

### Introduction

In February 2022, the EU Commission (EC) [published](#) its long-anticipated plan to bolster the European Union's (EU) sovereignty in semiconductor production and to achieve better supply chain resilience via a legislative package including a European Chips Act.

The [European Chips Act package](#) of measures includes a communication, two legislative proposals and a recommendation for Member States, as follows:

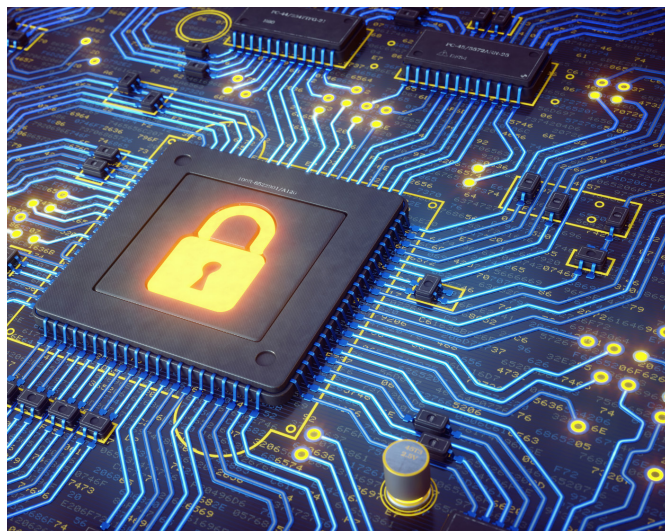
- i. **Communication** outlining the proposed strategy for a European Chips Act, and the EU's plans for the European semiconductor industry
- ii. **Proposal for a regulation** establishing the framework of measures for strengthening Europe's semiconductor ecosystem (known as the **European Chips Act**)
- iii. **Proposal for a regulation** creating a **Chips Joint Undertaking** under Horizon Europe, the EU's Research and Innovation Funding programme
- iv. **Commission recommendation** on a **common EU toolbox** to address semiconductor shortages and a mechanism to monitor the semiconductor ecosystem

This package of measures will be **supported by investments reaching up to €43 billion**, which will include public and private investments, expected to be realised by 2030. The proposed regulation for a European Chips Act will now be submitted to the two co-legislators for legislative scrutiny, while only the Council will be reviewing the proposed funding scheme and the recommended common EU toolbox.

In this client alert, we will review and analyse the content of the legislative package, which is likely to feature highly in future EU policy discussions. If the proposed European Chips Act is of relevance for your organisation, please do not hesitate to reach out to us.

### Strategic Objectives for Chips and the Semiconductor Ecosystem in Europe

The geopolitical challenges in recent years, combined with the impact of the COVID-19 pandemic, seriously affected the global semiconductor industry, and the consequent shortage of semiconductor supply had a significant effect on EU manufacturing. These factors have inspired the EC to put forward policies in order to increase the EU's resilience towards supply chain disruptions. This legislative initiative, thus, also contributes to the EU's technological sovereignty agenda, which is a central policy objective of the current EC.



The EC recognises the strategic importance of chips in/for the broader industrial value chain as a key component for Europe's digital transformation. The chip industry will be critical for automated cars, the cloud, IoT, supercomputers and connectivity technologies (5G/6G), among others. Thus, for the European market to be competitive in the global technological race, it must ensure the chips production capacity in Europe is enhanced by strengthening research and technology leadership, by investing in breakthrough technologies, and by building next-generation production facilities.

Guaranteeing the supply of chips in the longer term is one of the overarching strategic objectives of the EC. Achieving 20% (instead of the current 9%) of the global market share in global chips production by 2030 is the stated EU goal. In this context, tackling skills shortages, attracting new talent and supporting the emergence of a skilled workforce will also be decisive elements to strengthen Europe's semiconductors ecosystem.

The rationale for the policy approach is clear, and the instruments proposed are comprehensive. EU policymakers will have been conscious of the US Innovation and Competition Act, which aims, among other things, to boost chips production in the US. What is less clear is the extent to which the EU can achieve its policy objectives by trying to build autonomous chip manufacturing capacity on the basis of localised strengths in both R&D and efficient production techniques, or whether trying to encourage Asian chips manufacturing giants to invest in production facilities within the EU would provide a quicker route to building local production capacity to strengthen supply chain resilience, and building skills over time. The risk for the EU and the US is of getting into a bidding war to attract production investment.

It remains to be seen whether the EU initiative will be seen as a sensible re-balancing of a market in which the EU has underperformed, or as a protectionist attempt to cut non-EU supply out of the European market. A protectionist direction would be likely to encounter strong resistance from current market leaders. The industrial choices the EU makes will probably provide a better indication of this than the enabling legislation the EC has now proposed.

Three main policy initiatives shall drive forward these ambitions and objectives:

- 1. Chips for Europe Initiative** – This initiative will directly provide **€11 billion in EU public financing** to reinforce existing research, development and innovation on chips. The funding will also be disbursed to deploy advanced semiconductor tools and for professional training to develop an in-depth understanding of the semiconductor ecosystem and value chain.
- 2. Chips Fund** – To ensure the security of supply, a new framework is envisaged to facilitate access to finance for startups and to attract investors. A dedicated **semiconductor equity investment facility** will also contribute to scale-ups and SMEs with their expansion in the market.
- 3. Coordination Mechanism** – A coordination mechanism between Member States and the EC to monitor the supply of semiconductors, estimating the demand and anticipating the shortages, will be put in place.

## Proposed Regulation on a European Chips Act

The proposed regulation on a European Chips Act is the central pillar implementing the aforementioned ambitions and objectives, and it sets out a framework for strengthening Europe's semiconductor ecosystem. The legislative proposal is structured into three pillars:

### 1. Chips for Europe Initiative, Creating the Conditions to Strengthen the EU's Industrial Innovation Capacity

A **European Chips Infrastructure Consortium** will be created to reinforce the EU's competitiveness, resilience and innovation capacity. It comprises five elements:

- Advance large-scale **design capacities** for integrated semiconductor technologies
- Strengthen existing and new **advanced pilot lines**
- Work towards **advanced technology and engineering capacities** to accelerate the innovative development of quantum chips
- Establish a **network of competence centres** across the EU
- Create a **Chips Fund** to facilitate access to debt financing and equity by startups, scale-ups, SMEs and companies in the semiconductor value chain (under the InvestEU Fund and the European Innovation Council)

### 2. First-of-a-Kind Integrated Production Facilities and Open EU Foundries Facilities

The second pillar consists of support schemes through semiconductor manufacturing facilities that would contribute to the security of supply and the resilience of the chips ecosystem in the EU's internal market. These facilities will be committed to continued investments to develop the semiconductor sector in the EU.

The **Integrated Production Facilities** will be vertical and would enable the manufacturing and production of components that would serve the European market.

The **Open EU Foundries**, on the other hand, will be more diversified across industrial segments, and will include facilities that would design and produce components mainly for a broader range of industrial players.

However, to avoid competition between Member States on accessing such subsidies, the aid would be granted only if the activity is a pioneer in Europe and if it improves the security of supply for Europe and offers benefits to the entire European ecosystem.

Any work recognised in any of these two facilities could offer benefits to fast-track permits for the construction facilities and operations in Member States, as well as prioritise pilot lines under the Chips for Europe Initiative. Importantly, Member States can grant public financing in line with the EU's State Aid rules.

### 3. Coordination Mechanism for Monitoring and Crisis Response

The third pillar lays the foundations for the creation of a **monitoring and alert system for the semiconductor value chain**, whereby Member States will be tasked to provide regular updates and exchange their findings within the European Semiconductor Board. The newly established board will comprise representatives from Member States and the EC. The board will assess whether any crisis response needs to be activated or if any coordinated chips procurement would be required in case of shortages.

The **EC has the power to designate a crisis stage by means of a delegated act** (i.e. secondary EU legislation) when there is serious evidence of a semiconductor crisis due to a supply disruption having a negative impact on the internal market. In case of a crisis, the EC can also **request that semiconductor facilities prioritise the production of crisis-relevant products for critical sectors**. It is worth noting that the critical sectors are defined in the legislative proposal for the resilience of critical entities – still under negotiation – and include operators ranging from energy, healthcare, air transport, digital infrastructure, public administration or space. The US has similar powers through the Defense Production Act, but the existence of powers to override commercial contractual obligations may make it harder to develop EU industrial capacity as part of a global supply chain, as opposed to supplying purely within the EU.

## Proposed Semiconductor Monitoring Toolbox

The EC issued a recommendation for Member States to establish a **common toolbox to address semiconductor shortages** and an **EU mechanism to monitor the semiconductor ecosystem**. The toolbox would provide an immediate, rapid and coordinated response to the current shortage of chips.

Member States are encouraged to work with the EC through the **European Semiconductor Expert Group**, to actively monitor the semiconductor value chain and to coordinate any immediate crisis response. In case of an immediate crisis, Member States would need to urgently exchange information through the expert group on the state of the semiconductor crisis in their markets.

The toolbox empowers Member States to **request information from semiconductor manufacturers or their representative organisations** on their supply capabilities, production capacity and disruptions. This information will be critical to determine the proportionate crisis response measures at both the national and EU levels.

**Specific crisis response measures** could include:

- Requesting that chips manufacturers **prioritise the production of crisis-relevant products**
- Empowering the **EC to act as a central purchasing body** on behalf of two or more Member States for public procurement of crisis-relevant products for critical sectors
- Assessing whether the EU should create an **export-surveillance mechanism** for crisis-relevant products, and by extension decide if protective measures with respect to such exports may be imposed
- Conducting regular **consultations with third countries** to enhance collaboration on supply chain disruptions

To ensure an appropriate monitoring tool is in place, **early warning indicators** will be identified. Finally, users of semiconductors, particularly those covering the critical sectors, would be required to provide information to Member States with respect to atypical increases in demand, as well as any known disruption in their supply chain. Member States would, in turn, inform the EC accordingly. Based on this information, as well as on information gathered by Member States, namely on mapping factors, trends and events that can lead to significant disruption of the global semiconductor value chain, a risk assessment tool will be established.

Finally, it is worth noting the toolbox remains a recommendation by the EC and Member States are not legally required to follow these. However, due to the strategic importance of the chips supply shortages, it is our expectation the recommendation will be followed through.

## Funding Mechanism

Finally, the package includes a legislative proposal amending existing legislation to direct additional funding from existing EU funding programmes under a new EU Chips Joint Undertaking. The funding, estimated to reach €11 billion by 2030, will be implemented by actions stemming from the Digital Europe programme in areas such as high-performance computing, artificial intelligence, cybersecurity and skills development, and the Horizon Europe programme, focusing on pre-competitive research, technological innovation in chips materials and semiconductors.

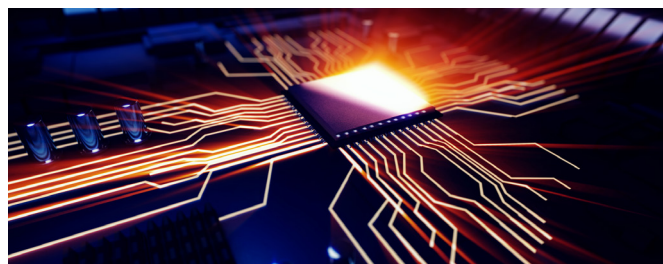
## How We Can Help

The proposed European Chips Act is contemplating a broad range of public and private financing opportunities in order to expand the semiconductor industry and manufacturing capacity in Europe. It will be important for private sector operators to understand how they may benefit from these new funding opportunities, and how as the European Chips Act is implemented it will create innovation opportunities, but may also lead to trade barriers.

Whether the significant funding opportunities will enable the EU to become a leader in the broader chips value chain in the medium term, with the ultimate goal to achieve diversification of the supply chains in the long term, remains to be seen. However, the EC's proposals are a serious effort to boost European capacity in a strategically important area in which Europe has fallen behind.

In any case, the proposed legislative measures are subject to change, as the EU's co-legislators will now start to negotiate between them. For anyone impacted by the proposed European Chips Act, whether as a potential beneficiary of EU funding, or as a customer in need of supply of chips, it will be essential to monitor and analyse the policy discussions, and to engage in them as necessary in order to shape the new EU chips regime. The evolving geopolitical context will put a particular emphasis on getting the balance right in this discussion.

**With us as your trusted advisors on your side, you will be able to spot, assess and understand the risks and opportunities for your organisation from the proposed European Chips Act.** We can support you with any legal or policy request you may have. Please do not hesitate to reach out to us for a discussion.





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