

2020/0154(COD)

# **COLUMN TABLE FOR INTERINSTITUTIONAL NEGOTIATIONS – WORKING DOCUMENT**

Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 as regards the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation (COM(2020)0337 – C9-0209/2020 – 2020/0154(COD))

Date of the trilogue: 25.11.2020

**Committee on Economic and Monetary Affairs – Negotiating team**

NB: this cover page has been added for technical reasons only.



Nr	Ref.	European Commission	Council	European Parliament	Compromise text
1		2020/0154 (COD)	2020/0154 (COD)	2020/0154 (COD)	2020/0154 (COD) GREEN
2	Title	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1011 as regards the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1011 as regards the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1011 as regards the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation <i>and amending Regulation (EU) No 648/2012</i>	
3		(Text with EEA relevance)	(Text with EEA relevance)	(Text with EEA relevance)	(Text with EEA relevance) GREEN
4		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE

<b>Nr</b>	<b>Ref.</b>	<b>European Commission</b>	<b>Council</b>	<b>European Parliament</b>	<b>Compromise text</b>
		THE EUROPEAN UNION,	EUROPEAN UNION,	EUROPEAN UNION,	EUROPEAN UNION, GREEN
5	Citation 1	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof, GREEN
6	Citation 2	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission, GREEN
7	Citation 3	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments, GREEN
8	Citation 3a (new)			<i>Having regard to the opinion of the European Central Bank,</i>	
9	Citation 4	Having regard to the opinion of the European Economic and Social	Having regard to the opinion of the European Economic and Social Committee <sup>2</sup> ,	Having regard to the opinion of the European Economic and Social	Having regard to the opinion of the European Economic and Social Committee <sup>4</sup> , GREEN

<sup>2</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		Committee <sup>1</sup> ,		Committee <sup>3</sup> ,	
10	Citation 5	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure, GREEN
11		Whereas:	Whereas:	Whereas:	Whereas: GREEN
12	Recital 1	(1) In order to hedge against exposure to foreign exchange rate volatility in currencies that are not readily convertible or subject to exchange controls, companies in the Union enter into non-deliverable currency forwards and swaps. Those instruments enable their users to protect against volatility of foreign currencies that are not readily convertible into a base	(1) In order to hedge against <b><u>adverse foreign exchange rate movements exposure to foreign exchange rate volatility</u></b> in currencies that are not readily convertible or subject to exchange controls, companies in the Union enter into non-deliverable currency <b><u>derivatives, such as</u></b> forwards and swaps. Those instruments enable their users to protect against <b><u>volatility adverse movements</u></b> of foreign currencies that are not readily convertible into a base currency, <del>such as the dollar or</del>	(1) In order to hedge against exposure to foreign exchange rate volatility in currencies that are not readily convertible or subject to exchange controls, companies in the Union enter into non-deliverable currency forwards and swaps. Those instruments enable their users to protect against volatility of foreign currencies that are not readily convertible into a base currency, such as the dollar or the euro.	

<sup>1</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

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		<p>currency, such as the dollar or the euro. The unavailability of foreign currency spot exchange rates to calculate the pay-outs due under currency forwards and swaps would have a negative effect on companies in the Union that export to emerging markets or hold assets in those markets, with consequent exposure to fluctuations of emerging market currencies. Following the expiration of the transitional period set out in paragraphs 4a and 4b of Article 51 of Regulation (EU) 2016/1011 of the</p>	<p><del>the euro.</del> The unavailability of <del>foreign currency spot exchange rates</del> <u>spot foreign exchange benchmarks</u> to calculate the pay-outs due under currency <del>forwards and swaps</del> <u>derivatives</u> would have a negative effect on companies in the Union that export to emerging markets or hold assets <u>or liabilities</u> in those markets, with consequent exposure to fluctuations of emerging market currencies. Following the expiration of the transitional period set out in <del>paragraphs 4a and 4b</del> <u>paragraph 5</u> of Article 51 of Regulation (EU) 2016/1011 of the European Parliament and of the Council<sup>6</sup>, the use of <del>spot foreign exchange rates</del> <u>spot</u></p>	<p>The unavailability of foreign currency spot exchange rates to calculate the pay-outs due under currency forwards and swaps would have a negative effect on companies in the Union that export to emerging markets or hold assets in those markets, with consequent exposure to fluctuations of emerging market currencies. Following the expiration of the transitional period set out in <i>paragraph 5</i> of Article 51 of Regulation (EU) 2016/1011 of the European Parliament and of the Council<sup>7</sup>, the use of spot foreign exchange</p>	

<sup>6</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

<sup>7</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

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		European Parliament and of the Council <sup>5</sup> , the use of spot foreign exchange rates provided by a third country administrator other than a central bank will no longer be possible.	<b><u>foreign exchange benchmarks</u></b> provided by a third country administrator other than a central bank will no longer be possible.	rates provided by a third country administrator other than a central bank will no longer be possible.	
13	Recital 2	(2) In order to enable companies in the Union to continue their business activities while mitigating foreign exchange risk, spot exchange rates referred to in non-deliverable forwards or swaps to calculate contractual pay-outs should be excluded from the scope of Regulation (EU) 2016/1011.	(2) In order to enable companies in the Union to continue their business activities while mitigating foreign exchange risk, <b><u>certain spot exchange rates spot foreign exchange benchmarks referred used to</u></b> in financial instruments to calculate contractual pay-outs <b><u>that are designated by the Commission in accordance with certain criteria</u></b> should be excluded from the scope of Regulation (EU) 2016/1011.	(2) In order to enable companies in the Union to continue their business activities while mitigating foreign exchange risk, spot exchange rates referred to in non-deliverable forwards or swaps to calculate contractual pay-outs should be excluded from the scope of Regulation (EU) 2016/1011.	

<sup>5</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
14	Recital 3	<p>(3) In order to designate certain third country spot exchange rates as being excluded from the scope of Regulation (EU) 2016/1011, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the exemption of foreign spot exchange rate for non-convertible currencies when that the spot exchange rate is used for calculating the pay-outs that arise under non-deliverable currency forwards or swaps. It is of particular importance that the Commission carry out appropriate</p>	<p>(3) In order to designate certain third country <del>spot</del> <b><u>exchange rates spot foreign exchange benchmarks</u></b> as being excluded from the scope of Regulation (EU) 2016/1011, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the exemption of <del>foreign spot exchange rate spot</del> <b><u>foreign exchange benchmarks</u></b> for non-convertible currencies when <del>that the spot exchange rate spot foreign exchange benchmark</del> <b><u>that the spot exchange rate spot foreign exchange benchmark</u></b> is used for calculating the pay-outs that arise under non-deliverable <del>currency forwards or swaps</del> <b><u>foreign spot exchange derivative contracts</u></b>. It is of particular importance that the Commission carry out</p>	<p>(3) In order to designate certain third country spot exchange rates as being excluded from the scope of Regulation (EU) 2016/1011, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the exemption of foreign spot exchange rate for non-convertible currencies when that the spot exchange rate is used for calculating the pay-outs that arise under non-deliverable currency forwards or swaps. It is of particular importance that the Commission carry out appropriate consultations during its preparatory</p>	



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		<p>consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated</p>	<p>appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p>	<p>work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p>	

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		acts.			
15	Recital 3a (new)			<p><i>(3a) Regulation (EU) 2016/1011 provides that, until 31 December 2021, Union market participants can use benchmarks administered in a country outside the Union regardless of whether an equivalence decision is in place or the index has been recognised or endorsed for use in the Union. The expectation of the legislators was that until the end of 2021 third countries would adapt their benchmark regime to the rules put forward by this Regulation and that the use by Union market participants of benchmarks administered in a country outside the</i></p>	<p><i>(3a) Regulation (EU) 2016/1011 provides that, until 31 December 2021, Union market participants can use benchmarks administered in a country outside the Union regardless of whether an equivalence decision is in place or the index has been recognised or endorsed for use in the Union. The expectation of the legislators was that until the end of 2021 third countries would adapt their benchmark regime to the rules put forward by this Regulation and that the use by Union market participants of benchmarks administered in a country outside the Union would be ensured by equivalence or endorsement decisions taken by the Commission, thus safeguarding legal certainty.</i></p>

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				<p><i>Union would be ensured by equivalence or endorsement decisions taken by the Commission, thus safeguarding legal certainty. Nonetheless, little progress was made in that regard.</i></p> <p><i>Considering the disparity and intensity that exists between the regulation of financial benchmarks for use in the Union and in third countries, and to ensure the smooth function of the market and the availability of third country benchmarks for use in the Union after the end of December 2021, the Commission should review, by 30 June 2021, the current provisions on third country regime of Regulation (EU)</i></p>	<p><i>Nonetheless, little progress was made in that regard.</i></p> <p><i>Considering the disparity and intensity that exists between the regulation of financial benchmarks for use in the Union and in third countries, and to ensure the smooth function of the market and the availability of third country benchmarks for use in the Union <del>after the end of December 2021,</del> the Commission should review, <del>by 30 June 2021,</del> the current provisions on third country regime of Regulation (EU) 2016/1011 <del>by means of a delegated act to overcome current obstacles and be given, if appropriate, additional powers on the endorsement of third countries benchmarks or family of benchmarks.</del></i></p>

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				<p><i>2016/1011 by means of a delegated act to overcome current obstacles and be given, if appropriate, additional powers on the endorsement of third countries benchmarks or family of benchmarks.</i></p>	
16	Recital 4	<p>(4) The UK Financial Conduct Authority (FCA) has announced it will stop supporting the production of one of the most important interest rate benchmarks, the London Interbank Offered Rate (LIBOR) by the end of 2021. As of the end of the transition period for the United Kingdom's withdrawal from the Union on 31 December 2021, LIBOR will no</p>	<p>(4) <b><u>As of the end of the transition period for the United Kingdom's withdrawal from the Union on 31 December <del>2021</del> 2020, the interest rate benchmark London Interbank Offered Rate (LIBOR) will no longer qualify as a critical benchmark under Regulation (EU) 2016/1011.</u></b> The UK Financial Conduct Authority (FCA) has announced <b><u>that it will not persuade or compel panel banks to submit to LIBOR beyond the end of 2021 which increases the risk</u></b></p>	<p>(4) <i>Following the withdrawal of the United Kingdom from the European Union, the London Interbank Offered Rate (LIBOR) will cease to qualify as a critical benchmark as of the end of the transition period on 31 December 2020. In addition, the UK Financial Conduct Authority (FCA) has announced it will stop encouraging or compelling banks to contribute to LIBOR</i></p>	

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		<p>longer qualify as a critical benchmark. The cessation of LIBOR may nevertheless result in negative consequences that produce significant disruption in the functioning of financial markets in the Union. In the Union there is a stock of contracts in the areas of debt, loans, term deposits and derivatives that reference LIBOR, that mature beyond 31 December 2021 and that do not have robust contractual fall-back provisions to cover for the cessation of LIBOR. Many of those contracts cannot be renegotiated to incorporate a contractual fall-back prior to 31 December 2021. The cessation of</p>	<p><del>it will stop supporting that the production of</del> one of the most important interest rate benchmarks, <del>the London Interbank Offered Rate (LIBOR)</del> <u>will most likely be wound down</u> by the end of 2021. <del>As of the end of the transition period for the United Kingdom's withdrawal from the Union on 31 December 2021 2020,</del> <del>LIBOR will no longer qualify as a critical benchmark.</del> The <del>cessation winding down</del> of LIBOR may <del>nevertheless</del> result in negative consequences that produce significant disruption in the functioning of financial markets in the Union. In the Union there is a stock of contracts in the areas of debt, loans, term deposits, <u>securities</u> and derivatives that <u>all</u> reference LIBOR, that mature beyond 31 December 2021 and</p>	<p><i>thereby creating a substantial risk of cessation of one of the most important interest rate benchmarks, by the end of 2021.</i> The cessation of LIBOR may nevertheless result in negative consequences that produce significant disruption in the functioning of financial markets in the Union. In the Union there is a stock of contracts in the areas of debt, loans, term deposits and derivatives that reference LIBOR, that mature beyond 31 December 2021 and that do not have robust contractual fall-back provisions to cover for the cessation of LIBOR. Many of those contracts cannot be renegotiated to</p>	

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		LIBOR may therefore result in significant disruption in the functioning of financial markets in the Union.	that do not have robust contractual fallback provision to cover for the cessation <b>of publication or winding down of LIBOR in the relevant calculated currency respectively some of its tenors. Many Some</b> of those contracts <b>or and financial instruments as defined in Directive 2014/65/EU</b> cannot be renegotiated to incorporate a contractual fallback <b>provision</b> prior to 31 December 2021. The cessation <b>or winding down</b> of LIBOR may therefore result in significant disruption in the functioning of financial markets in the Union.	incorporate a contractual fall-back prior to 31 December 2021. The cessation of LIBOR may therefore result in significant disruption in the functioning of financial markets in the Union.	
17	Recital 5	(5) To be able to provide for an orderly wind down of contracts that reference a widely used benchmark the cessation of which may result in negative	(5) To be able to provide for <del>an</del> <b>the</b> orderly <b>winding down of contracts that reference</b> a widely used benchmark the cessation <b>of which</b> may result in negative consequences that produce	(5) <i>Article 28(2) of Regulation 2016/1011 requires supervised entities other than benchmark administrators to have contingency plans in</i>	

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		<p>consequences that produce significant disruption in the functioning of financial markets in the Union and where such contracts cannot be renegotiated to include a contractual fall-back rate by the time of that benchmark's cessation, a framework accompanying the cessation of such benchmarks should be laid down. That framework should comprise a mechanism aimed at transitioning such contracts to suitable replacement benchmarks. Replacement benchmarks should ensure avoiding contract frustration which may</p>	<p>significant disruption in the functioning of financial markets in the Union and where such contracts <b><u>or financial instruments as defined in Directive 2014/65/EU</u></b> cannot be renegotiated to include a contractual <b><u>fallback provision</u></b> by the time of that benchmark's cessation, a framework accompanying the cessation <b><u>or orderly winding down</u></b> of such benchmarks should be laid down. That framework should comprise a mechanism aimed at transitioning such contracts <b><u>or financial instruments as defined in Directive 2014/65/EU to suitable designated</u></b> replacement benchmarks. Replacement benchmarks should ensure avoiding contract frustration which may result in negative consequences that produce</p>	<p><i>place in case a benchmark changes materially or ceases to be provided. If possible, those contingency plans should identify one or more potential replacement benchmarks. That decentralised, non-legislative method should remain the default method for provisioning in the event of a benchmark cessation, but the LIBOR case has shown that, in practice, that method might not always be sufficient. Therefore, to ensure an orderly wind down of contracts that reference a widely used benchmark the cessation of which may result in negative consequences that produce significant</i></p>	

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		<p>result in negative consequences that produce significant disruption in the functioning of financial markets in the Union.</p>	<p>significant disruption in the functioning of financial markets in the Union.</p>	<p>disruption in the functioning of financial markets in the Union and where such contracts cannot be renegotiated to include a contractual fall-back rate by the time of that benchmark's cessation, <i>there</i> should be <b><i>a fall-back method that provides for mandatory public designation of a replacement benchmark. That method</i></b> should comprise a mechanism aimed at transitioning such contracts to suitable replacement benchmarks. Replacement benchmarks should ensure avoiding contract frustration which may result in negative consequences that produce significant disruption in the</p>	



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				functioning of financial markets in the Union.	
18	Recital 5a (new)		<p><b><u>(5a) The absence of a mechanism within this Regulation to organise the orderly winding down of a benchmark would likely result in heterogeneous legislative solutions by Member States. Hence, European stakeholders are exposed to risks from the diverging implementation of national laws. Along with the outstanding exposure and stock of contracts and financial instruments as defined in Directive 2014/65/EU, the increased likelihood of contractual frustration and the increased risk of litigation could lead to significant disruptions in the functioning of financial markets. Due to the</u></b></p>		

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			<p><b><u>extraordinary circumstances and systemic risks, it is necessary to establish a harmonised approach for critical benchmarks and third country benchmarks with systemic relevance for the Union. Member States competencies with regards to significant and non-significant benchmarks are not affected by this Regulation.</u></b></p>		
19	Recital 6	<p>(6) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to designate a replacement benchmark to be used for the winding down of contracts that have not been renegotiated by the</p>	<p>(6) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to designate a replacement benchmark to <b><u>replace all references to the benchmark in cessation or being wound down be used for the winding down of</u></b> in contracts <b><u>or financial instruments as defined in</u></b></p>	<p>(6) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to designate a replacement benchmark to be used for the winding down of contracts that have not been renegotiated by the date the benchmark in</p>	

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		<p>date the benchmark in cessation is no longer published. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>8</sup>. Legal certainty requires that the Commission exercises those implementing powers only upon precisely defined trigger events clearly demonstrating that administration and publication of the benchmark to be replaced will cease</p>	<p><b><u>Directive 2014/65/EU</u></b> that have not been renegotiated by the date of the entry into force of the implementing act <del>the benchmark in cessation is no longer published</del>. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>9</sup>. Legal certainty requires that the Commission exercises those implementing powers only upon precisely defined trigger events clearly demonstrating that administration and publication of the benchmark to be replaced will cease permanently. <b><u>Those powers</u></b></p>	<p>cessation is no longer published. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>10</sup>. Legal certainty requires that the Commission exercises those implementing powers only upon precisely defined trigger events clearly demonstrating that administration and publication of the benchmark to be replaced will cease permanently.</p>	

<sup>8</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>9</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>10</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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		permanently.	<u>should be conferred on the Commission for critical benchmarks under Regulation (EU) 2016/1011 and for third country benchmarks with systemic relevance for the Union.</u>		
20	Recital 6a (new)		<u>(6a) Similar negative consequences may arise from contracts or financial instruments which are by definition outside of the scope of Regulation (EU) 2016/1011, but which reference benchmarks that are under cessation or are being wound down. In the same way, many entities use such benchmarks but do not qualify as supervised entities. Consequently, those contracts and contractual parties would not benefit from a the replacement of a benchmark. In order to mitigate potential impacts on market integrity</u>		

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			<p><u>and financial stability as far as possible and to provide protection against legal uncertainty, the mandate of the Commission to designate a replacement benchmark should apply to any contract or any financial instrument as defined in Directive 2014/65/EU that is subject to the law of a Member State. In addition, the designated replacement benchmark should also apply to contracts that are subject to the law of a third country that have been entered into between contractual parties established in the Union in cases where the contract meets the requirements of this Regulation and where the law of the third country does not provide for an orderly wind down of a benchmark. This extension should not</u></p>		

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			<u>affect the remaining provisions of Regulation (EU) 1011/2016.</u>		
21	Recital 6b (new)		<u>(6b) The replacement benchmark designated by the Commission should not apply where all parties have agreed to apply before or after the entry into force of the implementing act a different contractual fallback provision.</u>		
22	Recital 7	(7) Where necessary, the Commission should, at the appropriate moment, adopt a recommendation encouraging Member States to designate, by virtue of national laws, a replacement rate for the benchmark in cessation for contracts entered into by entities that are not supervised entities subject to Regulation	<del>(7) — Where necessary, the Commission should, at the appropriate moment, adopt a recommendation encouraging Member States to designate, by virtue of national laws, a replacement rate for the benchmark in cessation for contracts entered into by entities that are not supervised entities subject to Regulation (EU) 2016/1011. In order to account for the interconnectedness of</del>	(7) Where necessary, the Commission should, at the appropriate moment, adopt a recommendation encouraging Member States to designate, by virtue of national laws, a replacement rate for the benchmark in cessation for contracts entered into by entities that are not supervised entities subject to Regulation (EU)	

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		<p>(EU) 2016/1011. In order to account for the interconnectedness of contracts, the Commission should have the possibility to recommend that the national replacement rates should be identical to the replacement rate it designates for contracts entered into by supervised entities.</p>	<p><del>contracts, the Commission should have the possibility to recommend that the national replacement rates should be identical to the replacement rate it designates for contracts entered into by supervised entities.</del></p>	<p>2016/1011. In order to account for the interconnectedness of contracts, the Commission should have the possibility to recommend that the national replacement rates should be identical to the replacement rate it designates for contracts entered into by supervised entities.</p>	
23	Recital 8	<p>(8) The Commission should exercise its implementing powers only in situations where it assesses that the cessation of a benchmark may result in negative consequences that produce significant disruption in the functioning of financial markets in the Union. The Commission should</p>	<p><del>(8) The Commission should exercise its implementing powers only in situations where it assesses that the cessation or wind down of a benchmark may result in negative consequences that produce significant disruption in the functioning of financial markets in the Union. The Commission should also exercise its implementing</del></p>	<p>(8) The Commission should exercise its implementing powers only in situations where it assesses that the cessation of a benchmark may result in negative consequences that produce significant disruption in the functioning of financial markets <i>and the real economy</i> in the Union.</p>	

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		also exercise its implementing powers only where it has become clear that the representativeness of the benchmark concerned cannot be restored or that the benchmark will no longer be published on a permanent basis.	<del>powers only where it has become clear that the representativeness of the benchmark concerned cannot be restored or that the benchmark will no longer be published on a permanent basis.</del>	The Commission should also exercise its implementing powers only where it has become clear that the representativeness of the benchmark concerned cannot be restored or that the benchmark will no longer be published on a permanent basis.	
24	Recital 8a (new)		<b><u>(8a) It should be incumbent on the contracting parties to analyse their private law contractual arrangement to determine which situations a contractual fallback provision intends to cover. If the interpretation of a contract or financial instrument as defined in Directive 2014/65/EU reveals that the parties did not intend to cover the permanent cessation of a chosen</u></b>		



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			<p><b><u>benchmark, the statutory replacement benchmark that is designated in accordance with the provision of this Regulation should provide a safe harbour to address the permanent cessation.</u></b></p>		
25	Recital 9	<p>(9) Use of that replacement benchmark should be allowed only for contracts that have not been renegotiated prior to the cessation date of the benchmark concerned. The use of the replacement benchmark designated by the Commission should therefore be restricted to contracts already entered into by supervised entities at the moment of the entry into force of the implementing act designating the</p>	<p>(9) <del>Use of that replacement benchmark should be allowed only for</del> <b><u>The application of the replacement benchmark by operation of law should be restricted to</u></b> contracts <b><u>or financial instruments as defined in Directive 2014/65/EU</u></b> that have <b><u>not been renegotiated prior to the cessation date of the benchmark concerned.</u></b> <b><u>Where master contracts are used, the replacement benchmark will apply only to transactions entered into prior to the relevant replacement date, even</u></b></p>	<p>(9) Use of that replacement benchmark should be allowed only for contracts that have not been renegotiated prior to the cessation date of the benchmark concerned. The use of the replacement benchmark designated by the Commission should therefore be restricted to contracts already entered into by supervised entities at the moment of the entry into force of the implementing act designating the replacement benchmark.</p>	

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		<p>replacement benchmark. Furthermore, considering that such implementing act is aimed at ensuring contract continuity, the designation of the replacement benchmark should not affect contracts that already provide a suitable contractual fall back provision.</p>	<p><b><u>though later transactions might technically be part of the same contracts.</u></b> The use of the replacement benchmark designated by the Commission should therefore be restricted to contracts <b><u>or financial instruments as defined in Directive 2014/65/EU</u></b> already entered into <del>by supervised</del> <b><u>entities</u></b> at the moment of the entry into force of the implementing act designating the replacement benchmark. Furthermore, considering that such implementing act is aimed at ensuring contract continuity, the designation of the replacement benchmark should not affect contracts or <b><u>financial instruments as defined in Directive 2014/65/EU</u></b> that already provide a <b><u>suitable</u></b> contractual <b><u>fallback</u></b> provision <b><u>which addresses the permanent cessation of a</u></b></p>	<p>Furthermore, considering that such implementing act is aimed at ensuring contract continuity, the designation of the replacement benchmark should not affect contracts that already provide a suitable contractual fall back provision.</p>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
26	Recital 10	(10) In exercising its implementing powers to designate a replacement benchmark, the Commission should take into account recommendations by private sector working groups operating under the auspices of the central bank responsible for the currency in which the interest rates of the replacement benchmark are denominated with regard to replacement rates to be used in existing financial instruments and contracts referencing the benchmark in cessation. Those recommendations should be based on extensive public	<u>benchmark.</u> (10) <del>In</del> <b>Before</b> exercising its implementing powers to designate a replacement benchmark, the Commission <b>should conduct a public consultation and should</b> take into account recommendations <b>by the central bank or</b> by private sector working groups operating under the auspices of the central bank responsible for the currency in which the interest rates of the replacement benchmark are denominated <del>with regard to replacement rates to be used in existing financial instruments and contracts referencing the benchmark in cessation.</del> Those recommendations should be based on extensive public consultations and expert knowledge, <del>and reflect benchmark users' agreement</del> about the most appropriate	(10) In exercising its implementing powers to designate a replacement benchmark, the Commission should take into account recommendations by private sector working groups operating under the auspices of the <i>public authorities of</i> the currency in which the interest rates of the replacement benchmark are denominated with regard to replacement rates to be used in existing financial instruments and contracts referencing the benchmark in cessation. <i>The Commission should also take into account the recommendations of the relevant supervisory authority of the</i>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		<p>consultations and expert knowledge, and reflect benchmark users' agreement about the most appropriate replacement rate for the interest rate benchmark in cessation.</p>	<p>replacement rate for the interest rate benchmark in cessation.  <b><u>The Commission should also take into account recommendations of other relevant stakeholders, including the competent authority of the benchmark administrator and ESMA.</u></b></p>	<p><i>benchmark administrator as well as of ESMA.</i>  Those recommendations should be based on extensive public consultations and expert knowledge, and reflect benchmark users' agreement about the most appropriate replacement rate for the interest rate benchmark in cessation.  <i>Furthermore, they are entirely the recommendations of these private sector working groups, and the public authorities under whose auspices these working groups operate do not accept any responsibility or liability for the contents of the recommendations or necessarily share any of</i></p>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<i>the views expressed in them.</i>	
27	Recital 10a (new)		<b><u>(10a) Considering that the replacement of a benchmark may require essential consequential changes or modifications of those contracts necessary for the practical use or application of such replacement benchmark, the Commission should be empowered to lay down such corresponding conforming changes in the implementing act.</u></b>		
28	Recital 11	(11) Since the main objective of those implementing powers is to ensure legal certainty for supervised entities with existing contracts referencing a benchmark in cessation, competent authorities of a supervised entity using	<del>(11) — Since the main objective of those implementing powers is to ensure legal certainty for supervised entities with existing contracts referencing a benchmark in cessation, competent authorities of a supervised entity using the benchmark in cessation</del>	(11) Since the main objective of those implementing powers is to ensure legal certainty for supervised entities with existing contracts referencing a benchmark in cessation, competent authorities of a supervised entity using the	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		<p>the benchmark in cessation should monitor the evolution of the legacy stock between counterparts to such contracts and report their findings annually to the Commission and to the European Securities and Markets Authority ('ESMA').</p>	<p><del>should monitor the evolution of the legacy stock between counterparts to such contracts and report their findings annually to the Commission and to the European Securities and Markets Authority ('ESMA').</del>  <b>(11) For benchmarks which are designated by the Commission as being critical in one Member State in accordance with Regulation (EU) 2016/1011 and where the cessation or winding down of such benchmark may result in significant disruptions of <u>the functioning of financial markets in one Member State, the relevant competent authority should, take necessary actions to avoid such disruptions in accordance with national law.</u></b></p>	<p>benchmark in cessation should monitor the evolution of the legacy stock between counterparts to such contracts and report their findings annually to the Commission and to the European Securities and Markets Authority ('ESMA').</p>	
29	Recital 11a		<b><u>(11a) Where a Member State</u></b>		

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	(new)		<p><u>accedes to the Euro area and where a subsequent lack of input data for computing a national benchmark requires the replacement of that benchmark, that Member State may adopt a statutory provision providing for the transition from this benchmark to a replacement benchmark. In such case, that Member State should take into account the status of consumers as contractual parties and ensure their position is not negatively affected by the transition of the benchmark to a greater extent than necessary.</u></p>		
30	Recital 11b (new)		<p><u>(11b) It is generally acknowledged that benchmarks and their contractually agreed fallback provision may over time significantly and unexpectedly diverge from</u></p>		

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><b><u>each other and, as a consequence, may neither represent the same underlying economic reality anymore nor lead to commercially acceptable results. Such cases could include the significant widening of the spread between the benchmark and the contractually agreed fallback provision over time or situations where the contractually agreed fallback provision changes the basis of the benchmark from a variable rate to a fixed rate. Since this issue might arise in a number of Member States, and frequently parties from different Member States would also be affected in such cases, it should be tackled in a harmonized way in order to avoid legal uncertainty, excessive litigation and, as a</u></b></p>		



Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><b><u>consequence, possible significant negative effects on the single market or repercussions on the financial stability in individual Member States or the Union. Accordingly, the replacement benchmark that is established by the implementing act to be adopted under this Regulation to provide for cases where there is no contractual fallback provision foreseen for cases of a permanent cessation of a critical benchmark and third country benchmarks with systemic relevance in the Union should under certain preconditions serve as a replacement benchmark after relevant national authorities, for example macro-prudential authorities, systemic risk councils or the central banks, have</u></b></p>		

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<b><u>established that the originally agreed fallback provision no longer reflects the economic reality that the ceasing benchmark was intended to measure or could pose a threat to financial stability. The relevant national authorities involved should be obliged to inform the Commission and ESMA of said assessment.</u></b>		
31	Recital 12	(12) Regulation (EU) 2016/1011 should therefore be amended accordingly.	(12) Regulation (EU) 2016/1011 should therefore be amended accordingly.	(12) Regulation (EU) 2016/1011 should therefore be amended accordingly.	(12) Regulation (EU) 2016/1011 should therefore be amended accordingly. GREEN
32	Recital 12a (new)			<b><i>(12a) Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>11</sup> is currently being amended for the purpose of providing clarity to</i></b>	

<sup>11</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<p><i>market participants that transactions entered into or novated before the beginning of the application of the clearing or margin requirements to OTC derivative transactions referencing an interest rate benchmark (legacy trades) will not be subject to these requirements when they are novated for the sole purpose of implementing or preparing for the implementation of the interest rate benchmark reform. Regulation (EU) 2016/1011 requires supervised entities to produce and maintain robust written plans setting out the actions they would take in the event that any</i></p>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<p><i>benchmark materially changes or ceases to be provided and to reflect those plans in the contractual relationship with clients. In order to facilitate compliance by market participants with those obligations and action by market participants to enhance the robustness of OTC derivative contracts referencing benchmarks of any kind, Regulation (EU) No 648/2012 should be amended to make clear that legacy trades will not be subject to those clearing and margin requirements when those trades are replaced, amended or novated, whether individually or as part of changes relating to a</i></p>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<p><i>portfolio of transactions, for the sole purpose of replacing the interest rate benchmark they refer to in order to implement or prepare for the implementation of the interest rate benchmark reform or of introducing fall-back provisions in relation to any benchmark they refer to in order to implement or prepare for that reform or otherwise in order to enhance the robustness of their contracts. Those amendments are necessary to provide clarity to market participants and should not affect the scope of the clearing and margin obligations in relation to the replacement, amendment or novation</i></p>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<i>of an OTC derivatives contract for other purposes.</i>	
33	Recital 13	(13) In view of the fact that LIBOR will no longer be a critical benchmark within the meaning of Regulation (EU) 2016/1011 as of 1 January 2021, it is appropriate that this Regulation enters into force without delay,	(13) In view of the fact that LIBOR will no longer be a critical benchmark within the meaning of Regulation (EU) 2016/1011 as of 1 January 2021, it is appropriate that this Regulation enters into force without delay.	(13) In view of the fact that LIBOR will no longer be a critical benchmark within the meaning of Regulation (EU) 2016/1011 as of 1 January 2021, it is appropriate that this Regulation enters into force without delay,	(13) In view of the fact that LIBOR will no longer be a critical benchmark within the meaning of Regulation (EU) 2016/1011 as of 1 January 2021, it is appropriate that this Regulation enters into force without delay, GREEN
34		HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION: GREEN
35		Article 1 <b>Amendments to Regulation (EU) 2016/1011</b>	<b>Article 1</b> <b>Amendments to Regulation (EU) 2016/1011</b>	Article 1 <b>Amendments to Regulation (EU) 2016/1011</b>	Article 1 <b>Amendments to Regulation (EU) 2016/1011</b> GREEN
36	Article 1 – point 1 – introd. part / <b>Article 2</b>	(1) Article 2 is amended as follows:	(1) Article 2 is amended as follows:	(1) Article 2 is amended as follows:	(1) Article 2 is amended as follows: GREEN
37	Article 1 – point 1 – point a (new) –		<b>(a) <u>the following paragraph is added:</u></b>	<b>(-a) <i>the following paragraph is inserted:</i></b>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	introd. part / <b>Article 2</b>				
38	Article 1 – point 1 – point a (new) / <b>Article 2 – paragraph 1a (new)</b>		<b><u>"1a. Chapter 4a applies to:</u></b>	<b><i>"1a. Article 28a applies to:</i></b>	
39	Article 1 – point 1 – point a (new) / <b>Article 2 – paragraph 1a (new) – point a</b>		<b>(a) <u>any contract or any financial instrument listed in Section C of Annex I to Directive 2014/65/EU that is governed by the laws of one of the Member States and that references a benchmark; and</u></b>	<b><i>(a) any contract or any financial instrument listed in Section C of Annex I to Directive 2014/65/EU that is governed by the laws of one of the Member States and that references a benchmark; and</i></b>	<b><i>(a) any contract or any financial instrument as defined in Directive 2014/65/EU that is governed by the laws of one of the Member States and that references a benchmark; and</i></b> BLUE Trilogue of 25/11/20 GREY TM of 26/11/20: LL suggestion
40	Article 1 – point 1 – point a (new) / <b>Article 2 – paragraph 1a (new) – point b</b>		<b>(b) <u>any contract that is subject to the law of a third country but the parties to which are all established in the Union and where the law of that third country does not provide for an orderly wind down of a benchmark."</u></b>	<b><i>(b) any contract that is subject to the law of a third country but the parties to which are all established in the Union and where the law of that third country does not provide for an orderly</i></b>	<b><i>(b) any contract that is subject to the law of a third country but the parties to which are all established in the Union and where the law of that third country does not provide for an orderly wind down of a benchmark."</i></b> BLUE Trilogue of 25/11/20

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<i>wind down of a benchmark.</i> "	
41	Article 1 – point 1 – point a – introd. part / <b>Article 2 – paragraph 2</b>	(a) in paragraph 2, the following point (i) is added:	(b) in paragraph 2, the following point (i) is added:	(a) in paragraph 2, the following point (i) is added:	(a) in paragraph 2, the following point (i) is added: GREEN
42	Article 1 – point 1 – point a / <b>Article 2 – paragraph 2 – point (i)</b>	“(i) a foreign exchange benchmark which has been designated by the Commission in accordance with paragraph 3.”;	"(i) a <del>foreign spot exchange benchmark</del> <b>spot foreign exchange benchmark</b> which has been designated by the Commission in accordance <b>with paragraph 5</b> ";	“(i) a foreign exchange benchmark which has been designated by the Commission in accordance with paragraph 3.”;	"(i) a <del>foreign spot exchange benchmark</del> <b>spot foreign exchange benchmark</b> which has been designated by the Commission in accordance <b>with paragraph (tbd)</b> "; BLUE Trilogue of 25/11/20
43	Article 1 – point 1 – point b – introd. part / <b>Article 2 – paragraph 3, 4</b>	(b) the following paragraphs 3 and 4 are added:	(c) the following paragraphs are added:	(b) the following paragraphs 3 and 4 are added:	(b) the following paragraphs 3 and 4 are added: GREEN
44	Article 1 – point 1 – point b / <b>Article 2 – paragraph 3</b>	“3. The Commission can designate foreign exchange benchmarks that are administered by administrators located outside the Union where all of the following criteria are fulfilled:	"3. The Commission can designate <del>foreign spot exchange benchmarks</del> <b>spot foreign exchange benchmarks</b> that are administered by administrators located outside the Union where all of the following criteria are fulfilled:	“3. The Commission can designate foreign exchange benchmarks that are administered by administrators located outside the Union where all of the following criteria are fulfilled:	"3. The Commission can designate <del>foreign spot exchange benchmarks</del> <b>spot foreign exchange benchmarks</b> that are administered by administrators located outside the Union where all of the following criteria are fulfilled:



Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					BLUE Trilogue of 25/11/20
45	Article 1 – point 1 – point b / Article 2 – paragraph 3 – point a	(a) the foreign exchange benchmark refers to a spot exchange rate of a third-country currency that is not freely convertible;	(a) the foreign exchange benchmark refers to a spot exchange rate of a third-country currency that is not freely convertible;	(a) the foreign exchange benchmark refers to a spot exchange rate of a third-country currency that is not freely convertible;	(a) the foreign exchange benchmark refers to a spot exchange rate of a third-country currency that is not freely convertible; GREEN
46	Article 1 – point 1 – point b / Article 2 – paragraph 3 – point b	(b) supervised entities use the foreign exchange benchmark on a frequent, systematic and regular basis in derivative contracts for hedging against third country currency volatility;	<del>(b) supervised entities use the</del> <b><u>foreign spot exchange benchmark spot foreign exchange benchmark is used</u></b> on a frequent, systematic and regular basis <del>in derivative contracts for hedging against third country currency volatility to hedge against</del> <b><u>adverse foreign exchange rate movements.</u></b>	(b) supervised entities use the foreign exchange benchmark on a frequent, systematic and regular basis in derivative contracts for hedging against third country currency volatility;	<del>(b) supervised entities use the</del> <b><u>foreign spot exchange benchmark spot foreign exchange benchmark is used</u></b> on a frequent, systematic and regular basis <del>in derivative contracts for hedging against third country currency volatility to hedge against</del> <b><u>adverse foreign exchange rate movements.</u></b> BLUE Trilogue of 25/11/20
47	Article 1 – point 1 – point b / Article 2 – paragraph 3 – point c	(c) the foreign exchange benchmark is used as a settlement rate to calculate the pay-out of the derivative contract referred to in point (b) in a currency other than the	<del>(c) — the foreign exchange benchmark is used as a settlement rate to calculate the pay-out of the derivative contract referred to in point (b) in a currency other than the</del> <b><u>currency with</u></b>	(c) the foreign exchange benchmark is used as a settlement rate to calculate the pay-out of the derivative contract referred to in point (b) in a currency other than the	<del>(c) — the foreign exchange benchmark is used as a settlement rate to calculate the pay-out of the derivative contract referred to in point (b) in a currency other than the</del> <b><u>currency with</u></b>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		currency with limited convertibility referred to in point (a).	<del>limited convertibility referred to in point (a).</del>	currency with limited convertibility referred to in point (a).	<del>limited convertibility referred to in point (a).</del> BLUE Trilogue of 25/11/20
48	Article 1 – point 1 – point b / Article 2 – paragraph 4		<b><u>4. By 31 December 2024, the Commission shall conduct a public consultation to identify spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 3.</u></b>		<b><u>4. [By 31 December 2024], the Commission shall conduct a public consultation to identify spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 3.</u></b> BLUE Trilogue of 25/11/20 (note: date to be determined and aligned based on a political agreement on the transition period)
49	Article 1 – point 1 – point b / Article 2 – paragraph 4	4. The Commission shall adopt delegated acts in accordance with Article 49 to create and update as appropriate a list of foreign exchange benchmarks that fulfil the criteria laid down in paragraph 3. Competent authorities of supervised entities that use third	<b><u>4. 5. By 31 December 2025, the Commission shall adopt delegated acts in accordance with Article 49 of this Regulation to create a list of foreign spot exchange benchmarks spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 3 of this Article. The Commission shall update</u></b>	4. <i>By 31 December 2022, the Commission shall conduct public consultations to identify the foreign exchange benchmarks that meet the criteria of paragraph 3 of this Article. By 31 December 2023, the Commission shall adopt delegated acts in</i>	<b><u>4. 5. [By 31 December 2025], the Commission shall adopt delegated acts in accordance with Article 49 of this Regulation to create a list of foreign spot exchange benchmarks spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 3 of this Article. The Commission shall update</u></b>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		country foreign exchange benchmarks that are designated by the Commission in accordance with paragraph 3 shall report to the Commission and to ESMA on the number of derivative contracts that use that foreign exchange benchmark for hedging against third country currency volatility at least every two years.”;	<b><u>the list as appropriate.”</u></b> <b><del>Competent authorities of supervised entities that use third country foreign exchange benchmarks that are designated by the Commission in accordance with paragraph 3 shall report to the Commission and to ESMA on the number of derivative contracts that use that foreign exchange benchmark for hedging against third country currency volatility at least every two years.”;</del></b>	<i>accordance with Article 49 to create a list of spot foreign exchange benchmarks for hedging against third country currency volatility, and shall update that list on a regular basis.</i> Competent authorities of supervised entities that use third country foreign exchange benchmarks that are designated by the Commission in accordance with paragraph 3 shall report to the Commission on the number of derivative contracts that use that foreign exchange benchmark for hedging against third country currency volatility at least every two years.”;	<b><u>the list as appropriate.”</u></b> <b><del>Competent authorities of supervised entities that use third country foreign exchange benchmarks that are designated by the Commission in accordance with paragraph 3 shall report to the Commission and to ESMA on the number of derivative contracts that use that foreign exchange benchmark for hedging against third country currency volatility at least every two years.”;</del></b> BLUE Trilogue of 25/11/20 (note: date to be determined and aligned based on a political agreement on the transition period)
50	Article 1 – point 1a (new)		<b><u>(1a) In Article 3, the</u></b>	<b><i>(1a) Article 3 is</i></b>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	– introd. part / <b>Article 3</b>		<b><u>following paragraph is inserted:</u></b>	<i>amended as follows:</i>	
51	Article 1 – point 1a (new) / <b>Article 3 – paragraph 1a (new)</b>		<b><u>“(1a) For the purposes of Chapter 4a of this Regulation, ‘financial instrument’ means any of the instruments listed in Section C of Annex I to Directive 2014/65/EU.</u></b>		
52	Article 1 – point 1a (new) – point a – introd. part / <b>Article 3 – paragraph 1</b>			<i>(a) in paragraph 1, the following point is inserted:</i>	
53	Article 1 – point 1a (new) – point a / <b>Article 3 – paragraph 1 – point 22 a (new)</b>			<i>“(22a) ‘foreign exchange rate benchmark’ means a benchmark whose value is determined in relation to the price, expressed in one currency, of one or a basket of other currencies;”</i>	
54	Article 1 – point 1a (new) – point b – introd. part / <b>Article 3 –</b>			<i>(b) point i of point 24(a) is amended as follows:</i>	<i>(b) point i of point 24(a) is amended as follows: BLUE Trilogue of 25/11/20</i>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	paragraph 1 – point 24 – point a				
55	Article 1 – point 1a (new) – point b / Article 3 – paragraph 1 – point 24 – point a – subpoint (i)			<p><i>“(i) a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or a trading venue in a third country for which the Commission has adopted an implementing decision that the legal and supervisory framework of that country is considered to have equivalent effect within the meaning of Article 28(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>(22)</sup> or Article 25(4) of Directive 2014/65/EU of the European Parliament and of the Council, or a regulated market</i></p>	<p><i>“(i) a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or a trading venue in a third country for which the Commission has adopted an implementing decision that the legal and supervisory framework of that country is considered to have equivalent effect within the meaning of Article 28(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>(22)</sup> or Article 25(4) of Directive 2014/65/EU of the European Parliament and of the Council, or a regulated market considered to be equivalent under Article 2a of Regulation (EU) No 648/2012, but in each case only with reference to</i></p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<i>considered to be equivalent under Article 2a of Regulation (EU) No 648/2012, but in each case only with reference to transaction data concerning financial instruments;”</i>	<i>transaction data concerning financial instruments;”</i> BLUE Trilogue of 25/11/20
56	Article 1 – point 1b (new) introd. part / <b>Article 28 – paragraph 2</b>			<i>(1b) Article 28(2) is replaced by the following:</i>	<i>(1b) Article 28(2) is replaced by the following:</i> BLUE Trilogue of 25/11/20
57	Article 1 – point 1b (new) / <b>Article 28 – paragraph 2</b>			<i>"2. Supervised entities other than an administrator as referred to in paragraph 1 that use a benchmark shall produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided. Where feasible and appropriate, such</i>	2. Supervised entities other than an administrator as referred to in paragraph 1 that use a benchmark shall produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided. Where feasible and appropriate, such plans shall nominate one or several alternative benchmarks that could be referenced to substitute the benchmarks no longer provided, indicating why

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<p><i>plans shall nominate one or several alternative benchmarks that could be referenced to substitute the benchmarks no longer provided, indicating why such benchmarks would be suitable alternatives. The supervised entities shall send those plans and any updates to them to the relevant competent authority without any undue delay and shall reflect them in the contractual relationship with clients. Competent authorities shall assess the robustness of these plans."</i></p>	<p>such benchmarks would be suitable alternatives. The supervised entities shall, upon request <b>and without undue delay</b>, provide the relevant competent authority with those plans and any updates and shall reflect them in the contractual relationship with clients. BLUE - Trilogue of 25/11/20</p>
58	Article 1 – point 2 – introd. part / <b>Article 23a</b>	(2) the following Article 23a is inserted:	<b><u>(2) the following chapter is added:</u></b>	(2) the following Article is inserted:	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
59	Article 1 – point 2 / Article 23a – title	“Article 23a <b>Mandatory replacement of a benchmark</b>	<b><u>CHAPTER 4a</u></b> Replacement of a benchmark by legislation <i>Article 23a</i> <del><b>Mandatory replacement of a benchmark</b></del> <b><u>Replacement of a benchmark by EU legislation</u></b>	“Article 28a <b>Mandatory replacement of a benchmark</b>	<b><u>CHAPTER 4a</u></b> Replacement of a benchmark by legislation <i>Article 23a</i> <b><u>Replacement of a benchmark by EU legislation</u></b> BLUE Trilogue of 25/11/20
59a					(-1) This Article shall apply to: <b>a. benchmarks designated as critical by an implementing act adopted in accordance with Article 20, paragraph 1(a) or 1(c) of this Regulation;</b> <b>b. benchmarks based on panel contribution if their cessation would result in a significant disruption in the functioning of financial markets in the Union; and</b> <b>c. benchmarks administered in a third country if their cessation would result in a significant disruption in the functioning of financial markets in the Union.</b>



Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					BLUE Trilogue of 25/11/20 (note: text proposal from the EC, see line 59a, 60 and 88)
60	Article 1 – point 2 / Article 23a – paragraph 1	(1) The Commission may designate a replacement benchmark for a benchmark that will cease to be published where the cessation of that publication may result in significant disruption in the functioning of financial markets in the Union and provided that any of the following events has occurred:	<b><u>(1) The Commission may designate one or more replacement benchmarks for a benchmark designated as critical by an implementing act adopted in accordance with Article 20, paragraph 1(a) or 1(c) of this Regulation or a third country benchmark where the winding down or cessation of that benchmark may result in significant disruption of the functioning of financial markets in the Union, provided that any of the following events has occurred:</u></b>	(1) The Commission may designate <i>one or more</i> replacement <i>benchmarks</i> for a benchmark that will cease to be published where the cessation of <i>the benchmark</i> may result in significant <i>and adverse impacts on market integrity, financial stability and the real economy</i> in one <i>or more Member States</i> and provided that any of the following events has occurred:	<b>(1) The Commission may designate one or more replacements for a benchmark provided any of the following events has occurred:</b> BLUE Trilogue of 25/11/20 (note: text proposal from the EC, see line 59a, 60 and 88)
61	Article 1 – point 2 / Article 23a – paragraph 1 – point a	(a) the competent authority for the administrator of that benchmark has issued a	(a) the competent authority for the administrator of that benchmark has issued a public statement, or has published	(a) the competent authority for the administrator of that benchmark has <i>stated</i>	(a) the competent authority for the administrator of that benchmark has issued a public statement, or has published

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		public statement, or has published information, in which it is announced that the capability of that benchmark to measure the underlying market or economic reality cannot be restored through the exercise of any of the remedial powers referred to in Article 23;	information, in which it is announced that the capability of that benchmark to measure the underlying market or economic reality cannot be restored <del>through the exercise of any of the remedial powers referred to in Article 23.</del> <u>In the case of a critical benchmark under points (a) and (c) of Article 20 (1) of this Regulation, the above determinations shall be made by it's the competent authority of that critical benchmark only after the remedial powers set out in Article 23 of this Regulation have been applied without leading to the restoration of the benchmark's capability to measure the underlying market or economic reality;</u>	<i>publicly or</i> issued a public statement, or has published information, in which it is announced that the capability of that benchmark to measure the underlying market or economic reality cannot be restored ; <i>prior to making such an announcement, the NCA shall have applied the remedial powers of Article 23 and have determined that the powers in Article 23 are not sufficient to restore the benchmark;</i>	information, in which it is announced that the capability of that benchmark to measure the underlying market or economic reality cannot be restored <del>through the exercise of any of the remedial powers referred to in Article 23.</del> <u>In the case of a critical benchmark under points (a) and (c) of Article 20 (1) of this Regulation, the above determinations shall be made by it's the competent authority of that critical benchmark only after the remedial powers set out in Article 23 of this Regulation have been applied exercised without leading to the restoration of the benchmark's capability to measure the underlying market or economic reality;</u> BLUE Trilogue of 25/11/20
62	Article 1 – point 2 /	(b) the administrator of a benchmark has	(b) the administrator of a benchmark has issued a public	(b) the administrator of a benchmark, <i>or</i>	(b) the administrator of a benchmark, <i>or someone acting</i>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Article 23a – paragraph 1 – point b	issued a public statement, or has published information, or such public statement has been made or such information has been published on behalf of that administrator, in which it is announced that that administrator has ceased or will cease to provide the benchmark, permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide the benchmark;	statement, or has published information, or such public statement has been made or such information has been published on behalf of that administrator, in which it is announced that that administrator <b><u>will orderly wind down the benchmark</u></b> <del>has ceased</del> or will cease to provide the benchmark or <b><u>certain tenors or certain currencies in which the benchmark is calculated,</u></b> permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide the benchmark;	<i>someone acting on behalf of the administrator, has stated publicly, by issuing a public statement, or publishing information, that <b>the</b> administrator has ceased or will cease to provide the benchmark, permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide the benchmark;</i>	<i>on behalf of the administrator</i> has issued a public statement, or has published information, or such public statement has been made or such information has been published <del>on behalf of that administrator,</del> in which it is announced that that administrator <i>will commence <b><u>the orderly winding down of the benchmark</u></b></i> <del>has ceased</del> or will cease to provide the benchmark or <b><u>certain tenors or certain currencies in which the benchmark is calculated,</u></b> permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide the benchmark; BLUE Trilogue of 25/11/20 GREY TM of 26/11/20: 'orderly winding down' to be clarified

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
63	Article 1 – point 2 / <b>Article 23a – paragraph 1 – point c</b>	(c) the competent authority for the administrator of a benchmark or any entity with insolvency or resolution authority over the administrator of that benchmark has issued a public statement or has published information in which it is stated that the administrator of that benchmark has ceased or will cease to provide that benchmark permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide that benchmark.	(c) the competent authority for the administrator of a benchmark or any entity with insolvency or resolution authority over the administrator of that benchmark has issued a public statement or has published information in which it is stated that the administrator of that benchmark <b><u>will orderly wind down the benchmark has ceased</u></b> or will cease to provide that benchmark or <b><u>certain tenors or certain currencies in which the benchmark is calculated</u></b> permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide that benchmark;	(c) the competent authority for the administrator of a benchmark or any entity with insolvency or resolution authority over the administrator of that benchmark has <b><i>stated publicly, by issuing a publishing</i></b> information, that the administrator of that benchmark has ceased or will cease to provide that benchmark permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide that benchmark;	(c) the competent authority for the administrator of a benchmark or any entity with insolvency or resolution authority over the administrator of that benchmark has issued a public statement or has published information in which it is stated that the administrator of that benchmark <b><u>will commence the orderly winding down of the benchmark has ceased</u></b> or will cease to provide that benchmark or <b><u>certain tenors or certain currencies in which the benchmark is calculated</u></b> permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide that benchmark;

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					BLUE Trilogue of 25/11/20
64	Article 1 – point 2 / Article 23a – paragraph 1 – point d (new)		<b><u>(d) the competent authority withdraws or suspends the authorization in accordance with Article 35 of this Regulation, withdraws the recognition in accordance with Article 32(8) of this Regulation or ceases the endorsement in accordance with Article 33(6) of this Regulation, provided that, at the time of the withdrawal or suspension or cessation, there is no successor administrator that will continue to provide that benchmark.</u></b>	<i>(ca) the competent authority withdraws or suspends the authorisation or registration of the benchmark administrator, provided that, at the time of the withdrawal or suspension, there is no successor administrator that will continue to provide that benchmark.</i>	<b><u>(d) the competent authority withdraws or suspends the authorization in accordance with Article 35 of this Regulation, withdraws the recognition in accordance with Article 32(8) of this Regulation or ceases the endorsement in accordance with Article 33(6) of this Regulation, provided that, at the time of the withdrawal or suspension or cessation, there is no successor administrator that will continue to provide that benchmark.</u></b> BLUE Trilogue of 25/11/20 (note: completed by added references to recognition / endorsement)
65	Article 1 – point 2 / Article 23a – paragraph 2	(2) The replacement benchmark shall, by operation of law, replace all references to the benchmark that has	(2) The replacement benchmark shall, by <del>operation</del> <b>of law</b> , replace all references to the benchmark <b><u>in contracts and financial instruments</u></b>	(2) The replacement benchmark shall, by operation of law, replace all references to the benchmark in contracts	(2) The replacement <b>for a</b> benchmark shall, <del>by operation of law</del> , replace all references to <del>the</del> <b><u>that benchmark in contracts and financial</u></b>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		ceased to be published in financial instruments, financial contracts and measurements of the performance of an investment fund where all of the following conditions are fulfilled:	<b><u>that are subject to Article 2(1a) of this Regulation, where all of the following conditions are fulfilled:</u></b>	<i>subject to Article 2(1a)</i> where all of the following conditions are fulfilled:	<b><u>instruments that are referred to Article 2(1a) of this Regulation, where all of the following conditions are fulfilled:</u></b> BLUE Trilogue of 25/11/20 GREY TM of 26/11/20: LL change, ‘replacement for a benchmark’ to be applied horizontally through the text
66	Article 1 – point 2 / Article 23a – paragraph 2 – point a	(a) those financial instruments, contracts and performance measurements reference the benchmark that has ceased to be published on the date the implementing act designating the replacement benchmark enters into force;	(a) <b><u>the contracts or those</u></b> financial instruments; <del>contracts and performance measurements</del> reference the benchmark that <del>has ceased to be published</del> <b><u>will cease or be wound down</u></b> , on the date <b><u>when</u></b> the implementing act designating the replacement benchmark enters into force; <b><u>and</u></b>	(a) those contracts reference the benchmark that has ceased to be published on the date the implementing act designating the replacement benchmark enters into force;	(a) those <b><u>contracts or those</u></b> financial instruments; <del>contracts and performance measurements</del> reference the benchmark that <del>has ceased to be published</del> <b><u>will cease or be wound down</u></b> , on the date <b><u>when</u></b> the implementing act designating the replacement benchmark enters into force; <b><u>and</u></b> BLUE Trilogue of 25/11/20 GREY TM of 26/11/20
67	Article 1 – point 2 / Article 23a – paragraph 2 –	(b) those financial instruments, contracts or performance	<b><u>(b) those contracts or financial instruments contain</u></b>	(b) those financial instruments, contracts or performance	<b><u>(b) those contracts or financial instruments contain</u></b> BLUE Trilogue of 25/11/20

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	<b>point b</b>	measurements contain no suitable fall back provisions.		measurements contain no suitable fall back provisions.	
<b>68</b>	Article 1 – point 2 / <b>Article 23a – paragraph 2 – point ba (new)</b>		<b><u>(ba) no fallback provision or a fallback provision that does not cover the permanent cessation of a reference benchmark; or</u></b>	<i>(ba) a fallback provision shall not be deemed suitable where one of the following conditions is met:</i>	<b><u>(i) no fallback provision;</u></b> BLUE Trilogue of 25/11/20
68+					<b><u>(ii) a fallback provision that is not deemed suitable when; or</u></b> BLUE Trilogue of 25/11/20
<b>69</b>	Article 1 – point 2 / <b>Article 23a – paragraph 2 – point ba (new) – point a</b>			<i>a) it does not cover the permanent cessation of a reference benchmark;</i>	<b>(iii) a fall back provision that does cover the permanent cessation of a reference benchmark contain no suitable any in the following cases:</b> BLUE Trilogue of 25/11/20
<b>70</b>	Article 1 – point 2 / <b>Article 23a – paragraph 2 – point ba (new) – point</b>			<i>b) any of the following conditions is fulfilled:</i>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	<b>b</b>				
71	Article 1 – point 2 / <b>Article 23a – paragraph 2 – point ba (new) – point b – subpoint (i)</b>			<i>(i) there is no fallback rate,</i>	
72	Article 1 – point 2 / <b>Article 23a – paragraph 2 – point ba (new) – point b – subpoint (ii)</b>			<i>(ii) the application of the fallback rate requires further consent from third parties;</i>	
73	Article 1 – point 2 / <b>Article 23a – paragraph 2 – point ba (new) – point b – subpoint (iii)</b>			<i>(iii) the fallback rate is calculated through quotes provided by third parties or fixes the last publication of the affected benchmark,</i>	
74	Article 1 – point 2 / <b>Article 23a – paragraph 2 – point bb (new)</b>		<u>(bb) a permanent fallback provision, provided that</u>		
75	Article 1 – point 2 / <b>Article 23a – paragraph 2 –</b>		<u>(i) the relevant authority has established that the</u>	<i>c) the relevant authority has established</i>	



Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	point bb (new) – subpoint (i)		<b><u>application of the contractually agreed fallback provision does generally no longer, and with significant difference, reflect the underlying market or the economic reality that the ceasing benchmark is intended to measure, and could have an adverse impact on financial stability;</u></b>	<i>that the application of the contractually agreed fallback provision does generally no longer, and with significant difference, reflect the underlying market or the economic reality that the ceasing benchmark is intended to measure, and could have an adverse impact on financial stability;</i>	
76	Article 1 – point 2 / Article 23a – paragraph 2 – point bb (new) – subpoint (ii)		<b><u>(ii) following the assessment by the competent authority in accordance with point (i), one of the parties to the contract has objected to the contractually agreed fallback provision at the latest [3 months] before the permanent cessation or winding down of the benchmark;</u></b>		
77	Article 1 – point 2 /		<b><u>(iii) the contracting parties</u></b>		

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Article 23a – paragraph 2 – point bb (new) – subpoint (iii)		<b><u>have not agreed on an alternative fallback provision following the objection pursuant to point (ii) at latest [one working day] before the permanent cessation or winding down of the benchmark.</u></b>		
78	Article 1 – point 2 / Article 23a – paragraph 2 – subparagraph 2 (new)		<b><u>For the purposes of point (i) of point (b)(bb), the relevant authority shall inform the Commission and ESMA of its assessment without undue delay. Where entities in more than one Member State could be affected by the assessment, the relevant authorities of all those Member States shall conduct the assessment jointly.</u></b>	<i>For the purposes of point (c) of point (b a), the relevant authority shall inform the Commission and ESMA of its assessment without undue delay. Where entities in more than one Member State could be affected by the assessment, the relevant authorities of all those Member States shall reach conduct the assessment jointly.</i>	
79	Article 1 – point 2 / Article 23a –		<b><u>Member States shall designate one or more</u></b>	<i>Member States shall designate one or more</i>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	paragraph 2 – subparagraph 3 (new)		<b><u>relevant authorities, which are in the position to conduct the assessment in accordance with i). Member States shall inform the Commission and ESMA of the designation of the competent authorities pursuant to this paragraph by [6 months after entry into force of this Regulation].</u></b>	<i>relevant authorities, which are in the position to conduct the assessment in accordance with point (c). Member States shall inform the Commission and ESMA of the designation of the competent authorities pursuant to this paragraph by [6 months after entry into force of this Regulation].</i>	
80	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 1	(3) The Commission shall adopt implementing acts to designate a replacement benchmark in accordance with the examination procedure referred to in Article 50(2) where one of the conditions laid down in paragraph 1 is fulfilled. When adopting	(3) The Commission shall adopt <b>an</b> implementing act to designate <b>one or more a</b> replacement <b>benchmarks</b> in accordance with the examination procedure referred to in Article 50(2) where one of the conditions laid down in paragraph 1 is fulfilled. <del>When adopting the implementing act referred to in paragraph 1, the</del>	(3) The Commission shall adopt implementing acts to designate <b>one or more</b> replacement <b>benchmarks</b> in accordance with the examination procedure referred to in Article 50(2) where one of the conditions laid down in paragraph 1 is fulfilled. When adopting the	(3) The Commission shall adopt implementing acts to designate <b>one or more replacements</b> for a <b>benchmark</b> in accordance with the examination procedure referred to in Article 50(2) where one of the conditions laid down in paragraph 1 is fulfilled. BLUE Trilogue of 25/11/20 (note: Council deletion and EP addition moved to line 86)

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		<p>the implementing act referred to in paragraph 1, the Commission shall take into account, where available, the recommendation by an alternative reference rate working group operating under the auspices of the central bank responsible for the currency in which the interest rates of the replacement benchmark are denominated.</p>	<p><del>Commission shall take into account, where available, the recommendation by an alternative reference rate working group operating under the auspices of the central bank responsible for the currency in which the interest rates of the replacement benchmark are denominated.</del></p>	<p>implementing act referred to in paragraph 1, the Commission shall take into account, where available, the recommendation by an alternative reference rate working group operating under the auspices of <i>public authorities of</i> the currency in which the interest rates of the replacement benchmark are denominated. <i>Before establishing a new replacement benchmark, the Commission shall conduct a public consultation and consult ESMA as well as the national competent authority of the benchmark administrator.</i></p>	<p>GREY TM of 26/11/20</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
81	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 2		<b><u>The implementing act shall include the following elements:</u></b>	<i>(3a) The implementing act referred to in paragraph 3 shall include the following:</i>	<i>(3a) The implementing act referred to in paragraph 3 shall include the following:</i> BLUE Trilogue of 25/11/20
82	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 2 – point (i)		<b><u>(i) the replacement benchmark</u></b>	<i>(i) the replacement for a benchmark or benchmarks;</i>	<i>(i) the replacement for a benchmark or benchmarks;</i> BLUE Trilogue of 25/11/20
83	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 2 – point (ii)		<b><u>(ii) the spread adjustment, including the method for determining such spread adjustment, that is to be applied to the benchmark in cessation on the date of the replacement for each particular term to account for the effects of the transition or change from the benchmark to be wound down to the replacement benchmark;</u></b>	<i>(ii) the spread adjustment, including the method for determining such spread adjustment, that is to be applied to the replacement for a benchmark in cessation on the date of the replacement for each particular term to account for the effects of the transition or change from the benchmark to be wound down to the replacement for a benchmark;</i>	<i>(ii) the spread adjustment, including the method for determining such spread adjustment, that is to be applied to the replacement for a benchmark in cessation on the date of the replacement for each particular term to account for the effects of the transition or change from the benchmark to be wound down to the replacement for a benchmark;</i> BLUE Trilogue of 25/11/20

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
84	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 2 – point (iii)		<b><u>(iii) the corresponding essential conforming changes that are associated with and reasonably necessary for the use or application of a replacement benchmark;</u></b>	<i>(iii) the corresponding essential conforming changes that are associated with and reasonably necessary for the use or application of a replacement for a benchmark;</i>	<i>(iii) the corresponding essential conforming changes that are associated with and reasonably necessary for the use or application of a replacement for a benchmark;</i> BLUE Trilogue of 25/11/20
85	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 2 – point (iv)		<b><u>(iv) the relevant date from which the replacement benchmark shall apply;</u></b>	<i>(iv) the relevant date from which the replacement for a benchmark or benchmarks shall apply;</i>	<i>(iv) the relevant date from which the replacement or replacements for a benchmark shall apply;</i> BLUE Trilogue of 25/11/20
86	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 3		<b>When adopting the implementing act, the Commission shall take into account, where available, <u>the recommendations on the replacement benchmark, the spread adjustment and the benchmark replacement conforming changes made by the central bank responsible for the currency area in</u></b>		<b>When adopting the implementing act, the Commission shall take into account, where available, <u>the recommendations on the replacement benchmark, the spread adjustment and the benchmark replacement conforming changes made by the central bank responsible for the currency area in</u></b>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><u>which the relevant benchmark which is to be wound down, or by the alternative reference rate working group operating under the auspices of the central bank responsible for the currency in which the interest rates of the replacement benchmark are denominated. Before adopting the implementing act the Commission shall conduct a public consultation and shall take into account the recommendations of other relevant stakeholders, including the competent authority of the benchmark administrator and ESMA.</u></p>		<p><u>which the relevant benchmark which is to be wound down, or by the alternative reference rate working group operating under the auspices of the central bank responsible for the currency in which the interest rates of the replacement benchmark are denominated. Before adopting the implementing act the Commission shall conduct a public consultation and shall take into account the recommendations of other relevant stakeholders, including the competent authority of the benchmark administrator and ESMA.</u> BLUE Trilogue of 25/11/20 (note: cfr. line 80)</p>
87	Article 1 – point 2 /	(4) Competent authorities of supervised	<del>(4) — Competent authorities of supervised entities using</del>	(4) Competent authorities of supervised	tbd

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Article 23a – paragraph 4	entities using the benchmark designated by the Commission shall monitor whether the implementing acts adopted in accordance with paragraph 1 have minimised contract frustration or any other detrimental effects on economic growth and investments in the Union. They shall report to that effect to the Commission and to ESMA annually.”	<del>the benchmark designated by the Commission shall monitor whether the implementing acts adopted in accordance with paragraph 1 have minimised contract frustration or any other detrimental effects on economic growth and investments in the Union. They shall report to that effect to the Commission and to ESMA annually.”</del>	entities using the benchmark designated by the Commission shall monitor whether the implementing acts adopted in accordance with paragraph 1 have minimised contract frustration or any other detrimental effects on economic growth and investments in the Union. They shall report to that effect to the Commission and to ESMA annually.”	
87a			<u>(4a) Notwithstanding the provisions of Article 23a (2) (b)(bb) of this Regulation, the replacement benchmark designated by the Commission in accordance with paragraph 1 shall not apply where all parties or the required majority of a contract or financial</u>		<u>(4a) Notwithstanding the provisions of Article 23a (2) (b)(iii) of this Regulation, the replacement benchmark designated by the Commission in accordance with paragraph 1 shall not apply where all parties or the required majority of a contract or financial</u>



Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<b><u>instrument that is subject to Article 2(1a) of this Regulation have agreed to apply a different replacement benchmark before or after the entry into force of the implementing act.</u></b>		<b><u>instrument that is subject to Article 2(1a) of this Regulation have agreed to apply a different replacement benchmark before or after the entry into force of the implementing act.</u></b> BLUE Trilogue of 25/11/20 GREY TM of 26/11/20
88	Article 1 – point 2 / <b>Article 23a – paragraph 4a (new)</b>			<i>(4a) This Article shall apply to critical benchmarks. It shall also apply to benchmarks that are not critical and to third country benchmarks if their cessation would result in significant and adverse impacts on market integrity, financial stability and the real economy in the Union.”</i>	[replaced by line 59a and 60 BLUE Trilogue of 25/11/20 (note: text proposal from the EC, see line 59a and 60)
89	Article 1 – point 2 / <b>Article 23b (new) – title</b>		<b><u>Article 23b – Replacement of a benchmark by national legislation</u></b>		<b><u>Article 23b – Replacement of a benchmark by national legislation</u></b>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					BLUE Trilogue of 25/11/20
90	Article 1 – point 2 / Article 23b (new) – paragraph 1		<b><u>(1) The Member State, where the majority of contributors is located, may designate one or more replacement benchmarks for a benchmark under Article 20 (1)(b) of this Regulation, provided that any of the following events has occurred:</u></b>		<b><u>(1) The (national competent authority of the) Member State, where the majority of contributors is located, may designate one or more replacement benchmarks for a benchmark under Article 20 (1)(b) of this Regulation, provided that any of the following events has occurred:</u></b> BLUE Trilogue of 25/11/20 GREY TM 26/11/20 (note to be aligned with 23a)
91	Article 1 – point 2 / Article 23b (new) – paragraph 1 – point a		<b><u>(a) the competent authority for the administrator of that benchmark has issued a public statement, or has published information, in which it is announced that the capability of that benchmark to measure the underlying market or</u></b>		<b><u>(a) the competent authority for the administrator of that benchmark has issued a public statement, or has published information, in which it is announced that the capability of that benchmark to measure the underlying market or economic reality</u></b>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><u>economic reality cannot be restored and that the remedial powers set out in Article 23 of this Regulation have been applied without leading to the restoration of the benchmark’s capability to measure the underlying market or economic reality;</u></p>		<p><u>cannot be restored and that the remedial powers set out in Article 23 of this Regulation have been applied exercised without leading to the restoration of the benchmark’s capability to measure the underlying market or economic reality;</u>            BLUE Trilogue of 25/11/20            GREY TM 26/11/20 (note: to be aligned with 23a)</p>
92	Article 1 – point 2 / Article 23b (new) – paragraph 1 – point b		<p><u>(b) the administrator of a benchmark has issued a public statement, or has published information, or such public statement has been made or such information has been published on behalf of that administrator, in which it is announced that that administrator will orderly wind down the benchmark or will cease to provide the benchmark or certain tenors</u></p>		<p><u>(b) the administrator of a benchmark has issued a public statement, or has published information, or such public statement has been made or such information has been published on behalf of that administrator, in which it is announced that that administrator will orderly wind down the benchmark or will cease to provide the benchmark or certain tenors</u></p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><b><u>of the benchmark or certain currencies in which the benchmark is calculated, permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide the benchmark;</u></b></p>		<p><b><u>of the benchmark or certain currencies in which the benchmark is calculated, permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide the benchmark;</u></b>            BLUE Trilogue of 25/11/20            GREY TM 26/11/20 (note: to be aligned with 23a, line 62)</p>
93	Article 1 – point 2 / Article 23b (new) – paragraph 1 – point c		<p><b><u>(c) the competent authority for the administrator of a benchmark or any entity with insolvency or resolution authority over the administrator of that benchmark has issued a public statement or has published information in which it is stated that the administrator of that</u></b></p>		<p><b><u>(c) the competent authority for the administrator of a benchmark or any entity with insolvency or resolution authority over the administrator of that benchmark has issued a public statement or has published information in which it is stated that the administrator of that</u></b></p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><u>benchmark will orderly wind down or will cease to provide that benchmark or certain tenors or certain currencies in which the benchmark is calculated permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide that benchmark or</u></p>		<p><u>benchmark will orderly wind down or will cease to provide that benchmark or certain tenors or certain currencies in which the benchmark is calculated permanently or indefinitely, provided that, at the time of the issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide that benchmark or</u>            BLUE Trilogue of 25/11/20            GREY TM 26/11/20 (note: to be aligned with 23a, line 63)</p>
94	Article 1 – point 2 / Article 23b (new) – paragraph 1 – point d		<p><u>(d) the competent authority withdraws the authorization of the benchmark administrator according to Article 35 of this Regulation, provided that, at the time of the withdrawal or suspension there is no successor administrator that will continue to provide that</u></p>		<p><u>(d) the competent authority withdraws the authorization of the benchmark administrator according to Article 35 of this Regulation, provided that, at the time of the withdrawal or suspension there is no successor administrator that will continue to provide that</u></p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<b><u>benchmark.</u></b>		<b><u>benchmark.</u></b> BLUE Trilogue of 25/11/20 GREY TM 26/11/20 (note to be aligned with 23a, line 64)
95	Article 1 – point 2 / Article 23b (new) – paragraph 2		<b><u>(2) Where a Member State designates one or more replacement benchmarks in accordance with paragraph 1, the competent authority of that Member State shall immediately notify ESMA.</u></b>		<b><u>(2) Where a Member State designates one or more replacement benchmarks in accordance with paragraph 1, the competent authority of that Member State shall immediately notify the European Commission and ESMA.</u></b> BLUE Trilogue of 25/11/20 GREY TM 26/11/20 (note: language to be aligned with 23a)
96	Article 1 – point 2 / Article 23b (new) – paragraph 3		<b><u>(3) The replacement benchmark shall, by law, replace all references to the benchmark in contracts and financial instruments that are subject to Article 2 (1a) of this Regulation where all of the following conditions are fulfilled:</u></b>		<b><u>(3) The replacement benchmark shall, by law, replace all references to the benchmark in contracts and financial instruments that are referred to Article 2 (1a) of this Regulation where all of the following conditions are fulfilled:</u></b>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					BLUE Trilogue of 25/11/20 GREY TM 26/11/20 (note: language to be aligned with 23a)
97	Article 1 – point 2 / Article 23b (new) – paragraph 3 – point a		<b><u>(a) the contracts or financial instruments reference the benchmark that will cease or has ceased to be published on the date when the national legislation designating the replacement benchmark enters into force; and</u></b>		<b><u>(a) the contracts or financial instruments reference the benchmark that will cease or has ceased to be published on the date when the national legislation designating the replacement benchmark enters into force; and</u></b> BLUE Trilogue of 25/11/20
98	Article 1 – point 2 / Article 23b (new) – paragraph 3 – point b		<b><u>(b) those contracts or financial instruments contain no fallback provision or contain a fallback provision which does not cover the permanent cessation of a reference benchmark.</u></b>		<b><u>(b) those contracts or financial instruments contain no fallback provision or contain a fallback provision which does not cover the permanent cessation of a reference benchmark.</u></b> BLUE Trilogue of 25/11/20
99	Article 1 – point 2 / Article 23b (new) – paragraph 4		<b><u>(4) The replacement benchmark designated by the Member State or competent authority in accordance with</u></b>		<b><u>(4) The replacement benchmark designated by the Member State or competent authority in accordance with</u></b>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><b><u>paragraph 1 shall not apply where all parties or the required majority of a contract or financial instrument that is subject to Article 2(1a) of this Regulation have agreed to apply a different replacement benchmark before or after the entry into force of the national provision."</u></b></p>		<p><b><u>paragraph 1 shall not apply where all parties or the required majority of a contract or financial instrument that is subject to Article 2(1a) of this Regulation have agreed to apply a different replacement benchmark before or after the entry into force of the national provision."</u></b>            BLUE Trilogue of 25/11/20            GREY TM 26/11/20 (note: language to be aligned with 23a)</p>
100	Article 1 – point 3 (new) – introd. part / Article 29		<p><b><u>(3) in Article 29 the following paragraph is inserted:</u></b></p>	<p><i>(2a) In Article 29, the following paragraph is inserted:</i></p>	<p><i>(2a) In Article 29, the following paragraph is inserted:</i>            GREEN</p>
101	Article 1 – point 3 (new) / Article 29 – paragraph 1a (new)		<p><b><u>"1a. A supervised entity may also use a benchmark in the Union if the benchmark is designated by the Commission or, in case of Art. 23b, by a Member State, in accordance with the</u></b></p>	<p><i>"1a. A supervised entity may also use a replacement for a benchmark in the Union if the replacement is designated by the Commission in</i></p>	



Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<b><u>procedure set out in Chapter 4a and only applicable to those financial instruments, financial contracts and measurements of the performance of an investment fund which fulfil the requirements in Chapter 4a of this Regulation."</u></b>	<i>accordance with the procedure set out in Article 23a."</i>	
102	Article 1 – point 4 (new) – introd. part / <b>Article 49</b>		<b><u>(4) the Article 49 is amended as follows:</u></b>		
103	Article 1 – point 4 (new) – point a – introd. part / <b>Article 49</b>		<b>(a) the following paragraph is inserted:</b>		
104	Article 1 – point 4 (new) – point a / <b>Article 49 – paragraph 2b (new)</b>		<b>(2b) The power to adopt delegated acts referred to in <u>Article 2(5)</u> shall be conferred on the Commission for an indeterminate period of time from [JANUARY 2021].</b>		
105	Article 1 – point 4 (new) – point b – introd. part / <b>Article 49 – paragraph 3</b>		<b>(b) paragraph 3 is replaced by the following:</b>		

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
106	Article 1 – point 4 (new) – point b / <b>Article 49 – paragraph 3</b>		<b>"3. The delegation of power referred to in <u>Articles 2(5), 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 30(2a), 30(3a), 33(7), 48i(10), 48l(3), 51(6) and 54(3)</u> may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.</b>		
107	Article 1 – point 4 (new) – point c – introd. part / <b>Article 49 – paragraph 6</b>		<b>(c) paragraph 6 is replaced by the following:</b>		
108	Article 1 – point 4 (new)		<b>"6. A delegated act adopted</b>		

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	– point c / <b>Article 49 – paragraph 6</b>		pursuant to <b>Article 2(5), 3(2), 13(2a), 19a(2), 19c(1), 20(6), 24(2), 27(2b), 30(2a), 30(3a), 33(7), 48i(10), 48l(3), 51(6) or 54(3)</b> shall enter into force only if no objection has been expressed either by the <b>European Parliament</b> or by the <b>Council</b> within a period of <b>three months of notification</b> of that act to the <b>European Parliament</b> and to the <b>Council</b> or if, before the expiry of that period, the <b>European Parliament</b> and the <b>Council</b> have both informed the <b>Commission</b> that they will not object. That period shall be extended by three months at the initiative of the <b>European Parliament</b> or of the <b>Council</b> .";		
109	Article 1 – point 5 (new) – introd. part / <b>Article 51 – paragraph 5</b>		(5) <u>in Article 51, paragraph 5 is replaced as follows:</u>		(5) <u>in Article 51, paragraph 5 is replaced as follows:</u> BLUE Trilogue of 25/11/20

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					(note: text proposal from EC, lines 109, 110, 111, 112)
110	Article 1 – point 5 (new) / Article 51 – paragraph 5		<p><b><u>“5. Unless the Commission has adopted an equivalence decision as referred to in Article 30(2) or (3) or unless an administrator has been recognised pursuant to Article 32, or a benchmark has been endorsed pursuant to Article 33, the use in the Union by supervised entities of a benchmark provided by an administrator located in a third country where the benchmark is already used in the Union as a reference for financial instruments, financial contracts, or for measuring the performance of an investment fund, shall be permitted only for such financial instruments, financial contracts and measurements of the performance of an</u></b></p>		<p><i>“5. Unless the Commission has adopted an equivalence decision as referred to in Article 30(2) or (3) or unless an administrator has been recognised pursuant to Article 32, or a benchmark has been endorsed pursuant to Article 33, the use in the Union by supervised entities of a benchmark provided by an administrator located in a third country where the benchmark is already used in the Union as a reference for financial instruments, financial contracts, or for measuring the performance of an investment fund, shall be permitted only for such financial instruments, financial contracts and measurements of the performance of an investment fund that already reference the benchmark in the Union on, or which add a reference to such</i></p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><b><u>investment fund that already reference the benchmark in the Union on, or which add a reference to such benchmark prior to, 31 December 2025."</u></b>;</p>		<p><i>benchmark prior to 31 December [2025]. The use of benchmarks whose administrator relocates to a third country during the transition period shall not be permitted, unless the administrator advances an objective justification for this move. An administrator that relocates during the transition period, while benefiting from the transitional arrangements, shall seek the Commission's prior approval to do so. In order to specify what proof an administrator has to supply in seeking the above approval, the Commission shall be empowered to adopt a delegated act in accordance with article 49 specifying objective reasons for a relocation of benchmark administration during the transitional period".</i> BLUE Trilogue of 25/11/20</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					(note: text proposal from EC: suggestion to add a anti-circumvention clause, lines 109, 110, 111, 112)
111	Article 1 – point 6 (new) – introd. part / <b>Article 54</b>		<b><u>(6) in Article 54, the following paragraph is added:</u></b>		<b><u>(6) in Article 54, the following paragraph is added:</u></b> BLUE Trilogue of 25/11/20 (note: text proposal from EC, lines 109, 110, 111, 112)
112	Article 1 – point 6 (new) / <b>Article 54 – paragraph 7 (new)</b>		<b><u>"7. By 31 December 2027, the Commission shall review the functioning of the exemptions laid down in Article 2(2)(i)."</u></b>		<b><i>7. By 30 June [2022], the Commission shall submit a report to the European Parliament and to the Council on the scope of this Regulation. That report shall analyse the consequences of the far reaching scope of this Regulation also with respect to the continued use of benchmarks administered in third countries. That report shall assess in particular whether there is a need to amend this Regulation and in order to reduce the scope to administrators of certain categories of benchmarks or to benchmarks administrators</i></b>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					<p><i>whose benchmarks are widely used in the Union and shall be accompanied by a legislative proposal, if appropriate.</i></p> <p>BLUE Trilogue of 25/11/20 (note: text proposal from EC suggestion to add review clause, lines 109, 110, 111, 112)</p>
113				<p><i>Article 1a</i></p> <p><i>Amendment to Regulation (EU) No 648/2012</i></p>	
114	Article 1a (new) – introd. part / <b>Article 13a</b>			<p><i>Article 13a of Regulation (EU) No 648/2012 is replaced by the following:</i></p>	
115	Article 1a (new) / <b>Article 13a – title</b>			<p><i>“Article 13a</i></p> <p><i>Replacement of interest rate benchmarks and embedding contractual fall-backs in legacy trades</i></p>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
116	Article 1a (new) / Article 13a – paragraph 1			<p><i>1. Counterparties as referred to in Article 11(3) may continue to apply the risk-management procedures that they have in place at the date of entry into force of this Regulation in respect of non-centrally cleared OTC derivative contracts entered into or novated before the date on which the obligation to have risk-management procedures pursuant to Article 11(3) takes effect where, after the entry into force of this Regulation, those contracts are replaced, amended or novated for the sole purpose of replacing the interest rate benchmark they are referring to or of</i></p>	



Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<i>introducing fall-back provisions in relation to any benchmark referred to in the transaction.</i>	
117	Article 1a (new) / Article 13a – paragraph 2			<i>2. Transactions entered into or novated before the date on which the clearing obligation takes effect pursuant to Article 4 and which, after the entry into force of this Regulation, are subsequently replaced, amended or novated for the sole purpose of replacing the interest benchmark they are referring to or of introducing fall-back provisions in relation to any benchmark referred to in the transaction, shall not, for that reason, become subject to the</i>	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<i>clearing obligation referred to in Article 4.”</i>	
118	Article 2 - heading	Article 2	Article 2	Article 2	Article 2 GREEN
119	Article 2 – paragraph 1	This Regulation shall enter into force on the day following that of its publication in the <i>Official Journal of the European Union</i> .	This Regulation shall enter into force on the day following that of its publication in the <i>Official Journal of the European Union</i> .	This Regulation shall enter into force on the day following that of its publication in the <i>Official Journal of the European Union</i> .	This Regulation shall enter into force on the day following that of its publication in the <i>Official Journal of the European Union</i> . GREEN
120	Article 2 – paragraph 2	This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States. GREEN
121		Done at Brussels,	Done at Brussels,	Done at Brussels,	Done at Brussels, GREEN
122		For the European Parliament For the Council	For the European Parliament For the Council	For the European Parliament For the Council	For the European Parliament For the Council GREEN
123		The President The President	The President The President	The President The President	The President The President GREEN