter on the agenda to take part in the meetings of the European Semiconductor Board on an ad hoc basis. The Commission may facilitate exchanges between the European Semiconductor Board and other Union bodies, offices, agencies and advisory groups. The Commission shall invite a representative from the European Parliament as **permanent** observer to the European Semiconductor Board **especially to all meetings regarding the semiconductor crisis**. The Commission shall ensure the participation of relevant other Union institutions and bodies as observers to the European Semiconductor Board with respect to meetings concerning Chapter IV on *monitoring and crisis response*. Observers and experts shall not have voting rights. **On a case by case basis, observers and experts, including industry and civil society stakeholders in their respective roles may contribute information and insights to the** formulation of opinions, recommendations or advice of the European Semiconductor Board and its sub-groups.

SEMI Europe Position/Comments

● **We would like to highlight the potential for improvement in this amendment.**

Given the complexity of the supply chain, industry needs to be involved in the European Semiconductor Board in a structural way.

The amendment is a step in the right direction but we believe the wording is still too “optional” and on a case-by-case basis.

It is important that all relevant industry stakeholders along semiconductor the supply chain operating in Europe are involved in a structural way incl. upstream and downstream industry. i.e through standing sub-groups.

European Chips Act ITRE Amended Text

ARTICLE 26A new

International cooperation

1. The Commission, on behalf of the Union, shall pursue cooperation with relevant third countries on mutual support and benefits in the field of semiconductor supply, building on complementarities and interdependencies along the semiconductor supply chain, **in compliance with international obligations and without prejudice to procedural requirements under the Treaty on international agreements. Complementarities should be focused on the gaps identified through the mapping of undertakings operating in the Union along the semiconductor supply chains.**

2. The Commission shall **establish a chips diplomacy initiative through which it** enter into consultations or cooperation, on behalf of the Union, and assisted by the European Semiconductor Board, with relevant third

countries with a view to seeking solutions to address future supply chain disruptions, **such as those resulting from third-country export restrictions**, to identify the availability of raw materials, intermediate products, in compliance with international obligations. This may involve, where appropriate, coordination in relevant international fora **or other diplomatic measures** and should ensure robust engagement with the stakeholder community.

2a. (new) The Commission shall also **assess the effect of trade policies, tariffs, export restrictions, trade barriers and other trade related measures on the security of supply, as well as, the effect of business closures, delocalisation or acquisitions of Union key market actors by or to third countries.**

3. In future investment and trade agreement of the Union with relevant third countries, collaboration in the field of semiconductors and along the entire semiconductor supply chain shall be a priority. **The Commission shall seek to reach such agreements with like-minded third countries that have advantages in the semiconductor industry to enhance cooperation and attract investment.**

4. For the purpose of implementing actions under the Initiative's component referred to in Article 4, point d, the Commission may set up an exchange programme for doctoral researchers in semiconductors engineering. The programme shall finance exchange periods for doctoral researchers between two or more higher education institutions in the Union and EEA members, including universities and research and technology organisations, and the relevant third countries. The cooperation agreement shall aim for the reciprocal participation of legal entities established in the Union in equivalent programmes of associated countries.

Without prejudice to the applicable procedures under the Treaties, the European Parliament shall be informed in a timely manner of initiatives or actions undertaken pursuant to this article.

SEMI Europe Position/Comments



We strongly support this amendment.

Geopolitics have changed radically since the publication of the EU Chips Act in February 2022. International cooperation has become even more important, and Europe needs to speak as a united voice with international partners. **The European Chips Act should establish a chips diplomacy initiative** with global partners to identify ways to ensure stronger, long-term resilience of supply chains that are essential for the microelectronics industry to withstand future crises. **Exchanging information with competent authorities of third countries could potentially be beneficial** for collaboration and exchange, for example in the context of the EU-US Trade and Technology Council or existing multi-lateral agreements.

International cooperation should be coordinated on a European level between the European Commission and the member states and explicitly tackle topics like target export restrictions, trade policies and third country policies affecting European companies.

Final Remark

SEMI Europe would welcome the opportunity to discuss the recommendations with the Members of the European Parliament, Council and Commission. The microelectronics sector is a key enabler and remains ready to work together with all interested stakeholders to develop new avenues of growth to maintain Europe's technological leadership.

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