

# **Single Market Information Tool (SMIT)**

**IMCO Committee, 11 October 2017**

# The motivation for the Single Market Information Tool

- Announced on October 28<sup>th</sup> 2015 as part of the **Single Market Strategy**:  
a regulation for the Single Market empowering the Commission, where strictly necessary, to collect information directly from selected market players:
  - in order to reinforce the basis for infringement action;
  - and to help determine where regulatory solutions are needed.
- **SMIT extends the scope of existing Commission information powers**:
  - first implementing regulation adopted in 1962 for antitrust then 1989 for mergers;
  - in 2013 requests for information powers extended to state aid control;
  - with SMIT the residual gaps in Single Market enforcement now get covered;
  - more data = more focused/swifter decisions => better functioning Single Market.
- SMIT is generic/future proof, not addressed to specific sector/problem/MS

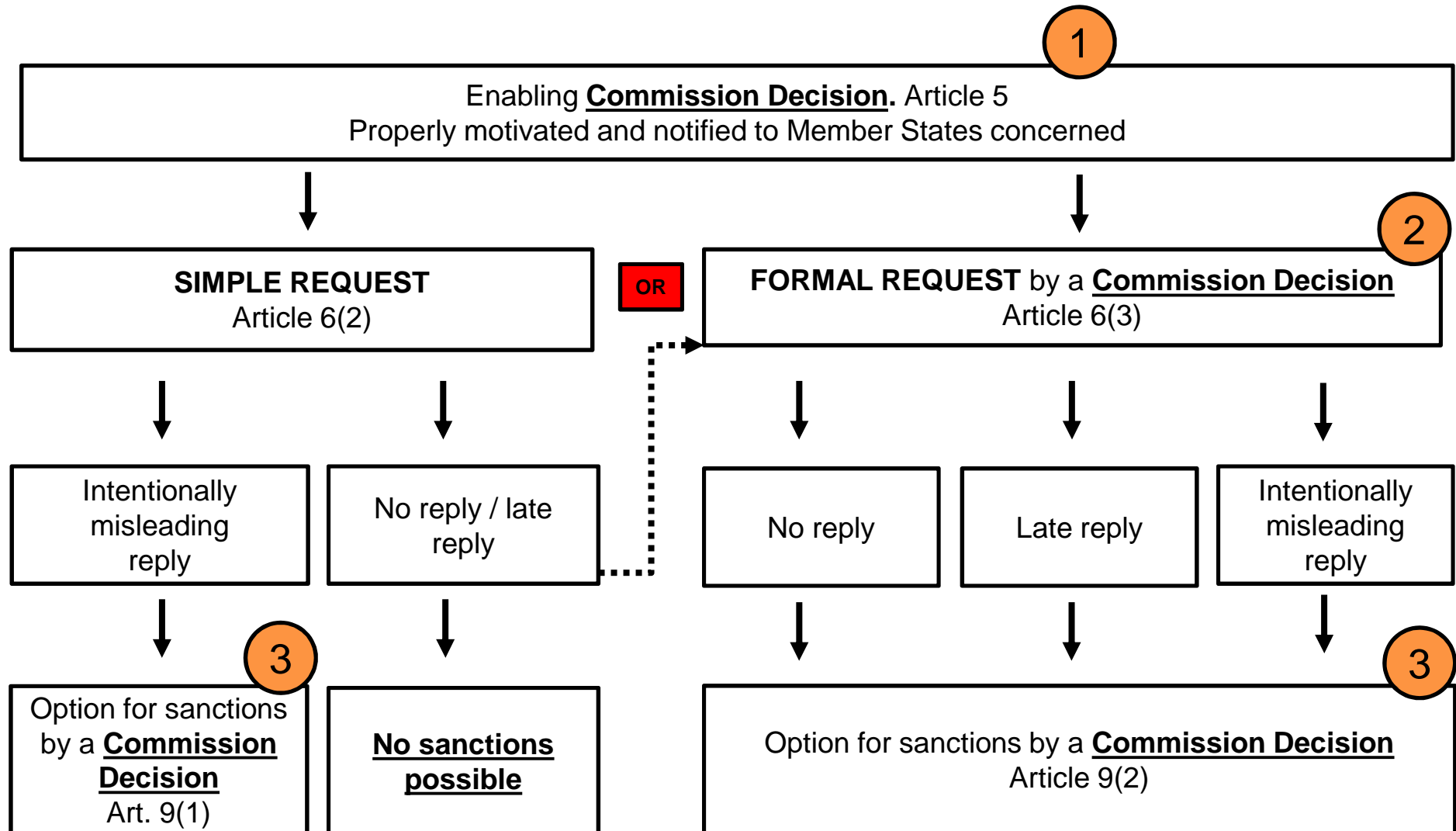
## The Impact Assessment makes the case for SMIT through:

- Reviewing cases the Commission lost in front of the Court due to insufficient company-level information
- Reviewing infringement proceedings where lack of data proved a bottleneck
- Showcasing where SMIT could improve the design/calibration of legislation
- Explaining why information at Member States level might be incomplete
- Why voluntary submissions/requests to firms do not always work in practice
- What the limits of existing (competition) info powers are for Single Market
- The benefits of SMIT use are then approximated (range in EUR billions)
- And the costs of SMIT requests to respondents (range in EUR thousands)

## A tool of last resort: safeguards and checks and balances

- NOT a new procedure. In scope of usual infringement under Art. 258 TFEU
- Even a voluntary SMIT request requires a College decision showing that:
  - there is a Single Market problem serious enough
  - it cannot be remedied without the missing piece of information from firms
  - this information is not otherwise easily available
- Not a fishing expedition or a reporting obligation:
  - A focused request addressed to a subset of firms
  - Typically addressed to large firms, SMEs only if complementary information
  - Micro-entities explicitly exempted from the scope
  - Typically concerns cross-border data, spread across multiple jurisdictions
  - State aid SMIT equivalent (MIT) applied in ~2% of enforcement actions
- Usually voluntary requests first. Only data 'readily available' to respondents.

# A structured framework



## All the time respecting confidentiality

Identical principles as already applied today in competition/state aid control:

- Rules on professional secrecy by EU officials (Article 339 TFEU) apply
- Idem for Member States and their officials in cases where information gets shared
- Respondents can mark which part of their reply they consider confidential
- Usual procedural safeguards resulting from the jurisprudence apply (e.g. opportunity for companies to challenge any Commission Decision in front of the Court)
- Outside a formal infringement context data always aggregated and/or anonymised
- Replies to be used strictly for the purposes for which they have been collected
- Compliant with business secrets/trade secrets/personal data protection acquis
- Practical solutions to data handling/storing/staff training follow COMP best practices

## Finally, a word of reassurance from a Nobel Laureate



*Regulation is difficult. (...) **The regulatory authority lacks information** about firms' costs and the quality of goods and services they deliver. The lack of knowledge often provides regulated firms with a natural advantage. (...)*

Jean Tirole (France)

Nobel Memorial Prize in Economics

2014