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# Three suggestions for the EU Chips Act

**As stated in our previously published general position paper, the Confederation of Swedish Enterprise is generally critical of major sections of the EU Chips Act. Many parts of the Act are questionable from the point of view of business and from a level playing field perspective. Indeed, it could constitute a dangerous precedent for more sectoral and interventionist policymaking at an EU level.**

**In this paper, we advance three specific suggestions for amendments that would improve the proposal. Overall, it should be streamlined, and should focus on stimulating economic activity within the semiconductor value chain, in particular in research and development. At the same time, it should refrain from imposing ineffective mechanisms for tackling security of supply through information gathering and steering production.**

## 1. Avoiding unnecessary bureaucracy and limited predictability

The Confederation of Swedish Enterprise is fundamentally opposed to selective Aid to the mass manufacturing of products where there seems to be no manifest long-term market failure. Should such Aid measures be enabled nevertheless, the process should not be made any more complicated than is necessary.

The current setup, as described in Articles 10-12, entails an ongoing control of whether a certain facility meets the requirements described in Articles 10 and 11, respectively. This in turn is a prerequisite for obtaining beneficial treatment in any State Aid procedures, as set out in Article 13.

If the requirements in Articles 10 or 11 are not met, and the facility no longer will be designated as an Integrated Production Facility (IPF) or Open EU Foundry (OEF), it will lose all rights linked to such a status.

The rights in question are primarily related to the construction of the facility – the major State Aid that is being granted and possibly national fast-tracking of permit-granting procedures as described in Article 14. However, in subsequent operations, being designated as an IPF or OEF can become a burden, as it means the European Commission can - in a situation of crisis - step in and take control of production. It is not clear in the proposal whether revoking the status as an IPF or OEF would affect the compatibility of previously granted State Aid, or whether such Aid would need to be recovered.

To avoid unnecessary bureaucratic procedures and create greater certainty for businesses and investors, the process should be more restricted and streamlined. It should mainly be a

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one-time event ahead of the construction, rather than be an ongoing exercise where the operation is under constant surveillance. This could be achieved through:

- Integrating the process of designating facilities as an IPF or OPF into the regular State Aid process and assessment. The assessment will thereby be a one-time up-front procedure rather than as an ongoing process. The question of whether a facility qualifies as an IPF or OPF, and whether it will be eligible for State Aid, will correlate and two separate processes will, in the end, become artificial.
    - Removing the new proposed term 'first-of-its-kind facility' from being a separate criterion and including such aspects in the overall State Aid balance test, where distortions of competition are assessed (Articles 10.2 (a) and 11.2 (a)).
    - Integrating the assessment of the positive impact on the EU's semiconductor value chain, which the facility will accommodate within the State Aid balance test on the positive side (Articles 10.2 (b) and 11.2 (b)).
    - Maintaining the requirement for the facility to not be subject to extraterritorial application of public service obligations of third countries, and clarifying the consequences if this is breached (Articles 10.2 (c) and 11.2 (c)).
    - Removing the redundant requirement to invest in next-generation chips (Articles 10.2 (d) and 11.2 (d)).
- Removing Articles 10.3 and 11.4, granting priority access to pilot lines set up in accordance with Article 5 to IPF and OEF. Access should be granted purely on the basis of market terms, rather than on whether or not a facility has been granted State Aid.
- By integrating the process and making it more streamlined, a great deal of Article 12 will be rendered redundant. However, we should point out that Article 12.2 (c) is particularly problematic; this states that proven experience of the applicant in installing and operating similar facilities should be considered a prerequisite. This could limit the right of an impartial assessment on equal terms and may exclude new actors from entering the market.

## 2. The limited relevance of new production capacity in Europe for the security of supplies.

Semiconductors are globally traded products and are part of a long and complex value chain, as illustrated on page 10 in the European Commission's Staff Working Document (SWD (2022) 147 final), where the supply chain for a smartphone is described. Any additional production capacity - whether established in Europe or elsewhere - adds to the total global supply. Therefore, any new facilities in Europe will contribute to an increased security of supply; however, they will only do so to an extremely limited extent.

As has also been addressed by our corresponding organisations in Germany and France, we would like to stress the complexity of the semiconductor value chain. As described in their joint position: "*The co-legislators should note that most semiconductor products are not "off-the-shelf" or "one-size-fits-all" components. Rather, they possess very specific technical specifications per product and customer. A chip developed for one industry cannot be easily used by another. In addition, chip factories are only able to manufacture a specific range of node sizes and transistor technologies. Consequently, the European Commission will*

*encounter massive difficulties when initiating the 'crisis stage', as it will be impossible for a fab to swiftly produce different semiconductors and / or to produce for different customers."*

In addition, any information-gathering exercise will inevitably be incomplete, as it will mostly only involve the demand side. This is because the main supply exists outside Europe, where the European Commission cannot require information be provided.

Therefore, it is the overall assessment of the Confederation of Swedish Enterprise that the proposed monitoring and crisis mechanism will not deliver any significant benefits to security of supply. Rather, it will entail increased administrative costs and the risk of leakage of business-critical information. The proposal is heavily fraught with ambiguity and provides the European Commission with an excessive mandate for – for example – defining a crisis, the measures to be taken and, ultimately, the management of companies' production. In particular, we advise against including the possibility of imposing export restrictions - as described in note 45 - as this would constitute a protectionist measure.

Increased security of supply is of course desirable, and the European Commission and EU can in general play an active and important role in this. However, this should mainly be by opening new avenues of trade and by strengthening the integrity of the Single Market and the four freedoms therein in times of crisis, as is currently being deliberated in relation to the Single Market Emergency Instrument initiative.

## 3. Article 107.3 c) does not empower the European Commission to approve State Aid with reference to security of supplies.

The legal basis for approving State Aid to large semiconductor-producing factories are - as set out in the European Commission communication on *A Chips Act for Europe* - described in Article 107.3 (c).

*Such cases are to be assessed by the European Commission directly under Article 107.3 (c) TFEU. Under this provision, the Commission may consider Aid to facilitate the development of certain economic activities or of certain economic areas to be compatible with State Aid rules, where it does not adversely affect trading conditions to an extent contrary to the common interest, weighing the positive effects of such State Aid against its likely negative impact on trade and competition.*

This Article does not empower the Commission to approve Aid with reference to security of supply, but rather to encourage the development of certain economic activities; in this case the research, development and production of chips. This should be reflected both in the wording of Article 13 and elsewhere in the proposal.

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*The Confederation of Swedish Enterprise is the voice of businesses in Sweden. We are Sweden's largest and most influential business federation, representing 60 000 member companies in all sectors with almost 2 million employees.*