EU Announces More Expansive Approach to Semiconductor Subsidies

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Summary

- **The European Commission (EC) signals relaxation of its strict anti-subsidy regime to encourage national aid for semiconductor manufacturing capabilities.** Member states will have more freedom to provide government support to the semiconductor industry for the creation of new production facilities in the EU.
- **EC revised policy seeks to create semiconductor supply chain independence.** The plan sets up the EU to double its global semiconductor production share by 2030, and officials will propose a European Chips Act in the first half of 2022 to support EU industry efforts.

On November 18, 2021, the EC's Executive Vice President Margrethe Vestager announced that the EC "may envisage approving support to fill potential funding gaps for the establishment, in particular of European first-of-a-kind facilities in the semiconductor ecosystem."[1]

This is a major development, as member state support for the semiconductor industry has so far been subject to strict controls by the EC's Directorate-General for Competition (DG COMP). Member states have typically only been allowed to support specific R&D projects and the first industrial deployment of the results of such R&D projects, *i.e.* the upscaling of pilot facilities and related testing.

The shift announced by Vice President Vestager now also permits state aid for the mass production and commercialization of semiconductors, subject to certain conditions and prior review by DG COMP. The announcement does not include any legislative change or new guidelines, and so the EC's review of any support package will follow the usual case-by-case assessment by DG COMP under the general rules for state aid compatibility of Article 107(3) of the Treaty on the Functioning of the EU (TFEU). However, the announcement is a welcome signal that state aid for new production capacity is possible.

European Chips Act

The announcement follows the launch of the European Chips Act, announced by EC President Ursula von der Leyen on September 15, 2021, which aims to "jointly create a state-of-the-art European chip ecosystem, including production."[2] The project to expand the ecosystem, which is expected to yield a more concrete legislative proposal in the first half of 2022, is intended to reduce the EU's dependency on foreign supplies, which reliance has become evident through the current supply crisis. The project also reflects a broader industrial policy strategy by the EC to strengthen the EU's industrial and technological sovereignty and independence.[3] The initiative aims to establish a collective plan to enhance European production capacity, including potentially through the

[1] "Remarks by Executive Vice-President Vestager on the Communication on a Competition Policy Fit for New Challenges," November 18, 2021. See also "Competition: Commission Outlines Contribution of Competition Policy and Its Review to Green and Digital Transition, and to a Resilient Single Market," November 18, 2021, and Communication on a Competition Policy Fit for New Challenges COM (2021) 713 final, November 18, 2021, p. 18.

[2] "2021 State of the Union Address by President von der Leyen," September 15, 2021. See also "Statement by European Commission President von der Leyen on Her Visit to ASML, Together With Dutch Prime Minister Rutte," November 15, 2021. The European Chips Act announcement was the EC's next step following the creation of a European Alliance for Industrial Processors and Semiconductor Technologies in June 2021.

[3] "How a European Chips Act Will Put Europe Back in the Tech Race," blog post by Internal Market Commissioner Thierry Breton, September 15, 2021.

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creation of a dedicated European semiconductor fund. It will also involve a European research strategy and a framework for international cooperation and partnership with the key global industry actors.

The project aligns with similar programs rolling out in other parts of the world. For example, in the United States, lawmakers are discussing plans to provide US$52 billion to support domestic semiconductor production. Similarly, South Korea is providing US$65 billion in public funds to safeguard its leading market position in the semiconductor sector, and China is injecting up to US$160 billion in a bid to domestically produce 70% of its semiconductor needs by 2025.

The European Chips Act should enable the EU to increase its position in the production of cutting-edge and sustainable semiconductors, including computing processors, to at least 20% of world production in value by 2030, thereby meeting an overarching objective set out in the EU's 2030 Digital Compass. More specifically, the Digital Compass targets the development of EU manufacturing capacities for nodes below 5nm power levels, aiming to generate 2nm processing tools and 10 times higher energy efficiency.[4] In a recent speech, the EC's commissioner for the internal market and one of the key proponents of the European Chips Act, Thierry Breton, summarized the project's overall goal as putting Europe "back in the tech race" by increasing the EU's global share in the production of semiconductors from 10% to 20% in the next 10 years.[5]

National Government Support

Several member states are already supporting the semiconductor industry through funding from their national budgets. Such measures are typically subject to the EU's state aid rules, meaning that they must first be vetted by the EC or otherwise meet a preapproved set of conditions that would exempt them from EC review.

Important Projects of Common European Interest

The most notable example is a project by France, Germany, Italy and the U.K. to provide nearly €1.75 billion in state aid to over 30 companies headquartered in and outside the EU for research and innovation in microelectronics in five key areas: energy efficient chips, power semiconductors, smart sensors, advanced optical equipment and compound materials. The project involves up to €820 million of state aid from Germany, €524 million from Italy, €355 million from France and €48 million from the U.K., and should be completed by 2024, with different timelines for different subprojects.[6] The EC approved the project in 2018 as a so-called Important Project of Common European Interest (IPCEI), which enables member states to jointly support transnational projects of strategic significance for the EU, subject to certain conditions and prior EC review.[7] In March 2021, the EC approved an additional €146.5 million in Austrian state aid as part of the IPCEI.[8]

The EC's updated communication on state aid for IPCEIs sets forth a number of qualifying conditions.[9] Eligible projects must: (i) provide an important contribution to EU objectives; (ii) demonstrably overcome important market failures; (iii) involve at least four member states, unless a smaller number is exceptionally justified by the nature of the project; (iv) be designed in a transparent and inclusive manner, providing all member states a genuine opportunity to participate in an emerging project; (v) deliver concrete positive spillover effects benefiting the EU economy and society, beyond the participating member states and companies; (vi) involve significant co-financing by the companies that will receive state aid; and (vii) avoid negative environmental impacts.

Several member states are in discussion with the EC regarding a second IPCEI on microelectronics. They have reserved amounts to be received from the EU's Recovery and Resilience Facility for this purpose and have opened calls for expressions of interest from national governments for companies to participate. The timing of the EC's state aid approval for the project, however, remains unclear.

Dedicated Support for 'First-of-a-Kind Facilities'

While IPCEIs have become popular in recent years, this route to EC state aid approval features several shortcomings. First, the collaboration of several member states and numerous companies tends to slow down the state aid approval process, as demonstrated by the second IPCEI on microelectronics, which was initially expected to launch in March 2021 but has not yet been approved. Moreover, as discussed above, state aid approval of an IPCEI

[4] "2030 Digital Compass: The European Way for the Digital Decade," COM(2021) 118 final, March 9, 2021.

[5] Commissioner Thierry Breton's keynote speech at the EU Pavilion side event of COP26 "EU Initiatives in Support of the Green Digital Twin Transition," November 10, 2021.

[6] See the IPCEI on Microelectronics site for more information.

[7] "State Aid: Commission Approves Plan by France, Germany, Italy and the UK To Give €1.75 Billion Public Support to Joint Research and Innovation Project in Microelectronics," December 18, 2018.

[8] "State Aid: Commission Approves €146.5 Million Austrian Support in Favour of Companies Joining Research and Innovation Project in Microelectronics," March 23, 2021.

[9] "State Aid: Commission Adopts Revised State Aid Rules on Important Projects of Common European Interest," November 25, 2021.

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is subject to stringent conditions. An additional limitation of an IPCEI is that it can only be used to support research and development and the first industrial deployment of R&D results, but not to fund mass production or commercialization.

Vice President Vestager's announcement of November 18, 2021, appears to open the door for state aid to support mass production and commercialization of semiconductors in the EU. The EC would review the compatibility of such projects with EU state aid law directly under TFEU Article 107(3), *i.e.*, without resorting to any dedicated compatibility criteria in separate EC state aid guidelines as is the case for IPCEIs. Although this approach enables more flexibility, Vice President Vestager specified that such aid should still be subject to "strong safeguards to ensure aid is necessary, appropriate and proportionate," that "undue competition distortions are minimized" and that "benefits must be shared widely and without discrimination across the European economy." She concluded with a reminder that "all cases regarding supply of such a critical product must be rigorously examined based on their own respective merits so as to ensure that projects have a European nature and avoid a subsidy race within the [European] Union and beyond."

Outlook

The semiconductor industry stands to benefit from significant public funding in the EU as the EU focuses on the global race for technological and industrial leadership in the processing chips industry. The EU plans to double its global semiconductor production share by 2030, and national governments will provide much of the funding support, subject to the EU state aid rules. While IPCEIs will continue to be an attractive route to state aid approval for Pan-European projects in the semiconductor space, Vice President Vestager's recent announcement highlights how bespoke measures by individual member state governments, including for the construction of European first-of-a-kind production facilities, may also be permitted under EU state aid law subject to certain conditions and prior EC review.

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