

Orgalim position on the Chips Act proposal

Executive summary

Orgalim, Europe's Technology Industries, welcomes the ambition behind the European Commission's proposed Chips Act. It is an opportunity for EU industry to regain technological leadership and competitiveness. However, it is important to ensure fair competition in the EU Single Market and work globally in international partnerships because the chips supply chain is – and will remain – global. In brief, our recommendations to improve the Chips Act are as follows:

First pillar: Chips for Europe Initiative

- We welcome increased funding for R&D in semiconductors, although we regret that this comes at the expense of funding allocated to other priorities.
- The initiative should direct funding to satisfy market demand and focus not only on cutting-edge technologies but also higher nodes, which are important for European industry.

Second pillar: Security of supply

- Fostering private industry-driven investment must be the focus of the strategy to ensure sustainable and commercially viable security of supply in the long-term.
- State aid rules should be fully respected to avoid permanent subsidies and distortion of competition in the Single Market.
- We strongly support national fast-tracking of permits.

Third pillar: Monitoring and crisis response

- Export controls must be a measure of last resort and a clearer definition of "crisis" is needed.
- Data on production capacity should not be part of the mandatory reporting.
- Information gathering must comply with competition rules.
- Priority-rated orders are not viable because recalibrating machines to produce different types of chips is complex. Also, priority-rated orders risk causing shortages of other types of chips.
- Common purchasing may not work for chips because they are not off-the-shelf and one-size-fits-all products.
- Protection of intellectual property rights and trade secrets must be ensured across the whole third pillar (i.e. information gathering, priority-rated orders and common purchasing).
- Industry involvement in the governance structure is essential. For monitoring purposes, the industry should be involved in the EU Semiconductor's Board to supply crucial technical knowledge and international partnerships must be encouraged.

1. Introduction

On 8 February 2022, the European Commission published a proposal for a comprehensive set of measures to ensure the EU's security of supply, resilience, and technological leadership in semiconductor technologies (hereafter the "Chips Act")¹. The Chips Act aims to bolster Europe's competitiveness and resilience in semiconductor technologies and applications and to help achieve the twin digital and green transitions. Its purpose is also to contribute to the Digital Compass objective that by 2030 "the production of cutting-edge and sustainable semiconductors in Europe including processors is at least 20% of world production in value"².

Orgalim, Europe's Technology Industries, represents chips manufacturers across different parts of the value chain, as well as downstream industries for semiconductors, which have been adversely affected during the last two years due to chips shortages. Therefore, Orgalim welcomes the ambition behind the Commission's proposed Chips Act to increase the resilience of Europe's chips ecosystem and supply security for companies operating on our continent. The Chips Act is an opportunity for the European industry to regain technological leadership and competitiveness. However, it is important to work globally in international partnerships and to ensure that competition is not distorted in the EU Single Market.

In the following chapters we outline Orgalim's views on the proposed regulation.

2. Scope and definitions (Articles 1-2)

It must be ensured that the definition of "next generation chips" in Article 2(11) and the objectives of the Chips for Europe Initiative (Article 4) also include innovations in higher nodes sizes and is not limited to certain technologies. Orgalim acknowledges the importance for Europe of investing in design, development, and production of "next generation" chips. We nevertheless underline that the shortage of semiconductors which has been impacting manufacturers across Europe and the rest of the world also affects more "mature" technologies. If the Chips Act indeed intends to increase the resilience of the European industry by enhancing the security of its supply chains, the legislation should apply the principle of technology neutrality, serving the needs of the European key industrial verticals. The demands of these verticals cover a broad range of node sizes and technologies, going beyond what are referred to as state-of-the-art chips or "next generation" chips.

A clear definition of "crisis" is needed. The criteria for how a "crisis" of semiconductors is defined are vague, as the definition can vary depending on target volumes, market demand, chip types and sizes.

The definition of "critical sectors" in Article 2(16) needs to be clarified. It raises questions about its impact on the distribution of products linked to the Commission's prioritisation mechanism, which could be to the detriment of other sectors deemed to be of lower priority.

3. First pillar: Chips for Europe Initiative (Articles 3-9)

The first pillar defines the scope for funding allocated to R&D, pilot facilities, the creation of competence centres and a new 'Chips Fund' which will also make it easier for smaller companies to access financing. This applies to the current Multiannual Financial Framework (MFF) 2021-2027 and amounts to € 3.3 billion. The funds stem mainly from a reallocation from Horizon Europe and the Digital Europe programmes.

¹ [European Chips Act: Communication, Regulation, Joint Undertaking and Recommendation | Shaping Europe's digital future \(europa.eu\)](#)

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, [2030 Digital Compass: the European way for the Digital Decade](#), COM(2021)118 final, 9 March 2021.

3.1. Funding

We **welcome increased EU funding for R&D** on the production and development of semiconductors. However, we do not support such funding being prioritised at the expense of existing research funding (i.e. the Horizon Europe and Digital Europe programmes). This risks undermining other research areas which are important for the European industry, including research enabling technologies essential for the semiconductor supply chain such as digital manufacturing technologies. Any potential displacement effects must be considered when resources are redirected from other fields.

Funding projections should be transparent regarding the amount of public funds expected from Member States and how private investment would be leveraged. Also, it is crucial that planned investments are based on the industrial Strategic Research and Innovation Agendas (SRIA).

3.2. Objectives of the Initiative

The first step should be to determine as quickly as possible what our strategic strengths are, and must be in the future, in order to make targeted investments. The best way to do this is to map out the chain from designers and manufacturing to customers. These customers include industrial electronics, machinery, digital infrastructure, healthcare and automotive sectors. **The priority should be to satisfy market demand for both higher and lower technology nodes**, including companies' needs for intermediate sizes (22-65 nm) and some 90 nm and above. The objectives and components of the Chips for Europe Initiative (Article 4) should be amended to reflect this priority.

We strongly recommend the EU not to try to compete with a limited amount of funding on technologies where it does not have sufficient hold. Rather, funding should focus on areas where the EU has comparative advantages and make sure we develop control points in the global value chain on issues where the EU semiconductor ecosystem has competences. It is not possible to compete globally on all process steps in the semiconductor ecosystem. **It will be very hard to satisfy the demand with the Chips Act alone.** The supply chain is global, and each region specialises in a few of the many steps of the chips manufacturing chain. The Chips Act can attempt to ensure the EU remains relevant in this chain, but will not be able to accommodate demand in isolation.

4. Second pillar: Security of supply (Articles 10-14)

The second pillar (Articles 10-14) describes the possibility of classifying a "first-of-a-kind" production facility as either an Integrated Production Facility or an Open EU Foundry. The classification would be made by the Commission upon application from a company. The classification allows for extensive state aid from Member States, up to 100% of a funding gap. Member States are obliged to give priority to the establishment of the fastest possible processes such as authorisation, and to appoint a responsible authority that would have the primary responsibility for processing and coordinating the authorisation of applications related to planning, construction, and operation of the new plant. However, such classification may result in restrictions on companies' freedoms under the third pillar (Articles 15-22).

We suggest improving **the notion of "first-of-a-kind facility"** (Article 2(10)) to take into account the current and future market demand of the European downstream industry and possibly also cater for external markets. This would allow the European chips ecosystem to reach higher volumes and strengthen Europe's role in the global semiconductor value chain as a consequence.

Because not every chip is the same, an important issue is which chips and which research directions to support, building on Europe's strengths and catering for both cutting-edge and higher nodes.

We highlight that **new production capacity is relevant in the long term only if it is commercially viable and able to sustain its own costs.** This requires attractive framework conditions for a well-functioning Single Market with access to global markets, which will attract investment and encourage industry to locate operations in Europe.

To avoid permanent subsidies, market-oriented viability in the medium to long term is required for all state support. We call on the Commission to conduct an impact assessment on the use of Article 107(3)(c) TFEU as a basis for allowing state aid to contribute to the security of European supply versus the possibility of distorting competition in the Single Market and international trade. To this aim, the assessment should include a comparative analysis of the public funding supplied in the different regions of the world. The use of Article 107(3)(c) TFEU may suit the semiconductors' current specific economic situation, but it should not apply to other sectors in the absence of specific market failures and should remain a last resort measure.

4.1. Foster private investment

We call for a European approach and **industry-driven investments**. Supply chains, production and research take place on a global scale. Europe can strengthen its position in the world only through pan-European and global cooperation in all areas, including financing. By maintaining EU state aid rules and establishing international partnerships, subsidy races, both within the EU and on a global scale, can be avoided.

4.2. National fast-tracking of permit granting procedures is positive

We **strongly support** the initiative in Article 14 to appoint national authorities to facilitate and coordinate administrative applications related to planning, construction, and operation.

5. Third pillar: Monitoring and crisis response (Articles 15-22)

Member States are required to monitor the semiconductor value chain on an ongoing basis. This includes, among other things, gathering information from market actors and communicating with the Commission and a new European Semiconductor Board with an advisory role. In the event of a crisis (such as a severe shortage of semiconductors), the Commission would be able to force the classified facilities mentioned above to give priority to certain orders, even if it is contrary to national law or contracts. The Commission would also be able, at the request of Member States, to act as a joint purchasing body and conduct procurement of crisis-related products.

The third pillar introduces **unnecessary oversight and intervention**, which adversely impacts Europe's aim to become a more attractive investment location. There are still many open questions about the necessity and proportionality of the proposed measures. Therefore, we have strong concerns regarding the third pillar of the Chips Act. Furthermore, we do not support export controls as this may lead to countermeasures by other countries, ultimately worsening trade conditions for European producers. **Governments should refrain from intervening in industrial value chains.**

While Europe's technology industries are undoubtedly reliant upon access to semiconductors, this is also fundamentally contingent on well-functioning markets and international trade. This is especially true for the chips ecosystem, which is one of the most globally-spread and knowledge-intensive ecosystems. Disturbing the markets and international trade would therefore be especially detrimental for European industry and there are – as currently formulated – several aspects in the third pillar that need to be reviewed.

5.1. Monitoring (Articles 15-17)

We call for a change to Article 15. Instead of having 27 separate Member State bodies carrying out the monitoring and receiving information, a **single EU-level body should be established**. Establishing one single reporting body mitigates divergences between Member States and reduces the burden for companies operating in multiple countries. Industry involvement in the governance structure is extremely important. It is essential to have relevant **industry representatives** in the European Semiconductor Board to avoid misinterpretation of data, as the semiconductor ecosystem is extremely complex.

5.2. Export controls must be a measure of last resort

Orgalim is highly critical of the export control mechanism proposed by Article 19.

This measure **should be clearly stated as a last resort** when all other measures have failed. Imposing export controls may cause countermeasures by our trading partners – worsening the supply crisis and damaging trade relations, including the risk of creating problems in other sectors should third countries follow this path.

Imposing export controls may contradict World Trade Organisation (WTO) rules. To avoid uncertainty, clear criteria must be defined for the justification of this type of “last resort” measures.

5.3. Information gathering needs safeguards

The granularity of the information that trade associations or individual companies might be requested to provide (Article 20) is not specified. We suggest that **data on production capacities should not be included in the mandatory reporting** because the risk of information leakage is an important issue for the competitiveness of industries.

The collection of data by the Commission or national competent authorities will not lead to more resilience or help to mitigate a crisis. **Interpretation of data and drawing the right conclusions is key.** However, we do not see that this will be the case. In addition, only very limited data solely covering Europe will be collected, which will not be a sound basis for any kind of measure since the industry is global – and crises are also global.

Information gathering must comply with the European competition rules. The obligation to disclose detailed information may apply to relevant competition details and thus may not be in line with Article 101 TFEU.

5.4. Priority-rated orders may have negative collateral effects

We suggest **deleting Article 21.** We are concerned about the possibility to oblige companies to manufacture specific chips in times of crisis. Businesses have shown, for instance during the Covid-19 pandemic, willingness and preparedness to adapt their production to the greatest extent possible in order to supply the public need in times of crisis.

Furthermore, in business-to-business (B2B) relations for complex products it is **not an easy or quick task to modify production and recalibrate machines to produce other specific types of chips.** Additionally, the delays in production modification on top of the consequent delays in the delivery of chips types placed in low-priority may cause shortages in other areas. **The risk of shortage spill over caused by priority-rated orders** should not be underestimated.

A prioritisation of orders in times of crisis may also deter foreign investment, as actors would be reluctant to put in orders with factories that may be instructed to prioritise other orders when supply is needed the most. This may result in EU-based factories being less globally competitive. Potential countermeasures and effects on global trade for such a mechanism must also be considered.

5.5. Common purchasing may not work for the supply of semiconductors

As currently proposed in Article 22, common purchasing may not solve semiconductor shortages because, contrary to other types of products, **chips are not off-the-shelf and one-size-fits-all products.** The common purchasing mechanism needs to be workable in practice. At the moment it is not clear who would decide on the distribution of the jointly-purchased chips and based on which criteria. Which sectors, companies or geographic areas would be allocated those chips first? Will these distribution criteria be flexible enough to be adapted to all shortage scenarios that may occur across the supply chain?

5.6. Respect for intellectual property rights and trade secrets

We highlight that **respect for intellectual property rights is not mentioned in the common purchasing system** (Article 22) proposed by the Commission. The absence of any reference to respect for business secrecy and to competition rules in all the proposed mechanisms (information sharing, priority-rated orders, common purchasing) is an issue of serious concern. It is essential that **data made available under this Regulation shall not be considered as open data** available for reuse by third parties in the meaning of the Open Data Directive (EU) 2019/1024³.

5.7. Recommendation to Member States: a coordination mechanism

A Commission recommendation has been made, immediately establishing a coordination mechanism to mitigate the current supply crisis of semiconductors. This has applied on a voluntary basis from 8 February 2022. This rapid implementation has meant that the European Parliament has not been able to discuss the decision. Furthermore, we are concerned about the **administrative burden created by the coordination mechanism**. Imposing further reporting requirements on businesses, which are already experiencing a crisis situation due to supply shortages, is not desirable.

5.8. Need for clearer criteria for triggering a crisis situation

The **criteria for triggering a crisis situation are very broad** and could generate a crisis level even for non-generalised and global crises, for example linked to the cessation of production of an obsolete component, thereby exceeding the objective of the text. A clear definition is needed. It should also not be possible for wrong purchasing decisions or the lack of proper supply chain management to trigger a crisis situation.

6. Governance (Articles 23-26)

The proposal lacks industry involvement. Since the aim of the Commission is to drastically increase production capacity and expects massive private investment, an institutionalised involvement of industry is necessary.

The absence of public consultation and impact study did not allow the actors, especially industrial experts, to be consulted during the drafting of the text, and the delayed start of the European Alliance on Processors and Semiconductor Technologies did not help in this regard.

The composition of the European group of experts on semiconductors and of the European Semiconductor Board, which will have the objective of supervising and advising on the mechanisms, also raises questions, in particular with regard to the association of industry representatives.

6.1. Industry must be represented in the European Semiconductor Board

Industry representation in the governance structure is essential. Orgalim calls for further involvement and a clearer mandate for the industry in the European Semiconductor Board, including voting rights. With the **need for advanced technical expertise from industry in the Board**, including on the interpretation of data for supply chain monitoring purposes, the presence of industry representatives would benefit the objectives of the Board and their outcome.

³ [Directive \(EU\) 2019/1024](#) of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information.

Furthermore, more detail should be given as to at what stage in the process the European Semiconductor Board will contribute to chip standardisation as defined in the Act and highlighted in the Commission's 2022 Annual Union Work Programme for European standardisation.

6.2. Cooperation with third countries is essential

The supply chain of semiconductors is complex and involves market players across the whole globe. Although we do welcome the EU taking action on increasing the resilience of its own semiconductor ecosystem, the global dimension of the supply chain will not, and should not, change. It is important that the EU and its Member States cooperate with third countries, for example on research and innovation. Cooperation is especially important in the context of pillar three in order to maintain a correct understanding of the status of the supply chain at global level, notwithstanding protection of IPRs and trade secrets, and to avoid the detrimental effects of priority-rated orders and export controls through cooperation. Initiatives such as the joint effort towards a EU-US common understanding of semiconductor shortages within the framework of the EU-US Trade and Technology Council (TTC)⁴ are a step in the right direction and should be pursued further. Similarly, under the second pillar, consideration of investments in third countries is imperative in order not to disturb the functioning of global markets, thereby resulting in less efficient global trade flows.

⁴ [EU-US Trade and Technology Council](#) – joint statement, 16 May 2022

Orgalim represents Europe's technology industries, comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU's largest manufacturing sector, generating annual turnover of €2,480 billion, manufacturing one-third of all European exports and providing 10.97 million direct jobs. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.



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Orgalim aisbl
BluePoint Brussels
Boulevard A Reyers 80
B1030 | Brussels | Belgium

+32 2 206 68 83
secretariat@orgalim.eu
www.orgalim.eu
VAT BE 0414 341 438