



Global Women's  
Innovation Network

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# Outlook for the Tech and Innovation Industry in Europe

**SAMMAN**

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CABINET D'AVOCATS  
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PARIS - BRUSSELS

# Outlook for the Tech and Innovation Industry in Europe

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## 1. A GLANCE AT THE EUROPEAN POLITICAL LANDSCAPE

- **European dynamism in full transformation**
- **Brexit**
  - What is at stake
  - Timelines

## 2. EU POLICY AGENDA FOR THE INNOVATION AND TECH INDUSTRY

- **What is at stake?**
- **Ongoing digital policy discussions in the EU**
  - GDPR
  - Cyber
  - Taxation
  - Others

# European dynamism in full transformation

## Balance of powers in the EU decision-making process

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### EU leadership under transformation

- Soon 27 Member States, working together through three main institutions (Parliament, Commission, Council);
- Euro currency: two groups and two development speeds;
- **Decision-making** marked by **intergovernmentalism since 2009**;
- Options for the future: economic market, focus on eurozone, strengthened cooperation.

### A paradoxical political movement in the Member States

- Strengthening of pro-EU feeling
- Rise of nationalism that can only exist through the EU

- **Possible revival of the French-German relationship** to boost institutional reforms:
  - ✓ Election of French President Emmanuel Macron's election, pro-European and EU reformist;
  - ✓ Re-election of pro-EU Chancellor Merkel, despite a more complex political/institutional situation in Germany;
- Rise of nationalistic/ ethno-centrist movements (Catalonia, Scotland and Northern Ireland, Belgium) which need a strong EU and the eurozone.

### Shaping trends to watch in EU politics

- Crisis at EU borders, *i.e.* Ukrainian conflict, authoritarianism in Turkey, migration in the Mediterranean Sea;
- EU institutions confronted with **Eurosceptic/ Europhobe groups and a legitimacy crisis**;
- Visegrad group;
- To a lesser extent, rhetoric on protectionism vs. reciprocity in foreign trade.

# Brexit

## What is at stake

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### How will the future status of the UK impact on American UK-based companies?

**Soft Brexit**

**Hard Brexit**

The nature of the UK-EU future trade relationship

#### European Free Trade Association (Norway)

The UK stays in the DSM (at least for some specific sectors), the Customs Union and the W29 group

Still able to discuss rules and conditions for tech topics

No change for UK-based companies

#### CETA-like trade agreement

Compliance with EU regulations

DSM?

Will UK still be part of W29?

What about adequacy and ability to negotiate the rules?



#### No deal

UK = third country (US-like)

WTO rules

Not able to discuss rules at the EU level

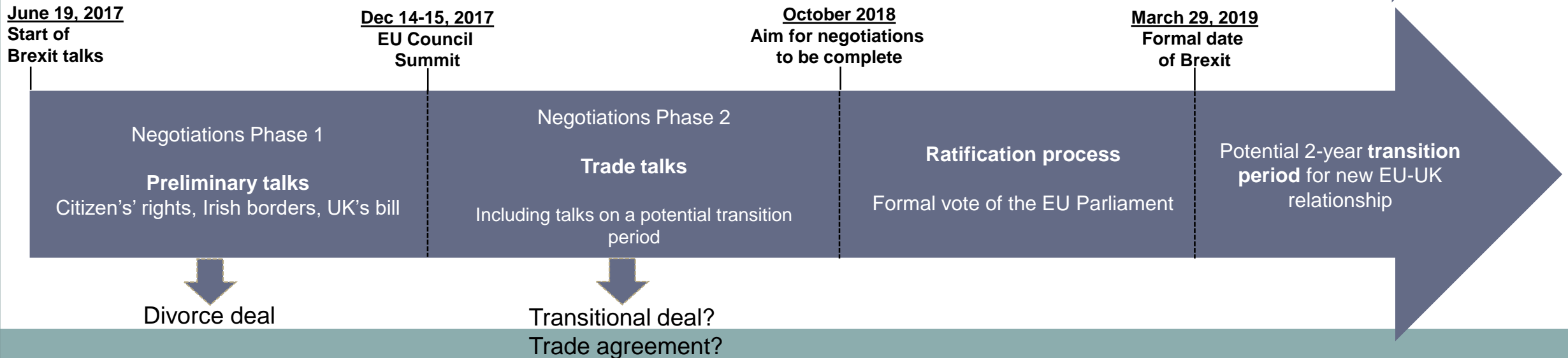
No adequacy regime

# Brexit Timelines

## What happened since the referendum



## Overview of the negotiations potential timeline



# EU Policy Agenda for the Innovation and Tech Industry

## What is at stake?

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- **Territorial scope for EU rules**

- Homogeneity of the EU single market;
- A very interesting market for foreign companies;
- EU patent, roaming, privacy rules...

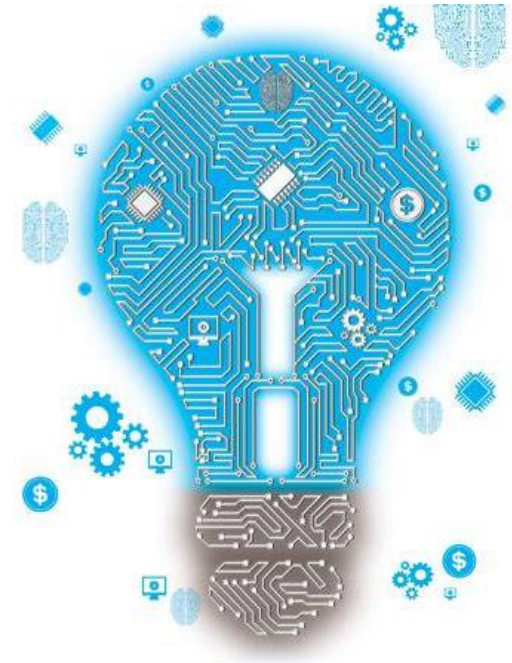
### TO BE WATCHED:

- **Digital agenda moving up in the list of EU leaders' priorities**

- Ministers for Digital Affairs to concentrate in the mid-term on a limited set of legislative files, that would enable EU political leaders to issue positive communications and results around June 2018;
- Next milestone: Summit of March 2018 focused on e-commerce and digital tax.

- **The increase of a pro-EU feeling** feeds the debates on a “too widely open” EU and the desire to strengthen European frontiers:

- Taxation issue;
- Commission's new powers on foreign direct investments.



# Ongoing digital policy discussions in the EU

## GDPR

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**A change of approach but no substantial changes**

Applicable  
from May  
25<sup>th</sup>, 2018

### Increased Territorial Scope

EU “established” controllers or  
processors

Non-EU “established”  
organizations who target or  
monitor EU data subjects

Unchanged  
Material Scope

Legal  
Harmonization

### 1. Accountability

Privacy by default  
Privacy by design

Voluntary compliance tools  
Certifications, Marks and Seals  
Codes of Conduct

### 2. Data Subjects’ Rights

Consent, Data portability,  
Transparency, Right to  
access, to object, to be  
forgotten, to restriction of  
processing

### 3. Cross Border Transfers

Issue for non-EU based  
companies  
Principe : prohibited  
Exceptions

# Ongoing digital policy discussions in the EU

## Cybersecurity

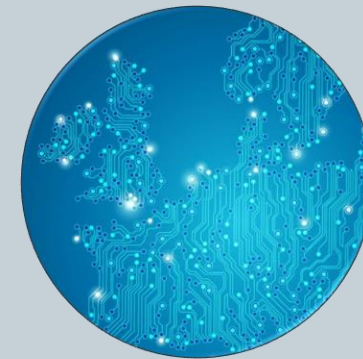
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### **The Network and Information Systems (NIS) Directive** (Adoption July 2016 / Transposition into national laws by May 26<sup>th</sup>, 2018)

- Strengthening NIS' security; Improving cooperation on cybersecurity; Defining a strategy for Operators of Essential Services (OESs) and Digital Service Providers (DSP)

### **Legislative proposal on a Cybersecurity Act** (Launched by the EU Commission in September 2017)

- Creation of EU-wide certifications for ICT products/ services
- Seeks to discourage the emergence of national certifications



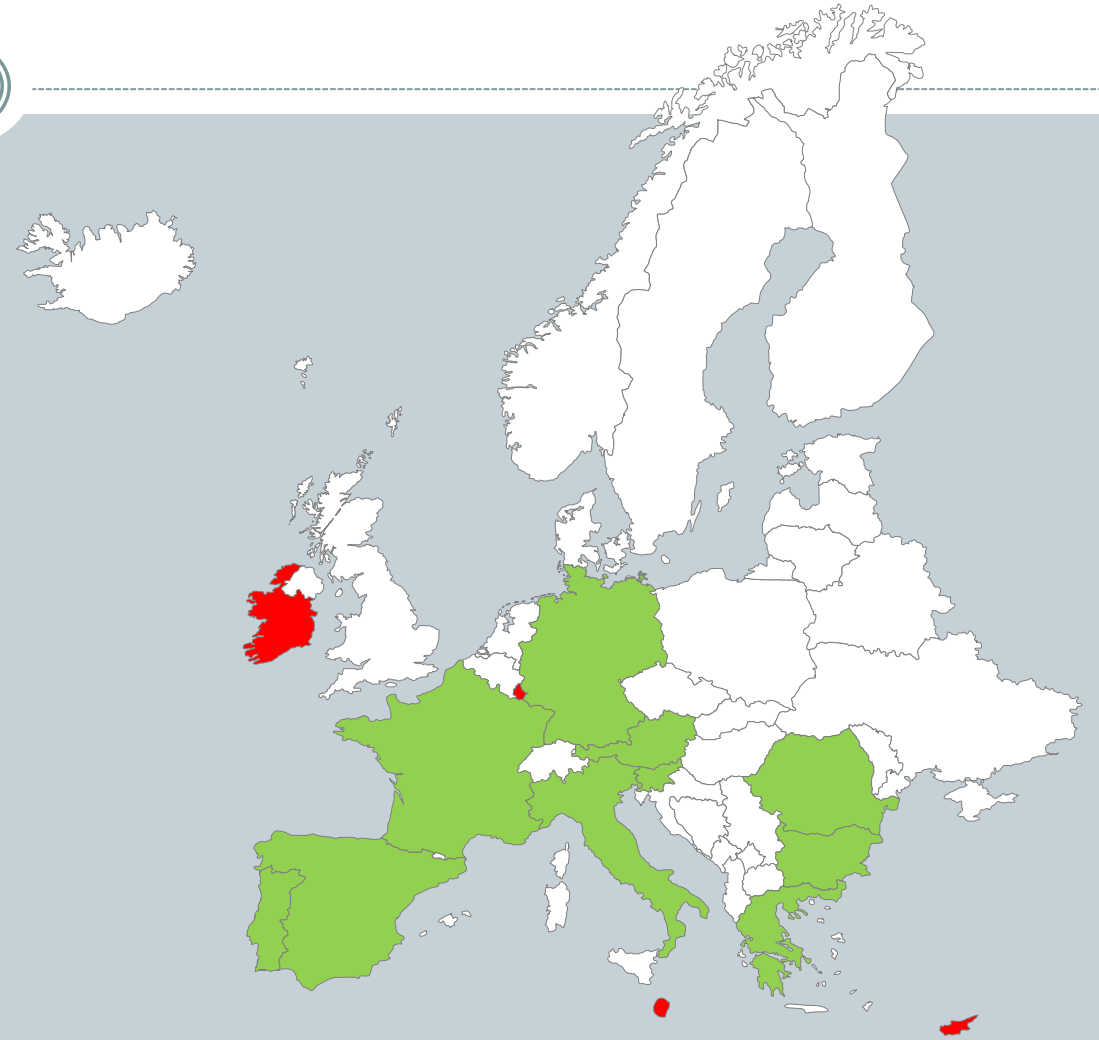


# Ongoing digital policy discussions in the EU

## Taxation

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- Digital tax proposals at EU level are gaining momentum since Macron's election, but moderate decision-making seems to prevail;
- Wide preference for a wide tax reform at EU or OECD level;
- **GAFAs Taxation: developments on corporate tax for the digital economy** EU institutions and stakeholders carried on discussions on recent proposals relative to corporate taxation.



Reforming GAFAs taxation: Who's for? Who's against?

# Ongoing digital policy discussions in the EU

## Others

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Discussions

Proposal

Legislative process

Adoption

Implementation

### Discussion about a legislative proposal on platform-to-business relationships

Aims at addressing the issues of unfair contractual clauses and trading practices identified in platform-to-business relationships, including by exploring dispute resolution, fair practices criteria and transparency.

### Legislative proposal relative to digital evidences

Aims at implementing effective mechanisms for law enforcement authorities to obtain digital evidence in criminal matters involving a cross-border aspect

### Proposed EU Regulation on the Free Flow of Non-Personal Data

Explicitly prohibiting EU Member States to adopt data localisation restrictions for non-personal data, other than those related to public security.

Improve assistance between national law enforcement authorities to access data stored or subject to further processing in another EU Member State

### Proposed E-privacy Regulation (“cookie law”)

Seeks to modify the legal framework relative to the processing of end users’ data (content data, metadata, device data) by electronic communication services, to align rules with the rules for the protection of personal data under the GDPR.

### Audiovisual Media Services Directive

Coordination of national legislation on all audiovisual media, both traditional TV broadcasts and on-demand services.



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**THANK YOU FOR YOUR ATTENTION**

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