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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 18 June 2013

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: Communication from the Commission to the European Parliament and to the  
Council  
Amendment of the financial statement accompanying  
Regulation (EU) N°1227/2011

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Delegations will find attached Commission document COM(2013) 431 final.

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT AND THE COUNCIL**

**Amendment of the financial statement accompanying Regulation (EU) No 1227/2011**

# COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## **Amendment of the financial statement accompanying Regulation (EU) No 1227/2011**

Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency<sup>1</sup> (hereafter 'REMIT') provides for new stringent rules on wholesale energy trading. The main objective of the Regulation is to prevent use of insider information and other forms of market abuse which distort wholesale energy prices and can result in businesses and consumers pay more for their energy than they need.

REMIT makes the Agency for the Cooperation of Energy Regulators<sup>2</sup> (hereafter 'ACER') responsible for independent monitoring of all relevant wholesale energy transactions and checking whether the rules are followed. Therefore, ACER's role is crucial for the proper implementation of REMIT and ensuring that wholesale energy markets across Europe function properly.

More specifically, under REMIT, the Agency is required to:

- establish the centralised European Register of wholesale energy market participants;
- collect information on all transactions in wholesale energy products for delivery in the European Union, independently of where they take place;
- collect “fundamental data” regarding the physical state of the energy systems (e.g. availability of generation and transport facilities);
- perform an initial screening and assessment of wholesale energy market transactions, in the light of the state of the energy systems, to identify instances of market abuse, and notify them to national competent authorities who are responsible for investigation and enforcement;
- coordinate the investigation of suspected cases of market abuse by national competent authorities when they involve more than one jurisdiction;
- assess the operation and the transparency of different categories of market places and ways of trading and formulate recommendations on how to improve market integrity and the functioning of the internal market.

The resources originally foreseen in the Financial Annex to REMIT<sup>3</sup> do not fully reflect the actual financial needs of the Agency. This is partly because several of the above listed tasks for ACER were further elaborated during the legislative process. In addition ACER has run several public tenders to procure REMIT related ICT services which revealed substantially higher costs than expected. This

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<sup>1</sup> OJ L 326 , 08.12.2011, p. 1

<sup>2</sup> Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, OJ L 211 , 14.08.2009, p. 1

<sup>3</sup> [http://ec.europa.eu/energy/gas\\_electricity/markets/doc/com\\_2010\\_0726\\_en.pdf](http://ec.europa.eu/energy/gas_electricity/markets/doc/com_2010_0726_en.pdf)

requires a re-assessment of these costs as the resources currently envisaged for 2013 are insufficient to perform the prescribed tasks.<sup>4</sup>

In particular, in order to handle large amounts of market data, ACER will have to set up an ICT framework which can adequately support all required data processing and analytical functions in efficient and safe way. This includes the development of highly specialised screens to identify suspicious trading behaviour. The Council and the European Parliament have requested the system to live up to highest security standards to ensure the handling of confidential data.

The timeline for the full implementation of the monitoring functions assigned to the Agency depends on the timing of the adoption of Implementing Acts by the Commission. In particular, full transactional data reporting should start six months after the adoption of the Implementing Act defining the “record of transactions” to be reported to the Agency. At present it is expected that the Implementing Acts will be adopted towards the end of 2013, so that the Agency will need to be ready to fully implement the REMIT monitoring system early in 2014. Therefore most of the preparatory work will have to take place in 2013.

According to detailed estimates provided in the attached financial statement, in 2013 ACER will need funds of € 3.139 million to develop its REMIT related ICT systems. However, in the approved budget for 2013 ACER only received an allocation of € 0.150 million for this purpose. The additional financial needs for 2013 are therefore € 2.989 million. These funds will be provided budget-neutrally as they will be financed by redeployment of existing resources of DG ENER in 2013.

On the basis of elements mentioned above, it is necessary to update the legislative financial statement. The new statement including a detailed explanation of the financial needs is attached herewith.

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<sup>4</sup> The initial proposal from the Commission, as presented in the Legislative Financial Statement in December 2010, envisaged 15 extra staff members for the Agency and a budget for ICT system development of €1.1 million over the period 2012 – 2013.

## **II.6.4 – Legislative Financial Statement – ‘Agencies’**

### **LEGISLATIVE FINANCIAL STATEMENT**

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## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Regulation (EU) No 1227/2011 of the European Parliament and of the Council on Wholesale Energy Market Integrity and Transparency - REMIT
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#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>5</sup>

Policy area: Energy
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Activity: Internal market in energy
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#### 1.3. Nature of the proposal/initiative

The proposal/initiative relates to **a new action**

The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>6</sup>

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objective(s)

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

Delivering deep, liquid and integrated energy markets fits into Europe's 2020 strategy to reach a smart, sustainable growth in EU. This goal requires among others "well connected markets where competition and consumer access stimulate growth and innovation" <sup>7</sup> Creating a proper framework for the integrity and transparency of Europe's traded energy markets will foster the desired market integration and underpin overarching European policy objectives.
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##### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Budget area: 3204 conventional and Renewable Energy
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ACER is mandated to monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation and expected to efficiently detect and prevent market misconducts of cross-commodity and cross-border nature on wholesale energy markets. It is also expected that its actions will deter attempted distortive
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<sup>5</sup> ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

<sup>6</sup> As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

<sup>7</sup> COM(2010) 2020, 3.3.2010: "Europe 2020 – A strategy for smart, sustainable and inclusive growth", p. 19.

market practices. This aims at ensuring that consumers and market participants can have confidence in the integrity of electricity and gas markets, that prices set on wholesale energy markets reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse. The goal of increased integrity and transparency of wholesale energy markets should be to foster open and fair competition in wholesale energy markets for the benefit of final consumers

*1.4.3. Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Continuous monitoring of wholesale energy market transactions, including orders to trade, and the operation of fundamental data (disaggregated production figures, outages, flow data, storage operation, etc) will allow ACER to efficiently detect and deter market abuses. This will give confidence to market participants and increase general trust in the proper functioning of markets. In addition, decreasing risk premia are expected to result in lower energy prices to all energy users.

*1.4.4. Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

- Number of market participants registered in the European registry;
- Number of transactions, including orders to trade, collected and monitored;
- Number of incidents of potential market abuse assessed and number of abuses detected;
- Development of bid-offer spreads over time (as a proxy for market risk premia).

**1.5. Grounds for the proposal/initiative**

*1.5.1. Requirement(s) to be met in the short or long term*

Central to REMIT is the establishment of a market monitoring function on European level in relation to which ACER will have to deploy and maintain IT infrastructure capable of handling large number of data and specialist software for automated data analysis purposes. This objective requires significant investments into IT resources necessary to fulfill the REMIT mandate and to ensure operational reliability of the information received and maintained by the Agency. The investments will in particular concern the development of software for a European registry of market participants, the notification of delayed disclosure of inside information, transactional and fundamental data collection, operational reliability, hardware, hosting services and a monitoring software.

1.5.2. *Added value of EU involvement*

As traded electricity and gas markets are strongly interlinked, any manipulation occurring on one market would automatically impact the other. Since these commodities and their derivatives are often traded in parallel in different Member States, any manipulation involving a combination of different commodity transactions and/or platforms can only be effectively detected if monitoring is organized centrally.

1.5.3. *Lessons learned from similar experiences in the past*

No similar experience exists on European level as monitoring and data collection of traded financial instruments is organised nationally. ESMA, the European Securities and Markets Authority has no comparable surveillance powers.

1.5.4. *Compatibility and possible synergy with other appropriate instruments*

The rules prohibiting market misconduct are coherent with comparable rules in applicable financial regulation, notably the Market Abuse Directive.

**1.6. Duration and financial impact**

Proposal/initiative of **limited duration**

–  Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

–  Financial impact from YYYY to YYYY

Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from 2013

– followed by full-scale operation.

**1.7. Management mode(s) envisaged<sup>8</sup>**

**Centralised indirect management** with the delegation of implementation tasks to:

–  executive agencies

–  bodies set up by the European Union<sup>9</sup>

–  national public-sector bodies/bodies with public-service mission

–  persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation.

<sup>8</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

<sup>9</sup> As referred to in Article 185 of the Financial Regulation.



**Joint management** with international organisations (*to be specified*)

*If more than one management mode is indicated, please provide details in the "Comments" section.*

Comments

Resources shall be managed by the ACER.

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

ACER shall report to the Commission on a regular basis on its activities in the field of wholesale transaction monitoring about market abuses that it identified and the results of investigations carried out by enforcement authorities.

### **2.2. Management and control system**

#### *2.2.1. Risk(s) identified*

Risk of inappropriate data handling

#### *2.2.2. Control method(s) envisaged*

The legal proposal contains a number of measures on data protection and operational liability. Further control measures are also envisaged by ACER's governing rules. See also Article 34 of Regulation (EC) No. 713/2009 of the European Parliament and the Council of 13 July 2009 establishing ACER.

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

The management of the funds entrusted to the Agency comes under the control of the Court of Auditors and the European Parliament (*Article 24 of Regulation 713/2009*) and the European Anti-Fraud Office (*Article 26 of Regulation 713/2009*).

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff. <sup>(10)</sup>	from EFTA countries <sup>11</sup>	from candidate countries <sup>12</sup>	from third countries	within the meaning of Article 21(2) b of the new Financial Regulation
	32.04 – Conventional and renewable energies					
1 A	32.04.10 – Agency for the Cooperation of Energy Regulators	Diff.	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading..... .....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2) b of the new Financial Regulation

<sup>10</sup> Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.

<sup>11</sup> EFTA: European Free Trade Association.

<sup>12</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO
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### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial Framework:		1A	32.04 – Conventional and renewable energies				
ACER: (Agency)							<b>TOTAL</b>
	Title 1	Commitments Payments	(1) (2)				
Title 2 - Equipment		Commitments	(1a)	2.989			2.989
		Payments	(2a)	2.989			2.989
Title 3-		Commitments	(3a)				
		Payments	(3b)				
<b>TOTAL appropriations for ACER*</b>		Commitments	=1+1a +3a	2.989			2.989
		Payments	=2+2a +3b	2.989			2.989

\*Remark: The total amount necessary to cover the REMIT related investments stands at € 3.139 million for the budgetary year 2013. In the approved budget for 2013 ACER already received an allocation of € 0.150 million to cover part of those costs. The additional financial needs for 2013 are therefore € 2.989 million. This amount will be transferred from Budget Line 32 04 06 – Competitiveness and Innovation Framework Programme Intelligent Energy Europe programme

<b>Heading of multiannual financial framework:</b>	<b>5</b>	‘Administrative expenditure’ – Not applicable
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EUR million (to three decimal places)	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	<b>TOTAL</b>
DG: ENER						
• Human resources						
• Other administrative expenditure						
<b>TOTAL DG &lt;...&gt;</b>						
	Appropriations					
<b>TOTAL appropriations under HEADING 5</b> of the multiannual financial framework						
	(Total commitments = Total payments)					

EUR million (to three decimal places)						
EUR million (to three decimal places)	2013	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	<b>TOTAL</b>
<b>TOTAL appropriations under HEADINGS 1 to 5</b> of the multiannual financial framework	2.989					<b>2.989</b>
	2.989					<b>2.989</b>
	Commitments					
	Payments					

### 3.2.2. Estimated impact on ACER's appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as described below:

As described under section 1.4.2 the specific objective of REMIT is to increase the integrity and transparency of wholesale energy markets by uncovering market abuses. Increased monitoring of markets is expected to help reducing the occurrence of market abuse. It is, however, difficult to define concrete outputs of the market monitoring function. Measures, like number of cases investigated or market abuses uncovered could be misleading and do not necessarily reflect the effectiveness of the monitoring exercise. Therefore associating the objective of the monitoring exercise with possible outputs in the form as required in the following table is not conducive.

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs	Type <sup>13</sup>	Year N			Year N+1			Year N+2			Year N+3			Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL			
		Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number		Cost		
<b>OUTPUTS</b>																				
↓	Average cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Number	Cost	Total number	Total cost	
SPECIFIC OBJECTIVE NO 1 <sup>14</sup>																				
...																				
- Output																				
- Output																				
- Output																				
Subtotal for specific objective N°1																				

<sup>13</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>14</sup> As described in point 1.4.2. 'Specific objective(s)...'

SPECIFIC OBJECTIVE No 2...												
- Output												
Subtotal for specific objective No 2												
<b>TOTAL COST</b>												

The measure requires the use of appropriations in relation to setting up the IT system to collect, store, handle and analyse data on wholesale energy markets, as explained below:

**Equipment (installation / set-up):**

In 2012 the Agency signed framework contracts in order to procure all the necessary components to comply with its REMIT related obligations. (in particular Tenders ACER/OP/ADMIN/12/2012, ACER/OP/ADMIN/14/2012 and ACER/OP/ADMIN/21/2012).

Hardware and software must be in line and sized to support the requirements of REMIT. Even more importantly, the requirements must also be compliant with the requirements on operational reliability. An in-depth assessment of the needs and of the contracts signed has highlighted the need for allocating additional hardware resources to the Agency.

The **hardware** requirements for the installation of the **REMIT Market Participant Registration System** for the European Registry of market participants are 6 enterprise class servers with a total of 24 CPUs with an estimated cost of **14 400 EUR** per year.

The **hardware** for the **Data Collection Systems** has been estimated in at least 8 enterprise class servers with a total of 32 CPUs at an estimated cost of **30 600 EUR** per year. This hardware is needed to implement the provisions of Article 8 of REMIT.

The **hardware** for the **Market Monitoring Software** is required to comply with under Article 7 of REMIT. The actual need is 8 enterprise servers class with at least 32 CPUs in total with an estimated cost of **56 000 EUR** per year.

Need for storage for the entire project for year 2013 has been estimated in 20 Terabytes, including security measures implementing Article 12 of REMIT. The estimated cost is **51 600 EUR**.

Dedicated connectivity price with contractors and stakeholders is estimated at **136 938 EUR** per year.

Security devices required to comply with requirements of Article 12 of REMIT are estimated to cost **170 000 EUR**.



**Total estimated need for IT infrastructure hosting services (hosting costs) will be in the order of 459 538 EUR for year 2013.** No hardware was procured during year 2012 as the Agency was using existing hardware with the aim to optimize budget.

Additional licenses of “*out of the shelf products*” are needed to comply with existing legislation on Copyright and licensing, to comply with Article 12 of REMIT and to improve efficiency of the entire implementation of the management and maintenance phases by the ACER IT Staff.

**Oracle Database licenses** are needed both for the **Registration and the Data Collection modules (Articles 8 and 9 of REMIT)** to run on 8 CPUs with an estimated cost of **140 000 EUR**.

**Licenses for transactional engines and Application Servers** (formally JBoss licenses for at least 8 CPUs) are needed to implement reliability and technical standards. Estimated cost: **12 000 EUR**.

**Operating systems and virtualization softwares** will optimize use of hardware resources at a cost of **26 000 EUR**.

A general portal/container linked to REMIT will need to be established to simplify the communication and the definition of cooperation workflows among the involved parties. The cost for the **licenses for the Liferay portal EE** (which is the designated platform) is around **33 900 EUR** for 2013 based on official Software Vendor price list.

The estimated cost of the **Market Monitoring Software License** in 2013 is **450 000 EUR**.

The total cost of “*out of the shelf*” *software products* is **661 900 EUR** for 2013.

Apart from “*out of the shelf software*” for the monitoring tasks the Agency need to procure developed software.

**The Registration Software** to build up a European Registry of market participants has been already ordered in 2012 and fully committed for a total value of 293 000 EUR against an initial forecast of 200 000 EUR. An additional appropriation of **93 000 EUR** will need to cover the additional costs. The reasons for this increase is the need for the software to be as flexible as possible to accommodate procedural differences in the 27 Member States.

In order to prepare the data cleaning process and to enable the ETL (Extract, Transform and Load) process to be performed a **Data Collection software** with several interfaces to data reporting parties will be necessary. With a view to optimizing resources and to increase operational reliability the use of data aggregators is considered (Registered Reporting Mechanisms – RRM - and Regulated information Services – RIS). Tasks related to the handling data reports (**reporting obligations in Article 8 (1) to (4) of REMIT**) have been estimated at a cost of **600 000 EUR**, including the costs of the RRM accreditation system.

**Reporting obligation on fundamental and physical data related to the energy market** as from Article 8(5) of REMIT, will be implemented with the creation of the RISs. The estimated cost is **300 000 EUR to be allocated in year 2013** including the cost of the RIS accreditation system.

In addition costs related to obligations laid down in Articles 8(2), 4 (1) and 15 of REMIT (**list of products and contracts, obligation to publish inside information and obligations of persons professionally arranging transactions**) will amount to **100 000 EUR in 2013**.

The cost of an **ETL software** (Extract, Transforms and Load) is estimated at 200.000 EUR. Its role is to validate, clean, correct and transform all incoming data to be used for the Market Monitoring or to be prepared for the sharing phase with third parties. Also removal of double reported transactions is needed prior market monitoring analysis.

ACER has the **obligation to share relevant collected information** with competent authorities requiring the set up different data formats. Estimated cost for 2013: **200 000 EUR**.

The total cost of acquisition and development of software products is **1 493 000 EUR to be allocated in 2013**.

In order to properly calibrate the **Market Monitoring platform, set the needed alert** and to determine the different data sources and the needed data formats to import from the lower software levels a design study will be needed for a total amount of **75 000 EUR in 2013**.

Additional **IT consultancy** for around **300 000 EUR** will be needed to support the ACER Market Monitoring team in defining and determining the organizational and technical standards and requirements, well-structured internal procedures and in analysing of the workings and trends of traded energy markets (200 man/days for year 2013, at an average price of 1 500 EUR per man day).

In order to cover the Market Monitoring Department's missions and all the mission costs related to contractors, an additional appropriation of **150 000 EUR for 2013 is needed**. The appropriation will cover around 150 days of mission to/from Ljubljana and the major capital cities in Europe.

In summary, for the aforementioned reasons, ACER will need the total amount of **3 139 438 EUR for the budgetary year 2013 in order to implement obligations related to REMIT as also described in ACER's Work Programme 2013**.

3.2.3. *Estimated impact on ACER's human resources*

1.1.1.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature

1.1.1.2. Estimated requirements of human resources for the parent DG

- The proposal/initiative does not require the use of human resources.

3.2.4. *Compatibility with the current multiannual financial framework*

- Proposal/initiative is compatible the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>15</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
<b>TOTAL appropriations cofinanced</b>								

<sup>15</sup> See points 19 and 24 of the Interinstitutional Agreement.

### 3.3. Estimated impact on revenue

- Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue