

Legislative Financial Statement – Retail Investment Strategy

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1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Package of measures aimed at implementing the retail investment strategy

1.2. Policy area(s) concerned

Policy area: Internal Market

Activity: Financial markets

1.3. The proposal relates to

- a new action
- a new action following a pilot project/preparatory action⁴¹
- the extension of an existing action
- a merger of one or more actions towards another/a new action

1.4. Objective(s)

1.4.1. General objective(s)

The general objectives of the initiative are to strengthen the protection framework for retail investors to empower them when taking investment decisions and to ensure their fair treatment when using investment services in order to achieve better investment performance. The retail investment strategy also aims to improve the efficiency and integration of the internal market across all retail financial services.

1.4.2. Specific objective(s)

The specific objectives of this initiative are as follows:

Improving information provided to investors and their ability to take well-informed investment decisions. The initiative aims to improve the legal framework by adapting disclosures to the digital environment, making disclosures more relevant for retail investors and ensuring retail investors receive marketing communications, also through online channels, that are relevant and not misleading.

Better aligning interests between intermediaries and investors. The improvements to the framework would ensure that the advice given to retail investors is not biased by monetary or non-monetary incentives provided by product manufacturers to intermediaries, is of good quality and adapted to their needs, preferences and objectives.

Ensuring that retail investors are offered cost-effective products. A strengthened approach in the legislative framework based around the value offered aims to help retail investors achieve better returns and easier access to more cost-efficient retail investment products.

⁴¹ As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

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

The proposals are expected to bring greater coherence to the legislative framework whilst reinforcing investor protection rules. They should achieve this by taking a holistic approach, looking across the different legislative instruments and seeking to address identified problems through a variety of measures. In particular, the proposals address how disclosures are made to retail investors and the rules on marketing communications in an increasingly digital environment, managing potential conflicts of interest that arise as a consequence of the payment of inducements and ensuring that value for money is appropriately reflected in existing product approval processes. The legislative package features a number of additional measures aimed at enhancing financial literacy, making it easier for more experienced investors to be classified as professional investors, strengthening the rules around suitability and appropriateness assessments, raising standards around the professional qualification of advisors as well as a number of measures designed to improve supervisory enforcement.

1.4.4. *Indicators of performance*

Specify the indicators for monitoring progress and achievements.

Non-exhaustive list of potential indicators:

- ESMA and EIOPA will be tasked with monitoring the effectiveness of digital disclosures.
- Change in number of complaints regarding quality/lack of information
- Evaluation of role of disclosure to take well-informed investment decisions
- Number of risk warnings regarding (aggressive) marketing
- Evaluation of investor's ability to discern essential product information from new marketing disclosure format
- Emerging marketing-related trends and risks
- Distribution of retail investment products per investment type
- Change in total number of complaints regarding investment advice, portfolio management and execution of orders
- Change in number of complaints according to firm type
- Distribution of costs and performance per investment type
- in cost of value-for-money related benchmarks
- Change in number of complaints regarding fees and charges

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

1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

These proposals should address the following challenges:

1. Retail investors lack relevant, comparable and easily understandable investment product information, while being inappropriately influenced by marketing communications.

Relevant, comparable and easily understandable information about investment products is important to help retail investors make well-informed decisions. That purpose is however hindered by several factors that limit the ability of investors to use and understand the information they need – some related to deficiencies in the retail disclosure framework, others related to insufficient levels of financial literacy. The information documents provided to retail investors are rarely engaging and their layout is frequently very dense and not reader friendly. Insufficient levels of financial literacy make it harder for investors to find and assess available information and reflect it in their investment decisions.

Current disclosure rules are not sufficiently helping consumers overcome the underlying complexity of retail investment products. As a consequence, there is further potential for disclosures to better help retail investors make their decisions.

Retail investors are increasingly exposed to the influence of social media and online marketing. The current framework has not been sufficiently adapted to the increasing use of digital channels for retail investing. In addition, the current framework does not reflect the growing need of inclusion of sustainability preferences of retail investors.

2. Shortcomings in the investment product manufacturing and distribution process related to the payment of inducements and the extent to which product design reflects cost-efficiency and value for the retail investor.

Some products offered and recommended to retail investors do not deliver satisfactory investment results and do not best serve their interests, nor correspond to their investment objectives, needs and preferences. Both EIOPA and ESMA have found that certain products offered to retail investors (e.g. certain structured investment products or insurance-based investment products) have in recent years offered very low if not negative returns, especially after deduction of fees .

Particularly costly are products that include the payment of inducements for financial intermediaries in the distribution process. Despite the existing safeguards to mitigate the resulting conflicts of interest, investors are still advised products that do not offer them the best value nor help them to achieve their long-term investment goals.

Jointly, these problems have the following consequences:

1. Investors may not be duly protected or treated fairly;
2. Some investors do not achieve good outcomes on their investment due to poor quality products, making it harder to accumulate capital to finance their retirement needs or other life goals;
3. As retail investors achieve suboptimal results and do not understand why their financial products did not yield a satisfying performance, their confidence in capital markets may be undermined and their willingness to invest in the first place discouraged;
4. The resulting lower retail investor engagement may constrain efforts to achieve a more efficient, developed and integrated capital market within the EU.

1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this*

point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante)

The legal framework governing retail investor protection is extensive and largely harmonised at EU level. Notwithstanding this extensive body of legislation at EU level, the evidence gathering exercises have identified a number of significant shortcomings, in particular with respect to the way retail investment products are distributed and the way information is provided to retail investors. Action is required at EU level as the options considered in this impact assessment necessitate the modification of the existing legal framework, consisting of EU Directives and Regulations. Individual initiatives at Member State level are therefore not suitable, insofar as the proposed amendments will be made to EU Directives and Regulations and consequently beyond the scope of the legislative competence of Member States.

Expected generated Union added value (ex-post)

Ensuring a coherent investor protection framework that empowers consumers to take financial decisions and benefit from the internal market can only be achieved at EU level, in close cooperation with Member States.

As the current retail investor protection framework largely consists of different EU legal instruments, in order to address the problems identified in this impact assessment and to facilitate cross-border retail investor participation in the EU, this framework may only be amended at EU level to update investor protection rules. Acting at the EU level and harmonising the operational requirements of service providers as well as the disclosure requirements imposed reduces the complexity and administrative burdens for stakeholders and promotes financial stability.

1.5.3. Lessons learned from similar experiences in the past

The evaluation and impact assessment accompanying the legislative proposal have assessed how the existing framework has performed and identify a number of shortcomings, in particular with respect to the way some products incorporate high costs by design, and the lack of salience of the disclosure documents that are provided to retail investors. Behavioural testing by EIOPA prior to finalisation of the design of the PEPP key information document has proven beneficial, and similar approaches would be appropriate when ESMA and EIOPA implement the changes to disclosure rules that form part of this legislative package.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

The objectives of the initiative are consistent with a number of other EU policies and ongoing initiatives, in particular with the Union policies aimed at creating a Capital Markets Union (CMU). In its September 2020 New Capital Markets Union Action Plan, the European Commission announced its intention to come forward with a strategy for retail investments in Europe that seeks to ensure that retail investors can take full advantage of capital markets and that rules are coherent across legal instruments.

The legislative proposal would have a very limited impact on the MFF, as it foresees additional Union contribution to ESMA and EIOPA stemming from the additional 16 FTEs (7

Temporary Agents and 9 Contract Agents) that the Authorities would receive to implement the additional tasks conferred by the legislators.

This will translate into a proposal to increase the authorised staff of the agency during the future annual budgetary procedure. The agencies will continue to work towards maximising synergies and efficiency gains (inter alia via IT systems), and closely monitor the additional workload associated with this proposal, which would be reflected in the level of authorised staff requested by the agency in the annual budgetary procedure.

1.5.5. *Assessment of the different available financing options, including scope for redeployment*

Both ESMA and EIOPA were asked whether fees levied on firms might be an alternative way to cover the costs of various initiatives. They concluded that such an approach would be difficult to justify, as the considered measures are not directly linked to supervisory powers, but part of developing the regulatory framework.

1.6. Duration and financial impact of the proposal/initiative

limited duration

- Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY

unlimited duration

- Implementation with a start-up period from 2025 to 2027,
- followed by full-scale operation.

1.7. Method(s) of budget implementation planned⁴²

Direct management by the Commission through

- executive agencies

Shared management with the Member States

Indirect management by entrusting budget implementation tasks to:

international organisations and their agencies (to be specified);

the EIB and the European Investment Fund;

bodies referred to in Articles 70 and 71;

public law bodies;

bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

⁴² Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: <https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx>

bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

In line with already existing arrangements, the ESAs prepare regular reports on their activity (including internal reporting to Senior Management, reporting to Boards and the production of the annual report), and are subject to audits by the Court of Auditors and the Commission's Internal Audit Service on their use of resources and performance. Monitoring and reporting of the actions included in the proposal will comply with the already existing requirements, as well as with any new requirements resulting from this proposal.

2.2. Management and control system(s)

2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The tasks will be implemented by EIOPA's and ESMA's indirect management with funding provided through the Union subsidy to the authorities and from the contributions of the National Competent Authorities (NCAs) in accordance with the normal funding formula (40% Union, and 60% Member State NCAs plus the contribution of EFTA NCAs and the NCA share of employer's pension contributions).

In accordance with Article 30 of their Financial Regulations, EIOPA and ESMA are to implement their budgets in compliance with effective and efficient internal control, which should be based upon best international practices and on the Internal Control Framework laid down by the Commission for its own departments.

In accordance with Article 70.5 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (the Financial Regulation), the Internal Auditor of the Commission is also the Internal Auditor of EIOPA and ESMA. In particular, in accordance with Article 78.3 of the Financial Regulations of EIOPA and ESMA, the Commission's Internal Auditor (i.e. the Internal Audit Service) is responsible for:

(a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them;

(b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each operation for implementation of the budget of the Union body.

These responsibilities of the Internal Audit Service will also extend to the tasks implemented by EIOPA and ESMA in accordance with the proposed legislation.

As well as the work of the Internal Audit Service, EIOPA and ESMA are subject to external audit including by the European Court of Auditors, which in accordance with Article 104 of the Financial Regulations of EIOPA and ESMA, shall each year prepare specific annual reports on EIOPA and ESMA in line with the requirements of Article 287(1) of the Treaty on the Functioning of the European Union. 2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Management and control systems are provided in the Regulations currently governing the functioning of the ESAs. These bodies work closely together with the Internal Audit Service of the Commission to ensure that the appropriate standards are observed in all areas of the internal control framework. Every year, the European Parliament, following a recommendation from the Council, grants discharge to each ESA for the implementation of their budget.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

Management and control systems as provided for in the ESAs Regulations are already implemented and deemed to be cost effective. The Regulation is regularly reviewed and the risks of error are expected to be low.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

For the purpose of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EU, Euratom) N°883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) apply to the ESAs without any restriction. The ESAs have a dedicated anti-fraud strategy and resulting action plan. The ESAs' actions in the area of anti-fraud will be compliant with the Financial Regulation, OLAF's fraud prevention policies, the provisions provided by the Commission Anti-Fraud Strategy (COM(2019)196) as well as the Common Approach on EU decentralised agencies (July 2012) and the related roadmap. In addition, the Regulations establishing the ESAs as well as the ESAs' Financial Regulations set out the provisions on implementation and control of the ESAs' budgets and applicable financial rules, including those aimed at preventing fraud and irregularities.

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. ⁴³	from EFTA countries ⁴⁴	from candidate countries ⁴⁵	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1	EIOPA: <03.10.03>	Diff.	NO	NO	NO	NO
1	ESMA: <03.10.04>	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	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation

⁴³ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

⁴⁴ EFTA: European Free Trade Association.

⁴⁵ Candidate countries and, where applicable, potential candidates from the Western Balkans.

	N/A					
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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	Number	Heading 1 : Single Market, Innovation & Digital
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EIOPA: <03.10.03>			2023	2024	2025	2026	2027	TOTAL
Title 1:	Commitments	(1)			0.042	0.085	0.117	0.244
	Payments	(2)			0.042	0.085	0.117	0.244
Title 2:	Commitments	(1a)			0.013	0.026	0.033	0.072
	Payments	(2a)			0.013	0.026	0.033	0.072
Title 3:	Commitments	(3a)			0.324	0.120	0.060	0.504
	Payments	(3b)			0.324	0.120	0.060	0.504
TOTAL appropriations for EIOPA <30.10.03>	Commitments	=1+1a +3a			0.379	0.231	0.210	0.820
	Payments	=2+2a +3b			0.379	0.231	0.210	0.820

ESMA: <03.10.04>			2023	2024	2025	2026	2027	TOTAL
Title 1:	Commitments	(1)			0.098	0.198	0.202	0.498
	Payments	(2)			0.098	0.198	0.202	0.498
Title 2:	Commitments	(1a)			0.026	0.052	0.053	0.131
	Payments	(2a)			0.026	0.052	0.053	0.131
Title 3:	Commitments	(3a)			0.360	0.160	0.080	0.600
	Payments	(3b)			0.360	0.160	0.080	0.600
TOTAL appropriations for ESMA <30.10.04>	Commitments	=1+1a +3a			0.484	0.410	0.335	1.229
	Payments	=2+2a +3b			0.484	0.410	0.335	1.229

Heading of multiannual financial framework	7	‘Administrative expenditure’				
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EUR million (to three decimal places)

		2023	2024	2025	2026	2027	TOTAL
DG: <.....>							
• Human Resources							
• Other administrative expenditure							
TOTAL DG <.....>	Appropriations						

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)						
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EUR million (to three decimal places)

		2023	2024	2025	2026	2027	TOTAL
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments			0.863	0.641	0.545	2.049
	Payments			0.863	0.641	0.545	2.049

3.2.2. *Estimated impact on EIOPA's and ESMA's appropriations*

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

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			2023	2024	2025	2026	2027	TOTAL						
	OUTPUTS													
	Type ⁴⁶	Average cost	N ^o	Cost	N ^o	Cost	N ^o	Cost	N ^o	Cost	N ^o	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1: EIOPA														
- Output	Consumer testing				1	0.510							1	0.510
- Output	Assessment of costs and performance of retail investment products				1	0.300	1	0.300	1	0.150			1	0.750
Subtotal for specific objective No 1						0.810		0.300		0.150				1.260
SPECIFIC OBJECTIVE No 2: ESMA														
- Output	Consumer testing				1	0.500								0.500
- Output	IT system				1	0.400	1	0.400	1	0.200				1.000
Subtotal for specific objective No 2						0.900	1	0.400	1	0.200				1.500
TOTAL COST						1.710		0.700		0.350				2.760

⁴⁶ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

3.2.3. Estimated impact on EIOPA's and ESMA's human resources

3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

EIOPA⁴⁷	2023	2024	2025	2026	2027	TOTAL
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Temporary agents (AD Grades)			0.079	0.160	0.164	0.403
Temporary agents (AST grades)					0.082	0.082
Contract staff			0.035	0.072	0.073	0.180
Seconded National Experts						

TOTAL			0.114	0.232	0.319	0.665
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Staff requirements (FTE):

EIOPA	2023	2024	2025	2026	2027	TOTAL
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Temporary agents (AD Grades)			1	1	1	1
Temporary agents (AST grades)					1	1
Contract staff			1	1	1	1
Seconded National Experts						

TOTAL			2	2	3	3
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⁴⁷ Total Cost EU and NCA (including NCA share of employer's pension contributions)

EUR million (to three decimal places)

ESMA	2023	2024	2025	2026	2027	TOTAL
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Temporary agents (AD Grades)			0.181	0.369	0.377	0.927
Temporary agents (AST grades)						
Contract staff			0.081	0.164	0.167	0.412
Seconded National Experts						

TOTAL⁴⁸			0.262	0.533	0.544	1.339
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Staff requirements (FTE):

ESMA	2023	2024	2025	2026	2027	TOTAL
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Temporary agents (AD Grades)			2	2	2	2
Temporary agents (AST grades)						
Contract staff			4	4	4	4
Seconded National Experts						

TOTAL			6	6	6	6
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⁴⁸ Total Cost EU and NCA (including NCA share of employer's pension contributions)

3.2.3.2. Estimated requirements of human resources for the parent DG

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

		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)	
• Establishment plan posts (officials and temporary staff)							
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)							
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External staff (in Full Time Equivalent unit: FTE)⁴⁹							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the Delegations)							
Budget line(s) (specify) ⁵⁰	- at Headquarters ⁵¹						
	- in Delegations						
01 01 01 02 (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
TOTAL							

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary

⁴⁹ AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

⁵⁰ Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

⁵¹ Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

3.2.4. *Compatibility with the current multiannual financial framework*

- The proposal/initiative is compatible the current multiannual financial framework.
- The 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.

The EIOPA <03 10 03> and ESMA <03 10 04> budget lines will need to be reprogrammed to provide for the additional appropriations identified in section 3.2.1

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework⁵².

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

N/A

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:

EUR million (to three decimal places)

	2023	2024	2025	2026	2027	Total
Estimate of costs covered by NCA Contributions			1.320	1.020	0.884	3.224
TOTAL appropriations co-financed (including employer's pension contributions)			1.320	1.020	0.884	3.224

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⁵² See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2093/2020 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.

3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
 - on own resources
 - on other revenue
 - please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative ⁵³							
		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)			
Article									

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

⁵³ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.